

W. P. M. Kennedy

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21

Amesbury

The reign

A
Compleat Collection
O F
STATE-TRYALS,
A N D
PROCEEDINGS
U P O N
Impeachments for HIGH TREASON,
A N D O T H E R
CRIMES and MISDEMEANOURS;
F R O M
The Reign of King *HENRY* the Fourth,
T O
The End of the Reign of Queen *ANNE*.


The THIRD VOLUME.

With an Exact Alphabetical Table to the Whole.

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JOHN WALTHOE in the Middle-Temple Cloysters; BENJ. TOOKE at the
Middle-Temple Gate in Fleet-Street; JOHN DARBY in Bartholomew-Close; JACOB
TONSON against Katherine-Street in the Strand; and JOHN WALTHOE Jun.
against the Royal-Exchange in Cornhill. M. DCC. XIX.

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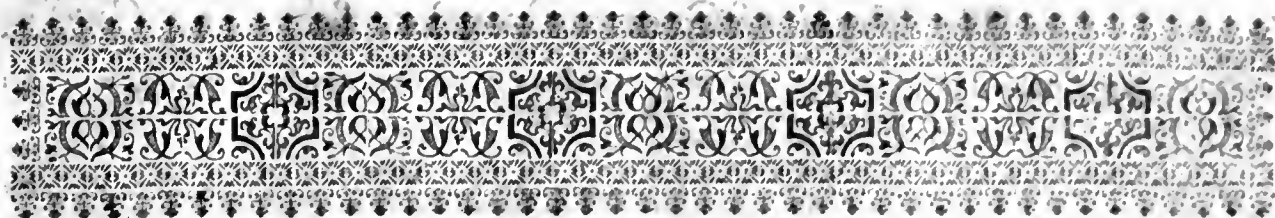
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A Compleat



A Compleat
COLLECTION
OF
TRIALS, &c.

The TRIAL of *George Borosky* alias *Boratz*,
Christopher Vratz, *John Stern*, and *Charles*
John Count Coningsmark.

Publisch'd by AUTHORITY.

On *Tuesday* the 28th of *February* 1681. The Sessions of the Peace for the City of *London*, and of *Oyer and Terminer* for the City of *London* and County of *Middlesex*, which was adjourned over till this day, was held at the Sessions-house in the *Old Bailey*: And there having been an Indictment found at *Hicks's-hall* by the Grand Jury for the County of *Middlesex* against *Charles George Borosky*, *Christopher Vratz* and *John Stern* for murdering *Thomas Thynn* Esq; and against *Charles John Count Coningsmark* as accessory before the Fact, the said Persons being in *Newgate*, were brought to the Bar to be Arraigned and Tryed: And they being Foreigners, an Interpreter was sworn to acquaint them in a Language they understood, what they were Accused of.

Clerk of the
Crown.



John Coningsmark hold up thy hand. (Which he did.)

You stand Indicted in the County of *Middlesex* by the Names of *Charles George Borosky*, late of the Parish of *St. Martins in the Fields*, in the County of *Middlesex*, Labourer; otherwise called *George Boratz* of the same Parish and County, Labourer; *Christopher Vratz* of the same Parish and County, Gen-

tleman; *John Stern* of the same Parish and County, Gentleman; and *Charles John Coningsmark*, of the same Parish and County, Esquire; otherwise called *John Coningsmark* of the same Parish and County, Esquire: For that you the said *Charles George Borosky* alias *Boratz*, *Christopher Vratz* and *John Stern*, not having God before your Eyes, but being moved and seduced by the Instigation of the Devil, upon the Twelfth Day of February, in the Thirty Fourth Year of the Reign of our Sovereign Lord King *Charles the Second*, with Force and Arms in the Parish of *St. Martins in the Fields* in the County of *Middlesex* aforesaid, in and upon *Thomas Thynn*, Esquire; in the Peace of God, and our said Sovereign Lord the King, then and there being, Feloniously, Wilfully, and of your Malice aforethought, did make an

Affault. And that thou the said George Borosky alias Boratzi, a certain Blunderbuss of the Value of Five Shillings, the said Blunderbuss being then charged with Gunpowder, and Four Leaden Bullets; which said Blunderbuss thou the said George Borosky alias Boratzi in both thy hands so as aforesaid, Loaden to and against the said Thomas Thynn then and there badst and beldest. And that thou the aforesaid George Borosky alias Boratzi, knowing the Blunderbuss aforesaid, to be so as aforesaid, charged with Gunpowder and Leaden Bullets, to and against the said Thomas Thynn then and there, with Force of Arms, Feloniously, Wilfully, and of thy Malice aforethought, didst Discharge and Shoot off. And that thou the said George Borosky alias Boratzi, with the said Leaden Bullets shot and sent out of the Blunderbuss aforesaid, by the violence and force of the Gunpowder aforesaid: And by thee the said George Borosky alias Boratzi so as aforesaid discharged and shot off, the said Thomas Thynn in and upon the right side of the Body of the said Thomas Thynn, near the short Ribbs of the right side of the Body of the said Thomas Thynn then and there Feloniously, Wilfully, and of thy Malice aforethought didst Strike and Wound; giving unto him the said Thomas Thynn then and there with the Leaden Bullets aforesaid, so as aforesaid shot and sent out of the Blunderbuss aforesaid by force and violence of the Gunpowder aforesaid, by thee the said George Borosky alias Boratzi, so as aforesaid discharged and sent out, in and upon the right side of the Body of him the said Thomas Thynn, near the short Ribbs, on the right side of him the said Thomas Thynn four mortal wounds, every one of them of the breadth of one Inch, and of the depth of six Inches; of which said mortal wounds, he the said Thomas Thynn from the said twelfth day of February in the thirty fourth Year aforesaid, unto the thirteenth day of the same Month of February at the Parish of St. Martins in the Fields aforesaid, did languish and lived languishing: On which said thirteenth day of February, in the thirty fourth Year aforesaid, he the said Thomas Thynn at the Parish of St. Martins in the Fields aforesaid, of the mortal wounds so as aforesaid given, died. And that you the said Christopher Vratz and John Stern, then, that is to say at the time of the Felony and Murder aforesaid, by the said George Borosky alias Boratzi; so as aforesaid Feloniously, Wilfully and of his Malice aforethought, done and committed, then and there Feloniously, Wilfully, and of your Malice aforethought, by force and arms were present, aiding, comforting, abetting, assisting and maintaining the said George Borosky alias Boratzi, the Felony and Murder aforesaid Feloniously, Wilfully and of his Malice aforethought to do and commit. And so you the said George Borosky alias Boratzi, Christopher Vratz and John Stern, the said Thomas Thynn in manner and form aforesaid, Feloniously, Wilfully, and of your Malice aforethought didst kill and murder against the Peace of our Sovereign Lord the King, His Crown and Dignity. And that thou the said Charles John Coningsmark before the Felony and Murder aforesaid, by the said George Borosky alias Boratzi, Christopher Vratz and John Stern in manner and form aforesaid, Feloniously, Wilfully, and of their Malice aforethought, done and committed, to wit, the said twelfth day of February, in the thirty fourth Year aforesaid, at the Parish of St. Martins in the Fields aforesaid, them the said George Borosky alias Boratzi, Christopher Vratz and John Stern the Felony and Murder aforesaid, in manner and form aforesaid Feloniously to do and commit, Feloniously, Wilfully and of thy Malice aforethought didst stir up, counsel, perswade and procure, against

the Peace of our Sovereign Lord the King, his Crown and Dignity.

L. Ch. Just. Why you must read this to them now in their Language, *Sir Francis Pemberton.* or else they can't understand it.

L. Ch. Just. North. You that are the Interpreter, tell them that you are going to interpret the Indictment to them by degrees.

Mr. Vandore. Yes, my Lord, I will.

L. Ch. Just. Don't read all the Circumstantial, but only the substance of the Indictment.

Then the Clerk of the Crown went near the Bar, and dictated to the Interpreter deliberately, who interpreted it to the Prisoners.

L. Ch. Just. Well, you have told them the substance of it, that they are Indicted for killing Mr. Thynn.

Mr. Vandore. Yes.

L. Ch. Just. Well, what says the first man?

Ch. of Cr. I asked him if he be Guilty of the Murder whereof he stands Indicted, and he says he is not Guilty.

L. Ch. Just. Does he say so?

Mr. Vandore. Yes, he says he is not Guilty.

L. Ch. Just. Why now tell him the Formality, that he must put himself upon the Jury here.

[Then Sir Nathaniel Johnson was sworn Interpreter.]

L. Ch. Just. Ask him this Question. Tell him he is accused of the Murder of Mr. Thomas Thynn; ask him if he be Guilty, or not Guilty.

Mr. Vandore. He says he is not Guilty, my Lord. I ask'd him just now.

L. Ch. Just. Then Sir Nathaniel Johnson, if you can make him to understand it, tell him; that our manner of Tryal here is by Twelve men, and that is by putting himself upon the Country, and therefore ask him, how he will be tryed. Tell him that the method is by saying, By God and the Country.

Sir N. Johnson. My Lord, he is a very dull kind of man, he knows not how to Answer, nor what to say; nor won't say any thing, that is the truth of it.

L. Ch. Just. Ask him if he be willing to be tryed after the manner of the English.

Sir N. Johnson. Yes, he says he is willing to be tryed according to the fashion of the English.

L. Ch. Just. North. He hath pleaded not Guilty, and the other follows of course.

L. Ch. Just. Ask the other, the Captain, the same thing.

Sir N. Johnson. He desires a French Interpreter, for he speaks French.

L. Ch. Justice. Surely here are enough People that understand French, but ask him if he does not understand English.

Sir N. Johnson. He can understand some he says.

L. Ch. Just. Then ask him, whether he be Guilty, or not.

Sir N. Johnson. He says he is not Guilty, my Lord.

L. Ch. Just. Now ask Mr. Stern, but first, ask the Captain how he will be tryed.

Sir N. Johnson. He says he will be tryed by God, and half his own Country, and half English.

L. Ch. Just. He shall have his Request.

Sir N. Johnson. He desires one thing further.

L. Ch. Just. Look you Sir Nathaniel Johnson, you must tell him this; he shall be tryed by half Foreigners,

Foreigners, and half English; that is it I suppose he desires.

Sir N. *Johnson*. My Lord, he desires that there may be none of the Jury that are any thing a Kindred or Relation to Mr. *Thomas Thynn*, nor any particular Friend of his, and he is satisfied.

L. *Ch. Just.* No, there shall not, we will take care of that. Now ask Mr. *Stern* then the like Question.

Sir N. *Johnson*. My Lord, he says he is not Guilty.

L. *Ch. Just.* Ask him too how he will be tryed; Whether by a Jury?

Sir N. *Johnson*. He says he's content to be tryed as the others are, by half Strangers and half English.

L. *Ch. Just.* Now then ask my Lord *Coningmark* what he says.

Mr. *Thynn*. He speaks *English*, my Lord.

L. *Ch. Just.* But not well enough may be, to understand the whole.

L. *Ch. Just. North.* Sir *Nathaniel*, what does he say?

Sir N. *Johnson*. My Lord, he says it is a Concern of his Life, and therefore he desires he may have not only one Interpreter, but others: He desires he may have two or three, that they may make no Mistake.

L. *Ch. Just.* Very well.

Sir N. *Johnson*. He says that I understand the *Dutch* Language; but his Life and Honour are concerned, and therefore he would have three or four.

L. *Ch. Just.* Who would he have?

Sir N. *Johnson*. Sir *Tho. Thynn* said they had one that was brought by them.

Mr. *Thynn*. That is *Vandore*, who is sworn already.

L. *Ch. Just.* Look you, Sir *Nathaniel*, tell my Lord, if he pleases, he shall have a *French* Interpreter; for I know he speaks that Language very well.

Sir N. *Johnson*. My Lord, he says, That *Highb Dutch* is his Natural Language, and he can express himself best in that.

[Then one Vanbaring was called for by the Count, but did not appear.

Wm. Montague, Esq;

L. *Ch. Bar.* Sir N. *Johnson*, You must ask the Count whether he be Guilty of the Indictment, as Accessory before the Fact.

Sir N. *Johnson*. I have asked my Lord, and Not Guilty he answers.

Ch. of the Cr. How will you be tryed?

Sir N. *Johnson*. He says, he will be tryed by God and half his own Country, or half Foreigners and half English; and he desires they may be Persons of some Quality, as they use to treat Persons of his Quality, and Strangers.

L. *Ch. Just.* There shall be such Strangers, tell him. You have Merchants of good Account, I suppose, upon this Pannel?

Under-Sheriff. Yes, my Lord, they are all such.

Sir N. *Johnson*. He desires he may be tryed distinctly from the others.

L. *Ch. Just.* That cannot be: But look you Sir, Pray tell my Lord this, That though the Evidence must be given, and the Jury must be charged all together, yet in this case we will distinguish his Case to the Jury, if there be occasion.

L. *Ch. Bar.* And his Evidence will come distinct.

Vol. III.

Mr. *Vandore*. My Lord, he asks this Question of your Lordship and this Honourable Court, if it be agreeable, and according to the Justice of this Nation, that my Lord may be allowed two or three days Delay, because he is to prepare himself and Witnesses for his Tryal.

Sir N. *Johnson*. My Lord, he says this, his Witnesses are not prepared, and he not having had time to recollect himself, so as to fit himself for his Defence, therefore he begs the favour of the Court, that he may have a day or two's time to recollect himself. He says he is to answer Circumstances with Circumstances, my Lord; he says he has some Witnesses as to Circumstances that are very material to answer such Circumstances as are brought against him; he does not understand the Law, my Lord, nor has had no time to have any Council to inform himself.

L. *Ch. Just.* You must tell him this, That which he is charged with is matter of Fact that none can instruct him in but himself, Council can do him no good in such a case as this.

Sir N. *Johnson*. My Lord, he says, the Matters that are objected against him are only Circumstances, my Lord, and they require an Answer, which he can do by other Circumstances, and he desires time to recollect himself, two or three days respite, he desires if it were but a little time, a day or two.

Mr. *Thynn*. My Lord, our Witnesses are all ready, and the Counsel instructed, and wait here to go on.

L. *Ch. Just. North.* Look you, pray will you tell him, When the Tryal is once begun, the Jury can neither eat nor drink till they have given their Verdict; that is the Law, and we can't change the Law, therefore we cannot allow him the time he desires. He knows what he is Accused of, and has known it a good while, and has had time to recollect himself, and prepare himself.

Sir N. *Johnson*. My Lord, he says, the Jury are not yet together, nor charged with him, and therefore till the Jury are charged, he thinks he may have time, if your Lordship please to allow it.

L. *Ch. Just.* Look you, you must tell him, that he is to understand that here is but one Indictment against the Principals and himself, and we cannot try this by piece-meals; we cannot try the Principals now, and my Lord *Coningmark* another time.

Sir N. *Johnson*. If it must be so, he says, he must throw himself upon your Lordship; he hopes he shall have nothing but what is just and fair, and he hopes your Lordship will be of Counsel to him, as the Fashion of this Country is; if any thing arises of Matter of Law, he desires he may have the Advantage of it: And if he can't have a day or two, he says, the Innocency of his Case will protect him. Count *Coningmark* knowing how innocent he is, won't stick for a day or two, but he will be ready to be tryed as your Lordship shall think fit; he has Innocence on his side, and that will protect him.

L. *Ch. Just.* Let my Lord know, that we will be careful in Examining all things that concern him.

Sir N. *Johnson*. He says, he does not fear it, my Lord, having to do with such Honourable Persons, nor doubt it at all.

L. *Ch. Just.* Then swear a Jury. But look you, my Lord *Coningmark*, consider this, As the Gentlemen

lemen of the Jury come to be sworn, if you do dislike any of them, you may except against them.

Sir N. *Johnson*. My Lord, he says, being altogether a Stranger here in *England*, and not knowing any of the Persons, he begs the favour of the Bench, that he may have the Names of those that are Returned of the Jury, and a little time to consider of it.

L. C. J. That we cannot do: All we can do for you is, we will take as much care as we can, that you may have indifferent Persons, and Persons of Quality.

L. C. J. *North*. Pray tell him, the Law gives him the Privilege of a peremptory Challenge.

Sir N. *Johnson*. He says, my Lord, he does not know who they are, but they may be Persons that are touched, and may have something of evil Will or Spleen against him. His Father served against the King of *Denmark*, and against the *Poles* and the *Papists*, and his Father was a Protestant, and served the Protestant Cause.

L. C. J. What Country-men are they, Mr. Sheriff?

Under-Sheriff. They are *French* and *Dutch* most of them, I do not believe there is ever a *Dane* amongst them.

L. C. J. We will call all *French* men, if he had rather have them than *Dutch*.

Sir N. *Johnson*. He would very gladly have them all *High Dutch*; if not, that he may have some.

L. C. J. I thought he had excepted against the *Dutch*.

Sir N. *Johnson*. No, against the *Danes*, for his Father in the Wars burnt their Towns.

L. C. J. Examine them as they come to the Book. If there be any of the *Roman* Catholick Religion, and don't let any such be sworn.

Mr. Sheriff *Pilkington*. There is none such amongst them, I dare say.

L. C. J. Sir Nat. *Johnson*, tell my Lord, he shall have no *Roman* Catholicks at all.

Sir N. *Johnson*. He thanks your Lordship. He desires he may have the Pannel to look upon, and he hopes that is an easy Favour.

L. C. J. Let him have the Pannel, if it will do him any good. He is a Stranger, satisfy him in what we can.

[Which was delivered to him, and he looked it over.

L. C. J. Tell him as the Jury is called he shall have every one of the *Outlandish* men and *English* men brought before him.

Sir N. *Johnson*. My Lord, he thanks you for this favour.

L. C. Bar. Sir Nat. *Johnson*, tell the Count, They call first an *English* man, then a *Foreigner*, and they shall be brought to view.

L. C. J. Pray have you told the other persons, that their time to challenge is before the Jury is sworn?

Sir N. *Johnson*. The *Polander* says he can challenge none, because he knows none.

L. C. J. What say the rest?

Mr. *Vandore*. They say they know no body, and can except against no body.

Cl. of Cr. Call Sir *Will. Roberts*.

[Who appearing, stood up.

L. C. J. My Lord *Coningmark*, there is the *Fore*man.

Sir N. *Johnson*. He has nothing to say against him.

L. C. J. Then hold him a Book, and swear him. [Which was done.

Cl. of Cr. Call Mr. *Downing*.

Interpreter. He says he is no *Foreigner*.

L. C. J. Then he must not be sworn.

Cl. of Cr. *Moses Charas*.

[Who appeared.

Interpreter. He has nothing to say against him. But he himself says, he does not speak *English*, but he desires to speak *French*.

Cl. of Cr. Then tell him in *French*, he must lay his Hand on the Book and be sworn, and hearken to his Oath.

Sir Fr. *Winnington*. We challenge him for the King.

L. C. J. For what Cause?

Sir Fr. *Winnington*. My Lord, we take it that we need not shew any Cause, unless there be any want of the Number in the Pannel.

L. C. J. Then we must do him right, and tell him what Advantage the Law gives him. Tell my Lord, you that understand *English*, that this Gentleman is challenged for the King, and if the King shew any good Cause for it, he must not be sworn, else he must. And the way for him to cause the King's Council to shew their Cause, (if he desire it) is to challenge all the rest.

Mr. *Williams*. We waive our challenge; for the reason why we challenged him was, because he did not understand *English*, which will be no reason at all.

Then he was sworn.

Cl. of Cr. Sir *Henry Ingoldsby*.

Sir N. *Johnson*. He challenges him, my Lord.

Cl. of Cr. Sir *William Gulston*.

Sir N. *Johnson*. He excepts against him, my Lord.

L. C. J. Does he challenge him in respect of what I said to him about the *Outlandish* Gentlemen, that the King is to shew cause? Or how does he challenge him?

Interpreter. My Lord, he says, he hears he is a Friend to Mr. *Thynn*.

L. C. J. Well let him be passed by then.

Cl. of Cr. Sir *John Musters*. [Who did not appear.

Sir N. *Johnson*. He says, my Lord, he only desires indifferent persons.

Cl. of Cr. *Henry Herbert*, Esq;

Sir N. *Johnson*. He challenges him.

Cl. of Cr. *Richard Paget*, Esq;

Sir N. *Johnson*. He desires to see him.

L. C. J. Let him be brought into the middle, that he may look upon the Prisoners.

Interpreter. He has nothing to say against him.

Then he was sworn.

Cl. of Cr. *James Buggone*.

Interpreter. He excepts against him.

Cl. of Cr. *Claudius Derolee*.

Interpreter. He excepts against him too.

Cl. of Cr. *Charles Beelow*.

Interpreter. He says he looks like a Man, and he does not except against him. [And he was sworn.

Cl. of Cr. *Ralph Bucknall*, Esq;

Interpreter. He challenges him.

Cl. of Cr. *Thomas Earsby*, Esq;

Interpreter. He challenges him too.

L. C. J. Look you, Sir Nath. Johnson, pray tell him he can challenge but Twenty.

Sir N. Johnson. He says very well; he will not do any more. He desires the favour, that those that he challenges may not come near those that are sworn.

L. C. J. Well, it shall be so; we will take care of it.

Cl. of Cr. Richard Gowre, Esq;

Sir N. Johnson. He excepts against him.

Cl. of Cr. George Hocknall, Esq;

Interpret. He challenges him. [But then the

Count looking in his Paper, retracted his challenge, and he was sworn.

Cl. of Cr. Peter Vandenhagen.

Interpret. He says nothing to him.

[Then he was sworn.

Cl. of Cr. Walter Moyle, Esq;

Interpret. He does not challenge him.

[He was sworn.

Cl. of Cr. Christopher Ripkey.

Interpret. He does not challenge him.

[He was sworn.

Cl. of Cr. Thomas Henslow, Esq;

Interpret. He does not except against him.

[Then he was sworn.

Cl. of Cr. Lewis Doncarr.

Interpret. He challenges him.

Cl. of Cr. Peter Lecane. [He did not appear.

David Collivaux.

Interpret. He challenges him, because he knew Mr. Thynn, they say.

Cl. of Cr. Andrew Lodderley.

Interpret. He challenges him.

Cl. of Cr. James Burk.

Interpret. He challenges him.

Cl. of Cr. Daniel Griggion.

Interpret. He does not challenge him.

[So he was sworn.

Cl. of Cr. Robert Jordan, Esq;

Interpret. He challenges him.

Cl. of Cr. Lucy Knightley, Esq;

Interpret. He challenges him.

Cl. of Cr. John Haynes, Esq;

Interpret. He does not except against him.

[He was sworn.

Cl. of Cr. Lewis le Count.

Interpret. He challenges him.

Cl. of Cr. John Bellieu.

Interpret. He challenges him.

Cl. of Cr. James Fromtein.

Mr. Williams. We challenge him for the King.

Cl. of Cr. John Massey.

Interpret. He challenges him.

Cl. of Cr. Andrew Primow.

Interpret. He challenges him.

Cl. of Cr. Nicholas Beufoy.

Interpret. He challenges him. He says they are all Walloons, and therefore he challenges them.

L. C. J. Why does he except against Walloons?

Interpret. Because they have always served against the Swedes.

Cl. of Cr. John Lebarr.

Interpret. He does not except against him.

[And so he was sworn.

Cl. of Cr. Cryer, count these, &c.

Sir Will. Roberts, Bart.

Moses Charas, Gent.

Richard Pagett, Esq;

Charles Beelow, Gent.

Geo. Hocknall, Esq;

Pet. Vandenhagen, Gent.

Walter Moyle, Esq;

Chr. Ripkey, Gent.

Tho. Henslow, Esq;

Dan. Griggion, Gent.

John Haynes, Esq; And

Job. Lebarr, Gent.

Then Proclamation for Information and Prosecution was made: And a Chair was set for the Count, at his Request.

Cl. of Cr. **G**entlemen, Look upon the Prisoners, you that are Sworn, and hearken to their Cause; they stand Indicted *prout* in the Indictment, *mutatis mutandis* — against the Peace of our Sovereign Lord the King, his Crown and Dignity. Upon this Indictment they have been Arraigned, and thereunto have severally pleaded, *Not Guilty*: And for their Tryal, have put themselves upon God and their Country; which Country you are. Your Charge is to enquire, whether they, or any of them are guilty of the Offences whereof they stand Indicted, or not Guilty. And if you find them, or any of them Guilty, you are to find what Goods or Chattels, Lands or Tenements they had at the time of the Felony and Murder committed, or at any time since. If you find them or any of them Guilty, you are to inquire, whether they or any of them fled for it: If you find that they, or any of them fled for it, you are to inquire of their Goods and Chattels, as if you had found them Guilty; if you find them or any of them not Guilty, nor that they did fly for it, you are to say so, and no more, and hear your Evidence. But if you acquit any one of the Principals —

L. C. J. That is a Mistake, it must be all the Principals.

Cl. of Cr. If you acquit the Principals, you are not to inquire of *Charles John Coningsmark* as accessory before.

Mr. Keene. May it please your Lordship, and you Gentlemen that are Sworn of this Jury, *George Borosky*, alias *Boratz*, *Christopher Vratz*, and *John Stern*, the Prisoners at the Bar, stand here Indicted; for that they not having the fear of God before their Eyes, but being moved and seduced by the Instigation of the Devil, the 12th Day of February, in the 34th Year of the Reign of this King, feloniously and voluntarily, and of their Malice afore-thought, did make an Assault upon *Thomas Thynn*, Esq; at the Parish of *St. Martin's in the Fields*, in this County; and that the said *George Borosky*, having in his Hands a Blunderbuss, which he knew to be charged with four leaden Bullets, did discharge it at Mr. Thynn, and gave him four mortal Wounds, of which Wounds he languished till the 13th Day of February, and then dyed: And that they, the said *Christopher Vratz*, and *John Stern* were there present, aiding, assisting and abetting him to commit the said Felony and Murder; and so that they the said *George Borosky*, *Christopher Vratz*, and *John Stern*, did of their Malice afore-thought, in manner aforesaid, Murder the said *Thomas Thynn*. And *Charles John Coningsmark*, the other Prisoner at the Bar, stands Indicted, for that he before the Felony and Murder aforesaid, so done and committed, to wit, the 12th Day of February aforesaid, did of his Malice afore-thought, move, incite, counsel, persuade and procure the said *Borosky*, *Vratz*, and *Stern*, to do that Murder, against the Peace of the King, his Crown and Dignity. To this Indictment they have severally pleaded *Not Guilty*; and you are to enquire, whether they are Guilty, as they are charged, or no.

Sir Francis Mordaunt. My Lord and Gentlemen, I am of Counsel in this Case for the King, against

gainst the Prisoners at the Bar. There are three of them Indicted as Principals in this Murder, the fourth as Accessory before. In this Case that is now before you, Gentlemen, I cannot chuse but take Notice unto you, that a Murder of this Nature has never been heard of to be perpetrated upon *English* Ground, both in respect of the Person Murdered, and in respect of the Circumstances of the Fact. For the Person Murdered, a Gentleman of that Quality and Estate, that he hath left but few Equals behind him. That this Man being in his Coach, should be way-layed, surpris'd, murdered, and this Murder committed in the midst of our Streets, is that which works Amazement in all *English* Hearts. And our only Comfort upon this sad Occasion is; that there is not one Native of this Countrey found amongst all those that are Accused to be Instruments in this Barbarous Fact.

I did Observe to you, Gentlemen, before, that there are three named to be Principals; *Borosky*, whom for distinction sake, I shall call by the Name of the *Polander*, *Vratz*, who is called the Captain, and *Stern*, who is called the Lieutenant. *Borosky* the *Polander*, we say, was the Man that discharged this Blunderbuss against this Worthy Gentleman that was slain; but though he was the only Man that discharg'd it, yet if we can satisfie you that *Vratz* and *Stern* were with him at the same time, aiding and assisting him when he gave the Blow, they are as much Principals as he that shot off the Gun. It will be natural to open to you what is said against this Captain *Vratz*; he is a *Swede* by Birth, and did formerly belong to Count *Coningsmark*; he was a Retainer to him. Afterwards, I think in the War he was made a Captain. This Gentleman had been formerly in *England*, but at the last time he came, which was three Weeks, or thereabouts, before the Murder was committed, his Lodging was in *King-street* at *Westminster*. This Captain *Vratz*, we shall prove, did often discourse that he had a Quarrel with Mr. *Thynn*, that several times before this Murder was actually done, he ordered his Servant to way-lay his Coach; and upon that very fatal Day, the 12th of *February*, when this unhappy Accident fell out, having Information that Mr. *Thynn* was gone out in his Coach, immediately he puts on his Boots, gives Order to his Servant to bring his Cloaths to him at such a Place, because he should remove his Lodging, he said, that Night, that he should bring his Cloaths to the *Black-Bull Inn* in *Holbourn*, and bring his Horse thither too. When he went from his Lodging, the *Polander* went along with him, and they came to the *Black-Bull* in *Holbourn*, where they met with *Stern*. We shall shew you, that these three Gentlemen being thus Armed, one with a Blunderbuss, the Second with Pistols, and the other very well provided, rid out about six of the Clock, the Murder being committed about seven or eight. At their going out, they enquired which was their way to *Temple Barr*, they were seen to ride through the *Strand* to *St. James's*, the Fact was done in the *Pall-Mall*, and we shall shew you the way of it was thus; Mr. *Thynn* passing thro' the Street to go home in his Coach, three Persons came riding up to the Coach-side, and while the one stopped the Horses, immediately the Blunderbuss was discharg'd into the Coach against Mr. *Thynn*, and gave him those Wounds, of which the next Morning he dyed. Presently

these three Men ran away, but one of them let fall a Pistol upon the Place, which I shall observe as a material Circumstance against these Persons, because we shall prove whose the Blunderbuss was. These things being done, this Murder committed, and they gone away, it began to work in Peoples Thoughts, and Circumstances began to come out, that this Blunderbuss should be ordered to be bought by Captain *Vratz*, who had discoursed with many Persons about the Quarrel he had with Mr. *Thynn*, and given Order to his Servant to way-lay his Coach; and these Persons being rid out at that time, there was a great Suspicion that they did it. Great care there was taken, and great means used, as no doubt there would be, to apprehend the Malefactors; and by great Providence it was found out at last, that this Captain *Vratz*, according to his Word, had altered his Lodging, and was got to a Doctor's House, that lived, I think, in *Leicester-Fields*. Being there surpris'd, and coming upon his Examination, he did not deny but he was there one of the three that was at the Place when and where Mr. *Thynn* was Murdered, but he pretended, he did intend to fight him in a Duel, and kill him fairly, as he called it. But Gentlemen, I must observe this to you, in my small time of Experience of the World, I never knew a Man go to fight a Duel, and carry out with him a Second with a Blunderbuss. 'Tis not possible he should go with such a Design as he would insinuate, but rather with an Intention of Murder. For the *Polander*, he came into *England* but the *Fryday* before, and so we shall prove to you that which will stick hard upon the Count. Upon *Fryday*, he being landed, he inquires for the young Count's Tutor, which was at an Academy of one Monsieur *Faubert's*; and there he enquires for the Count's Secretary; he lay there, I think, that Night, and upon *Saturday* he was conveyed to the Count's Lodgings. There also he was lodged for one Night. The Count was pleased to bespeak him a very good Sword, and a Coat for him, that he might be well arm'd, and there he lay on *Saturday* Night, as I said, the Night before the Murder was committed. Upon *Sunday*, Gentlemen, there being a Message sent to this Doctor, where *Vratz* lay, the Night following that the Count would speak with the Doctor, the Doctor came, and the Doctor and the *Polander* went away to Captain *Vratz's* Lodging, and from thence to *Holborn*, to the *Black-Bull*, and the Captain was carried in as much secrecie as he could, for he was carried in a Sedan; and I think we shall be able to prove by the Persons that carried him, that this was the Man. For the other Gentleman, *Stern*, the Lieutenant, as they call him, he was an ancient Acquaintance of Capt. *Vratz's*, had known him long ago in *England*, and complained to him, that Lodgings might be very dear: but the Captain told him, he had a Design; and if he would assist him as a brave Fellow, would maintain him, and he should not want Money to bear all his Charges. But we shall prove that this was the third Person that rid out with the *Polander*, and the Captain in this Garb that I told you of, this Night that the Fact was done. And indeed, Gentlemen, upon their Examination they have every one confessed the Fact; even the *Polander* confessed that he did shoot off the Blunderbuss; and *Vratz* confessed that he was there, and the Lieutenant *Stern*; so that if there had been no more

more Evidence, it would have been sufficient to maintain the Issue, and in our Circumstances, it is more perhaps than could be expected. This, Gentlemen, is the principal Sum of the Evidence that will be given against the three Principals. For the fourth, Gentlemen, Count *Coningsmark*, he is a Person of great Quality, and I am extraordinary sorry to find the Evidence so strong against him, as my Brief imports; I wish his Innocence were greater, and our Evidence less; for he is a Person of too great Quality, one would hope, to be concerned in a thing of this Nature; but that he was the main Abettor and Procurer of this Barbarous Business, we shall prove upon these Grounds: First, That he had a Design upon Mr. *Thynn's* Life; for, Gentlemen, coming into *England*, about three Weeks before this Matter was transacted, first he lies in Disguise, and lives private, and removes his Lodging from Place to Place frequently; that he sent a Person to inquire of the *Swedish* Resident, whether, or no, if he should kill Mr. *Thynn* in a Duel, he could by the Laws of *England* afterwards marry the Lady *Ogle*? So that Mr. *Thynn's* death was in Prospect from the beginning. Gentlemen, We shall prove to you, as I did in some measure open before, that the Count himself was pleased to give express Order, that the *Polander* should have a good Sword bought him; that before he came into *England*, he was very much troubled, by reason of the stormy Weather, for fear he should be cast away; that he lodged him in his own Lodging the Night before this Act was perpetrated; and that Captain *Vratz* was the Morning before, and immediately after, with the Count. Another thing, Gentlemen, that I had almost forgot; The Count was willing to be instructed in the Laws of *England*, and inquired, Whether a Man might lawfully ride out upon a *Sunday*? And being told, That after Sermon he might; he was very well satisfied; and the Day he inquired of it, was the Day that the Murder was committed. After the thing was done, Count *Coningsmark* the next Morning pretended he was to go to *Windsor*, and leaves his Lodging; but instead of going to *Windsor* (being still in his disguise) he goes to *Rotherbith*, by the Water-side, and there, I think, he continues two or three Days in a black Peruque; (and that is Disguise enough for such a Gentleman.) And afterwards he goes to *Gravelend*; but, I think, he was upon the Water some time, before he thought it convenient to land; and there he was surpris'd in this Disguise. And when he was surpris'd and taken, he shew'd himself to be in great disorder; but being charged with the Fact, acknowledged nothing of the Matter; but how it should come to pass, that he should lie so long disguised, upon no Pretence that can be known, and afterwards to pretend that he had a Business to effect, and then he was to go into *France*, that will lie upon him to answer. But these are the inducing Evidences that we give to you; his keeping the *Polander* in his House, his disguising of himself, and his inquiring, Whether if he killed Mr. *Thynn*, he might not marry my Lady *Ogle*? His flight the next Day, and pretending to go to *Windsor*, when he went quite the other way, and all in a Disguise; and these Persons not having any appearance, or any reason whatsoever, for any particular Quarrel to Mr. *Thynn*, but the Count having some disgust to him, upon the Terms that the

Witnesses will tell you of by and by, and being related to the Count, we must leave it to you to judge, whether these Gentlemen did it singly and purely upon their own Heads, or whether they were not set upon it by the Count.

Sir *Fra. Winn*. My Lord, I shall not trouble you with repeating of our Evidence, but we will begin and call our Witnesses, directly to prove the Murder done by these Gentlemen; we will prove the Fact downright upon them, and then we shall afterwards come to the Count.

Mr. *Williams*. My Lord, first, we will direct Evidence to the Principals, and then to the Accessory. Call *William Cole* and *William Ellers*.

L. C. J. Swear some Persons to Interpret the Evidence that shall be given: I do it for the sake of the *Aliens* that are of the Jury; for some of them understand no *English*, and they will not know what to make of the Evidence, if they do not repeat it to them in their own Language.

Then *Vandore* and *Wright* were sworn for the King.

Sir N. *Johnson*. My Lord desires that the Doctor and the Taylor that are in Prison may be sent for, to be here, for they are Witnesses for him.

Sir *Fra. Winn*. We desire they may be here too, for they are Witnesses for the King, and I believe they are here, my Lord.

Sir N. *Johnson*. Mr. *Vandore* does not speak *French*.

Sir *Will. Roberts*. Mr. *Craven* speaks *Dutch* and *French* very well.

Mr. *Craven* was sworn.

Sir N. *Johnson*. The Count desires the favour of Pen and Ink.

L. C. J. Let the Count have Pen and Ink.

Mr. *Williams*. Call *William Cole* and *William Ellers*.

Who appear'd, and were sworn.

Which is *William Cole*? Set him up. Acquaint my Lord and the Jury how Mr. *Thynn* was Assaulted, and the manner of it.

Cole. My Lord, my Master was coming up *St. James's-street*, from the Countess of *Northernberland's*.

Sir *Fra. Winn*. Name your Master.

Mr. *Williams*. Who was your Master?

Cole. Mr. *Thynn*. And I had a Flambeau in my Hand, and was going before the Coach, and coming along, at the lower end of *St. Alban's-street*, I heard the Blunderbuss go off; so upon that I turned my Face back, and saw a great Smoak, and heard my Master cry out he was Murdered: and I see three Horsemen riding away on the right side of the Coach, and I pursued after them, and cryed out Murder; I ran to the upper end of the *Hay market*, till I was quite spent, and was able to go no further, and turning back again, my Master was got into the House, and I understood he was wounded: that is all I know.

Mr. *Williams*. You say you heard a Blunderbuss go off, and turning back, you saw three Men riding away from the Coach.

Cole. Yes.

Mr. *Williams*. Look upon the Prisoners at the Bar: Can you say all them, or any of them were the Men?

Cole.

Cole. No I cannot ; I did not see their Faces, but I saw the Horse of one of them was a little Bay Horse.

Mr. Williams. But do you take any of them Men to be one of the three ?

Cole. I did not see any of their Faces.

Sir Fr. Winn. What time of Night was it ?

Cole. A quarter after Eight.

Sir Fr. Winn. Pray what day of the Week ?

Cole. Sunday.

Sir Fr. Winn. What day of the Month ?

Cole. The 11th or 12th of February.

Sir Fr. Winn. Then, where is *William Ellers* ? Pray do you tell the Court and Jury how *Mr. Thynn* was wounded, and by whom, and what you know of it.

Ellers. My Lord, I came with my Master from *St. James's-street* from my Lady *Northumberland's*, and as I came at *St. Alban's-street*, there came three Men riding by the right side of the Coach, and as they rid, one of them turned about, and bid me stop, you Dog ; and just as I looked about, the fire was let into the Coach upon my Master, and the Men ran away as fast as they could.

Sir Fr. Winn. How many were there of them ?

Ellers. There were three.

Sir Fr. Winn. Were those Men at the Bar, or any of them the Persons ?

Ellers. I cannot tell.

Sir Fr. Winn. What were the words they said when the Coach was stopped : Hold, hold, or stop, you Dog ?

Mr. Williams. What Condition was your Master in then ? Was he shot then ?

Ellers. Yes.

Mr. Williams. We will give you some Evidence now out of their Examinations.

L. C. J. You had best give some Evidence of his Wounds.

Mr. Williams. Yes, we will. Call *Mr. Hobbs* the Surgeon.

L. C. J. Look you, *Mr. Craven*, you hear what these Witnesses say, tell it to the Gentlemen of the Jury that are *Outlandish* Men, That these Witnesses swear, there were three Men did do this thing ; the one of them stopped the Coach, and the other shot into it, but it was at that time of Night, they could not know their Faces, and they all rid away.

Mr. Craven. My Lord, if you please, the Witnesses may speak by degrees, and between every Witness I will give the Jury an Account.

L. C. J. Well, it shall be so ; but these say no more than what I tell you, That three Men did do this.

Then be Interpreted it to the Jury.

L. C. J. What says that Gentleman to you ?

Mr. Craven. He says, he hears that three Men did do it, but he says, he does not hear that they knew any of them.

Then Mr. Hobbs was sworn.

Mr. Williams. Had you the searching of *Mr. Thynn's* Body after it was hurt ?

Mr. Hobbs. Yes.

Mr. Williams. How did you find him ?

Mr. Hobbs. I was with him, Sir, that Night he was wounded, and I found him shot with four Bullets which enter'd into his Body and

tore his Guts, and wounded his Liver, and his Stomach, and his Gall, and wounded his great Guts, and his small Guts, and broke one of the Ribs, and wounded the great Bone below.

Sir Fran. Winn. What time came you to him ?

Mr. Hobbs. About Nine or Ten of the Clock.

Sir Fran. Winn. Did he die of those Wounds ?

Mr. Hobbs. Yes he did die of those Wounds.

Mr. Williams. Did you apprehend them all Mortal, or any, or which of them ?

Mr. Hobbs. I believe there was never a Wound but it might prove Mortal.

Sir Fran Winn. Now tell us what Day of the Week, and what Day of the Month it was.

Mr. Hobbs. It was *Sunday-Night*, the 12th of February, I think.

L. C. J. What did you observe of the Bullets, was there any thing done to them more than ordinary ?

Mr. Hobbs. I could not see any thing, I have them here, my Lord.

L. Chief Baron. Were they Iron or Lead ?

Then Mr. Hobbs delivered them into Court.

Mr. Hobbs. Two of them, the little ones, may be Iron, for one of them went through a thick Bone, and yet there was no Impression on it.

L. C. J. And this that has the Impression, you think might be done against the Bones.

Mr. Hobbs. Yes.

L. C. J. Was this left ragged on purpose to do the more Mischief ?

Mr. Hobbs. Which, my Lord ?

L. C. J. This that is left at the end here. Would this be more Mortal than another Bullet, or harder to heal ?

Mr. Hobbs. No, but as they take up a greater space in flying.

L. C. J. Would not the raggedness hinder the healing ?

Mr. Hobbs. No, only bruise the Flesh, which bruised Flesh must come away before it can be healed. All Bullets wound by bruising of the Flesh.

L. C. J. Well, these were the four Bullets that were found in *Mr. Thynn's* Body ?

Mr. Hobbs. I verily believe they are. *Dr. Lowre* had them out of my Hands for a Day or two, but I believe them to be the same.

L. C. J. Was there any lodged in the Stomach ?

Mr. Hobbs. Yes, one of the little ones.

L. C. J. Had they broke the great Bone ?

Mr. Hobbs. Yes, the great Bone in the bottom of the Belly.

L. C. J. Two of them ?

Mr. Hobbs. A great one and a little one ; two of them passed through that Bone, and lodged in the Back-Bone.

L. C. J. Was any of them gone through the Body ?

Mr. Hobbs. One of them lay between the Ribs and the Skin.

L. C. J. None were got quite through then ?

Mr. Hobbs. None.

Sir. Fr. Winn. Call the Coroner, *Mr. White*.

L. C. J. Tell the Jury, *Mr. Craven*, what this Witness has said.

[Then be Interpreted it.]

L. C. J. What says that Gentleman ?

Mr. Craven. He says, 'tis very well, he understands part of it.

L. C. J. Do the rest of them understand it ?

Mr. Bridgman.

Mr. *Bridgman*. No, unless he could not make his Escape.

L. C. J. Now what say you to this?

Sir N. *Johnson*. He desires to understand it.

L. C. J. Why then speak it to him, you that are the Interpreter.

[Then Mr. *Craven* interpreted it to him in French.

L. C. J. Now speak aloud and tell us what he says.

Mr. *Craven*. He says 'tis very true, that he was there, and had that Gentleman and the *Polander* along with him as his servants; Mr. *Thynn* being a Gentleman that had always a great many servants about him. And he says, my Lord, that he had received an Affront from Mr. *Thynn*; upon that, he challenged him, and sent Letters out of *Holland* to desire him to give satisfaction by fighting, but could have no satisfaction; and therefore because in *England* Duels were forbid, he thought to make a Rencounter of it, and took these Gentlemen along with him, that if so be Mr. *Thynn's* servants should assault him, or knock him on the head, or hinder him from escaping, that they might get him off.

Sir Fr. *Winn*. I beg one favour of you, Sir, that you would ask him one Question, and that is, What the Affront was that Mr. *Thynn* gave him?

L. C. J. That he apprehends he gave him?

[The Interpreter asked him.

Mr. *Craven*. My Lord, he says, That at *Richmond* he heard he spoke and gave out very ill language of Count *Coningsmark*, who was his Friend, and a man he had many Obligations to, and so of himself too, and he would never acquaint Count *Coningsmark* with it, but would have satisfaction, and take the Quarrel upon himself, being a Gentleman; he says, that he heard that he called him *Hector*, and gave such ill language as was never to be suffered.

Sir N. *Johnson*. And the fashion in *Germany* is, if they won't fight, to shoot them.

Sir Fr. *Winn*. How can you tell that, Sir? the Interpreter that asked the Question says no such thing.

L. C. J. Pray will you ask him this, Whether ever he saw Mr. *Thynn*, and how many times?

Mr. *Craven*. He says he has seen him several times in the Play-house, and riding in his Coach; he did not see him at *Richmond*, for if he had, he would not have put it up so long.

Mr. *Williams*. I believe he never spoke to him in his life.

L. C. J. Ask him that Question, whether he ever spoke to him?

Mr. *Craven*. He says he had no Friend to send to Mr. *Thynn*, and he could not speak with Mr. *Thynn* himself; for Mr. *Thynn* might think that he was not a Gentleman good enough to fight with him.

L. C. J. Ask him this, about what time he saw him at the Play-house?

Mr. *Craven*. He says he does not remember exactly the time when he did see him at the Play-house.

L. C. J. Ask him whether this Affront that he pretends, was given him since he last came over, or when he was in *England* before?

Mr. *Craven*. He says 'tis eight Months ago since he received the Affront.

L. C. J. That was before he went out of *England*.

Mr. *Craven*. Yes, it was before.

Sir Fr. *Winn*. He says he writ to Mr. *Thynn* out of *Holland*; we desire to know by whom he sent his Challenge?

L. C. J. Ask him if he sent a Challenge to Mr. *Thynn*, and by whom?

Mr. *Craven*. He says he could send no less than a Gentleman; and he had never a Gentleman to send by, and so he sent his Letter by the Post.

Mr. *Williams*. Mr. *Bridgman*, now we would ask you concerning Mr. *Stern*, the Third man.

Mr. *Bridgman*. Let me have the Examination, and I will look upon it and tell you.

Mr. *Williams*. Pray do, Sir, tell us what he said.

Mr. *Bridgman*. Upon his Examination he confessed, that the Captain told him, he had a Quarrel with a Gentleman, and that if he would assist him in it, he would make his Fortune. And that the Captain gave him Money to buy the Blunderbuss.

Sir Fr. *Winn*. *Stern* did confess that, did he?

Mr. *Bridgman*. Yes.

L. C. J. Did he confess he was at the Fact?

Mr. *Bridgman*. Yes, he confessed he was at the Fact; and he said, when he came beyond *Charing-Cross*, he was about ten Yards before, and he heard the Captain say, stop to the Coach, upon which he turned about, and presently saw the shot made, and he saw the other Persons ride away, and he made away after them: and the Captain further told him, that he would give two or three, or four hundred Crowns, to find a Man that would kill Mr. *Thynn*.

Sir Fr. *Winn*. What did he speak about Strabbing, or about an *Italian*?

Mr. *Bridgman*. He said that the Captain desired him to get an *Italian* that would stab a Man, and that he would get two Ponyards for that purpose, and that it was before the *Polonian* came over.

L. C. J. This is no Evidence against the Captain; but pray will you tell *Stern* the Lieutenant what it is that Mr. *Bridgman* does testify against him; that he acknowledged thus and thus before him. And pray speak it again, Mr. *Bridgman*.

Mr. *Bridgman*. The Captain told that Gentleman, that he had a Quarrel with a Gentleman, with whom he was resolved to fight; that he wanted a good Servant; and if he would assist him, he would make his Fortune; that he gave him Money to buy the Musquetoon, and owned he was there; that he went out with the Captain and *Polander* on Horseback, about five or six a Clock on Sunday; that they went towards *Charing-Cross*, and when they were gone beyond *Charing-Cross*, into the *Pall-mall*, he heard the Captain say to the Coach-man, Stop; and turning immediately, he saw the shot go off; and that they riding away, he followed them: and that before the *Polander* came over, the Captain desired him to get an *Italian* to stab a Man.

[Then that was Interpreted to *Stern*.]

Mr. *Craven*. My Lord, he denies that he spoke any thing of four hundred Pound, or about the *Italian*.

L. C. J. Tell him it is testified, that he confessed he was at the shooting of this Gentleman.

Mr. *Craven*. He says he was there, and being about ten Yards off, he heard one say, Hold to the Coach, but he cannot say it was the Captain.

Sir Fr. *Winn*. But was he there?

Mr. *Craven*. Yes, he says he was.

Sir Fr. *Winn*. Who caused him to be there?

L. C. J. Ask

L. C. J. Ask him upon what occasion he was there?

Mr. Craven. He says the Captain intreated him to be there to be his Second, to fight with a Gentleman, and that was the reason.

L. C. J. Pray tell him 'tis testified here, that he bought the Musquetoon, and charged it.

Mr. Craven. He says he did assist at the loading of it, he was by.

Sir Fr. Winn. Pray, my Lord, let us know who it was assisting him?

L. C. J. Why, that is no Evidence against any body.

Sir Fr. Winn. But, my Lord, it was delivered to the *Polander* charged, and we desire to know who loaded it?

L. C. J. North. That is no Evidence; but yet the Question may be asked, and the Jury may be told 'tis no Evidence.

L. C. J. But we must not let the Jury be possessed by that which not Evidence.

L. C. J. North. Pray will you ask him, Mr. Craven, who helped him to load the Gun.

Mr. Craven. The Captain was by, he says, and the Captain and he did it together.

Sir Fran. Winn. Now we will ask Sir John Reresby the same Questions, You were by, Sir, at the Examinations of these three men, pray what did the *Polander* say upon his Examination?

Sir John Reresby. My Lord, I cannot charge my Memory with the Particulars; but if your Lordship pleases, I will read it.

L. C. J. No, refresh your memory with it, and then tell us the substance of it.

Sir John Reresby. In general, he did confess to me, that he was the person that did discharge the Blunderbuss into Mr. Thynn's Coach, and that he was commanded so to do by Captain Vratz.

L. C. J. That is the substance of all.

Sir Fra. Winn. That is as to him, but what did Captain Vratz say?

L. C. J. He said, that he did go out with an intention to fight with Mr. Thynn, and did take these persons with him; that he did not order the *Polander* to discharge, but he mistook him when he bid the Coach-man stand, the other apprehended he bid him shoot, and he did so.

Mr. Williams. What said Stern?

Sir John Reresby. Stern did say this, that the Captain told him he had a quarrel with an English Gentleman, and desired him to go along with him and assist him in it, and be his second; but said he, I was chiefly carried out to keep off the people, in case there should be a croud about them when they were fighting; this is the chief part of what they did confess.

L. C. J. We would not trouble you with more than is material, Did he acknowledge he was there at the time when he was shot?

Sir John Reresby. Yes, he did about nine or ten yards off, I think.

L. C. J. All three confessed they were there?

Sir John Reresby. Yes, they did so.

L. C. J. North. They had a design of killing, which was unlawful.

Sir John Reresby. They said, they came on purpose to fight.

Sir Fra. Winn. Call Michael Fenderoston: My Lord, we would willingly spare your time, and offer only what is proper in this Case, and now we shall produce our Evidence against the

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Count; and if any thing fall out in that Evidence that touches these three men (which we think will be but the killing of dead men) your Lordship will take notice of it. Now we shall not go to open the heads of our Evidence against the Count, Sir Francis Withins has given an account of the general, and our Witnesses will best declare it.

Mr. Williams. We will begin with Frederick Hanson. (Who was sworn and stood up)

Mr. Hanson. How long have you known Count Coningsmark?

Mr. Hanson. A matter of four years.

Mr. Williams. Pray do you remember his last coming into England?

Mr. Hanson. Yes my Lord, I do remember it.

Mr. Williams. Then let us know the time.

Mr. Hanson. I think 'tis above a month since.

Mr. Williams. Where was his Lodging first?

Mr. Hanson. The first time I saw him was in the Post-house.

Mr. Williams. Did he come privately or publickly?

Mr. Hanson. Privately to my best knowledge.

Mr. Williams. Which was his first Lodging?

Mr. Hanson. In the Hay-market.

Mr. Williams. Where there?

Mr. Hanson. At the corner house.

Mr. Williams. How long did he continue there?

Mr. Hanson. A matter of a week.

Mr. Williams. Pray in all that time did he keep privately at home, or did he go abroad sometimes?

Mr. Hanson. I believe he kept his Chamber all the time.

Mr. Williams. Were you with him at any time there?

Mr. Hanson. Yes, I was.

Mr. Williams. What Company did use to be with him to your knowledge?

Mr. Hanson. To my knowledge, I have seen Dr. Frederick in his Company.

Mr. Williams. One Dr. Frederick, you say, Who else?

Mr. Hanson. When I came from Whitehall on a Sunday in the evening, when my Lord was going to bed, I called, if I could be admitted to see him, so I went in to him, and a little after the Doctor came.

Sir Fra. Winn. Pray Sir, at that time that he was in that Lodging, did he wear his own hair, or was he in a disguise?

Mr. Hanson. That Sunday night he was in his night-Cap and night-Gown, ready to go to bed.

Mr. Williams. When you first came to him to the Post-house, did you go of your own accord, or were you sent for?

Mr. Hanson. Count Coningsmark sent for me.

Mr. Williams. Was it sent in his own name, or the name of another?

Mr. Hanson. It was in a strange name, Carlo Cusk.

Mr. Williams. Have you the Note by you?

Mr. Hanson. No.

Mr. Williams. In whose Character was it writ?

Mr. Hanson. In the Count's own Character.

Sir Fra. Winn. What was his Name in his first Lodging? What Title was he called by, Captain, or what?

Mr. Hanson. I know of no other name but only the stranger.

C 2

Sir Fra. Winn.

Sir Fra. Winn. Was it known to any Person in the Family?

Mr. Hanson. No.

Mr. Williams. When did he remove from thence?

Mr. Hanson. I know not.

Sir Fra. Winn. You say the first place of his Lodging was in the Hay-market, where did you see him the second time?

Mr. Hanson. At a corner House, I know not the name of the Street.

Sir Fra. Winn. Did he direct you to come to him?

Mr. Williams. Had you any discourse with him, what his business was here in England?

Mr. Hanson. I asked him, if we should have his company here some time; he told me he was come over about some business, and was afterwards to go into France.

Mr. Williams. Then he never told you what that business was?

Mr. Hanson. No.

Mr. Williams. Where was his second Lodging, do you say?

Mr. Hanson. It was at a corner house, not above two streets off from the former.

Mr. Williams. How long did he continue in his second Lodging?

Mr. Hanson. A few days, because the Chimney did so smook, that he could have no fire made in it.

Sir Fra. Winn. Then I ask you, in his second Lodging, was he there publicly or privately?

Mr. Hanson. He was there after the same manner that he was in his first Lodging.

Mr. Williams. Whither went he afterwards?

Mr. Hanson. To St. Martins Lane, I think it is called.

Mr. Williams. How long did he continue there?

Mr. Hanson. There I saw him the last time before he went away.

Mr. Williams. When was that?

Mr. Hanson. It was Sunday evening after I came from Whitehall.

Mr. Williams. Was it near the time of killing Mr. Thynn?

Mr. Hanson. It was about two or three hours afterwards.

Mr. Williams. Was he as private there, as he was in his other Lodgings?

Mr. Hanson. Yes.

Mr. Williams. What Company came to him thither?

Mr. Hanson. The same that came to him in the other.

Sir Fra. Winn. Who were they?

Mr. Hanson. The Doctor was in his Company.

Sir Fra. Winn. And who else?

Mr. Hanson. I saw one Captain Vratz there.

Sir Fra. Winn. Sir, I ask you upon your Oath, you are a man of understanding, did you frequently see Captain Vratz in his Company? How often do you remember you saw him at his Lodging?

Mr. Hanson. I do not remember that I saw Captain Vratz at that Lodging above one single time.

Mr. Williams. Pray Sir thus; Did Captain Vratz come with the Count into England this last time?

Mr. Hanson. To my best remembrance he did.

Mr. Williams. You say Captain Vratz came with the Count to England.

Mr. Hanson. I believe he was before the Count, but not long before; I can't exactly tell.

Mr. Williams. How long before the Count?

Mr. Hanson. Truly I can't tell, but I believe not long.

Mr. Williams. What makes you think he came into England with him?

Mr. Hanson. Because I saw him in Company with the Count, as soon as I saw the Count.

Mr. Williams. Were they in Company at the Post-house?

Mr. Hanson. Yes.

Sir Fra. Winn. And you saw him once at his first Lodging?

Mr. Hanson. Yes.

Mr. Williams. Pray Sir, have you carried any Message from the Count to the Swedish Resident?

Mr. Hanson. My Lord, I can say this upon my Oath, to my best remembrance, Count Coningsmark never charged me, or gave me any positive Order to go to the Swedish Envoy, but he did name the Swedish Envoy to me, as if he were willing to know his advice; and so I being obliged to pay my Respects to the Swedish Envoy, who had treated the young Count and my self very civilly before; and so paying my Respects to the said Envoy, I did remember the Conversation I had with the Count, and spoke with the said Envoy about this business, and that is all that I can say.

Sir Fra. Winn. What was that Message?

Mr. Hanson. I say there was no direct message: But I say this was the business; Count Coningsmark told me in private familiar discourse, that he had heard that Esquire Thynn had spoken some abusive language of him, and he would fain know what the consequence of this would be, if he should call him to account about this business; and he named the Swedish Envoy to me: And I saw his desire was to know his Opinion about the business, what the consequence of it would be. So I spoke to the Swedish Envoy, and he gave me this answer, That if the Count should any way meddle with Esquire Thynn, he would have but bad living in England; but what the Law would say in that particular Case he could not answer, but he would enquire, and afterwards would give me an account, but I never spake with him after.

Sir Fra. Winn. I ask you, because you have been formerly examined in another place about this matter. Do you remember any thing that ever you heard the Count speaking of fighting with Mr. Thynn?

Mr. Hanson. Count Coningsmark spoke to me in the German Language; I spoke to the Swedish Agent in French; and when I was before the King and Council I spoke in English; therefore I desire no evil construction may be made of it. I cannot remember the Count spake of killing or duelling. On the contrary I can swear for Count Coningsmark this, that I am confident he never told me that he had resolved or would fight with Mr. Thynn, or would call him to account, but if he should call him to account, what would be the consequence of it.

Sir Fra. Winn. Call him to account, about what?

Mr. Hanson. The Count in familiar discourse with

with me did tell me; that he had heard Esquire *Thynn* had spoken abusively of him.

Sir *Fra. Winn*. How had he spoken abusively of him?

Mr. *Hanson*. He reflected upon his Person and upon his Horse.

Mr. *Williams*. Was there any thing in that Message about marrying my Lady *Ogle*?

Mr. *Hanson*. That was the last part of the Question, That if he should meddle with Esquire *Thynn*, what the consequence might be, if the Laws of *England* would be contrary to him in the hopes or pretensions he might have to my Lady *Ogle*.

Mr. *Williams*. You mince your words mightily; pray remember your self; did he speak of killing Mr. *Thynn*, or that Mr. *Thynn* should be destroyed?

Mr. *Hanson*. No, his Phrase was; if he should have an advantage of him, when he should meddle with him, or call him to an account, what the Consequence might be; I can say this upon my Conscience.

Sir *Fra. Winn*. Sir, you are in a place where you are sworn to speak the Truth, the whole Truth, and nothing but the Truth; what Relation have you to Count *Coningsmark*'s Family?

Mr. *Hanson*. I have no Relation to the Family at all.

Sir *Fra. Winn*. Are not you Governour to the young Count?

Mr. *Hanson*. The Countess has given me her younger Son, for me to be his Companion in his Travels.

Sir *Fra. Winn*. Sir, I ask you a plain Question, let it lye at your own door, if you won't tell the Truth; had you any Conversation with Count *Coningsmark*, wherein he did desire you to ask advice of the *Swedish* Envoy or Resident here, about duelling Mr. *Thynn*, or in case he should kill Mr. *Thynn*, or upon any such account?

Mr. *Hanson*. My Lord, I say this was spoken in several Languages, by the Count in *Dutch*, by my self to the Envoy in *French*; and I do know I Swore before the King and Council, but I cannot lay this to Count *Coningsmark*'s Charge, for then I must forswear my self.

Sir *Fra. Winn*. Sir, you can answer me all my Questions in *English*, if you please, what the Discourse was.

L. C. J. Pray Sir thus, what was the Discourse as near as you can remember it, between Count *Coningsmark* and you, relating to Mr. *Thynn*?

L. C. J. North. Tell the whole, Sir, for you are bound to tell the whole indifferently.

Sir *Fra. Winn*. And pray remember what you swore in another Place.

Mr. *Hanson*. The Count sent to me a Note, that he had a mind to speak with me, and he entertained me with a familiar Discourse about his Travelling, and about the settling of his business, and thereupon he fell upon other Discourse about Mr. *Thynn*, and not to mistake, having had time in my own Chamber, I have put it down in writing, to satisfy my Lord and all this Honourable Court, what I can say about this Matter.

Mr. *Hanson* reads——'Tis very hard to give a true account.

L. C. J. Read it to your self if you will, and tell us the Substance.

Mr. *Hanson*. If my words may not turn to the

prejudice of my Lord Count *Coningsmark*, but this is the substance of the thing; my Lord Count *Coningsmark* did tell me in a familiar Discourse, that Esquire *Thynn* had spoken some reflecting Words upon him; he did desire to know if he did call him to account, whether in this case the Laws of *England* might not go contrary to his Design, in his Pretensions that he might have upon my Lady *Ogle*. And in that familiar Discourse, he seemed to think that Monsieur *Lienburgh* could give him advice. In a little while afterwards, I was paying my respects to the Envoy, and reflecting upon the Count's Conversation, I spoke to him about this business, and his answer was this; he told me, that if he should meddle with Mr. *Thynn*, he would have no good living in *England*: But as to the particular Question, what the Consequence of the Law might be, he did not know, but would inquire and tell me, but I never asked him any Question about it afterwards. And if my Conversation with this Count, or with Monsieur *Lienburgh*, should turn to the Count's prejudice, I should be answerable for it to God and my own Conscience, all the days of my Life. I desire Mr. *Thynn*'s blood might be revenged, but I desire also that innocent Blood may be spared.

Sir *Fra. Winn*. Pray Sir, will you look upon that Paper, you signed it.

L. C. J. North. Only to recollect your Memory.

Then he was shew'd his Examination before the Council.

L. C. J. Now have you read it over, that there is under your own hand, do you now again deliver the substance of your discourse you had with Count *Coningsmark*, as you will stand by it.

Mr. *Hanson*. I see that there are expressions in this Paper.

L. C. J. Speak not what is in that Paper, but what discourse (as near as you can) you had with Count *Coningsmark*.

Mr. *Hanson*. My Discourse with Count *Coningsmark* was this; in a familiar Discourse amongst other things, he spoke, that he heard Esq; *Thynn* had affronted him, I don't know upon what Subject, but I believe it was words reflecting upon him and his Horse; he did not tell me that he desired me to go, nor did he give me any positive charge to go to the *Swedish* Envoy, but by the discourse I had with him, I did understand that he was desirous to have his advice, I thought his inclinations were, that I should go and ask his advice; I did not go on purpose to do the Message, nor did I receive any order that can be called a Message in my Life, to my remembrance; but when I came to pay my respects in a familiar Discourse, I did propose this to the Envoy; what might be the Consequence, if the Count should call Mr. *Thynn* to account; and he told me the same Answer that I have already told you. Now this I desire only to consider, that it was spoken in divers Languages; and if a man should write down my Expressions now, as they came from me, they would upon reading, perhaps, appear not so well; so if these Expressions of mine should turn to Count *Coningsmark*'s Prejudice, as that I should Swear that this Phrase of killing or duelling was used, or that ever Count *Coningsmark* told me that he resolved to call, or that he would call him to an account, I might do him wrong

wrong perhaps, but if he should call him to account, what might be the Consequence of it.

Sir Fr. Winn. I would not intangle you, but only I would seek after the Truth. I do not ask you positively, whether he did bid you go to ask Advice of the *Swedish* Envoy, that he did resolve so and so; but did he discourse it thus, if he should Duel him, or Fight him?

Mr. Hanson. As I am before God Almighty, I cannot say I heard such Expressions.

Mr. Williams. Pray Sir, you confess you acquainted the Envoy with it?

Mr. Hanson. Yes.

Mr. Williams. Did you bring the Envoy's Answer to the Gentleman, or no?

Mr. Hanson. If I should be upon the Gospel, I am sure I cannot exactly tell what was the Expression.

L. C. Baron. What was it that you discerned he doubted, if he did call Mr. Thynn to account?

Sir Fr. Winn. He spoke in relation to a Marriage, pray what was it?

Mr. Williams. What did that if relate to?

Mr. Hanson. If he should ask him satisfaction about it, having heard that he had spoken abusive words of him.

Sir Fr. Winn. What then was to follow?

Mr. Hanson. If he should call him to account, then how the Laws of *England* might do in this Point.

Mr. Williams. To whom?

Mr. Hanson. To the Count.

Mr. Williams. What should befall him?

Mr. Hanson. Whether the Law should be contrary to him in the Design and Proposals he might have, concerning the young Countess of *Ogle*.

Mr. Williams. Well, I see you will give no reasonable answer to that; but now when came the *Polander* over into *England*?

Mr. Hanson. I cannot say positively I can tell when he came.

Mr. Williams. But when did you see him first?

Mr. Hanson. Upon the *Fryday* he came and asked me for the Count at Monsieur *Faubert's* Academy. Now the young Count *Coningmark's* Chamber and mine joyns together, next to one another, and there came a Man with him, I do not know his Name, but if I see the Man I know him.

Mr. Williams. You say the *Polander* came over on *Fryday*.

Mr. Hanson. He came to me on *Fryday*.

Mr. Williams. And he came to you to the *French* Academy, to enquire for Count *Coningmark*?

Mr. Hanson. Yes, he did so.

Mr. Williams. Had he any Letters?

Mr. Hanson. Yes, he had two Letters.

Mr. Williams. From whom, and to whom?

Mr. Hanson. I asked him if he had any Letter for Count *Coningmark*, and he said no; but he told me he had two Letters, and the one was to the Count's Secretary, and the other was to the Count's Steward in *London*. So I gave him back his Letters, and asked him whence he came? He told me, he was just come into *England*. I asked him, whether he had been a great while at Sea? And he told me, yes; and that it was Stormy, and he had like to have been cast away; said I, I hear you are expected therefore; have you paid your Lodging? No, said he; then said I, go and pay your Lodging, and come to me in the Morning early.

Sir Fr. Winn. You say you heard he was expected, pray who expected him?

Mr. Hanson. The Count; for he had spoken formerly twice of the *Polander*, and in the great Storm thought he had been drowned. To the best of my remembrance, I have heard the Count speak twice of this *Polander*.

Sir Fr. Winn. Of this Man?

Mr. Hanson. I suppose it is the same.

Sir Fr. Winn. You say you saw him on *Fryday*.

Mr. Hanson. Yes, I did.

Mr. Williams. When did he speak of the Stormy Weather? And that he was afraid the *Polander* might miscarry?

Mr. Hanson. About twelve or thirteen Days before.

Mr. Williams. Now say as near as you can what the Count said.

Mr. Hanson. He said the *Polander* was a mighty able Man, and understood Horses, and the Count had a mind to buy *English* Horses, and intended to have had this *Polander* as a Groom to dress them after the *German* way, and no Man was abler than the *Polander* to do it; and when he spoke of it, I went once to the Change, and inquired whether the Ship was lost.

Sir Fr. Winn. By whose Directions did you go to inquire whether the Ship was lost?

Mr. Hanson. I had no Direction, but only Count *Coningmark's* speaking about it.

Sir Fr. Winn. He seemed to be concerned at it, did he?

Mr. Hanson. Yes, he was afraid that the *Polander* would be drowned.

Mr. Williams. You say you directed him to clear his Quarters?

Mr. Hanson. Yes, I did so.

Mr. Williams. Did you see him again the next Day?

Mr. Hanson. Yes, he came the next Day.

Mr. Williams. Was he the next Day in Company with the Count or no?

Mr. Hanson. I brought him to the Count.

Sir Fr. Winn. Where?

Mr. Hanson. It was a little before Noon; because I went the back Way, and left him at the Count's Lodging.

Mr. Williams. Did you leave him with the Count?

Mr. Hanson. Yes, I did.

Mr. Williams. Pray, as long as you were there what passed between the Count and the *Polander*?

Mr. Hanson. I remember very well what passed between the Count and him, for I have thought of it. He spoke to him, and called him *Thou*, as to his Servant, and asked him, Where he had been all the while? And he answered he had been at Sea, and tossed up and down.

Sir Fr. Withins. Pray what Directions had you given about a Sword for that *Polander*?

Mr. Hanson. I went to the Count's Lodgings, and being desired by him to stay, I desired he would excuse me, for I could not stay, because I was to go about another Business; he told me the Fellow was all naked, and he had no Man to send to buy him a Riding-Coat; I told him I would very willingly and heartily do it. And after I had dined, I went to an House near the *Hay-Market*, and bought a Riding Coat, and brought the Riding Coat to the Count's Lodgings. I delivered it to the Count. Then the Count told me his Man had never a Sword, and I asked him how much his Lordship would please

to bestow on a Sword, he told me a matter of 10 s. or thereabouts; I told him I did not know where I should get such a Sword, nor how to send for it, because I was to meet his Brother; but I withal said, it is no matter for that, I will take care you shall have it; this Evening I went into St. Martin's-Lane, but could not find ever a Sword worth a Groat: Then I went as far as Charing-Cross to a Cutler whom I knew, so I told him, Sir, said I, I have a Commission to bestow 10 s. upon a Sword for a Servant, therefore, said I, I leave it to your Discretion, use my Friend well, and use your self favourably too. I asked him when I should have the Sword, he told me in the Evening; I told him I would call for it when I came from the Play, where I was to be with the Count's Brother. When I came back with the young Count Coningsmark from the Play, I called for the Sword, but he told me it was not ready. I seemed to be a little angry, and told him that it was strange, a Gentleman could not get a little Sword ready for him in an whole Afternoon. Well, Sir, said he, pray do not be impatient, I will send you the Sword, and afterwards he sent it to the Academy, and I afterwards sent the Sword to Count Coningsmark's Lodgings.

Mr. Williams. Pray had you this Direction for the Sword, after you had brought the Polander to the Count, or before?

Mr. Hanson. Count Coningsmark did never give me any Direction or Charge to buy a Sword for him, but I did offer my Service if he pleased, because he said, he had no body to send.

Mr. Williams. Sir, You do not know the Question, or you won't apprehend it; pray when had you this Direction from the Count to buy this Sword?

Mr. Hanson. On Saturday in the Afternoon.

Mr. Williams. When was it you brought the Polander to the Count?

Mr. Hanson. In the Morning.

Sir Fr. Winn. Pray let me ask you another Question, when was it you first heard Mr. Thynn was kill'd?

Mr. Hanson. I heard it I believe about eight a Clock in the Evening on Sunday.

Sir Fr. Winn. Had you any Discourse with the Count about the Murder?

Mr. Hanson. Yes, I had.

Sir Fr. Winn. Pray tell what that Discourse was?

Mr. Hanson. I was at Whitehall till ten of the Clock, and then I went to the Count; but I desire this may not be taken as an extraordinary Visit, because I used to go to him on Sundays in the Evenings, and those three Sundays before he was taken, I used to come to him in the Evening, after I had been at Whitehall. When I came into his Lodgings, I found him in his Night-Cap, and his Night-Gown; he asked me what News, I told him I could tell him great News, and that was of the killing of Esq; Thynn, who was shot in his Coach: the Embassador of Savoy had told me all that he had heard about it, and I told it him. After I had spoken of this Business, he asked me where his Brother was; I told him, his Brother was at the Duke of Richmond's. And after some Discourse I went away.

Sir Fr. Winn. When you told him of the Murder of Mr. Thynn, did he make no Answer, nor say any thing about it?

Mr. Hanson. He did not make me any Answer, by which I could conclude that Count Conings-

mark was any way concerned in the Business.

Sir Fr. Wimbins. Pray Sir, I ask you upon your Oath, the Count is a Man of great Quality himself; when you told him of such an horrid Murder, what, did he say nothing about it?

Mr. Hanson. He asked me several Questions, what the People did say, but I would not make any mistake.

Sir Fr. Winn. Tell all he said Sir about it.

Mr. Hanson. I told him the greatest News I heard was, the killing of Mr. Thynn; and I told him who brought the News, and I told him the Court was heartily angry at it, that such an Accident should happen, and I said it was an Italian trick, not used in England.

Sir Fr. Winn. What said he then?

Mr. Williams. Pray do you remember what he said?

Mr. Hanson. What I have answered now. He made me such Questions upon this Story as I have told you.

L. C. J. Let him explain himself, Pray as near as you can, relate what Discourse you had with Count Coningsmark, that Sunday Night, after you came to him, and told him of the Murder.

Sir Fr. Winn. What did he say to you?

Mr. Hanson. I will tell you my Lord, the Count was surpris'd, as every Man would be, to hear of so sad an Accident; and so the Count asked me what the People said, so I told him what I heard at Whitehall, I cannot call to my memory all the Particulars; but I said the King was heartily sorry, and all the Court, for so sad an Accident, and I must wrong myself, or Count Coningsmark; if I should undertake to relate exactly what pass'd, for I cannot remember it.

Mr. Williams. But you said just now, that you told the Count it looked like an Italian Trick, not used in England.

Mr. Hanson. Yes, I did so.

Mr. Williams. What did he reply to that?

Mr. Hanson. Not a word.

Mr. Williams. Did he mention any thing of Fortifications to you then?

Mr. Hanson. Yes, he gave me a Plan, or a Draught of a Fortification done with his own Hand, and that was all the discourse.

Mr. Williams. So then he diverted the discourse to the Business of Fortification.

L. C. J. The Evidence is heard, what it is that he ended all the Discourse with, shewing him a Paper of Fortifications.

Sir Fr. Winn. But this he does say, He asked him what the People did say of it?

Mr. Hanson. For my Life I dare not say I remember any more than I have told.

L. C. J. Look you, Sir, now will you in French deliver this, for the Benefit of those Jury-men that don't understand English.

Mr. Williams. We pray, my Lord, that our Interpreter may do it.

L. C. J. When a Man can speak both Languages, he needs no Interpreter, he is his own best Interpreter.

Mr. Williams. My Lord, I will tell you why I ask it; there is a great deal of difference, I find, where you to examine a Man with the Hair, and where you examine him against the Hair: where you find it difficult to make a Man answer, you will pump him with Questions, and cross interrogate him, to sift out the Truth; now if you leave this Man to the Interpretation of what he hath

hath said himself, he will make a fine Story of it; and we shall be never the wiser.

L. C. J. You may examine him in French if you will.

Mr. Williams. And I understand none but Pedlar's French.

Sir Fr. Winn. The truth of it is; what your Lordship says cannot be opposed regularly; but I do appeal to your Lordship; and all the Judges, and all the Court, whether this man does answer like an ingenuous man; you see he shifts.

L. C. J. I do not see it, nor do I believe any see he shifts in any thing you ask of him; either he tells you what the Question is, or the Reason of it; how far that is a Reason, is left to the Jury to consider.

Sir Fr. Winn. Certainly it can do no hurt to have an Interpreter.

L. C. J. North. My Lord, if there be two ways to take, 'tis best to take that which will give satisfaction to all Persons, let him be asked by the Interpreter, what Questions the Counsel would have answered; and then let him tell his Answer in French.

L. C. J. If that be liked better, let it be so. *Mr. Craven,* can you tell the substance of the Evidence that this Gentleman hath given?

Mr. Craven. No, I cannot, his Evidence has been so long, and so many cross Questions have been asked.

Sir Fr. Winn. I would spare your time —

L. C. J. But this is the way to spend our time.

Sir Fr. Winn. I know your Lordship does not value time in such a case as this is; but you would have the truth found out.

L. C. J. You must repeat first the discourse you had with Count *Coningsmark*.

Sir Fr. Winn. My Lord, we will reduce it to two or three Questions. *Mr. Craven,* will you please to ask him what discourse he had with Count *Coningsmark*.

Mr. Craven. He says, the discourse he had with Count *Coningsmark* about the *Polander*, was, that he came over as a Groom to serve him to look after his Horses; that he had occasion for several English Horses, and English Servants to look after them as Grooms; and among the rest of his Grooms, he intended the *Polander* should be one, to dress his Horses after the German way.

Sir Fr. Winn. So far he goes as to that, That the *Polander* came over to serve the Count.

L. C. J. Look you, Sir, does not he tell you, the Count had a purpose to buy Horses here?

Mr. Craven. He says there was a discourse about Bills of Exchange of 7000 Pistoles to buy Horses.

Sir Fr. Winn. Pray then will you ask him, what discourse he had with Count *Coningsmark* about the death of *Mr. Thynn*, and what the Consequences in Law might be.

Mr. Craven. My Lord, he says, that the discourse with Count *Coningsmark*, concerning the Swedish Agent, was, That in case he should ask Satisfaction of *Mr. Thynn*, for the Affronts that he had given him, not understanding the Customs of the Nation, if he should call him to account, what prejudice it might be to him; for he did not hear, he says, that Count *Coningsmark* designed any thing, or resolved upon killing him, or any thing of that nature; but died

whether if he should call him to account, what the Laws of England might be.

Mr. Williams. Call *John Wright*.

Sir N. Johnson. My Lord, the Count desires to know if he may be permitted to make his Defence against these Witnesses.

L. C. J. No, he is not to make his Defence now. But pray tell him if my Lord have a desire to ask any Questions of this Witness, he may ask what he pleases.

L. C. J. North. Let the Question be put to the Interpreter, that we may know what the Question is before the Witness gives an Answer.

Mr. Craven. He asks him if he has not seen him oftner in his Lodging undressed than dressed? And whether he was not to take Physick from his Physician?

Mr. Hanson. I do not remember that in all the time I saw Count *Coningsmark*, I saw him dressed four times in his Coat, I cannot say I remember three times in all. The first time when he came, he was in a Campaign Coat; but all the time he was in his Lodging, as I remember, he was in his Night-gown and Cap. As to the other part of his Question, whether I heard that he took Physick? I say this, When I saw Count *Coningsmark* first at his Lodging; when I came to him, on the Sunday Evening, I was told the Count was in Bed: It was late, but I ventured to go into his Room, and sat a quarter of an hour there; and afterwards the Doctor came in, *Dr. Frederick*, I saw him oftentimes at his Lodging; and at the same time the young Count was sick of an Ague: And when he came one Evening to see the young Count, I asked him what was the Distemper the Count had? The Doctor answered me, that he had not told any body that the Count was sick, or what he was sick of, but he hoped in God in a short time he would be recovered.

Mr. Craven. He asks him if he gave him any positive Order, that he should go of any Message to the Swedish Envoy?

Mr. Hanson. This I have answered before, and I say now, If this discourse that I had with the Swedish Envoy, turn to the Lord Count *Coningsmark*'s prejudice, it would grate upon my Conscience all my life: Count *Coningsmark* never gave me any positive Order to carry any Message; but I did gather, by his discourse, that the Count might be desirous to know the Envoy's Opinion about this Question; and therefore I thought, the Count desiring it, I would do it to please him, rather than by Order. But I do not know that ever the Count had a mind to give me such an Order, but I did it voluntarily.

L. C. J. In plain English, Did he ever direct you to go to the Swedish Envoy?

Mr. Hanson. No, my Lord, he never did direct me.

L. C. Baron. How came you to choose a Foreigner to know what the Laws of England are?

Mr. Hanson. I thought it would please the Count to know his Opinion.

L. C. Baron. But how came you to choose a Foreigner, I ask?

Mr. Hanson. He has been 19 Years here in England, and sure he should know.

Mr. Craven. My Lord, he asks him if ever he told him that he had a design to fight *Mr. Thynn*,

or do him any Prejudice, or send him a Challenge?

Mr. *Hanson*. My Lord, I am upon my Oath, and this I say, I speak it before God and the Court, Count *Coningmark* did never tell me that he had any mind, or did resolve to call *Esquire Thynn* any ways to account.

Mr. *Williams*. Call *John Wright*.

[*Who stood up, and was sworn.*]

Sir *Fr. Winn*. We shall ask him but a Question or two, my Lord.

Mr. *Williams*. Pray tell me the time when this *Polander* came into *England*, that man at the Bar?

Mr. *Wright*. He came the 10th day of this month.

Mr. *Williams*. Pray what Ship did he come in? Where did you first meet with him?

Mr. *Wright*. Here in Town.

Mr. *Williams*. Where was it?

Mr. *Wright*. At the *Cross-Keys* in *Throgmorton-street*.

Mr. *Williams*. Pray when you first saw him, what did he ask you?

Mr. *Wright*. He asked me where Count *Coningmark's* Lodgings were? I told him, I thought he was at *Oxford*, I meant the young Gentleman, for I did not know the other was in Town; but I went and inquired, and they told me, it was at *Faubert's Academy*.

Mr. *Williams*. Whither went you with the *Polander* then?

Mr. *Wright*. I went to my Lord's Lodgings.

Mr. *Williams*. What Lord?

Mr. *Wright*. The young Count's Lodgings.

Mr. *Williams*. Well, and what then?

Mr. *Wright*. And I came to Mr. *Hanson*, and he did deliver a Letter to Mr. *Hanson*, and I stayed there about half an hour, or thereabouts.

Mr. *Williams*. When was this?

Mr. *Wright*. Upon *Friday*, the 10th day of this month.

Mr. *Williams*. How long was Mr. *Hanson* and the *Polander* together?

Mr. *Wright*. About half an hour.

Mr. *Williams*. What said *Hanson* to him in your presence?

Mr. *Wright*. Mr. *Hanson* said nothing.

Mr. *Williams*. Was there any thing said about going back, and paying his Lodging, and coming back?

Mr. *Wright*. Mr. *Hanson* came down to me, and told me he was glad to see me, and bid me take the *Polander* back with me, and bring him to him to morrow betimes, for he must dispatch him about his Business.

Sir *Fr. Winn*. Then he said nothing to the *Polander*?

Mr. *Wright*. No, but to me.

Sir *Fr. Winn*. Well, what did you do the next morning?

Mr. *Wright*. I came to him the next morning, to this *Polander*, and he took his things with him, which was a Sea-bed that he had, and a Gun with a Wheel-lock, and some other things.

Sir *Fr. Winn*. And whither did you bring him?

Mr. *Wright*. I brought him to the upper end of the *Hay-market*, *Monsieur Faubert's School*.

Mr. *Williams*. To what place did you come in the morning, say you?

Mr. *Wright*. Sir, if it please you, I brought him within a door or two of Mr. *Faubert's* the Horse-master, that teaches to ride the great

Horse; for he did desire that we might go to an House hard by, because he would not carry his carriage to my Lord, he had a Sea-bed, a Portmantle, a Gun, and other things; and so I brought him to an House, and there I called for a Pot of Ale; and he put down his things and went out, I thought he had gone to make water, but within a little while after returns again, and Mr. *Hanson* comes in with him; he asked me why I did not come sooner? I told him, I had some other Business, I was with some French Merchants to look upon some Goods. So he bid the *Pole* pay me for my trouble, and take up his things, and go along with him; and he did do so, and I never saw the *Pole* afterwards.

L. C. J. You that are the Interpreters, repeat what he hath said to the Jury. [*Which was done.*]

Sir *Fr. Winn*. We have done with this man, the use we make of him, is to follow this *Polander*, and we shall bring him to the Count by and by. Call Dr. *Frederick Harder*.

[*Who was sworn.*]

L. C. J. The Doctor understands English, don't he?

Sir *Fr. Winn*. Yes, we are told he does.

Mr. *Williams*. How long have you known the Count that stands there at the Bar?

Dr. *Harder*. I have known him a good while; it may be this four or five Years. I have known him four or five Years.

Mr. *Williams*. How long have you known Captain *Vratz*?

Dr. *Harder*. About a Year and a half, or two Years.

Mr. *Williams*. Was my Lord and Captain *Vratz* acquainted then?

Dr. *Harder*. Yes.

Mr. *Williams*. Was he in Employment under my Lord? Was he in the Count's Service?

Dr. *Harder*. He was with the Count, but whether he was his Companion, I cannot tell.

Mr. *Williams*. Did he live with the Count?

Dr. *Harder*. Yes.

Mr. *Williams*. Did Captain *Vratz*, when the Count came last over into *England*, come over with him?

Dr. *Harder*. Yes, by my knowledge.

L. C. J. Do you know it or not?

Dr. *Harder*. Captain *Vratz* came to me, and told me, my Lord desired to speak with me, and I went with him to my Lord.

Sir *Fr. Winn*. Was that the first Message you received from the Count?

Dr. *Harder*. Yes, it was.

Mr. *Williams*. How long was that ago?

Dr. *Harder*. The same day the *Morocco* Embassador did exercise in *Hide-Park*.

Sir *Fr. Winn*. How long is that ago?

Dr. *Harder*. About a Month ago.

Sir *Fr. Winn*. Whar, was that his first Lodging after he came last into *England*?

Dr. *Harder*. It was in the *Hay-market*.

L. C. J. Was it a corner House, as the other Witness saith, or not?

Dr. *Harder*. Yes it was.

Mr. *Williams*. Was the Count a private Lodger there?

Dr. *Harder*. He lay in his Bed when I came to him; he came as a Traveller privately.

Mr. *Williams*. Did he go by his own Name, or another Name?

Dr. *Harder*. No body did question him about his Name, but when I did come to him, I did discourse him about his Body.

Mr. Williams. Pray Sir, thus; you went often to visit him, pray did you inquire for him by his own Name; or any other Name?

Dr. Harder. He desired that he might be private, because he was to take some Medicines, and he would not have it known.

Mr. Williams. Now Sir, I would ask you, did you observe him to be in any disguise? Did he wear a Perriwig, or how?

Dr. Harder. He had a Perriwig.

Mr. Williams. Was it a fair Perriwig, or what colour?

Dr. Harder. It was brown or black.

Sir Fr. Winn. Sir, was he in a disguise, or no?

Dr. Harder. He had his own Cloaths, but he had a Perriwig.

Sir Fr. Winn. Pray what Name did he go by, his right Name, or any particular Name?

Dr. Harder. In the first beginning I gave him no Name, but said he to me, If any body ask you about me, I would not be known; for if they know that I lie privately thus, they will think I ail some ill Distemper, therefore I would have you call me by the Name of Carlo Cuski.

Mr. Williams. Were you with him, pray Sir, upon the Sunday Morning that Mr. Thynn was murdered?

Dr. Harder. I cannot certainly tell, but I was with him in the Afternoon.

Sir Fr. Winn. Pray call your self to mind, Sir.

Dr. Harder. I cannot certainly tell.

Sir Fr. Winn. What time were you with him in the Evening?

Dr. Harder. At nine a Clock at Night, or thereabouts.

Mr. Williams. Did you receive any Letter from Captain Vratz at any time?

Dr. Harder. I did upon Saturday morning, the Saturday before Mr. Thynn was murdered.

Sir Fr. Winn. Have you that Letter about you?

Dr. Harder. No.

Sir Fr. Winn. What was in the Letter?

Dr. Harder. He desired me to go to the Count, who had a desire to speak with me. I came there, and had some speech with him about his Indisposition. I told him he had better stay till next day before he took Physick, because it was cold Weather. And after that went with the Polander to my Lodging, and the Captain's man came in, and then said, here is a man that will direct you to Captain Vratz's Lodging; which I did not know.

Mr. Williams. Look you, Sir, you say you went to the Count, did you shew the Count that Letter from Captain Vratz, or no?

Dr. Harder. The Count saw it.

Mr. Williams. Then hear a little, When was it you shew'd the Letter to the Count? Was it Saturday or Sunday?

Dr. Harder. It was Saturday.

Mr. Williams. Now, was the Polander then in the Count's Lodgings, or no?

Dr. Harder. Yes, he was.

Mr. Williams. Was there any discourse about him then?

Dr. Harder. I had never seen him in my life.

Mr. Williams. But was there any with the Count?

Dr. Harder. No, not at all.

Sir Fr. Winn. Then, upon your Oath I ask you once more, Was the Polander ever in Company with you and my Lord, at any time?

Dr. Harder. No.

Sir Fr. Winn. Upon the Sunday, upon your Oath?

Dr. Harder. No.

Sir Fr. Winn. Nor the Saturday evening?

Dr. Harder. No, I have not seen him since that morning when the Captain's man took him along with him to his Master.

Mr. Williams. Pray how came the Polander into your company on Saturday morning?

Dr. Harder. I had him from my Lord's that morning.

Mr. Williams. Then my Lord and the Polander were together?

Dr. Harder. No, they were not together.

Mr. Williams. Was the Polander in my Lord's Lodgings?

Dr. Harder. Yes, the Polander was below stairs.

Mr. Williams. And did you take him from the Lodging?

Dr. Harder. Yes, I did.

Mr. Williams. How long did he continue with you?

Dr. Harder. Not at all, I went home with him.

Mr. Williams. Had you no discourse with him?

Dr. Harder. No, none at all.

Mr. Williams. Where did you part with him?

Dr. Harder. I brought him to my House; and when he came in a doors, the Captain's man being there, I told him there was a man would shew him the Captain's Lodgings; and he took him away along with him.

Mr. Williams. You say, the Captain's man had the Polander from you; pray name that man.

Dr. Harder. I cannot tell his Name.

Mr. Williams. Was his Name Berg?

Dr. Harder. I believe it was.

Sir Fr. Winn. You say you delivered a Letter from Captain Vratz on Saturday morning to the Count?

Dr. Harder. Yes.

Sir Fr. Winn. Did the Count read the Letter, and tell you the Contents of it?

Dr. Harder. No, it was not sealed.

Sir Fr. Winn. Did not you know the Contents of it then?

Dr. Harder. No.

Sir Fr. Winn. Pray, when you delivered the Letter from Captain Vratz to the Count, what did the Count say to you?

Dr. Harder. The Letter was not written to the Count, but it was writ to me.

Mr. Williams. What was the reason that you shewed it to him then?

Dr. Harder. I received a Letter from Captain Vratz, that the Count desired to speak with me; and afterwards I was desired to direct this man, the Polander, to Captain Vratz; and so I directed him to Captain Vratz, and nothing more I know.

Sir Fr. Winn. Well, Sir, one thing more and I have done with you, for you will not I see give a reasonable Answer; pray, when the Polander came along with you from the Count's, did you observe he had any thing about him?

Dr. Harder. He had a great Campaign Coat.

Sir Fr. Winn. Did he seem to have any thing under it?

Dr. Harder. He had a Portmantle under it, I think, or some such thing.

Mr. Craven. My Lord, the Count desires to ask him some Questions.

L. C. J. Let him ask what Questions he will.

Mr. Cra-

Mr. *Craven*. My Lord, he asks him whether he does not remember, when he first came to Town, he had not his Body full of Spots?

Dr. *Harder*. Yes, my Lord, when he came from *Tangier*, he had spots over all his Breast; and it was feared they might get up higher towards his Neck, and indanger him very much.

Mr. *Craven*. He says, If my Lord pleases, he will shew it openly.

L. C. J. No, there is no need of that Doctor. Did you give him Physick for that?

Dr. *Harder*. Yes, for that I did administer Physick to him.

Mr. *Craven*. He says, my Lord, he over-heated himself in riding to *Tangier*, thinking to do the King and the Nation Service, and the Heat broke out in spots over his Breast.

L. C. J. The Doctor knows nothing of that.

Mr. *Craven*. He asks whether the Doctor was not desired by him to cure him; whether he did not tell him he would cure him of those Spots?

Dr. *Harder*. He desired me to administer Physick unto him.

Mr. *Craven*. He says he went to *Strasburgh*, and when he came back, he was in the same condition he was in before; and he asks whether the Doctor did not undertake to cure him?

Dr. *Harder*. Yes, I did administer Physick unto him; and this my own man can testify and be witness of; because my Lord bid me take care that he might be private, for he would not have it known that he did take Physick; but I told my man, said I, 'tis my Lord *Coningsmark*; and therefore pray take care of him, and see that the Physick be made very well up.

L. C. J. You seem to intimate, as if he lay private to take Physick; pray let me ask you this Question, Did you give him Physick all this time?

Dr. *Harder*. Not always purging Physick, but some sort of Physick all the time?

L. C. J. What every night and morning?

Dr. *Harder*. Yes, every day.

Mr. *Craven*. The Count desires to ask him where he was that unhappy day this Business was done?

Dr. *Harder*. I found him that day ill, lying down upon the Bed; I asked him how his Physick had worked; he told me he was afraid he had got some cold; and indeed I found him very much disordered, and I went home and fetched him some Physick to take that night.

L. C. J. By the Oath you have taken, was there any other occasion, or had you any other discourse with him, when you came on the Sunday night but concerning his Physick?

Dr. *Harder*. My Lord, I will tell you the Truth; I never heard the Count speak any word in my life, that he had any concern, or design of any quarrel at all, nor any discourse, but about the administration of his Physick.

L. C. J. Let me ask you this Question, for they desire it here, What was the occasion? And whether you know the occasion, why my Lord altered his Lodgings so often?

Dr. *Harder*. The first occasion was this, Because it was in the *Hay-market*; and his Man said it would be quickly known if he did continue there; so he would take another Lodging, which was in *Ruperts-Street*, and there he lodged three days; but the Chimney did so smoke, that my Lord could not stay, because he could have no Fire in his Chamber, and the weather was

very cold, for it did snow, and therefore I told my Lord, it was not so proper for taking of Physick: Thereupon he desired me to take him another Lodging in *Queen street*, which I did look about for, but it was not ready, so he had a Lodging taken for him in *St. Martins-lane*, where he lodged till he went away.

Mr. *Williams*. Pray, Sir, the Physick that you gave the Count, did it require his keeping within doors? might not he walk abroad with it, upon your Oath?

Dr. *Harder*. It did require him to keep in.

Mr. *Williams*. Pray then, how comes it to pass that the Count so suddenly could go by Water to *Gravesend*?

Dr. *Harder*. I do not know what was done afterwards.

Sir *Fr. Winn*. I would ask you one Question, and I would fain have you give me a fair answer to it, What became of the Letter that Capt. *Vratz* writ to you, and you shewed it to the Count?

Dr. *Harder*. It remained there upon the Table.

Sir *Fr. Winn*. Did not you keep your own Letter?

Dr. *Harder*. It was not of any Concern.

Sir *Fr. Winn*. If the Letter were written to you, it is not so long since, but you can tell us the Contents of it; pray what were the Contents?

L. C. J. Can you remember what were the Contents?

Dr. *Harder*. He desired me to go to Count *Coningsmark*, who would speak with me, and that I would give his man an Answer when I came from him.

Sir *Fr. Winn*. But what were you to go to the Count to do?

Dr. *Harder*. Nothing, but the Count discoursed to me about his own Body and Indisposition.

Sir *Fr. Winn*. But Capt. *Vratz* was no Physician; why should he send you a Letter to talk about Physick?

Dr. *Harder*. It was nothing but my Lord would speak with me.

Mr. *Williams*. We need not trouble our selves with this Fellow, he confesses he found the *Polander* in the Count's House.

Sir *Fr. Withins*. Pray, Sir, let me ask you, Who was with the Count on Sunday night?

Dr. *Harder*. Mr. *Hanson* was there, I think.

Sir *Fr. Withins*. Who else?

Dr. *Harder*. The Captain came in, and went out again.

Sir *Fr. Winn*. What time of Night was it that *Vratz* came in to the Count?

Dr. *Harder*. It was at the same time that I was with him.

Sir *Fr. Winn*. That he swears to be about nine a Clock; Was it after Mr. *Tbynn* was killed?

Dr. *Harder*. We had not heard it.

Sir *Fr. Winn*. Sir, was it nine of the Clock?

Dr. *Harder*. Yes, it was.

Mr. *Williams*. You say you found the *Polander* at the Count's Lodgings?

Dr. *Harder*. Yes, upon Saturday morning.

Mr. *Williams*. Then he came along with you from the Count's Lodgings?

Dr. *Harder*. Yes, to my House.

Mr. *Williams*. And you parted with him there?

Dr. *Harder*. Yes, the Captain's man took him away with him.

Mr. Williams. That was Berg, wa'nt it?

Dr. Harder. Yes.

Then this Evidence was interpreted to the Jury.

Mr. Craven. He desires the Jury should know what the Doctor said about his Sickness.

L. C. J. Let it be repeated to them.

Mr. Craven. He desires to know whether he may not speak it in French himself?

L. C. J. No, the Interpreter must do it; *(which was done.)* My Lord, would you ask any more Questions of the Doctor?

Count Con. No more Questions but them I have asked.

Sir Fr. Winn. Call Thomas Howgood.

(who was sworn.)

Mr. Williams. Pray, did you sell any Sword to the Count?

Mr. Howgood. I sold a Sword to the Governor, a broad Horseman's Sword.

Mr. Williams. When was this?

Mr. Howgood. On Saturday was fortnight.

Mr. Williams. What time was it that he bespoke it?

Mr. Howgood. He bespoke it half an hour after six at night.

Mr. Williams. What did he say to you when he bought it?

Mr. Howgood. He said he would call for it about eight a Clock at night, when he came from the Play.

Mr. Williams. What kind of Sword was it?

Mr. Howgood. An Horseman's Sword, as broad as two fingers, such as the Gentlemen of the Guards wear.

Sir Fr. Winn. When he came for the Sword, what said he?

Mr. Howgood. He was angry it was not done, and I told him that I would send it to him quickly.

Sir Fr. Winn. Where was it sent?

Mr. Howgood. To the Governor's Lodgings at the Academy.

Mr. Williams. Now, my Lord, we will call several Persons that were privy to the concealing of this Gentleman, that can give you a better account, Richard Hays and Robert French.

(Robert French appeared, and was sworn.)

Sir Fr. Winn. Pray, will you tell my Lord what you know of the Count's concealing himself and changing his Habit.

Mr. French. I never saw him, my Lord, before I came here in Court, but it seems he did lodge in my House three or four days.

Sir Fr. Winn. How long is it since?

Mr. French. Between three weeks and a month ago, just ten days before the Murder.

Sir Fr. Winn. What Name did he go by then?

Mr. French. I did not know his Name.

Sir Fr. Winn. Who used to resort to him at that time?

L. C. J. You say, Sir, you saw him not, what company did come to him?

Mr. French. I did not see him indeed.

Sir Fr. Winn. Pray did Capt. Vratz come to him to your House?

Mr. French. He lodged with him all the time.

Sir Fr. Winn. You say you know Capt. Vratz, was there?

Mr. French. Yes.

Mr. Williams. Did Dr. Harder use to come to him?

Mr. French. Yes, several times a day.

Mr. Williams. What Name did he enquire for him by?

Mr. French. The Doctor took the Lodging, and it was for a stranger, I heard no Name at all.

Interpreter. My Lord desires to know, whether you did not suspect he took Physick in the House?

Mr. French. I suppose the Doctor did give you an account of that, I don't know that he did.

Interpret. Did not your Maid know of any such thing?

Mr. French. My Maid is here, she will give you an account.

Sir Fr. Winn. Call Anne Prince; *(who was sworn.)* Pray do you acquaint my Lord what you know of Count Coningsmark; whether ever you saw him at your Master's House in the Hay-market?

Prince. Yes, he lodged there.

Mr. Williams. When?

Prince. He came thither last Fryday was a month.

Mr. Williams. How long did he stay there?

Prince. Till Wednesday.

Mr. Williams. At that time who used to frequent his Company?

Prince. I know no Body but the Doctor that used to come to him.

Mr. Williams. What Name did he go by?

Prince. No Name at all as I know of; they did not ask for him by any Name.

Mr. Williams. Did the Captain use to come to him?

L. C. J. Her Master says he did lie there.

Prince. Yes, he used to lodge there.

Mr. Williams. Did the Captain give him any Physick?

L. C. J. No, but the Doctor did.

Sir Fr. Winn. He only asks a merry Question.

L. C. J. But we are now upon the Life and Death of a man, pray let us have those Questions asked that are serious, not such light things as are permitted in ordinary Cafes.

Sir Fr. Winn. Now my Lord, we will call Francis Watts.

Mr. Craven. Maid, my Lord asks, whether he did not take a Vomit in your House?

Prince. Not that I know of.

Then Francis Watts was sworn.

L. C. J. How old is the Child?

Fr. Watts. Fifteen Years old last Christmasts.

L. C. Baron. Ask him whether he understands what an Oath is?

Mr. Thynn. He was sworn before the King and Council.

L. C. Baron. If he were sworn before the Council, he may give Evidence here sure.

Sir Fr. Winn. Were you at the Count's Service at any time?

Watts. Yes.

Sir Fr. Winn. How long?

Watts. I was with him eleven days; I came to him upon the Fryday.

Sir Fr. Winn. How long was it before the Death of Mr. Thynn?

Watts. I think it was ten-days before the Death of Mr. Thynn.

Sir Fr. Winn. What was your Employment with him?

Watts

Watts. His Boy to wait upon him.

Sir Fr. Winn. Did you lye in the same Lodging?

Watts. No, at my Father's.

Sir Fr. Winn. What was the Agreement between your Father and the Count?

Watts. Six pence a Day, and my Diet.

Sir. Fr. Winn. What Company did you observe came to the Count's Lodgings?

Watts. That Gentleman there in the black Perriwig.

Sir Fr. Winn. Was he often with your Master?

Watts. Yes, every Day.

Sir. Fr. Winn. How many Lodgings had he while you were with him?

Watts. Three: One in the Hay-market, and one in *Ruperts-street*, and then the last in *St. Martins*.

Mr. Williams. Thus Child, Do you remember the time of killing *Mr. Thynn*?

Watts. Yes.

Mr. Williams. Were you in your Master's Service then?

Watts. Yes, I was.

Mr. Williams. Who was in your Master's Company that Morning before *Mr. Thynn* was killed?

Watts. I came up, as I used to do in the morning, to my Master, and he asked me what was the matter with the buffle in the Street? and I told him some body was taken upon suspicion for killing *Esq; Thynn*.

Sir Fra. Winn. That was on Monday morning; but the Sunday morning before, what Company did you observe there then?

Watts. I cannot tell any thing exactly of the Sunday morning.

Sir Fra. Winn. Was Captain *Vratz* there?

Watts. I can't exactly remember.

Sir. Fr. Winn. What time in the Evening was it reported *Mr. Thynn* was killed?

Watts. About eight a Clock.

Sir Fran. Winn. Can you tell who brought the first News?

Watts. One of my Lady *Seymour's* Maids, who was telling the People of it below.

Sir Fran. Winn. Did you observe any body come to your Master's Lodgings afterwards?

Watts. Yes.

Sir Fran. Winn. Pray who came?

Watts. That Gentleman in the black Perriwig.

Mr. Williams. Pray in what Habit was he? And how came he in?

Watts. He came in a great Coat; I can't tell whether it was Cloath or Camblet.

Mr. Williams. And what, did he speak to any Body, or go strait up?

Watts. No, he spoke to no Body, but went strait up Stairs.

Mr. Williams. Did he go up to your Master's Lodgings?

Watts. Yes, I believe so, but I stay'd below in the Shop.

Mr. Williams. How long did you stay in the Shop?

Watts. I stay'd there about half an Hour.

Mr. Williams. Did you leave him there?

Watts. Yes, I did.

Mr. Williams. Did he continue there all the time that you were in the House?

Watts. Yes.

Mr. Williams. What time did you go away?

Watts. About three quarters of an Hour after that Gentleman came in.

Sir Fr. Withini. Do you remember you had any discourse with the Count, about riding on Sundays?

Watts. He asked me on Sunday in the Forenoon, whether People were suffered to ride about the Streets on Horseback on Sundays.

Sir Fr. Winn. This was that Sunday Morning, was it?

Watts. Yes: he asked if they might be suffered to ride about the Streets on Sunday? I told him, yes, before Sermon time, and after Sermon time.

Sir Fr. Winn. About what time of the Day was it that he had this discourse?

Watts. About ten or eleven a Clock.

Sir Fr. Winn. Are you sure it was Sunday?

Watts. Yes.

Sir Fr. Winn. Then I ask you another Question; Upon Sunday Morning, or any other time, do you remember that the *Polander* was with the Count, your Master?

Watts. He came in on the Saturday Morning.

Mr. Williams. Was he in the Company or Presence of the Count?

Watts. I was above Stairs when he came in.

Sir Fr. Winn. What do you know of any Sword that was delivered to him?

Watts. Upon the Sunday Morning there was a Sword brought to my Master's Lodgings, and my Master's Man took it of me, and carried it up Stairs, and this Man, the *Polander*, afterwards had it below Stairs.

Mr. Williams. When was this Sword brought to your Master's House?

Watts. It was on the Sunday Morning.

Mr. Williams. What, the Cutler brought the Sword?

Watts. No, it was sent by a Porter from *Mr. Hanson*.

Mr. Williams. What Room was it carryed into when it was brought?

Watts. I think I did not carry it up: Yes truly, now I remember, I did, and delivered it to my Master.

Mr. Williams. Pray what did the Count say to you?

Watts. I asked him if there needed an Answer to the Note I carryed with it, and he said no.

Mr. Williams. To whom was the Sword delivered afterwards?

Watts. It was brought down, and afterwards this *Polander* had it.

Mr. Williams. That Man there?

Watts. Yes.

Mr. Williams. You say that the Sword was given to the *Polander*: Pray speak that the Jury may hear. Who brought down the Sword?

Watts. I saw it in the *Polander's* keeping when it was below, but I cannot say who brought it down.

Sir Fr. Winn. Where did the *Polander* dine on Saturday?

Watts. He dined with my Master's Man and I on Saturday.

Sir Fr. Winn. Where did he lye that Night? At whose Chamber?

Watts. At our Lodgings in the Garret, in my Master's Man's Chamber.

Sir Fr. Winn. What Day was this, do you say?

Watts. Saturday.

Mr. Williams. When the *Polander* had the Sword, do you remember any Boots that he had under his Arm?

Watts.

Watts. Yes, he had Boots under his Arm.

Mr. Williams. And he had the Sword with him when he went away?

Watts. Yes.

Mr. Williams. Had he any Coat?

Watts. Yes, a new Coat.

Mr. Williams. Well, I ask you once more, what time of Day was it that he went away with the Sword and the Boots?

Watts. It was in the Fore-noon.

Mr. Williams. What Day of the Week?

Watts. Sunday Morning.

L. C. J. Ay, but your Doctor that you examin'd before, says, the *Polander* went away with him, and he was not there on Sunday Morning.

Sir Fr. Winn. It is true, my Lord, it was too tender a Point for the Doctor, he lyes under some Suspicion; and 'tis *proximus ardet* with him.

L. C. J. Well, call him again: Look you, Doctor, you were asked before, and now you are asked again, were you at Count *Coningmark's* Lodgings on Sunday Morning?

Dr. Harder. I cannot certainly tell.

L. C. J. When did you see the *Polander* at the Count's Lodgings, and whether was it on Sunday Morning?

Dr. Harder. On Sunday Morning I did not see him. The only time was when I fetched him from my Lord's, I have not seen him before nor since.

L. C. J. Then call up the Boy again. Where did the *Polander* dine on Saturday?

Watts. He dined with me and my Master's Man.

L. C. J. Where?

Watts. Below in the Kitchen of our Lodgings.

L. C. J. Where lay the *Polander* that Night?

Watts. He lay in our Garret.

L. C. J. When went he from your Master's Lodgings?

Watts. On Sunday Morning.

Mr. Williams. Had he an old Coat, or a new Coat upon him?

Watts. He had a new Coat.

L. C. J. Was the Doctor with him?

Watts. Yes, the Doctor went away with him.

Dr. Harder. I have not seen the *Polander* above once in my Life.

Sir Fr. Winn. But were you at the Count's on Sunday Morning, or no, I ask you?

Dr. Harder. I do not know whether it was Saturday or Sunday.

L. C. J. But when you fetched him away, was it Saturday or Sunday Morning?

Dr. Harder. My Lord, I can't very well remember.

L. C. J. Had the *Polander* a Sword when you went away with him?

Dr. Harder. I cannot positively say, but (as Travellers commonly have) he might have a Sword.

Sir Fr. Winn. Now come to your self, and deal honestly, for you are upon your Oath; I ask you, Friend, this, You say he might have a Sword, do you remember a pair of Boots?

Dr. Harder. No, I do not.

Sir Fr. Winn. Do you remember the Coat he had uppermost?

Dr. Harder. Yes he had something under his Coat, but I don't know it was Boots.

L. C. Baron. Had he a Buff-Coat under his Campaign?

Watts. Yes.

Sir Fran. Withins. Let me ask you one Questi-

on, young Man, Do you remember you saw any Musquetoon in your Master's Lodging?

Watts. I did see a Gun there.

Sir Fra. Withins. When was that?

Watts. I saw it upon Saturday.

Mr. Williams. The Musquetoon or Gun that was in your Master's Lodgings, was it that which was bought by the *Polander*, or no?

Watts. I can't tell that.

Mr. Williams. Was it a long Piece or a short Piece?

Watts. It was not a short Piece.

L. C. J. Did the *Polander* take it away with him?

Watts. No, not that I know of.

Mr. Williams. Now, young Man, I would ask you as to Monday Morning: About what time on Monday Morning did you come to your Master's Lodgings?

Watts. It was between seven and eight a Clock, a little after seven.

Mr. Williams. What condition was he in? Was he in Bed, or up?

Watts. He was up.

Mr. Williams. What was he doing? Was he packing up?

Watts. Not that I see.

Sir Fr. Winn. It was when he asked you about the Hubbub in the Street; pray tell what he said to you.

Watts. He asked me what the matter was with the bustle in the Street, and I told him that some were taken that had kill'd Esq; *Thynn*; and I told him all the Story as near as I could: He asked me when Esq; *Thynn* was murdered? I told him the Night before, but I did not mind any thing that was done: But as I went down Stairs, I met with a Stranger, and he went up Stairs, but I never saw my Master after, till he was taken.

Sir Fr. Winn. Did he ask you what Mr. *Thynn* was?

Watts. Yes, and I told him I heard he was a Man of a great Estate, and well-beloved, and that the Duke of *Monmouth* was in the Coach but a little before, and if he had not gone out, he had been kill'd too.

Sir Fr. Winn. What said the Count to you, when you told him Mr. *Thynn* was well-beloved?

Watts. He said nothing.

Sir Fr. Winn. Can you remember who it was came to your Master then?

Watts. I know the Man if I see him again.

Sir Fr. Winn. Do you know his Name?

Watts. No, I do not know his Name.

Mr. Williams. Were any of your Master's Goods carried away then?

Watts. Yes.

Mr. Williams. What Goods were carried away then?

Watts. Two Portmantles.

Mr. Williams. Who carried them away?

Watts. My Father carried them away.

Mr. Williams. What time was it?

Watts. Between eight and nine of the Clock.

Sir Fr. Winn. It was time to be gone. How parted you and your Master?

Watts. The Stranger did come in, and I never saw my Master afterwards.

Sir Fr. Winn. What, did your Master take no leave, nor say any thing to you?

Watts. No.

Sir Fr. Winn. What kind of Perriwig had he when he went away?

Watts. He had a black Perriwig.

Sir Fr. Winn. What Cloaths?

Watts. A light coloured Suit, with gold Buttons.

L. C. Baron. Will the Count ask the Boy any Questions?

Mr. Craven. Did you see the Gun in the Room after the Polander was gone?

Watts. Yes.

L. C. J. 'Tis very plain, that this Gun was none of the Gun that did this Mischief, but the Gun the Polander brought over from beyond Sea.

Sir Fr. Winn. Call the Boy's Father, Thomas Watts (who was sworn) How long have you known the Count?

T. Watts. I do not know him but as I have seen him.

Sir Fr. Winn. Were you employed to carry any thing for him?

T. Watts. Two or three times I was.

Mr. Williams. When were you last employed by him?

T. Watts. The Morrow after the Murder was committed.

Mr. Williams. What Time in the morning was it?

T. Watts. It was between 8 and 9 of the Clock in the morning.

Mr. Williams. What was it you did for him?

T. Watts. I carried a Portmantle, and a Portmantle Trunck; and some other things.

Mr. Williams. Where were you directed to deliver these?

T. Watts. His Man told me they were to go to Windsor.

Mr. Williams. Well, tell the whole Story.

T. Watts. He bid me carry them to Charing-Cross, that they might be put into the Coach there. But when he came to Charing-Cross, a Coach-man and he had some Words, and he bid him open his Boot, and then he took the things from me, and put them into the Coach.

L. C. J. Who was it that told you they were to go to Windsor?

T. Watts. It was his Man.

Sir Fr. Winn. I would ask you, Sir, when was the first time you knew the Count?

T. Watts. It was ten or eleven days before.

Sir Fr. Winn. What was the occasion that brought you acquainted with him?

T. Watts. I was Dr. Frederick's Porter, and he sent me to carry some things to the Count.

Mr. Williams. Was it your Son that waited upon him?

T. Watts. Yes. For when I brought the things, they said they had forgot to give me a Sword which I was to carry with the things; and I said, that I had a Boy that I would send, and I did so, and so they took a Liking to the Boy.

Mr. Williams. What was the Agreement for your Son's Service?

T. Watts. Six pence a Day, and his Victuals.

Sir Fr. Winn. What was the man's name (as you remember) that gave you the things to carry to the Coach, which were said to go Windsor?

T. Watts. I can't tell his Name.

Mr. Williams. He that pinched and pushed you back, and took the things from you, and put them into the Coach?

L. C. Justice. Did you see the Count that Morning?

T. Watts. No, I did not see him.

Mr. Williams. Have you been laboured and sought to by any body to conceal your Boy, that he should not be brought at this Tryal?

T. Watts. No, Sir.

Mr. Williams. Had you no endeavours used with you about it?

T. Watts. No.

Mr. Williams. Did no body speak of any such thing to you?

T. Watts. No.

Mr. Williams. Did any Merchant or any body send to you about this Boy, to take him into Service?

T. Watts. There was a Merchant that would have helped the Boy to a place on Saturday last, but the Persons that would have procured it, were about it a good while ago.

Mr. Williams. Call Derick Raynes, and Richard Chappel. (who were Sworn, and Raynes stood up.)

When did you see the Count, the Prisoner at the Bar?

Raynes. On Monday in the Afternoon.

Mr. Williams. What time was it in the Afternoon?

Raynes. In the Evening.

Mr. Williams. Where was it?

Raynes. At my House.

Mr. Williams. Where is that?

Raynes. At Rotherith.

Mr. Williams. How came the Count to your House?

Raynes. I know not, I was not at home when he came.

Mr. Williams. Pray when you saw him, had he his own Hair or a Perriwig, or how was he habited?

Raynes. He had black Hair then.

Mr. Williams. How long did he continue at your House?

Raynes. From Monday till Thursday Morning.

Mr. Williams. Was he privately there or publicly?

Raynes. He walked up and down the House.

Sir Fr. Winn. What Country-man are you?

Raynes. I am a Sweed.

Sir Fr. Winn. What became of him after Thursday?

Raynes. On Thursday Morning he took Water and went to Deptford.

Sir Fr. Winn. What way did he go, by Boat, or how?

Raynes. A Waterman carried him.

Mr. Williams. Pray what did the Count say to you about his coming in a disguise to your House?

Raynes. I knew nothing at all. I came late home, and when I came to know of him what he was, then he told me that he was Count Coningsmark.

Mr. Williams. What did he say to you when you discovered that he was the Count? What did he tell you of his business?

Raynes. He said nothing; but that he was desirous to go to Gravesend.

Sir Fr. Winn. Upon your Oath, Sir, did you furnish him with any Cloaths?

Raynes. Yes, I lent him a Coat.

Sir Fr. Winn. What say you to a black Suit?

Raynes. The black Suit did not belong to me.

Sir Fr. Winn. What say you to a Velvet Cap?

Raynes.

Raynes. I help'd him to a Coat, Stockings, and Shoes.

Sir Fr. Winn. Then I ask you, what did he declare to you?

Raynes. Why, he did desire to have those Cloaths.

Sir Fr. Winn. You are an honest man, tell the truth.

Raynes. He declared nothing to me.

Sir Fr. Winn. When you dressed him, why did he put on that habit?

Raynes. He thought his own Cloaths were too cold to go upon the water.

Sir Fr. Winn. Had he no Cloaths before?

Raynes. Yes, he had.

Mr. Williams. You had the warmer Coat, had you?

Sir Fr. Winn. Did he desire you to let him have your Cloaths, because he was in trouble?

Raynes. He desired a Coat of me, and a pair of Stockings to keep his Legs warm, and when he had got them, his own Shoes would not come on, so I lent him a pair of Shoes.

Sir Fr. Winn. I do ask you, did he declare the Reason why he would have those Cloaths, was, because he would not be known?

Raynes. He said he was afraid of coming into trouble.

Sir Fr. Winn. Why were you unwilling to tell this?

Raynes. As soon as I came to know he was the man, I told him he should not stay in my House.

Sir Fr. Winn. Did you lend him those Cloaths, or sell them?

Raynes. I lent him them.

Sir Fr. Winn. Had you them again?

Raynes. No, I had not.

Sir Fr. Winn. Are you paid for them or no?

Raynes. No, my Ship lies at the Key, and I came home late in the Evening, and found him there.

Sir Fr. Winn. Set up *Richard Chappel.*

Mr. Williams. When did you first see that Gentleman?

Chappel. On *Thursday* Morning at Ten of the Clock.

Mr. Williams. Where?

Chappel. At *Rotherith.*

Mr. Williams. How came you to him? Who brought you?

Chappel. That Man.

Mr. Williams. What were you to do with him?

Chappel. To carry him to *Gravesend.*

Mr. Williams. Do you row in a pair of Oars, or a Sculler?

Chappel. A Sculler.

Mr. Williams. Whither did you carry the Count that day?

Chappel. To *Deptford.*

Mr. Williams. Whither the next day?

Chappel. To *Greenwich.*

Mr. Williams. And whither then?

Chappel. To *Greenhithe*, and then the next day to *Gravesend.*

Mr. Williams. Was he in the same Cloaths all the while?

Chappel. Yes, all the while.

L. C. Baron. Were you hired to wait upon him all that time?

Chappel. Yes, I was to have 5 s. every 24 hours.

L. C. Baron. Was he alone?

Chappel. No, this man was with him.

L. C. J. Did he go in the Sculler with him?

Chappel. Yes, to *Deptford.*

Mr. Williams. Well, now we will call the Gentleman that seized him at the Water-side at *Gravesend.*

Sir Fr. Winn. What did the Count call himself? What profession did he tell you he was of?

Chappel. He told me he was a Merchant.

Sir Fr. Winn. Did he say he was a Jeweller upon your Oath?

Chappel. Yes, he said he had bought Jewels.

Sir Fr. Winn. Where is *Mr. Gibbons*, and *Mr. John Kid*. [Who were sworn, and *Mr. Kid* stood up.]

Mr. Williams. *Mr. Kid*, pray Sir, will you acquaint my Lord and the Jury, in what Condition you found the Count at *Gravesend*. Tell the whole Story, and speak aloud, that all may hear you.

Mr. Kid. I had some Information upon *Friday* Night of him.

Mr. Williams. Of whom, and what?

Mr. Kid. Of the Count where he was. So I made it my Business to inquire into it. On *Saturday* in the Afternoon a Gentleman came to me, and gave me certain Information where he thought that Gentleman the Count was. This Gentleman coming to me said, *Mr. Thynn* is a stranger to me, but, said he, I would not have *Mr. Thynn's* Blood lie at my door. This same person who is put out in the *Gazette*, I believe, is at a neighbour's house of mine. Says he, I desire you to be private in it, because it may do you a Prejudice; so we went into a Coach at *Charing-Cross* to go to a Justice of Peace; I did not know where *Sir John Reresby* lived, but inquired of *Mr. Gibbons*, who told me, but he was not at home, and *Mr. Bridgman* was not at home; so we went to the Recorder, and there we had a Warrant, and then I came by water to *Rotherith*, and this same *Raynes* that was Examined, and his Wife where he lay, were gone to *Greenwich* to carry his Cloaths, a grey Suit, and other Cloaths that he had left. So going down to *Greenwich* we called every Boat that was upon the River aboard of us, to know whence they came. And we had taken her Sister along with us, and she called out her Sister's Name, *Mall Raynes*, and her Brother's Name, *Derick Raynes*, and so at last we got the Boat wherein they were, on board us. And we asked the man, what he had done with the Gentleman that lay at his House? He declared, he was gone away he did not know whither. So I went back again to this Gentleman that gave me this first Information, who did go to him as a Neighbour, to know whither he was gone, and where he was to be found, and where he would land. So he declared the Particulars, That if we missed him that Night, we should have him in the *Hope* upon *Monday* Morning, upon a Vessel that was to be cleared on *Monday* Morning. So upon *Sunday* Night coming to *Gravesend* about 8 or 9 a Clock, or thereabouts, there he landed. There were 13 or 14 *Swedes* at the same House where he was to land. So we thought it convenient to take him at his first landing, for fear of further danger. So I staid at the *Red-Lyon* Backstairs, and he landed at the Fore-stairs where the Watermen were. As soon as he was laid hold of, I came to him; said I, your Lordship shall not want for any thing that is convenient. He desired to know, whether I knew him? I told him, yes; and that his Name was Count *Coningsmark*.

Coningsmark. That is my Name, says he; I do not deny it. So the Mayor came and the *Custom-House* Officers searched him, and found nothing at all of any Arms about him. He desired he might be used like a Gentleman, and so he was, for there was no abuse given to him, as I know of. Coming up the River, the most of my discourse was about Martial Affairs; a Serjeant that had the Command of a File of Musqueteers, which the Deputy-Governour sent to guard the Count to *Whitehall*, a Gentleman sitting there by me was asking me concerning Mr. *Thynn's* Murder; I told him, that I was at *Newgate* on Friday, and there I saw those that had done that barbarous Fact. With that, my Lord asked, what Lodgings there were in *Newgate*. And whether the Captain had a good Lodging? I told him a very good one. He asked me, whether he confessed any thing? I told him he had confessed some particulars; And said I, 'tis the most barbarous thing that ever was done. Certainly, says my Lord, this Mr. *Thynn* must have Correspondence and Commerce with some Lady that this Captain knew, that belonged to the Court, or he would never have done it. As for the *Polander*, I told him, that he had confessed, he wept mightily. With that my Lord seemed very much concerned, and took up his Cloaths and bit them, and sat a while up, but was very much discomposed, and then desired to lie down.

Sir Fr. Winn. That was, when you told him, the *Polander* had confessed.

Mr. Kid. Yes; my Lord was mightily altered in his Countenance.

Sir Fr. Winn. Did you at the first time that you seized him charge him with the Murder?

Mr. Kid. No, I did not.

Sir Fr. Winn. Was he in a black Perriwig.

Mr. Kid. His Cap fell off, and his Perriwig, just as I came to him.

Sir Fr. Winn. Set up Mr. *Gibbons*. Pray will you tell what passed.

Mr. Gibbons. My Lord, As soon as ever he came to shore, I walked by him, and gave him a little kind of a juggle, and my reason was, to see whether he had not a black Coat under his Campaign: I walked close to him just in this manner, as he walked along, so he turns about again, and went down to the Water-side, and asked the Watermen, Watermen, Have you stowed your Boat? They answered, Yes; Then come away said he; so soon as he came back again, I caught him fast hold by the Arm, and the first word he said to me was, What do you come to rob me? Said I, my Lord, you are my Prisoner, and I told him I was the King's Messenger that had waited there several days for him; and holding of him very hard, whether that was the occasion of it, or the Watermen that were on the other side of him, he dropped down his Sword between his Legs; but when I named his Name he gave a little start and his Perriwig dropped off of his Face. We went up the Street to the Mayor, and the People crowding about us were very rude and very rugged, and he desired he might be well used. We did all we could to keep the People from him; we went up to the Mayor's House, and when we came there, I desired he might be searched, whether he had any Arms; He said, he had none, and there was none.

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Sir Fr. Winn. When you had the Custody of him, whither did you carry him?

Mr. Gibbons. We carried him to the Mayor's House, and after we removed him from his House to an Inn.

Sir Fr. Winn. What did you do the next Day?

Mr. Gibbons. We staid there about some 2 or 3 Hours. After an hour or half an hour's time, near upon an hour, my Lord came to me; and asked me my Name; and he said, the reason was, that after his Trouble was over, he would give me thanks for my Civility to him. Captain *Sinkler*, who stood by, gave him my Name before I could, that it was *Gibbons*. Yes, said I, my Name is *Gibbons*, and I belong to the Duke of *Monmouth*: Why, says he, the Duke of *Monmouth* has no Command now, and therefore how could I take him by his Order? My Lord, said I, I do not apprehend you by his Order; you have killed a very good Friend of mine, and had not Providence ordered it otherwise, you had like to have killed a more particular Friend, and a Master: So, my Lord, he seemed to be very sorry at that; but, says he, I don't think they would have done any harm to the Duke of *Monmouth*.

Sir Fr. Winn. What else did he say?

Mr. Gibbons. I think I have told you all that is Material.

Sir Fr. Winn. Were you in the Boat at any time, and gave him any Account of the Man's having Confessed; what did he say to it?

Mr. Gibbons. Sir, I was not there, nor I did not come up in the same Boat with him.

Mr. Williams. Did he mention any thing about a stain to his Blood?

Mr. Gibbons. I ask your pardon, he did so.

Mr. Williams. What did he say?

Mr. Gibbons. Says he, it is a stain upon my Blood; but one good Action in the Wars, or one Lodging upon a Counterscarp will wash away all that.

L. C. J. What did he say was a stain upon his Blood?

Mr. Gibbons. My Lord, if you please, I will tell you. As I said, he asked me my Name, because he would come to give me thanks for my Civility after his Trouble was over; the Captain being quicker than I, told him my Name: Yes, Sir, said I, 'tis *Gibbons*, and I belong to the Duke of *Monmouth*; said he, he has no Command now, how could you come upon his Order? Said I, I do not come upon his Command, but you have killed a very good Friend of mine, and a Country-man, and if Providence had not ordered it otherwise, you had killed a more particular Friend of mine, and a Master, that I had served many Years; said he, I don't think they would have done the Duke of *Monmouth* any Injury: After that he walked up and down a while, and then said he, 'tis a stain upon my Blood; but one good Action in the Wars, or lodging upon a Counterscarp will wash away all that. The Mayor was in the Room, and several others.

Sir Fr. Winn. Pray Sir, one thing more, when you did speak to him of Confession, did he say any thing to you about Captain *Vratz*?

Mr. Gibbons. Sir, he was only asking of me how things were, what the People said, or some such thing? I was not forward to tell him at first, but afterwards I did tell him, that

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the Captain had made a Confession, tho' it was a thing I did not know then. Says he, I do not believe the Captain would confess any thing.

L. C. J. Did he say so?

Mr. Gibbons. Yes, he did, to the best of my remembrance.

Sir Fr. Winn. We have done with our Evidence, my Lord.

L. C. J. My Lord Coningsmark, will you ask him any thing?

Count Coningsmark. No.

L. C. J. Then the next thing is, You heard the Evidence that is given against you. Now you must come to your Defence; I will put you in mind of some things, my Lord, which things it will concern you to give some Account of. It is here laid to your Charge; That you were Accessory to this Murder of Mr. Thynn; and that you were the Person that directed and designed it. And these Evidences there are against you, that you were cognizant of this, and that you were the Person that designed this: That you came into *England* about a Fortnight or three Weeks before the death of Mr. Thynn, that Captain Vratz, who was one of them that killed him, came with you, that he lay at your Lodging, that he was constantly with you, that you lay *Incognito* there, and private, would not be known what your Name was, that you shifted Lodgings from time to time, that Borosky the *Polander* came over by your Order, was brought to your Lodging, was provided for there, that he had Cloaths, and he had a Sword provided by your Lordship for him, and that there was care taken that it should be an extraordinary good Sword, that you did discourse to Mr. Hanson about your calling Mr. Thynn to account, and this much about the time, or a little before the time of his death, and what the Laws of *England* would be in case you should call Mr. Thynn to account; and particularly you desired to know what Monsieur *Lienberg's* Opinion might be concerning it, and especially what in relation to my Lady Ogle. And that after all this, Mr. Borosky was not only clothed by you, but was sent by you to Vratz, (that the Doctor says) and after Vratz, him, that he lay in your Lodging that Night before this evil thing was done, and that after the thing was done, the same Night Vratz came to your Lodging and was with you, and had private Conference with you, that the next Morning you got up and went away, tho' you had taken Physick the Night before, and tho' you your self, nor your Doctor thought you fit to go abroad, and you go away *Incognito*, in a Perriwig, disguised, you direct your Servant to carry your Cloaths one way, while you go another; then you go down to the Water-side, and lye private near the River, at a *Swede's* House at *Rotherith*, for several Days together; you afterwards take great care to conceal your self by changing your Cloaths, and putting your self in a Garb not like your own, and giving out you were a Merchant or a Jeweller, or some other Trade; that afterwards you trifled away the time and went two or three Miles, and then struck in upon one side of the River, and afterwards on the other side of the River, suspiciously up and down not to be known, and this, not like your self in any manner, but in a pittiful poor Disguise, and hire a Sculler to carry you, from whom you concealed your self, and so all along you trifled away the time till you were taken at *Gravesend*; that afterwards

when you were taken, you were inquisitive about the Captain, whether he did confess; that you should likewise say some such suspicious Words as these, That you believed those that killed Mr. Thynn, had no design against the Duke of *Monmouth*, that you believed the Captain would not confess, that you seemed to be concerned when you were told the *Polander* had confessed; that afterwards you should say, my Lord, this is a stain to my Blood; but one good Action in the Wars, or a Lodging upon a Counter-scarp, will take away all this, or wash it clean. And then, which is also testified against you, that you should ask the Boy that very Morning of the Day the Murder was committed, whether they used in *London* here to permit Men to ride up and down on Horseback upon a *Sunday*? Now these things, my Lord, it will import you to give some account of.

Sir N. Johnson. My Lord says, he desires he may answer all these things one after another.

L. C. J. Let him do so. And first let him answer what his Reason was to come into *England* in such a manner *Incognito* at this time, and lye concealed when he had been in *England* before, and lived in a mighty good Equipage and Condition?

Mr. Craven. My Lord, he says that hearing there was a Peace between *Sweedland* and *England*, and *Holland* designed, and like to be confirmed suddenly against the *French*, he came with a design to serve *England*, and to raise a Regiment of Horse here for the Service of the King of *England*.

Count Coningsmark. If any such Peace should be, if any appearance of an Alliance between *England* and *Holland*, and *Sweedland*, I had a design to propose, if I could have a Regiment.

L. C. J. Why did he come unknown, and in a Disguise?

Sir N. Johnson. Secondly, He says, my Lord, the Reason of his coming *Incognito* was; because he had a Distemper upon his Arms and Breast, and having formerly tryed and employed this Physician, and having experience that he was an able Man, he was resolved to lye privately till he had cured himself, for he could not drink Wine nor keep Company, having this Distemper upon him, and he was afraid if he had kept Company it would have hindered his Cure, and he should not have been so soon cured as if he kept in the House; and he says, that his Equipage could not come till after, and he would not willingly appear till he had his Equipage as a Man of his Quality ought to do, and these were the Reasons that made him keep private.

L. C. J. Pray ask him upon what occasion he did change his Lodgings so often?

Sir N. Johnson. He says, That his first Lodging was changed, because it was too cold for him, and he says, the next Lodging where he was, those that were there can tell, the Room where he was, smoaked so cruelly, that he was not able to endure it. And he says, he liked the House so well, that he sent to see if the Chimney could be mended, and it was not to be done, otherwise he had gone back to that House, and he has the Man and his Wife to bear Witness of it if you please.

L. C. J. Let him call them.

Count. Call Joseph Parsons and his Wife [but they did not appear.]

L. C. J. Then

L. C. J. Then ask my Lord this, To what purpose he did bring over this *Polander* here? He ought to consider of that, and give an account why he brought him hither.

Interpreter. He says this *Pole* was taken into his Service when he went to *Tangier*, when he went several Thousand Miles to do the King Service, and he had designed at that time to bring him into *England* to dress his Horses after the *German* way.

L. C. J. Had the *Polander* been a Groom formerly?

Interpreter. He says he thinks he had been Groom to his Uncle before.

L. C. J. But to what purpose did he bring him hither?

Interpreter. He says there was a great discourse about *Strasburgh's* being besieged, he did design to buy some Horses, for every one did Arm themselves, and he says he sent over 1000 Pistoles to be answered by the Merchants here, to buy Horses.

L. C. J. Hath he any body to prove it?

Count. There is Mr. *Risby*, Mr. *Hanson*, and my Brother.

Young Count. My Lord, I had a Bill of Exchange.

L. C. J. For how much Money, my Lord?

Young Count. For 1000 Pistoles to buy Horses, and he has bought one Horse, and was to buy more.

L. C. J. Do you hear, Gentlemen, what he says? He came over to buy Horses, and he returned 1000 Pistoles for that purpose, and his Brother does attest there was such a Sum returned by Bills of Exchange, for the buying of Horses.

Interpreter. My Lord, he says he does fear that the Jury that do not understand *English*, do not understand his Reasons for being in a Disguise.

L. C. J. Can't he give an account of it himself?

Mr. *Williams*. No, my Lord, his Evidence must be Interpreted to them by the Interpreter.

L. C. J. The Doctor's Evidence hath been heard already about the same matter.

Sir N. *Johnson*. He desires, my Lord, to know this; whether he may not say the same things over again to the Jury in *French*, there are a great many Persons of Quality that understand it, and they will see whether he speak true.

L. C. J. Let him if he pleases.

Sir Fr. *Winn*. But then, my Lord, I hope that your Lordship will tell the Jury it goes for nothing without Proof.

Then the Count spake to the Jury in *French*.

L. C. J. My Lord, I do not know whether the Gentlemen that are of your right Hand heard you or not.

Jury-man. We understand not *French*.

Then the Count spake it in *Dutch*.

Interp. He says, if it had not been for the great stormy Weather, the *Polander* had been sooner in *London*, for he sent for him before. He says, the Letters go from *Strasburgh* to *Hamburg* in seven Days, and that most commonly Ships do come from thence in eight Days, but in a great deal less time than the *Polander* came over in. And he says that he writ four Months before to fetch the *Polander* over, and he might have been here long ere now, if it had not been for the Weather.

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L. C. J. Then, my Lord, I would ask you some more Questions, which it concerns you to answer. Upon what occasion did you make your discourse of Mr. *Thynn's* death to Mr. *Hanson*? Had you any discourse with him? And upon what occasion?

Sir N. *Johnson*. My Lord, he says in common Discourses, 'tis impossible to give an account of the Discourse, or remember the occasion of it so long ago.

L. C. J. Ask him if he had any Quarrel with Mr. *Thynn*? Or knew Mr. *Thynn*?

Sir N. *Johnson*. He says, my Lord, that he never had any Quarrel with Mr. *Thynn*, nor to the best of his remembrance with his Eyes never saw Mr. *Thynn*.

L. C. J. Then I ask you this, my Lord, Did you ever hear Mr. *Thynn* had married my Lady *Ogle* before you last came into *England*?

Interpreter. He says, he never heard of it till he was going to *Strasburgh*, and then all the whole Town did talk of it.

L. C. J. How long is that ago?

Interpreter. Half a Year ago.

L. C. J. Then it was before his last coming into *England*.

Sir Fr. *Winn*. My Lord, his discourse with Mr. *Hanson*, was not when he was last in Town, but before.

L. C. J. Then pray ask him this, What occasion he had to ask the Boy upon *Sunday*, Whether Horses might ride about the Town of a *Sunday*?

Interpreter. He says, my Lord, this is a very strange thing, That he should go and ask a Scullion-Boy, whether People might ride on *Sundays*, when he himself over and over again has rid upon *Sundays* to *Hide-Park*, as many Persons of Quality do.

L. C. J. Has he any body to prove it?

Sir N. *Johnson*. Here is Major *Oglethorp* (who with divers other Gentlemen testified they had seen him riding diverse times, on *Sundays*, in *Hide-Park*).

L. C. J. Then that Question signifies nothing, there could be nothing in that Question.

Sir N. *Johnson*. My Lord, he desires that I may be examined concerning the Boy, of what I heard by chance from the Boy himself, and I will give you an account of it upon my Faith and Reputation.

L. C. J. Do so, Sir *Nathaniel*, say what you can say.

Sir N. *Johnson*. My Lord, I having had the Honour to serve a while under my Lord's Father, I was desirous, knowing the Honour of the Family, and bearing a great respect to it, to do my Lord all the reasonable Service I could. So hearing my Lord was taken, and in *Newgate*, I went to wait upon him, and coming there, Mr. *Richardson* told me, there was a little Boy waited at the Count's Door for his Wages, as he said. So I spake to the Boy, and asked him what doest thou stay for? He told me for his Wages. Said I, certainly my Lord will pay you your Wages; how long have you serv'd him? he said a little while, and then said I, if you lived with him, what do you know of his Business? And then of himself he began and told me, Only this I know, that *Vratz*, was in my Master's Chamber that Night, and the *Polander* that Night went out with a pair of Boots under his Arm, and more than this I do

do not know. Said I, Boy who do you serve? Says he, I have no Master at present, but then of his own accord he told me, Sir *Thomas Thynn* had promised him a place, and in the mean time, I am, says he, to go to serve my Lord *Pri-vy Seal*; so my Lord gave him Twenty Shillings for his Wages.

Interpreter. My Lord desires the Boy may be asked whether he did not go to fetch Physick.

L. C. J. Ask him, where is the Boy?

Watts. No, I do not remember it.

L. C. J. Now, you should put the Count in mind.

Sir Fr. Winn. We observe what a sort of Interpreter *Sir N. Johnson* is: He speaks more like an Advocate than an Interpreter, he mingles Interpreter and Witness and Advocate together, I don't know what to make of him.

L. C. J. The Count had taken Physick that day.

Sir Thomas Thynn. My Lord, I desire to be heard, I never spake to the Boy in all my Life.

Mr. Thynn. Nor I. But he gave the same Testimony he gives now, before the King and Council.

L. C. J. Look you, *Sir Thomas*, it does not concern you at all to speak to that, there is no reflection made upon you in it. But my Lord *Coringmark*, it will concern you a little, to shew upon what occasion Captain *Vratz* came to you that Night that *Mr. Thynn* was killed.

Interpreter. He says, my Lord, he can't tell why he came there, it's a proper Question to ask Captain *Vratz* himself.

L. C. J. That can't be.

Interpreter. He says, my Lord, he kept his Chamber at that time, he had taken cold upon his taking Physick, and the Captain came to give him a visit, and he never reflected upon any one he came for, he was lying upon his Bed.

L. C. Baron. Pray ask my Lord this, Why this man that was sent over to attend Horses, should come upon the *Fryday*, and a Campaign Coat be bought him on the *Saturday*, and he furnished with a Sword on the *Sunday*?

Interpreter. My Lord, the Noise is great, but I suppose your Lordship desires to know what was the reason, why he bought a Sword for him and a Coat?

L. C. Baron. Ay, and how he came by the Buff-Coat?

Interpreter. He says, he had that before.

L. C. Baron. But why must he have such a strong Basket-hilted Sword furnished him in a day's time?

Interpreter. He says, my Lord, As to the Cloaths, when he saw him with all his Cloaths torn, he must of necessity get him a Coat, or else he was a shame to him, and his Service. And as for the Sword, it was no more (he says) then what Servants of his bulk and making used to wear.

Sir N. Johnson. And he says, all the Servants of Gentlemen in *Germany*, wear such broad Swords.

L. C. J. You know it your self, *Sir Nathaniel Johnson*, you have travelled there.

Sir N. Johnson. Yes, my Lord, they do, and the Poles much broader and greater Swords then

the others. Here is one in Court that hath a great broad Sword now by his Side.

L. C. J. Now, my Lord, it will import you to give some account, how, you having brought over this *Polander* (as you say) to choose Horses, and help you in the management of them, to take care of them in the Nature of a Groom, how you came to part with him to Captain *Vratz* as soon as he came over?

Interpreter. My Lord, he says, Being that he was sick himself, and there was no hopes of the Alliance between *England* and *Holland*, he had no such occasion for him, as when he wrote for him, and therefore saw no reason to keep him.

L. C. J. How long was it, before that he wrote for him?

Count. My Lord, after the Seige of *Strasbourg*, when every body thought there would have been a War, but it was not so; therefore I had not need of him, but he had been 7 Weeks at Sea, and my Lord, 'tis a common thing in *Germany*.

Interpreter. He says, 'tis a common thing in their Country, to give Servants away, if there be no occasion for them.

Count. My Lord, 'tis a common thing in *Germany*, it may be, it may not be so much used in *England* to give a Servant away.

L. C. Baron. What! the next day that he comes over?

L. C. J. What say you, *Sir Nathaniel Johnson*?

Sir N. Johnson. Yes, my Lord, 'tis very frequent in *Germany* to give a Servant away if there be no use of him, for these *Polanders* are like slaves.

Interpreter. And, my Lord, he says, that *Mr. Russel* does know, that the Merchant that sent him over hither is a man of good Repute, and if this man had had an ill Reputation in *Germany*, he would not have sent him.

Witness. My Lord, I know very well he is a man of very great Credit in *Hamburg*, and of great Estate.

L. C. J. Did he send over this *Polander*?

Witness. Yes, my Lord, so I understand.

L. C. J. Can you speak of his Credit, *Sir Nathaniel Johnson*?

Witness. Of the Merchant's Credit I can, my Lord, I know him to be a man of considerable Estate and Credit. He is a man of such Reputation, that he would not send a man of an ill Reputation.

L. C. Baron. Oh Sir, *Nemo repente fit turpissimus*. He could not be so ill a man at the first dash, he must be a man probable for such a service.

Sir Fr. Winn. You may observe, my Lord, how *Sir Nathaniel Johnson*, who is Interpreter in the Case, is a Witness, and argues for the Prisoner too.

Mr. Williams. Pray *Sir Nathaniel*, is a Rencounter the killing of a Man after this manner?

Sir N. Johnson. A Rencounter is another sort of thing, Sir, you don't speak as if you were a Soldier.

Mr. Williams. My being a Soldier or not is nothing to the business, but the Captain said, he intended to have made a Rencounter of it.

Sir Fr. Winn. But my Lord, we desire to take notice of *Sir Nathaniel's* forwardness; for it may be a President in other Cases.

L. Ch. J. What do you talk of a President? When did you see a President of a like Tryal of Stran-

Strangers, that could speak not a word of English; but you would fain have the Court thought hard of, for doing things that are extraordinary in this Case.

Mr. Craven. My Lord he desires he may inform the Jury what he sent for this *Polander* for.

L. C. J. Let him.

Then the Count spake it in French and Dutch.

L. C. J. My Lord, another thing is this, How came your Lordship presently to go away in such a private secret manner, and to direct your Cloaths to be sent as it were to *Windsor*? And your self to go away, and to make such a private withdrawing of your self down the River in this manner?

Mr. Craven. My Lord, he says, that one *Markham* that is here, came and told him that upon the killing of this Man by the *Polander* and the Captain who were taken in such a fact, there was a discourse of it that it might turn to his prejudice, and that the Common people do commonly fall upon Strangers, that his Taylor told him, that he heard the Common people name him as concerned in it, and that he believed, if the Common people did catch him, they would tear him to pieces, and so his friends did counsel him that he would withdraw himself.

L. C. J. Is the Taylor here? Call him.

Interpreter. Call *Markham* the Taylor

(who stood up.)

Sir N. Johnson. My Lord, he says that he was afraid the people might tear him to pieces, before he could come to justify himself.

L. C. J. Look you friend, did you come to Count *Coningsmark's* Lodgings after Mr. *Thynn* was killed, on the Monday morning?

Markham. Yes.

L. C. J. What did you tell him?

Markham. I told him nothing, but I was sent there by Mr. *Hanson*, says he, tell the Count that the Duke of *Monmouth* and several Noblemen have been here: Now I had not seen the Count at that time before, but he told me where he lodged, when I came there I told the Count of it, but he told me he knew nothing of it, but said he, I am sorry if any such thing be done.

L. C. J. But what did you say his friends advised him to about it?

Markham. I did say nothing of it.

Then the Count spake to him in Dutch.

Markham. That was afterwards.

L. C. J. What was that afterwards?

Markham. I was told, the people said, if he were taken, he would be knocked on the head.

L. C. J. What time afterwards was it?

Markham. After he went away.

L. C. J. Who told you so then?

Markham. Mr. *Hanson* told me so then, I would not tell a lye for all the World.

Count. He can tell also when I went away—the rest he spake in Dutch.

Interpreter. He says this man can witness, that he asked his man what money he had left, and he told him that he had not above 10 or 11 l. so he put his hand in his bag and took out some, and put it into his pocket.

Count. So ill was I provided for an escape.

L. C. J. Ask him that Question, do you know any thing of what money he took with him?

Markham. No, I saw him take an handful of Silver, but what it was I can't tell.

Mr. *Thynn*. He had 7 or 8 l. about him when he was taken.

Interpreter. He desires leave to tell it to the Jury, (which he did.)

L. C. J. Now, my Lord, this will require some Answer, how came you to tell those Gentlemen that took you, that you believed Mr. *Vratz* and the rest would have done the Duke of *Monmouth* no harm?

Interpreter. He says, the people told when he was taken, that the Duke of *Monmouth* was in the Coach, and that they did follow the Coach a great way, and would not do the Action till the Duke of *Monmouth* was out of the Coach.

Count. They did tell me, the Crowd that were about me, that those that were taken said they would not do it till the Duke was out.

Interpreter. And he says, that gave him sufficient reason to say to Mr. *Gibbons* that he did believe, they had no design upon his Grace the Duke of *Monmouth*.

L. C. J. He heard it so commonly, it seems: Now my Lord, there is one thing more that you should explain your self in, what you meant by this, when you said it would be a stain upon your blood, yet one Noble Act in War, or the Lodging upon a Counterscarp would wash it off?

Interpreter. He says my Lord, that tho' he knew himself not Guilty of any thing, yet his being taken upon suspicion, and clapped up in Prison, would be a great disgrace to him, and would be worse resented in his own Country than the thing it self was. It being not the Custom in his Country to take Persons of his Quality Prisoners in that manner.

L. C. J. Now, my Lord, Is there any person that you would have called to ask any Questions of? If you have, they shall be called.

Count. No, my Lord, but if you please to give me leave to tell something that may be necessary.

Then he spake in Dutch.

Sir N. Johnson. My Lord, he says, if you will give him leave, though it does not come very well from himself, yet he desires to say something for his own Reputation.

Mr. *Williams*. He should be armed with Witnesses to make his defence.

L. C. J. 'Tis fit for men that stand here to say any thing that is reasonable for themselves. My Lord, if you can speak any thing that you apprehend the Jury can understand, speak to them what you please, so as they understand it, but do not be too long.

Mr. Craven. My Lord, if your Lordship please, he says he would speak it first in French, and then in German.

L. C. J. Ay, but then the English men of the Jury will not understand a word of it; he had better speak in English to the Jury.

L. C. J. North. My Lord, It is an Indifferent thing, it may be Interpreted, not being matter of Fact.

Sir N. Johnson. My Lord he says it is a great happiness in all his trouble, that he was in a Country, where he was to appear before a Protestant Judicature, himself being a Protestant, and his fore-Fathers also. He says that his fore-Fathers under *Gustaphus Adolphus* were Souldiers, and did there with their Swords in their hands, and the loss of their blood endeavour to settle the Protestant Religion in *Germany*, and protect it there; he says, that it has been the honour of

of himself, and his Family, that they have always been ready to venture their Blood, and their Lives for the Advantage of the Protestant Religion, as the Examples of his Grandfather and Father do shew, and there never was any thing done by his Family, but what was done for the Honour of his Country, and his Religion; and he says, that if any of his former Actions can give any the least suspicion of his being Guilty of this or any foul Fact, he is very willing to lay down his Life, and very willing to have it cut off immediately.

Count. Immediately.

Sir N. Johnson. He says, that he is very ready upon all occasions to serve the King of *England*, and that he loves the *English* Nation so well, as always to be ready to do any thing to serve them.

Count. Without any interest in the world, against the Will of all my Relations, and I have brought my Brother into *England* to be brought up into the Protestant Religion to shew my Inclinations to the Religion, and the *English* Nation.

L. C. J. Have you done?

Sir Fr. Winn. Yes, my Lord, we have done with our Evidence, and we have no matter of Fact to reply unto: but we think it is our Duty, considering the Defence my Lord has made, that we should take some care to put the King's Evidence a little together, it being a case of such nature, and so cruel and horrid a Murder.

My Lord, and you Gentlemen of the Jury, I am of Counsel here for the King, and you are Gentlemen upon an inquiry to find out the Offenders in a very great, a barbarous, and a wilful Murder. And, my Lord, in relation to the Principals, I need not spend your Lordship's and the Jury's time about them; for all those three Men, that are indicted as Principals, do my Lord confess the Fact, tho' they do it in a different manner, and tho' in Form of Law they are pleaded not Guilty; yet when they come to be asked the Question, their Guilt flies in their Faces, and they cannot deny it. So then for those three Men there is no need to spend time in repeating the Evidence.

But, my Lord, that that seems to require the Consideration of the Jury is, whether this wicked, and horrid Murder be only circumscribed in the Guilt of it to those three Men that have confessed it, or whether any rational man in the World will believe upon the account they give themselves, that they only had a design, a study, or a delight to kill this Innocent Gentleman. No, my Lord, the thing must lie a little deeper, and there must be some other reason why this barbarous Murder was committed, I would crave your pardon for what I say. My Lord, I would not speak any thing that should mislead a Jury in matters of Blood, and I think it was rightly said by your Lordship, that when a Man is tried for his Life, We ought all to behave ourselves seriously as in a matter of weight and moment. And so it is, I think, a very serious thing, and a matter of concernment to us all to inquire who hath shed Innocent Blood; for such was this poor Gentleman's Blood that was killed, Innocent Blood.

My Lord, this Count is a very unhappy Person to have such a Relation as has been pro-

ved to be of the Principals; I will do my Lord no wrong in the repetition, if I do, and am mistaken, I crave your direction, I am sure you will correct me in it. Two of the Persons that are Principals, that was Captain *Vratz* and the *Polander*, happen'd to be Persons Relating to my Lord's Family, as his servants. For it is agreed by the Witnesses that were that Count's Friends, that they came over into *England* with the Count, the last time he came over in that private manner, and 'tis likewise proved, and not denied by him, that Captain *Vratz* was frequently with him, not only to the very day when this bloody Fact was done, but after that great Crime was committed; I say, my Lord, 'tis a very unfortunate thing for this Lord, that those men should have so near a Relation to him, who have had their hands in it, and can give no account why they did it.

My Lord, I do know (and your Lordship has justly directed us) that no Evidence from one Prisoner, or the Confession of one can charge the others in point of Evidence; but I cannot but take notice, that Captain *Vratz* could give no Reason in the world for it, but as it were for some Affront to the Count and himself. But, my Lord, the Evidence that lies heavy upon this Lord at the Bar, is made up of these Particulars:

First, that here is a Murder committed is plain, then that this Lord did fly, is also plain, and when he did fly, Gentlemen, he kept himself in disguise before that Fact was committed, and whether or no the Reasons be sufficient that he has given to your Lordship, and the Jury, must be left to consideration. He says, that he had not his Equipage, that he was not very well, and that he could not drink Wine: Those I take to be the Reasons given, why my Lord *Coningmark* did conceal himself, till the time after the Fact was committed.

L. C. J. He was taking of Physick, and he thought it might be prejudicial to him to drink Wine, or keep company.

Sir Fr. Winn. But, my Lord, these kinds of shifts, we think, are not able to ballance the Evidence, for that which is truly the Evidence is this Mr. *Hanson*, who is very much conversant in that Family, and who did give his Evidence very unwillingly; yet, he did really confess that which will go very far in this Case; for after he was pressed several times (your Lordship, and the Court, and the Counsel pressed him) to tell what was the Reason of that discourse he had with the *Swedish* Resident, and he was asked, Had you any Command from my Lord *Coningmark*? He answered no; but, says he, I thought it would please him, if I could have the Opinion of the Agent or Resident to know what the Laws of *England* were, if so be he called Mr. *Thynn* to account, and what the consequence would be in reference to his design upon my Lady *Ogle*, and upon this he does go, and ask the Question of the Resident.

Now, what does he mean by this calling to account? We must take things according to the Reason of them. Certainly it was some offence that he had taken to Mr. *Thynn*, and that is plain in regard when he was asked what the Prejudice did refer to, Mr. *Hanson* was pleased to name that great Lady, my Lady *Ogle*, and said she was mentioned, and he did desire

to know what the Influence of the Laws of England would be in that matter, if he should call him to account.

My Lord, I think with submission it carries this in it, as if he had a purpose in his mind to call Mr. *Thynn* to account by quarrelling with him and hazarding him in his Life; I do not undertake, nor would not of my self, to expound it, but this I will say, it must signify something, and must have some consideration, and without all doubt a Person of this Lord's Quality would not let fall such an Expression, but for some end and purpose.

My Lord, after Mr. *Hanson* had given his long Evidence, which came so difficultly from him, we traced it down by several Witnesses, *Wright*, *Harder*, and others, that this *Polander* came over, as it happen'd, on the *Fryday*, (which is a thing that comes mighty close) upon the *Saturday*, he is provided with a Coat and a Sword; on the *Sunday* he committed this inhuman bloody Fact. Now it is a mighty unfortunate Circumstance upon this Lord, that this should be a man whom my Lord *Coningmark* should be so very much concerned for, that because he was not come, he should be afraid he had miscarry'd in the Weather, to that his Answer was this, that he was sent for over by him to look after his Horses, and he had come a great deal sooner, if it had not been for the stormy Weather. But, your Lordship observes, that it was not above three or four months before, and then by his own shewing the business of Mr. *Thynn*, and his Marriage with my Lady *Ogle* was talked of far and near; and so, my Lord, it makes the suspicion of the malice the greater, that he who has done this bloody Murder, and has been so much under the Command of this Lord's Family, that he should come but two days before, and the Count provide him with a Sword that very day, and then that Letter from Captain *Vratz* to Dr. *Harder*, which he carried to the Count, and the Count read, but of which he can tell you none of the Contents; that speak something in regard when the Doctor went away, this *Polander* was sent to the Captain by the Doctor; but this is certain, however, there was a Sword that was brought by the Cutler, that Sword was carried up to the Count's Chamber, that Sword was delivered afterwards to the *Polander*; for he had it on the *Sunday* morning when he went away with the Boots under his Arm, and the Campaign Coat upon his Back, with a Buff-Coat under it; and he went out, and never returned till the Fact was committed.

I say, my Lord, it carries a vehement suspicion, that he was privy to this Murder, because this was a servant at his Devotion, and your Lordship and the Jury see what kind of a Creature he is, likely to do any thing, being at the Command of so great a Person.

But then, my Lord, to come closer to the matter (for I will only repeat that which is most material) there is the Evidence of the Boy, who, I must say, tells you a very sensible Story; he tells you upon what account he came to him, that he was there ten Days before the Murder was committed; he swears expressly, That the *Polander* lay there the Night before, was there that morning, went away with the Sword, and Dr. *Harder* with him; that this Murder was committed about eight a Clock at

Night, that Captain *Vratz* came bustling into the Count's Lodgings, where he lay concealed; and the Boy by agreement, being to go home every Night, staid till half an hour past nine, and left the Captain there at that time, and the Captain had been there in the Morning.

My Lord, Surely it is a strange thing, and much to be wonder'd at, that the Captain, who had the management of this Murder, had no where to go for a Refuge, but to his Patron my Lord *Coningmark*, reeking hot with Mr. *Thynn's* Blood, when the Blow was given, within an hour after the Murder committed, (for so the Boy swears expressly, for the Blow was given at eight a Clock) and afterwards he went to the Doctor's to bed about ten a clock at night, as the Doctor hath confessed; I take that for a mighty Evidence. And then, my Lord, upon the Monday morning when the Boy comes in, the Count asks him, *What was the matter with the Bustle in the Street the last night?* Will any man in England believe, but that he had had earlier news of it? And for what reason should he ask the Question, if Mr. *Hanson* speaks true, who brought the news in from *Whitball*?

But the great Question that we wonder should be asked the Boy, is, *What Mr. Thynn was?* Which certainly was a very odd expression, if we consider what Mr. *Hanson* says, *That the Count had mentioned him in his discourse, and my Lady Ogle too.* One of the Count's Answers was, *It could not be imagined that he could speak to a Scullion-Boy;* but you see the Boy swears it, and tells it so, as that it is very probable.

We now come, my Lord, to give an account of his Flight.

The Father of the Boy comes in the morning: And I would observe, tho' he pretended his business and his distemper brought him over, and that he was ill, and under Cure; yet this matter made the place too hot to hold him; stay here he durst not, immediately he forgot his Physician's Prescriptions, and gave order to his man to send away his things. Then the Boy's Father was sent for, and the Portmanteaus are given him, and he is told my Lord was going to *Windsor*; but when he came to *Charing-cross*, the things are put into a Coach in the *Strand*, and from thence they went for *Rotterith*.

Then came the man at whose house he lay, and he was a *Swede*, and by the way I would observe, the Witnesses are most of them my Lord's own Friends, unwilling to tell the truth till we get it (and that very hardly) from them. This Man was very unwilling to tell his knowledge, but he got him the Cloaths, which Cloaths, by the bulk of the Man, one would think would hardly fit the Count; but the more he was disguised, the more was his Security; and when he was asked this Question, *Why he desired to have those Cloaths to secure him?* He said at last, *It was to prevent Trouble.*

Now let us consider, my Lord, whether the Count has given any Answer to that. My Lord, there is nothing in what he said, under pardon. He says, *He went away, because he was afraid the People would tear him in pieces, before he could justify himself.* If he were innocent, he knew where to go to be secure from any hurt from the People; he might have applied himself to your Lordship, or to any other Magistrate. He is so ingenious he could not but know he might have protected himself under the Government, which

which protects and secures any man whatsoever if he be innocent.

I have these two things more to mention, and then I shall leave it to your Lordship and the Jury; and one is the Evidence of Mr. Gibbons, and Mr. Kid.

Mr. Kid gives that which to me is a very material Evidence of what passed when they seized him: As they were coming up the River, the Count asks him, Whether there were any good Lodgings in *Newgate*? and particularly expressed his Care of the Captain, to ask whether he were well lodged. And when he was told that the *Polander* had confessed, he says he seemed on the sudden to be very much concerned, bit his Cloaths, and threw himself along with some agony. My Lord, an innocent man needed not to use any such actions.

Then comes Mr. Gibbons, who was very instrumental in the pursuing of him, and is known to be an honest Man, he gives this Evidence, That when there was a Discourse about Mr. *Thynn*, and his old Master the Duke of *Monmouth*, the Count presently reply'd, *They meant to have done the Duke of Monmouth no harm*; and walking about the room, on a sudden, burst out into this expression, *This is a stain upon my Blood; but one good Action in the Wars, or lodging upon a Counterscarp, will wash it all away.*

Now, my Lord, as to what he answers to this, I say any Man may make that evasion which he would excuse it by, to say that the Accusation is a scandal or a stain may be worse than the Guilt of the Action: But your Lordship and the Jury see plainly, if so be the thoughts of a Man's own Heart be that he is guilty, it will break out some way or other. These things I only repeat, I leave them to the Consideration of the Jury.

But when I have said this, there is one thing more, and that is above all relating to the Captain: Says Mr. Gibbons, *I did not know that the Captain had confessed, but I did venture to say he had*; but the Count replied, *He did not believe the Captain had confessed.* My Lord, you see how the Captain appears before you, and if the Count will take upon him to say, he does not believe the Captain would confess; it doth strongly argue he knew as much of the Captain's mind, as he himself. Then look upon the resolute Behaviour of the Captain, the familiarity he lived in with the Count, that he had always been a Dependent upon his Family, it shews some reason for his assurance of secrecy from the Captain, that he would not confess the Author of this most notorious Murder, and it lies heavy upon him. My Lord, I look upon the Discovery of this as a very miraculous thing; And pray consider, Gentlemen, where shall a Man go to settle his thoughts for the Original business? Do you (or can you) think it was begun, invented and contrived by yonder three Men? To what end or purpose; or for what advantage to them? You have heard the Evidence that I have repeated to you; You have heard what this Lord has said for himself; how he has fled, and what has been done. My Lord, I will not use any thing of Argument to persuade the Jury; but I cannot chuse but say, we know no where to go for the Author of this villanous Fact, nor whom to accuse as the prime Contriver, but this Count before you. I pray the God of Heaven to direct you in your Enquiry; and if

I have said any thing amiss, I beg your Pardon for it.

[Then a great Shout was made, which the Court rebuked the People for.]

Mr. Williams. My Lord, I did not think to have said any thing more in this Case; but I must crave your Lordship's and the Jury's Patience for a few words. As for the three Persons at the Bar, (the *Pole*, the Captain and the Lieutenant) it is, Gentlemen, very notorious they are guilty of this most Hellish Murder. But all the labour and difficulty of this matter is, how far this Count is Guilty, or not Guilty.

Pray, Gentlemen, do but observe the nature of this Crime, and the manner of our Evidence that has been given you. The Crime he is accused of, is, for being Accessory to a Wilful Murder; Accessory before the Fact; Contriving of it, and laying the Train, which these Persons were made use of to fire. This being so, it is almost impossible to give you that clear light and pregnant proof against an Accessory, as against the Principals. The Principal is he that doth the Fact; that is notorious and open. The Accessory is the Person that prepares the Scheme, contrives the management, first sets the Wheel on work, gives the necessary Instructions, who lies behind the Curtain. Now, considering that, and the nature of the thing, it is impossible to give a clearer Evidence than what you have had.

Pray, Gentlemen, do but first consider who hath been the Privadoes and the Intimates of this Count, with whom he has had Conference since he came into *England*, *Hanson*, and Dr. *Frederick*, who are brought as Witnesses (tho' unwilling ones) against him; the Boy that was employed by him. He is in no other hands; I cannot hear he was among any other Persons but these, and Captain *Vratz*, and the *Polander*. These are his Company, and those alone with whom he had conversation. Now, Gentlemen, that we should be able to produce these very Men (that were his only Companions) against him as Witnesses, is a mighty thing, considering the privacy he lay in.

As for *Vratz*, his most intimate Privado, he came over with him into *England*, lived with him in his first Lodging, and was continually with him during his stay. So then, what can we expect about this Man, Gentlemen, when he had laid his Design with all the privacy he could, would have as little Conversation with Englishmen as he could. It was very craftily laid, that he would converse with none but those that were privy to his Design, or had an hand in it in a great measure. Then pray consider how it was carried on, Gentlemen; *Vratz*, who was the great Commander, and the *Polander*, who was the immediate Actor in it, had been his own Servants. *Vratz*, I say, he had a great confidence in; he came over with him; and will not any Man believe, that this Man, who eat of his Bread, who lay in his Family, was a likely Man to do this for his sake that thus cherish'd him? For whose sake pray can it be thought to be? Not for his own sake; for the Captain tells you he never had any communication or conversation with this unhappy Gentleman, Mr. *Thynn*. So that if it were as they would have it, that they did it out of respect to this Count, who

who was the Captain's Friend, it will turn upon the same point, and confirm the suspicion. Why should the *Polander* do it, if he had no reason to do it upon his own account? For he never saw the Face of Mr. *Thynn*, but was brought hood-wink'd in a manner to the Fact.

Therefore whether it were not done for his sake, is that which you are to consider; and as a Proof that for the Count it was done, I shall pitch upon one Circumstance that will bring it home to his door, and that is, the Evidence of *Hanson* his Brother's Tutor: And by the way I cannot but repeat it, that this Thread goes thro' all the Cloth, we have no Witnesses but those of his own familiar Acquaintance and Dependence. Now *Hanson* has (tho' very shufflingly) told you, the Count and he had some Discourse about my Lady *Ogle*; and tho' we cannot come to know all the Circumstances, yet he does acknowledge so much as that there was mention made of requiring satisfaction of Mr. *Thynn*, or some account of him, and what might be the consequences of the Laws of *England*, in reference to my Lady *Ogle*, in case he should call him to account. So far he is plain, tho' he will not tell what the Discourse was; that there was a Discourse of my Lady *Ogle*, of Mr. *Thynn*, of asking satisfaction of Mr. *Thynn*, or calling him to account, and what the consequences in Law might be. And pray, Gentlemen, observe, being to take Advice about this matter, they would not consult an English Lawyer, tho' I see one behind him now, but a Foreigner, the *Swedish* Agent; not ask the Opinion of one Man of this Kingdom. And then he gives you a mighty Reason for it, That the *Swedish* Resident knew very well how to advise him in this Affair, because he had lived in *England* about 19 Years: So that all his Acquaintance and Friends, the Managers of the Business, and those consulted with about it, all Outlandish-men; I cannot say they are all Guilty, but I will say this makes our Proof more difficult.

Gentlemen, This being taken notice of as a mighty Circumstance, I would bring it a little more home to this Gentleman, whom we accuse as Accessory before the Fact. Pray consider how all along he lay skulking, and hiding himself in disguise, and shifting his Lodging from place to place. I need not repeat it, but I would desire you to think of what was concurrent with that very day, and, as it were, concomitant with the very Murder, and that will appear to be sufficient to satisfy any rational Man. We are not picking up an Evidence upon flying Words, or unconcluding Circumstances, but we offer Facts to you, and Facts are to guide you, you being to compare Facts with Facts. As to his lurking and hiding, this Gentleman gives you no manner of rational account, that he had any business with any Man in *England* that should occasion his lying private; but only he tells you, he labour'd under a Distemper that he would not have discover'd; and yet take him in that very Distemper, and in the process of his Cure, as soon as this Fact is over, the next Morning he values neither his Disease, nor his Physick, but goes by Water, and made an Attempt to fly abroad. Will any understanding Man believe that he came privately into *England*, that he lay skulking here,

that he made use of another Name, and other Cloaths, that he should do all these things, and run away so immediately after the Fact was done, and all only because of a little Distemper of Spots on his Breast?

But then, says he, it was reported in the World, and told him the next Morning, that the People, the Rabble, would tear him in pieces. He was asked where he had this Report, and he brought up a Taylor, and depended mightily upon it, but the Taylor denied it; and, Gentlemen, he that fails in one thing he says, is not to be credited in another without good Proof. He says that he said no such thing, so that, Gentlemen, this fictitious Argument of his Fear falls to the ground.

Then observe what follows upon this villainous Fact; he flies away privately, he goes to a *Swedish* House at *Rotherith*, from thence by a *Swede* he must be put into a Skulker, and that Skulker must be towing of him for several days together, till he come to *Gravesend*, from whence he was to have gone over Sea. Pray lay all this together, and weigh it well, and see if you can imagine any other Reason for it all, than what we alledge.

I would observe it to you, Gentlemen, and pray think of it, what the Count has said to you in his own Defence in so many Languages, without Proof, must pass for nothing. The Court has had a great deal of Patience to hear him, and shewn him a great deal of Favour in permitting it; but without Proof, I say, it all passeth for nothing. And what Proof he hath made of it, I must submit to you; for I will not spend your time in running into Particulars: And where he has proved any thing, pray compare Facts with Facts, especially that concerning the Captain *Vratz*, which is not, in my Opinion, to be answered, that he lived with him, that he should be with him on the *Sunday* Morning, that in the Evening he should come thither again after the Fact done, that he should be left in his Chamber, and continue in the House so long. Will any one believe, that when *Vratz* came over with the Count from abroad, lodged with him here, was every day with him in familiar Conversation, should come that Morning before, and in the Evening immediately after, and stay with him so long, and yet the Count be innocent? Nay, will not any Man rather absolutely conclude him an Accessory to the Murder?

Then, Gentlemen, take into your Consideration his Flight, and Endeavours to escape out of the hands of Justice; if there were no more, that is a great Evidence of his Guilt, but you have much more, and as strong as you can desire or expect. He says he was afraid of the People; alas he needed not to fear that, he finds a very fair and generous Treatment here, he knew the Temper of our *English* Nation well enough, to know they do not presently fly in Men's Faces; and he could not but know, he might, without danger, resign himself up to the Law if he were innocent.

Gentlemen, We have given you a fair and a full Evidence, we have offer'd you sufficient Proof in Fact, and have offer'd no Shams to you; and I do not doubt but you will do right to the Honour of *England*, and the Justice of the Nation, which are deeply concerned in this Case.

[Then there was a great Noise made.

L. C. J. Look you, Gentlemen, the Council for the King have been very large in the repeating of the Evidence, therefore you must not expect from me, that I should go over it again, in the same method that they have done. I will direct you a little as to some Points in Law as to this Case: Here is, as they tell you truly, a Murder as horrid and barbarous as peradventure can be committed upon any Subject. It is a Murder of a very bad nature, so that the repeating of it is enough to make all Men abhor it; it needs no Aggravation, it is in its own nature so very barbarous; and those Gentlemen that had a hand in it, must certainly needs be ashamed, and look upon themselves as not fit to be accounted Men, whoever they be that had any hand in it, so barbarous and inhuman, and base in its own nature, and so unworthy of a Man.

I must tell you, Gentlemen, when one Man shoots another, and two are with him, tho' they do nothing but come on purpose to countenance that evil Fact, that is Murder in them All; All that were present are guilty, when ever such an Act is done: And three or four come together, and one does the Fact, and the others stand by to countenance it, whether they be there to bring the Party off, or to animate him, and put him into a condition that he may murder and kill, it is Murder in All, and they are All as equally guilty, as he that shot, or actually gave the Blow.

Now as to these three Persons here, the *Polander* that shot, *Vratz* who was with him and stop'd the Coach, and *Stern* that was by with them, they do all acknowledge themselves to be there at this Murder; the least they say for themselves, is, that they came to countenance a fighting with Mr. *Thynn*, that is the least any of them say; for Captain *Vratz* makes this his Excuse, that he intended to kill him (as he calls it) fairly; and the others were to stand by to let him make the best of it; so that they All came with a murderous Intent, and a Murder followed. And I must declare this for Law to you, that this is Murder in them All, if you believe themselves; so that I think there is little, very little for you to consider concerning these three Men, but according to what they have acknowledged of themselves both before the Council, and here likewise in your own Presence, they seem All to be guilty of this Murder.

The more doubtful Question is concerning Count *Coningsmark*, that stands here before you, for he was not at the Murder, nor is he charged as Principal; and the Question will be as to him, Whether he commanded, or gave any Authority or Direction to have this Murder committed; That is the thing that is now charged upon him, and without that he cannot be Accessory in this Case.

Now, Gentlemen, you must consider as to that, several things are certain and positive; That this *Polander* was once his servant; That he was brought over from beyond Sea by his Order; That he was given by him to Captain *Vratz*; That *Vratz* was his great Acquaintance, and lay in his Lodging some time, tho' not at this very time. These things are plain: Now what Answer is given to this? You hear, he says, the *Polander* was taken for him, and hired as a Servant beyond Seas, knowing that he had

skill in Horses; and the Count having remitted Money to buy Horses, he was willing to have him manage the Horses, and to have his Judgment in them, and sent for him three Months before for that purpose, and that he came for that purpose; but knowing that the occasion for which he was to buy his Horses was past over, there being like to be no War, and therefore there would be no occasion for Horses, he was willing to part with the *Polander*, as he says, is usual for Persons of Quality in his Country to do upon such occasions, to give their Servants to one another; and so having cloathed him first, he gave him to Captain *Vratz*: And you hear how much of this is made good by Witnesses, and how far this is satisfactory to you as an Excuse and Reason for this, I leave to you.

There is more too that is very plain: It is apparent that the Count bid him come to his Lodging after this Murder was committed. According to the calculation of the time, it must be after the Murder, for that was about eight a clock, and he was there about nine. You hear what Answer the Count gives to that; That he came as formerly he had done, he knowing nothing of this, nor of Mr. *Thynn's* Murder, and that he did not speak to him concerning it.

The next thing, Gentlemen, is, 'Tis plain the Count did lie private when he came to England; and he tells you (he brings the Doctor to witness it;) his occasion of Privacy was, because he had a Sickness, which he was loth should be known, having been formerly in splendor in England; but now, without his Equipage, he would not publickly appear; and he was afraid, if he appeared in Company, he should be inticed to drink high, and that would retard his Cure. And the Doctor tells you, he was under his Hands for Cure of his Disease, which was some Spots upon his Body.

It is plain too, that Count *Coningsmark* did go away the next Morning after he had heard of the Murder, he acknowledgeth it himself; and that he did conceal himself upon the Water, and was taken in such a manner as the Witnesses speak. But withal he tells you the occasion of this was, A Stranger here, Captain *Vratz*, as he heard, was accused for the Murder, and seized; and he did not know what this might occasion to him; how the common People might fall upon a Stranger that was of that Man's Acquaintance; and it was through his Fear of the People (lest they should fall upon him before he could vindicate himself) that he withdrew himself, and concealed himself in this manner. As it was told you by the Counsel it was an unreasonable fear in him, for there is no such disorderly proceeding (we thank God) in England; but he tells you he was afraid of it; and if he were, being a Stranger, he might not know our Constitution so well.

But I must tell you another thing for Law, Gentlemen, which was urged by the Counsel for the King. Captain *Vratz* doth say, that he, knowing of an Affront that had been given to the Count, and having received an Affront himself, he did, without the Count's knowledge, do this Murder, for Revenge, upon Mr. *Thynn*. It has been said by the Counsel, it will be all one whether it were with the knowledge of Count *Coningsmark*, or not. Now, I must tell you, Gentlemen, the Law is not so: For if a Gentleman has an Affront given him which he does seem

seem to resent, if any of his Servants officiously, without acquainting him with it, out of too much Zeal and too forward a Respect to their Master's Honour, will go and pistol and kill him that they apprehend has affronted their Master, he not knowing of it, it will not charge their Master with any Guilt at all. The Law, Gentlemen, is not so as was urged; for if it were without the Count's knowledge and direction, if a zealous Captain has gone and over-shot himself, out of respect to his Master's Honour, when really it was a Dishonour to himself, and all that were acquainted with it, this cannot lie upon him, to make Count *Coningmark* guilty. But it lies upon me to direct you, for otherwise you might swallow it as a Maxim, to be all one in Law, which it is not.

So that it will return to this, Whether here be any Proof that Count *Coningmark* did consent to this Murder, or any ways countenance the killing of Mr. *Thynn*, or command any of these Persons to do it.

Look you, Gentlemen, there are some suspicious Speeches that are mentioned here of the Count's. One is, that the Boy should say that the Count asked him whether Men might ride in London on Sundays? You hear what Answer is given to that. The Count denieth that he asked any such Question: And to shew and prove that such a Question could not likely be asked, he says and proves, by divers Persons, that it was an ordinary thing for himself to ride on Sundays in *Hide-Park*, before this Business long.

It is also said, that when he was taken, he should say, That he did believe they intended the Duke of *Monmouth* no hurt. Now that he said these words he doth not here deny; but he says he spoke it upon the common Report, that these Men had watched the Coach till they saw his Grace out of it, and then they did do this Villany; so that he apprehended they had no design to hurt the Duke at all. This is the answer he gives; how satisfactory it is, I leave it to you.

Then as to those other Words; That it would reflect upon his Family, and stain his Blood; but he presently recollected himself, and said, One brave Action in the Wars, or Lodging upon a Counterscarp would wash it off. You hear what he says to that: He looked upon it as an Injury to his Family, and it would be some stain to his Blood, that he should be accused of so base and unworthy an Act; but that Accusation he thought might be washed off; and so, though he were innocent, it might be looked upon as a Stain, which a brave Behaviour in the Wars would wipe off.

Gentlemen, Thus, as near as I can, I have given you an Account of the most material Things that are objected against him, and his Answers to them. I must leave it to you, whether upon the Evidence which you have heard, you do believe that this Murder was directed or countenanced by Count *Coningmark*. If it were, he then is guilty as Accessory before, and you must find it; but if you believe he did not know it till after the Murder was done, then he is innocent, and you must acquit him. And upon the whole, Gentlemen, I must leave it to you.

Then, it being late, after an Officer was sworn to keep the Jury, the Court adjourned for a while; and in half an hour returned; and

sent for the Jury, who came in, and answering to their Names, gave this Verdict.

Cl. of Cr. Gentlemen, Are you all agreed of your Verdict?

Omnes. Yes.

Cl. of Cr. Who shall say for you?

Omnes. Foreman.

Cl. of Cr. *George Borosky*, alias *Boratz*, hold up thy Hand, (which he did.) Look upon the Prisoner; How say you? Is he guilty of the Felony and Murder whereof he stands Indicted, or not guilty?

Foreman. Guilty.

Cl. of Cr. What Goods and Chattels, Lands and Tenements?

Foreman. None to our knowledge.

Cl. of Cr. *Christopher Vratz*, hold up thy hand—Is he guilty, &c.

Foreman. Guilty.

Cl. of Cr. What Goods, &c.

Foreman. None to our knowledge.

Cl. of Cr. *John Stern*, hold up thy hand — Is he guilty or, &c.

Foreman. Guilty.

Cl. of Cr. What Goods, &c.

Foreman. None to our knowledge.

Cl. of Cr. *Charles John Coningsmark*, hold up thy hand (which he did.) How say you, is he guilty of the Felony whereof he stands Indicted as Accessory before, or not guilty?

Foreman. Not guilty.

Count *Con.* God bless the King and the Honourable Bench.

Cl. of Cr. Then hearken to your Verdict as the Court hath recorded it, you say that *George Borosky*, &c. and so you say all.

Then the Jury was dismissed, and the Court ordered to take a Recognizance from the Count, with three Sureties, to appear the next Sessions and to answer any Appeal if brought; after which the Judges went away, and the Recorder, with the Lord Mayor and Aldermen stay'd to pronounce Sentence on the convicted Malefactors.

Cl. of Cr. Keeper, Set *George Borosky* to the Bar, hold up thy hand (which he did) Thou standest convicted of Murder, for killing *Thomas Thynn Esq*; what canst thou say for thy self why the Court should not give Judgment upon thee to die according to Law?

Interpreter. He says, he prays God to have mercy upon him.

Cl. of Cr. Tye him up. Set *Christopher Vratz* to the Bar —

Interpreter. He says he hears he is condemned, but he was never rightly examined, nor fairly tried.

Cl. of Cr. Set *John Stern* to the Bar —

Interpreter. He says he did it for the Captain's sake, he went as a Second along with him.

Then the Prisoners being tyed all up by the Executioner, Proclamation was made for Silence, during the pronouncing of the Sentence.

Mr. Recorder. You the Prisoners at the Bar, *George Borosky*, *Christopher Vratz*, and *John Stern*, you have been all Indicted for the Murder of a Gentleman of great Quality, Mr. *Thynn*; a great, and heinous and a crying Crime, that cries aloud for Vengeance: You have been brought to your

Tryal,

Tryal, and tried indifferently by a Jury not consisting only of the Country-men of the Party slain, but compounded of Foreigners and Freeholders of the County too. These impartial Men have found you Guilty, and indeed the Plainness of your Guilt is such, that you yourselves have acknowledged yourselves Guilty. For when you were apprehended, your Guilt did so stare in your Faces, and you could give so little an account how you had bestowed that time wherein he was Murdered, that you were forced to confess your interest in the Fact.

It is our Duty to pronounce the Sentence of the Law against you upon this Conviction; but it is also our usage to open the nature of the Crime for which the convicted Person is to suffer Death, for the Conviction of the Offenders themselves. Now your Crime is one of the deepest die, it is the wilful shedding of innocent Blood, to which you could be led by nothing but what you are charged with in the Indictment, the motion and seduction of the Devil. This Crime of Murder is put into the highest and foremost rank. When God himself had given Laws to the World under the Old Administration, after the Command of honouring Father and Mother, in the next place he forbids Murder. This Crime you have committed, and that, with the most aggravating Circumstances that I have ever known attend any Crime of this nature. It was committed upon a Gentleman of great Quality, that was so far from giving you any Provocation to it, that you acknowledge yourselves you never had any communication with him. It was done, upon a Day when you ought to have exercised, and busied your selves in Acts of Piety and Religious Worship. It was done, in the Streets of the City near the King's Royal Palace. But the greatest Circumstance of all is the doing it in such a manner, that is, it was done by way-laying; a sort of killing the most unworthy, the most base and the most ungenerous of all other. For that it gives the Party assaulted no liberty for any Prevention, or any Defence by any prudence he can use; and the Consequence of it is, as much as lies in the Malefactor, to destroy as well the Soul as the Body; by such an insidious Murder to take a Man out of this life before he can have any opportunity to prepare for another life. Therefore in our publick solemn Prayers in our Church it has very justly and worthily been made part of our Liturgy, to pray to be delivered from Murder and sudden Death.

You that are Strangers in this Countrey, if you had been tried and convicted of a breach of our Municipal Laws, the peculiar Laws of this King-

dom, much Indulgence might be shewn to you because of your little acquaintance with the Law. But that is not your Case: Your Offence is a transgression against the Law of God, written in large Characters in the Nature of Man. It is against the Laws of all Nations, even your own Countrey from whence you come, and any other Countrey where-ever you could go, are severe in their Laws against that by which you have broken the Law in so foul a Fact. The very Barbarians could say, *This Man is a Murderer, and Divine Vengeance will not suffer him to live*; so that they all think the Divine Vengeance concern'd to revenge it.

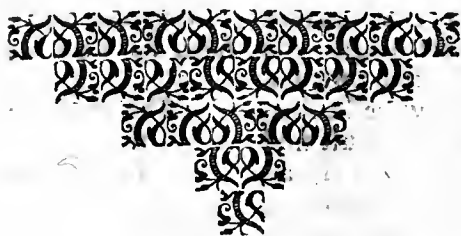
You have slain this innocent Gentleman which is but a single Distemper as it concerns him, but if it should go unpunished, it would turn to a pestilential Contagion. If such Assassinations and Murders of Persons should not be severely punished, it were a greater Woe than ever was brought upon this Kingdom. Therefore it is thought fit by his Majesty to make his Justice signal and exemplary upon those that have thus basely and inhumanly brought themselves under the Censure of it. That when the fame of this barbarous Action shall go abroad, his Justice shall also be celebrated upon the Actors, and that this Kingdom is maintained by Justice.

I have but one thing more to say to you, and that is in tenderness to you yourselves. You are to consider that you are to receive another Judgment than that you will be condemned by here, and that you may be prepared for that is your great and your only Care. Now it is Repentance that is the only Antidote against the sting of Death. You cannot be found Innocent, yourselves acknowledge your Guilt, then let it be your care to be found Penitent. For that purpose you shall have the assistance of some of our learned Divines here, and you will do well to hearken to their good Counsels. I pray God you may submit to Justice patiently, and that your Contrition may be correspondent to your Crime, that so you may obtain Pardon and everlasting Favour from God.

It remains only that we pass the Sentence of Law against you, which is this,

That you shall go from hence to the Place from whence you came, from thence to the Place of Execution, where you shall be severally hanged by the Neck untill you be dead: And the Lord have mercy upon your Souls.

Then the Prisoners were carried away, and the Court adjourned.



THE
T R Y A L
OF
Nathaniel Thompson,
William Pain,
AND
John Farwell.

Publish'd by AUTHORITY.

Trinity Term, XXXIV. Caroli Secundi Regis.

On Tuesday the 20th of June 1682, before the Right Honourable Sir Francis Pemberton, Lord Chief Justice of His Majesties Court of King's Bench, by Nisi prius in the Guild-Hall of the City of London, came on the Tryals of Nathaniel Thompson, William Pain, and John Farwell, upon an Information brought against them for several Trespasses and Misdemeanours in Writing, Printing, and Publishing Letters Importing that Sir Edmondbury Godfrey murdered himself, as also for several Falsities relating to the said Matter Printed in several Papers, called the Loyal Protestant Intelligence. And the Jurors Names, were as follow,

<i>Peter Houblon.</i>	} Jur.	<i>George Widdowes.</i>
<i>John Ellis.</i>		<i>William Sambrooke.</i>
<i>William Barret.</i>		<i>William Jacomb.</i>
<i>Joshua Brooks.</i>		<i>John Delmee.</i>
<i>Gervas Byfield.</i>		<i>Samuel Bayly.</i>
<i>Jonathan Lee.</i>		<i>Samuel Howard.</i>

ir Robert
Sawyer.

The INFORMATION was in the Attorney General's name.



OR that in Hillary Term, in the 30th and 31st years of this King's Reign, in the Court of King's Bench at Westminster, by a Jury of the County of Middlesex were indicted, Robert Green, Gerald, Clerk, Henry Berry, Lawrence Hill, Dominick Kelly and Philbert Vernatt; for that they by the Instigation of the Devil, &c. The 12th of October in the 30th year of this King's Reign, at the Parish of St. Mary le Strand in the County of Middlesex aforesaid, with Force and Arms, in and upon Sir Edmondbury Godfrey Knight, in the Peace of God and the King then and there being, feloniously, wilfully, and of their malice aforethought, did make an Assault, and kill and murder him in this manner, viz. Green did fold and fasten a Linnen Handkerchief about his Neck, and therewith choaked and strangled him, of which choaking and strangling he instantly died: And the others, viz. Gerald, Berry, Hill, Kelly and Vernatt were present, aiding, abetting, comforting, assisting and maintaining the said Green to kill and murder the said Sir Edmondbury Godfrey in form aforesaid; and so they the said Green, Gerald, Berry, Hill, Kelly, and Vernatt in manner and form aforesaid, him the said Sir Edmondbury Godfrey feloniously, wilfully, and of their malice aforethought, did kill and murder, against the Peace of our said Lord the King, his Crown and Dignity: To which indictment afterwards, the said Term, the said Robert Green, Henry Berry, and Lawrence Hill severally pleaded, Not Guilty, and put themselves upon the Countrey; and after in the said Term of St. Hillary, in the said Court of King's Bench at Westminster, for the Felony and Murder aforesaid, by a Jury of their Countrey in due manner were tryed, and thereof lawfully convicted and attainted, as by the Record thereof in the said Court of King's Bench at Westminster remaining more fully appears; which said Robert Green, Henry Berry and Lawrence Hill were afterwards executed and suffered Death, according to the form and effect of the Judgment and Attainder aforesaid: And whereas one Miles Prance upon the Tryal of the Indictment aforesaid, was produced a Witness and sworn for the King, and gave material Evidence against the said Green, Berry, and Hill to prove them guilty of the Felony and Murder aforesaid: And one William Bedloe, John Brown, Elizabeth Curtis, Zachary Skillarne and Nicholas Cambridge upon the Tryal aforesaid, were Witnesses in like manner produced and sworn for the King, and gave diverse material evidences against the said Green, Berry and Hill, to prove them guilty of the said Felony and Murder: And whereas also the said Gerald, Robert Green, Lawrence Hill, Dominick Kelly and Philbert Vernatt, at the time of the Felony and Murder aforesaid were Papists, and Maintainers of the Romish Superstitions; And the said Gerald, Dominick Kelly and Philbert Vernatt have fled, and not yet appeared to the said Indictment; And whereas also by the Coroner's Inquest taken upon the view of the Body of the

said Sir Edmondbury Godfrey lying dead, before John Cooper Gent. one of the Coroners of the said County of Middlesex by the Oaths of honest and lawful men of the same County above the number of twelve persons, it was found that certain Malefactors unknown, Feloniously and of their malice prepense him the said Sir Edmondbury Godfrey did strangle and choak, of which he died: The said Nathaniel Thompson, William Pain and John Farwel, well knowing the premises, and being persons Devillishly affected, devising, practising, and with all their strength intending the Peace and common Tranquillity of their Kingdom of England to disturb, and as much as in them lay the due Course of the Law to destroy, and subvert and elude, and the Justice of this Kingdom of England to defame and scandalize, and as well the said Miles Prance, William Bedloe, John Brown, Elizabeth Curtis, Zachary Skillarne, Nicholas Cambridge, as the said John Cooper, and the honest and lawful men sworn upon Inquest aforesaid, upon view of the body aforesaid, to bring into the greatest hatred, contempt and vile esteem withall the King's Subjects, and to deter the King's Subjects from finding detecting and proving the designs of Papists against our Lord the King and the true Religion now by Law established, and impiously and wickedly devising and intending them the said Gerald, Dominick Kelly, and Philbert Vernatt, from undergoing the pains and sentences by Law upon them to be inflicted, for the murder aforesaid, and to aid and assist them (altho' they be Guilty) to be found Not Guilty thereof; And to deceive and beguile the King's Subjects in the premises with their false Affirmations and Arguments, and cause and procure that it should be believed and esteemed, that the said Green, Berry, and Hill, the persons for the Murder of the said Sir Edmondbury Godfrey as aforesaid convicted and executed, had been convicted, and executed unjustly, and that the said Sir Edmondbury Godfrey was *felo de se*, and himself had feloniously murdered. They the said Thompson, Pain, and Farwel, their most impious wicked and diabolical intentions to fulfil and perfect afterwards, to wit the 23th of February, in the four and thirtieth year of the Reign of our now Sovereign Lord the King, at the parish of Saint Mary le Bow, London, with force and arms, &c. falsely, unlawfully, unjustly, wickedly, and diabolically, made, composed, and caused to be printed, a certain false scandalous and defamatory Libel, Entituled a Letter to Mr. Miles Prance in relation to the Murder of Sir Edmondbury Godfrey: In which said Libel amongst other things, it is contained, as follows, And hearing that the Coroner's Jury or Inquest were first of Opinion, and accordingly declared, he was *felo de se*, and that there was much Art and Skill used to procure their Verdict to the contrary, more particularly the refusing of the body at their instance and request to be opened: And in another place of the same Libel, it is further contained as follows, They say, that if a Man or any other Creature be strangled or hang'd, and his Body cold, and the blood settled in the Veins (as he must needs be, if your Evidence be true) (meaning the Evidence of

of the said Miles Prance) run twenty Swords through such a body, not one drop of blood will come out, but on the contrary, his body when found was full of blood, in so much that (over and above the Cakes or great Gobbets of congealed putrified blood found afterwards in his Cloths) the Constable when he pulled the sword out of his body, it crashed against his back bone, and gobbets of blood and water gushed or gubled out of that wound in abundance, not only in that very place where the sword was pulled out, but in all his passage to the White house; especially, there where his body was lifted over two high stumps, and also when he was laid upon the Table, the blood and water so issued out of that wound, that it ran from off the Table upon the Floor, and from thence into the Cellar; so that they do averr, that that wound that he received by that Sword, must of necessity be the Cause of his Death: And in another part of the same Libel, it is further contained as follows, They observe that Bedloe's before the Committee of Lords, and your Evidence in relation to this Gentleman's Death, are as different as the East is from the West; for you dogg him out of St. Clements, the other decoys him from Charing-Cross; you swear he was strangled with an Handkerchief near the Stables going to the Water-side, Bedloe that he was smothered with a Pillow in a Room in the great Court in Somerset-house; you say that he took Horse at So-hoe, Bedloe says he took Coach at Clarendon-house, with many more such like Contradictions; and considering the old Proverb, Fore-warned, fore-armed; a further and fuller account of the whole matter expect. And that the said Nathaniel Thompson, William Pain, and John Farwell, their most impious, wicked and diabolical intentions to fulfil and perfect, afterwards, to wit the third day of March, in the said four and thirtieth year of the Reign of the said late Lord the King, at the said Parish of St. Mary le Bow, London aforesaid, with Force and Arms, &c. falsely, unlawfully, unjustly, evilly, maliciously, scandalously and diabolically, made, composed, and caused to be printed, another false, scandalous and defaming Libel; intituled, A second Letter to Miles Prance, in reply to the Ghost of Sir Edmondbury Godfrey. In which last mentioned Libel amongst other things, it is further contained, as follows, Next whereas my Letter saith (and that truly) that the Coroner's Jury were first of opinion, and accordingly declared he was felo de se, and that much Art and Skill was used to procure their Verdict to the contrary. And in another place of the same last mentioned Libel, amongst other things, it is further contained, as follows; And it would be very material, if the Coroner would declare, what he received for that Job, and of whom; and what Evidence he had to induce the Jury to find (as the Inquisition imports) that he was strangled with a Linnen cloth, a Matter of fact never so much as spoken of, untill you came in with your Evidence, which was not in some weeks after; And I do again averr, that the Body was required by the Jury to be open'd, and was refused; and if the Body was in their and the Coroner's power (as the Ghost insinuates) such power was concealed from and denied the Jury. And in another place of the same last mentioned Libel, it is amongst other things contained, as follows: He is to understand, that Mr. Brown, the two Chirurgeons, (meaning the said Zachary Skillarne and Nicholas Cambridge) and Mrs. Curtis, are no competent (nor can be ma-

terial) Witnesses in this Case. And in another place of the same last mentioned Libel, it is further contained, as follows; But Mr. Prance, it will be fully proved, that the Body was full of Blood, and that there were Cakes or Gobbets of dry Blood found in his Cloaths, which with his Body stunk extremely: And it will be also fully and effectually proved that his Eyes, Nostrils, and Corners of his Mouth were Fly-blown. And in another place of the same last mentioned Libel, amongst other things, it is contained as follows: And as to the seventh and last Paragraph which relates only to the difference betwixt you and Mr. Bedloe's Evidence, I must take notice that what you and he swears is very contradictory: And in another place of the same last mentioned Libel, amongst other things it is further contained, as follows; But I cannot omit to take further notice of Mrs. Curtis's Affidavit, in relation to the Wax found upon the Cloaths, in which I cannot say, but she may swear true; but this I do averr, that if it be so, those drops were put upon the Cloaths long after he was found. And after the Jury had sat on the body; for there was no such thing then on the Cloaths. And, I suppose, this was some artifice used by those, who either out of interest or design, were desirous to confirm his being murdered at Somerset-house. And the said Attorney General for the same Lord the King, gives the Court here to understand and be informed: That the said Nathaniel Thompson, William Pain, and John Farwell, in their further prosecution aforesaid, falsely, wickedly, and maliciously, their contrivances and intentions aforesaid, afterwards to wit the 7th day of March, in the four and thirtieth year of our said Lord the King, at the Parish of St. Mary le Bow, London, with Force and Arms, &c. falsely, unlawfully, unjustly, wickedly, maliciously, scandalously, and devilishly, composed, made and caused to be printed, a certain other false, scandalous, and defamatory Libel, intituled, *The Loyal Protestant and True Domestic Intelligence, or News both from City and Country.* In which last mention'd Libel, it is contained, as follows, that there is not in the said Letter, (meaning the said false, scandalous, and defaming Libel,) Entituled, a Letter to Mr. Miles Prance, in relation to the Murder of Sir Edmondbury Godfrey, before first mentioned, the least item or circumstance, but what will be by undeniable Evidence made out to be the Truth: So the said Mr. Prance, having not as yet vouchsafed an Answer to that Letter, he will speedily receive a further Letter relating to that Murder, wherein the further truth will not only be fully set forth, and other Circumstances set out: And further, that the said Nathaniel Thompson, William Pain, and John Farwell, in their further prosecuting, falsely, wickedly, and maliciously, their contrivances and intentions aforesaid, with Force and Arms, &c. falsely, unlawfully, wickedly, maliciously, and devilishly, composed, and caused to be printed, a certain other false, scandalous, and defamatory Libel, intituled, *The Loyal Protestant Intelligence, &c.* In which last mentioned Libel, amongst other things, it is contained, as follows: Whereas Dick Janeway in this day's Mercury, promises an Answer to the late Letter to Mr. Prance, &c. This is to give him, and all the world notice, That such an Answer is impatiently expected by the Author of that Letter, who questions not but to prove every Tittle of that Letter, to the

Satis-

Satisfaction of all mankind; And besides, he is very desirous that the Courantier (according to his last Pacquet of Advice to Rome) would go on, and use his Interest, to procure the Lord Mayor, Court of Aldermen, and Common Council of London, to inspect the Truth of that Letter; whereby it will appear inevitably, that there is not one Papist or Popishly affected person concerned in that Letter, or in the proof of the particulars thereof; but the same (with divers other material circumstances relating to the Murther of Sir Edmondbury Godfrey, and the Fraud and Blind put upon the World in relation thereto) will be more fully, plainly and manifestly proved, without giving ill Words, or scurrilous Language, or Reflections to any persons that really are, or supposed to be therein concerned in any circumstance whatsoever. And that the said Nathaniel Thompson, William Pain, and John Farwell, in their further prosecution aforesaid, falsely, wickedly, and maliciously, their contrivances and intentions, after, to wit: The first day of April, in the four and thirtieth year of the Reign of our said Lord the King, with Force and Arms, &c. at the Parish of St. Mary le Bow, London, aforesaid, falsely, unlawfully, unjustly, wickedly, maliciously, scandalously, and devilishly, made, composed, and caused to be printed, a certain other false, scandalous, and defamatory Libel, intituled, *The Loyal Protestant Intelligence*, &c. In which last mentioned Libel, amongst other things, it is contained, as follows; *Last Wednesday, Nathaniel Thompson upon Summons appeared before the Lords of his Majesties most honourable Privy Council, about the Letters to Mr. Miles Prance, concerning the Death of Sir Edmondbury Godfrey, where he justified the Matter, and produced the Authors, who are ready to prove (by undeniable and substantial Witnesses, not in the least accused or suspected of Popery, as the malicious Party do suggest) that every Title and tota of those Letters are true.* And that in another part of the last mentioned Libel, amongst other things, it is contained, as follows; *Mr. Thompson and the Gentlemen his Friends are to attend the next Wednesday at Council, where they do not doubt, but that Honourable Board will put them into a Method to prove the whole, or any particular, which their Honours in their great Wisdom shall think convenient to be brought to the Test or Examination.* And further, that the said Nathaniel Thompson, &c. the Twenty-third day of February, in the aforesaid Thirty-fourth year of our said Lord the King; and divers other days and times betwixt the said Twenty-third of February, and the aforesaid Thirty-fourth year, and the day of the exhibiting of the said Information at the Parish of St. Mary le Bow, London, aforesaid, knowingly, and every of them knowing the said several Libels to be false, malicious, scandalous and seditious, with Force and Arms, &c. falsely, unlawfully, unjustly, wickedly, maliciously, scandalously, seditiously and devilishly, the said false, malicious, scandalous and seditious Libels uttered and published, and each of them uttered and published in manifest contempt of the Laws of this Kingdom of England, and the Scandal and Defamation of the publick Justice of the same, to the evil Example of all others in like Case offending; and against the King's Peace, his Crown and Dignity, &c.

Then Proclamation for Information being made, Mr. Thompson acquainted my Lord and the Jury with the Effect of the Information, as follows:

Mr. Thompson. My Lord, and you Gentlemen of the Jury, This is an Information against Nathaniel Thompson, William Pain, and John Farwell, and it is for writing and printing several Scandalous Libels, about the Death of Sir Edmondbury Godfrey: In which we set forth, that Green, Berry, and Hill, were indicted for the Murther of Sir Edmondbury Godfrey, and thereof convicted and attainted, and that the said Green, Berry, and Hill, were executed for it; that upon their Tryal for that Matter several Witnesses were examined, namely Mr. Prance, Bedloe, and Curtis, and several others to prove, Sir Edmondbury Godfrey murdered at *Somerset-house*; and before the Tryal there was an Inquest taken by the Coroner of *Middlesex*, by which it does appear, that Sir Edmondbury Godfrey was murdered by several Persons unknown, and that the Defendants, to reflect upon the Justice of the Nation, and scandalize the Witnesses produced at that Tryal, and to make it believed that these Persons died Wrongfully, did write and print several scandalous Libels and Letters, one of them intituled, *A Letter to Miles Prance*, concerning the Murther of Sir Edmondbury Godfrey, and in these Letters did suggest, as if he had been *felo de se*, and do reflect upon every one of the Witnesses, as if they had contradicted themselves, and also do reflect upon the Coroner, as though he had bribed the Jury, and do undertake by these Arguments and several others (that you will hear) to prove that Sir Edmondbury Godfrey murdered himself; And that in another Libel that Thompson printed, called his *Loyal, Protestant Intelligence*, he says, he will make it out by a Cloud of Witnesses: This we say is against the Peace of the King, and defaming of the Justice of the Nation: If we prove this Matter upon them, you are to find them Guilty.

Mr. Serj. Maynard. My Lord, The Matter which you have now before you, is as impudent a thing as ever was done. Gentlemen, Sir Edmondbury Godfrey was murdered, and Green and the Contrivers of it have been executed for it; the Matter hath passed the Examination of the Parliament, and the King and Council and all; Now this Thompson is a Printer, I may as well say a Printer of Libels, for he does constantly print Libels against the Religion established, and the Justice of the Nation; The Jury that were impannelled upon the Coroner's Inquest, he says of them, that they at first did agree that he murdered himself, and afterwards did return, and find that he was murdered by others: Gentlemen, it is plain that he was murdered by others, and the particular persons have been tryed for it, and found guilty. Now this Person after all this, What does he do? He takes upon him to write a Letter to Prance, (Prance was one of the Witnesses in that Case) he writes it by the name of a Letter, but it is a foul and wicked Libel; and therein 'tis too long for me to mention the particulars he

he scandalizes the publick Justice of the Nation, he undertakes to vindicate the Murderers, and to accuse the proceedings of the Nation. But Gentlemen, we will prove these Men guilty of framing and publishing of these wicked Libels, and that is all that is needful to be done upon the point of Evidence. We will call our Witnesses.

Then Mr. Clare was sworn, and produced a Copy of the Record of the conviction and attainder of *Green, Berry, and Hill*, for the Murder of *Sir Edmondbury Godfrey*. As also a Copy of the Inquisition, taken by the Coroner of *Middlesex*, upon the view of the Body of the said *Sir Edmondbury Godfrey*, whereby it is found that he was murdered by them, strangled with a Cord by persons unknown. Both which (Mr. Clare having sworn to be true Copies) were read.

Sir Francis Pemberton. Lord Chief Justice. This matter of his being thus strangled, was found before it was discovered who did the Murder. It was upon the sight of the body, and they supposed it to be done by a Cord, but afterwards it came to light that it was done with an Handkerchief.

Mr. Thomps. (To the Counsel of the Defendants) If you will put us to prove all, we must prove that these men were executed.

Then Captain Richardson was sworn.

L. C. J. Were these men executed for this Murder?

Capt. Rich. Yes, I saw them executed.

Then Mr. Prance was sworn.

Mr. Thomps. Did you give Evidence upon the Trial of *Green, Berry, and Hill*, for the Murder of *Sir Edmondbury Godfrey*?

Mr. Prance. Yes.

Mr. Thomps. Do you remember that *Brown* was a Witness too?

Mr. Prance. Yes, *Brown* was.

Mr. Thomps. Was *Curtis* a Witness, and Mr. *Bedloe*?

Mr. Prance. That *Curtis* was, I don't remember, Mr. *Bedloe* was.

Then *Curtis* was sworn.

Mr. Thomps. Were you a Witness at the Trial of *Green, Berry, and Hill*?

Mrs. *Curtis*. Yes, I was.

Then *Sir John Nicholas* and *Sir Philip Lloyd*, and *William Bridgman Esq;* were sworn, and the two Letters in the Information were shewed to them.

L. C. J. Were these shewed to the Defendants, *Thompson*, and *Pain*, and *Farwell*, at the Council?

Sir Phil. Lloyd. These were the same, I know because they are endorsed by my hand; *Thompson* owned the Printing of both, and one other of the Defendants owned the writing of one of them, and the other of the other.

L. C. J. But *Thompson* owned the Printing of both?

Sir Phil. Lloyd. Yes, my Lord.

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Mr. Sol. Gen. Did *Pain* and *Farwell* own the bringing of both to *Thompson* to print?

Sir Phil. Lloyd. One owned the one, and the other the other.

Then *Sir John Nicholas* and *Mr. Bridgman* testified the same.

Mr. *Saunders*, of Counsel with *Pain*, said to *Sir Phil. Lloyd*. Did *Pain* or *Farwell* own that they brought both, or one the one, and the other the other?

Sir Phil. Lloyd. One the one, and the other the other.

Mr. *Saunders*. Then pray, Sir, which was that *Farwell* did own?

Sir Phil. Lloyd. My Lord, my own memory does not tell me which, but here are Notes say that *Farwell* owned the first, and that *Pain* owned the second.

L. C. J. Do you beleive them to be true?

Sir J. Nicholas. Yes, Sir, I took the Notes.

Mr. *Talving*. Did he readily discover his Authors?

Sir Phil. Lloyd. Yes, he did.

Associat. The Title is thus, A Letter to Mr. *Miles Prance*, in relation to the Murder of *Sir Edmondbury Godfrey*. Shall I read it all?

L. C. J. All of it.

Associat. Read it in these words. Mr. *Prance*.

A LETTER to Mr. Miles Prance, in Relation to the Murder of Sir Edmondbury Godfrey.

Mr. Prance,

PERceiving by some late Pamphlets several Rumors rais'd, as if there were endeavours us'd to asperse your Evidence in Relation to the Death of *Sir E. B. G.* and to lay that Murder upon Himself. And remembering the Consternation, which then was in all people's minds, by the discovery at that time of a Dreadful and most Horrid Popish Plot, which occasion'd divers to report, and most to believe (even several days before the dead Body was found) That he was Murder'd by the Papists at *Somersehouse*. And hearing that the Coroner's Jury or Inquest were first of Opinion, and accordingly declar'd he was *Felo de se*; And that there was much Art and Skill us'd to procure their Verdict to the contrary; More particularly, the refusing of the Body (at their Instance and Request) to be opened; and opposing the Assistance of the Coroner of *Westminster*, who is taken notice of to be a Knowing and Impartial Man in the Execution of his Office;) who was desir'd to, and did attend for that purpose, but was dismiss'd with a Guinea; telling him, they had no need of his Service. I made it my business, partly for Your's, but chiefly for the Truth's sake, to make a strict Enquiry into the farther Causes of the [afore]said Rumors, and do find these particulars very much urg'd, and discours'd of, (*viz.*)

I.

In opposition to the Evidence of his being dog'd up and down, and lodg'd in a great House at St. Clement's on *Saturday* the 12th of *October* 1678. (being the Day he was first missing.) It is affirm'd he went out of his House that very *Saturday* Morning about nine a Clock; (which is the last time he ever returned thither;) And about ten that Forenoon was in the Fields walking towards *Marybone*, (in which Parish his dead Corps was afterwards found,) and was there met by a Brewer in St. Giles's, who discoursed with him; And about eleven of the same day he was seen passing by the Lady Cook's Lodgings near the *Cock-pit*; After which, he was seen in St. Martin's lane, went by the Church, and down *Church-lane* into the *Strand*; About one passed by the door of one Mr. Ratcliff an Oyl-man in the *Strand*, and soon after was met in the back Court of *Lincoln's-Inn* by two Gentlemen, who observed him to make a sudden turn, and to go out at the back door; They went out at that door also, and did see him turn the corner Wall, between which place and *Turn-stile*, he was met by a Barrister at Law; And that a Person living near *Primrose-hill*, declared before divers Persons, that he saw him about three that *Saturday* in the Afternoon walking in those Fields, his usual Walk being that way.

II.

They say, the place where, and the posture wherein he was found, are very remarkable. As to the place; It was in a Ditch on the South side of *Primrose-hill*, surrounded with divers *Closes*, fenced with high Mounds and Ditches, no Road near, only some deep dirty Lanes made only for the conveniency for driving Cows and such like Cattle in and out of the Grounds; And those very Lanes not coming near 500 Yards of the place, and impossible for any Man on Horseback with a dead Corpse before him at Midnight to approach, unless Gaps were made in the Mounds, as the Constable and his Assistants found by Experience when they came on Horseback thither. As to the posture, his Breast was unbuttoned, his Waistcoat and Shirt put by, his Sword run in under his left Pap next his Skin, the Point coming out at his right Shoulder about six Inches, his left Arm doubled under him, (on which his Head seemed to lean,) and his right Arm stiff, stretch'd out upon the Bank, his Belly and Breast being supported by the side of the Bank, his Knees knit together, and with his Hips a little bending or doubling under him.

And they infer from thence, that he being a tall raw-bon'd Man, (after he had been several days dead,) could never be crooked so as to be cram'd into a Sedan, (which are very low built, and difficult to be carried with proper Braces, much more as you evidenced, with Cords) then straitened, and his Legs opened, and mounted on Horseback, and then put into the posture he was found in, and stiffened again.

III.

Now altho' the Matters aforesaid may be said to be only *circumstantial*, yet they produce un-

deniable Arguments against your Evidence, viz. They say, that if a Man, or any other Creature, be Strangled, or Hanged, and his Body cold, and the Blood settled in the Veins, (as he must needs be, if your Evidence be true,) run twenty Swords thro' such a Body, not one drop of Blood will come out: But on the contrary, his Body when found, was full of Blood, insomuch, that (over and above the Cakes or great Gobbets of congealed putrefied Blood found afterwards in his Cloaths) the Constable when he pulled the Sword out of his Body, it crashed against his Back-bone, and Gobbets of Blood and Water gushed or gubbed out of that Wound in abundance, not only in that very place where the Sword was pulled out, but in all his Passage to the *White-house*, especially there where his Body was lifted over two high Stumps; and also when he was laid upon the Table, the Blood and Water so issued out of that Wound, that it ran from off the Table upon the Floor, and from thence into the Cellar; So that they do aver that that Wound that he received by that Sword, must of necessity be the Cause of his Death. And they take notice, that so much of the Sword as was in his Body, was discoloured and blackish; and that part that came out at his back was of a dullish colour, and the Point thereof was rusty; Also, that the Cloaths, Belt and Scabbard were weather-beaten to rags; his Body stunk extremely; his Eyes, Nostrils, and corners of his Mouth were fly-blown; all which must naturally be by his being so long in the Air.

IV.

They say, That when a Man is Strangled, or Hanged, his Eyes will be extorted, his Face will be swelled and black; Whereas his Eyes were shut, his Face was pale, only the left part of his Chin, with his Breast and Belly being next the Earth, were putrefied, and looked of a blue and greenish colour, more especially about the Wound; For that the Blood, when hot, running to the Wound, caused the greater putrefaction in that place; whereas, if the Wound had been made after he was Dead, and Cold, the rest of his Body would have putrefied as soon, and as much as there.

V.

They say, That the cleanness of his Shoes makes against your Evidence; For his Shoes were cleaned or rather glazed on the very bottoms of the Soles, occasioned by his walking in the Grass, and Grass-seeds were observed to stick in the Seams of his Shoes; And besides, there was not one speck of Dirt on his Cloaths, or Legs, not so much as a Horse-hair sticking thereon; Whereas the Constable, and those that went with him, were dirty'd and moul'd up to the very Saddle-skirts, and not easily to be cleaned; And Mr. Prance, you know that a tall Dead Man on Horse-back, cannot lift up his Legs to save them from the Dirt.

VI.

As to the looseness of his Neck, and the Rim or green Circle about it, they say they are ridiculous and impertinent Arguments against so many Demonstrative ones; especially, when there is not a Nurse, or any Woman of Age, that hath

hath buried any Relations, but will tell you it's very common for People to die with Necks as loose as his was. And the Rim about his Neck was so far from being like one made with a *Cravat* or *Handkerchief*, that it seems to be occasioned by the great height and stiffness of his *Collar*, which was fast buttoned about his Neck, and on which his Head rested, and was unbuttoned about ten of the Clock the next day, before the *Coroner* or *Jury* came. But if that Rim, or those Bruises, that your Evidence seems to make the Cause of his Death, were really so; Then they alledge, that in such case, the whole Mass of Blood would have settled there, and his Neck and Bruises would have swelled, and have been perfect black, which was not in His Case.

VII.

They also say, That all these Matters are Notorious, and will be proved by divers credible and undeniable Eye and Ear-witnesses; And besides, They observe, That *Bedloe's* (before the *Committee of Lords*;) and your Evidence in relation to this Gentleman's Death, are as different as the *East* is from the *West*; For you dogg him out of *St. Clement's*; the other decoys him from *Charing-cross*: You swear he was Strangled with a Handkerchief near the Stables going to the Water-side; *Bedloe*, that he was Smothered with a Pillow in a Room in the great Court in *Somerset-house*. You say he took Horse at *Soboe*; *Bedloe* says he took Coach at *Clarendon house*, with many more such like *Contradictions*; And considering the Old Proverb, *Fore-warn'd, fore-arm'd*. A further and fuller Account of the whole matter expect, I being loth at present to exceed the Bounds of a Letter, I am,

S I R,

Cambridge
Feb. 23. 1681.

Your very Loving Friend,

TRUEMAN.

London, Printed for M. G. at the Sign of Sir
E. B. G's Head near Fleet-bridge.

Sir Francis Winington. Now read the other Letter.

Affociat. This is intituled a second Letter to Mr. Miles Prance in reply to the Ghost of Sir Edmondbury Godfrey.

Mr. Prance,

Since my Last to you of the 23^d past, I have seen a prolix, railing, and impertinent Pamphlet, intituled, *Sir E. B. G's Ghost*, and pretended to be an Answer to my said Letter. And conceiving you are better acquainted with Ghosts than my self, I thought fit to direct my Answer to that Ghost to you, and thereby shew the Ridiculousness thereof, as also vindicate the Truths contained in my said former Letter, and shew you and the World further Circumstances to justify the same; and therefore, according to the method of my former Letter, I shall proceed by these Heads.

And first, Not understanding what the Ghost means, by arraigning the Justice of the Nation, unless he would assert that all that are legally, (are likewise justly hanged;) and so conse-

quently, that the Mother and her two Sons were justly hanged in *Glocestershire*, for the Murder of the Lady Viscountess *Camden's* Steward, tho' he afterwards appeared alive; And I do not find that ever his appearance arraign'd the Justice of the Nation. And remitting the Consideration of Mr. *Brown's*, the Surgeons, and Mrs. *Curtis's* Evidence in relation to the Blood, to its proper place; and affirming (as the truth is,) that Mrs. *Celliers*, Mrs. *Mary Gibbon*, the *Newgate* Priests, *James Magrath*, and all other *Irish men*, or *Irish* Evidences, or other Papist or Papists, or Popishly affected Persons whatsoever; as also those concerned in the late Sham of his having hang'd himself, are strangers to, and had not the least knowledge or intimation of the Contents of my said former Letter, nor any way concerned therein, or in or with any part thereof; (as the said Ghost most falsely and maliciously insinuates.) I take notice that the said Ghost seems to admit so much of the Truth of the said Letter, as that it was reported divers days before the dead Body was found, that he was murdered in *Somerset-house* by the Papists, and which Report was made even the next Morning after he was missing, (being *Sunday* the 13th of *October* 1678.) Now I would fain have this Ghost to inform the World who first raised that Report: But as to Mr. *Dugdale's* Letter of it. I cannot give it any better Answer, than that as his Evidence hath since been disbelieved in Matters of greater Consequence; so he not producing any such Letter, you must give me leave also to suspect him in this. But as to the other Evidences of Mr. *Birch* and the rest: Theirs I believe to be very true; for it's no Miracle that a Report so cunningly raised, (without any ground) might as industriously be promulged to most Parts of the Kingdom before the respective Days they speak of, especially when the Plot had filled all Men's Heads with Fears and Jealousies, without which it had not been in the Power or Art of the Ghost, or any of his Tribe, to have suggested the least Surmise to contradict his being *Felo de se*.

Next, whereas my Letter saith, (and that truly) that the *Coroner's Jury* were first of opinion, and accordingly declared, he was *Felo de se*, and that much Art and Skill was used to procure their Verdict to the contrary. This Ghost, instead of contradicting that Truth, would insinuate, as if that Letter reflected upon the Reputation of the Jurors, when as there was no such thing employed or intended, they being known to be honest Men, of good Reputation, and free from Fraud or Guile, and consequently the easier to be over-reached by the Cunning of those and that Party, whose Interest it was to deceive them, and who never leave any Stone unturn'd to attain their Designs. And I cannot but observe how skilful and industrious these People still are, to hide and prevent the Truth of that Man's Death from clearly appearing and shining forth, as without doubt it would, and must do, was not the Matter now (as formerly) puzzled with Legends, and long Stories, nothing to the purpose. And as to the *Coroner's Warrant* for burying the Body, and recited in the Ghost, it's notorious they are common Tricks, used by Men of his Profession, who (if any Money is like to come) will usually adjourn the Jury,

and then make such Warrants (they knowing, that if the Verdict be *Felo de se*, it's then out of their power to give leave to bury the Corps.) And it would be very material, if the Coroner would declare what he received for that Jobb, and of whom, and what Evidence he had to induce the Jury to find (as the Inquisition imports) that he was strangled with a Linnen Cloth, a Matter of Fact never so much as spoken of, until you came in with your Evidence, which was not in some Weeks after. And I do again aver, That the Body was required by the Jurors to be opened, and was refused; and if the Body was in their and the Coroner's Power, (as the Ghost insinuates) such Power was concealed from, and denied the Jury. And it's very probable the Coroner of *Westminster's* Assistance was refused, for some such indirect Doings, for that there was not the least difference betwixt the Coroners in relation to their Jurisdictions; and the *Westminster* Coroner came not voluntarily of himself, but was importuned to be there by Mr. Wigg, and divers others of the chief Inhabitants of St. Martin's Parish. And particularly, the Reverend Dr. Lloyd (who Preached the Funeral Sermon) spoke to the Coroner of *Westminster* before he went, so that it had been proper to have given the Matters mentioned in that Sermon in Evidence before the Jury. And it's observable, the Person mentioned to give the Information to the Doctor of the two Wounds in the Body, and that two Hours before it was found, was never produced; For if he had, and that Sir E. B. G. had been murdered, such Person might have been secured, and thereby the Murderers detected. But I suppose the Ghost will not pretend either that Sermon, or the Pamphlet printed by Nath. Thompson to be legal, or (indeed) any Evidence at all.

And now, Mr. Prance, being come to the several Paragraphs of my Letter, I shall take them in order as they are placed, and give the Ghost particular Answers accordingly.

I.

As to Sir E. B. G's Perambulations therein mentioned to be on the *Saturday* he was first missing, they are true in every particular, and will be proved by divers able, credible and undeniable Witnesses. And how vain it is for the Ghost to ask, Why these Witnesses did not come in sooner at the Tryal of *Green, Berry, and Hill*, do you judge, when all the World remembers the great Torrent that carried all before it in favour of the Plot, and the Murder of Sir E. B. G. by the Papists, without which (as T. O. was heard to say) his Plot had failed; And when it is duly considered, that the two Persons that first found the Body, (for no other cause) suffered much in their Persons and Estates, by a long and chargeable Imprisonment. And all others that then seem'd to doubt of the truth of that Man's being murdered by the Papists, were stigmatized with the odious Names of Papists, and Encouragers (if not Promoters) of the Plot: It will appear no wonder, if People were unwilling to discover their Knowledges, or to come voluntarily (without process) to give their Evidence. And how can it be imagined those three unfortunate Men, being kept close Prisoners, could make enquiry after proper Evi-

dences, or (against the common Vogue) draw into suspicion the Assertion of his being murdered by the Papists?

II.

The Ghost hath so much ingenuity to grant the second Paragraph of my Letter, as to the place and posture he was found in, but would avoid the inaccessableness of the place, pretending a Lane near, when as that Lane is, in effect, unpassable with two on a Horse, and comes not within 500 Yards of the place, and the Mounds thither very high, and the Constable and his Assistants (tho' they lived in the Parish, and well knew the way) were forced to break a Gap in the Mounds, tho' they were singly hors'd. And whereas the Ghost alledges, That you do not depose he was carried to the place wholly on Horseback, he hath run himself into a worse Dilemma, having made no provision of Men (either as to strength or number) to carry so great and weighty a Corps, in the dead of the Night, over such Mounds and Fences; but let all inquisitive People desirous of Truth, take the pains but to go to the Place (and that without any Burden on their backs) they will soon be convinced of the Assertion of the difficulty (if not impossibility) of the bringing a dead Corps thither, either on Foot or on Horseback. And the Pretensions of the Ghost's, as to the limberness of the Body and Joynts, does not answer that Part of my Letter which relates to the impossibility of his being put into a *Sedan*. For his Body, when found was stiff; so that what limberness happened or appeared afterwards, hath no relation to the Question. For it's a certain Maxim, a dead limber Body cannot be stiffened. And pray, Mr. Prance, give us an account what became of the *Sedan*, and the Cords? And how you could carry it with Cords; for the meanest *Sedan-man* in Town will tell you it is impracticable, or rather impossible; And you may, if you please make an experiment with a Cord.

III.

As to the Body being full of Blood, when found; the Ghost endeavours to disprove that Assertion, by the Evidence of Mr. Brown the Constable, the two Surgeons and Mrs. Curtis, and produceth the Evidence given at the Tryal of *Green, Berry, and Hill*, and an extrajudicial Affidavit since made by Mr. Brown, and another by Mrs. Curtis, to countenance such his Denial. But, Mr. Prance, (when you see the Ghost) tell him the matter of the Blood will (and I assure you and all the World, it will) be proved by divers credible and undeniable Evidence; And that I may pacify the Ghost in the mean time, he is to understand that Mr. Brown, the two Surgeons, and Mrs. Curtis, are no competent (nor can be material) Witnesses in this case. For Mr. Brown, as he did a rash and unaccountable Act (to give it no worse Name) in removing the Body before the Coroner and Jury saw it, (which hath occasion'd all this Dispute,) so he must not think to help himself by Affidavits, or to justify one ill Act by another; And besides, as he unadvisedly (and contrary to all Law and Practice) removed the Body before the Coroner and Jury came; so he did the same in the

the dark, (about eight a Clock at Night) when the Candle was blown out; whereby it was impossible for him to look for any Blood, so as to find it: And neither he or the Surgeons (by any Day-light) saw the Place where the Body was found, or where the Sword was pulled out, until after 10 a Clock the next Day; before which time much of the Blood was taken up, and the rest trampled out of sight by the great Concourse of the People which came thither. And as for Mrs. Curtis; she only saw the Body after it was brought home, when as the Body was strip'd at the *White house*, and a Blanket borrowed there to wrap the Body in. So the World may judge of the Truth of her Affidavit. But (Mr. Prance) it will be fully proved, that the Body was full of Blood; and that there were Cakes or Gobbets of dry Blood found in his Cloaths, which (with his Body) stunk extremely. And it will be also fully and effectually proved, that his Eyes, Nostrils, and corners of his Mouth were Fly-blown; tho' the Ghost (without the least colour of Reason) pretends it to be contrary to Nature and Reason; when as common Experience daily evinces the contrary. And I do observe, that the Ghost omits to take notice of two material Circumstances in this 3d Paragraph, (*viz.*) The first as to the Sword's crashing against the Back-bone: The second, as to that part of the Sword which was in his Body being discoloured. And pray, Mr. Prance, do You (or the Ghost) give the Reasons thereof, and of its point being rusty; as also, what was, or could be the Cause of the spots in the Shirt, Waistcoat and Drawers of greenish Colour, mentioned in Mrs. Curtis's Affidavit.

IV.

As to the 4th Paragraph of my Letter, I perceive the Ghost admits, that when a Man is strangled or hanged, his Eyes will be extorted; and admits that Sir E. B. Godfrey's Eyes (when found) were shut; only he seems to quarrel with the colour of his Face: And, seeing he admits his Face not black (as all hanged Mens are, when cold) I care not to contest, whether his Face was pale or ruddy, or a little swell'd, or not, those being very inconsiderable Circumstances. But his denying the Putrefaction charged in that Paragraph, and the Consequences deduced from thence, is not only a great untruth, but is directly opposite to the Evidence given by Mr. Skillarne, at the Tryal before mentioned. Page 37, 38.

V.

As to the 5th Paragraph, the Ghost is so far from answering the Assertions therein, as that he only quibbles at Words; and begging the Question, deduces thence impertinent and ridiculous Arguments. For it will be proved, that his Shoes were glazed at the bottom of the Soles, and which must of necessity be occasioned by his walking on the Grass. And (Mr. Prance) if you and the Ghost will walk thither, you will easily experience it, and so may any body else satisfy himself in this Speculation: As also, as to the Grass-seeds that stuck in the seams of his Shoes; which is so far from being impossible at that time of the Year, (as the Ghost would argue) as that it will be proved by undeniable Evidence. But (Mr. Prance,) pray ask the Ghost how he

came there without a speck of Dirt; and who pick'd the Horse-hairs off his Cloaths; and let him contrive (if he can) a probable or rational way for a dead Man on Horse-back, to hold up his Legs, or to save them or his Cloaths from the Dirt: For though a Man may walk thither very clean, yet it's impossible at that time of the Year to ride, either without being dirtied, and and some Horse hairs sticking on his Cloaths: But perhaps the next Account from the Ghost will be, that he either rid with Gambadoes, or else a pair of Fishermens Boots.

VI.

As to the 6th Paragraph, Pray, Mr. Prance, tell the Ghost, his railing against Popish Nurses, and Popish Midwives, is no Answer to the Assertions in that Paragraph; for all the Women in the Town are competent Judges thereof, and I hope the Ghost will not say they are all Papists. But pray tell the Ghost he takes no Notice of the height of the Collar, and its being fast button'd about his Neck when found. Nor the conclusion of that Paragraph; and therefore I suppose he admits it to be all true.

VII.

And as to the 7th and last Paragraph, which relates only to the Difference betwixt Yours and Mr. Bedloe's Evidence; I must take Notice, that what you and he swear, are very contradictory, and much more than I hinted in my said Letter: And though part of it be as he and you were informed; yet you and he swear the Informations were received from the Persons actually concerned in the Murder, and who had confidence enough in Mr. Bedloe (though he refused 4000 l. to help to kill him, and 2000 l. to help to carry him away,) as to shew him the dead Body, and so were under no Temptation of mis-informing either him or your self. And pray, Mr. Prance, will you let the World know what Reward you were to have for that Job; for certainly you deserved as much as Mr. Bedloe, and needed more, you having a Wife and Children, and he a Bachelor?

Thus, Mr. Prance, having gone through each Paragraph of my Letter, and answered the Ghost to your Satisfaction; I should leave here, fearing I have been too tedious already: But I cannot omit to take further Notice of Mrs. Curtis's Affidavit, in relation to the drops of Wax found upon the Cloaths, in which I cannot say but she may swear true; but this I do aver, that if it be so, those drops were put upon the Cloaths long after he was found, and after the Jury had sat on the Body; for there was no such thing then on the Cloaths: And I suppose this was some Artifice used by those, who either out of Interest or Design, were desirous to confirm his being murdered at *Somerfet-house*, and to carry on the great Lie, and impertinent Story then invented, and given out (amongst other) that he was laid under the High-Altar there; and if my Information fail not, there were other such like Tricks used, which I shall make bold to acquaint those more nearly concerned therein, than your self; and shall give them to understand, that it's no wonder a Man in Sir E. B. G's Circumstances, should kill himself, such accidents being no News to that Family, wherein Melancholy and Distraction

straction (that often produces such Effects) hath been predominant, and might occasion the Words he spake to Sir *Tho. Robinson*, as to his being the first Martyr.

And now, Mr. *Prance*, for a Conclusion, If you were guilty of the murder of Sir *E. B. G.* how durst you (as you did) on the *Fryday* after he was found, go to *Primrose-Hill* to see the Body, and not be afraid it should at your approach have bled afresh? And how came you (after *Green, Bury* and *Hill* were hanged) to declare in answer to a solemn Question, that you knew nothing of the death of Sir *E. B. G.*? Pray remember me to your old Friend and Lodger Mr. *Renn*, my respects also to your Wife, not forgetting your little Daughter, who gave you so good Advice before you took your Journey into *Nottinghamshire*, and help'd to take *Beddingfield*, who was bury'd 14 Months.

I am,

Cambridge, March 13.
1681.

Your Loving Friend,

TRUEMAN.

London, Printed for N. Thompson. 1682.

Then the Associate read out of a Paper, Intituled, The Loyal Protestant Intelligence, &c. Number 125. Tuesday, March 7. 1681. the following Paragraph.

March 4. 1682. **W**Hereas the Mayor of *Gotham*, in his pretended *True Protestant Mercury* of *Saturday* last, seems mightily offended with a Letter therein mentioned to be sent to Mr. *Prance*, concerning the murder of Sir *E. B. Godfrey*; and endeavours to avoid the Examination of the Truth of the Matter of Fact contained in that Letter, by his old way of railing and stigmatizing all honest *Church of England Men* with the Name of *Papist*, or *Popishly affected*: He, and his *Whiggish Tribe*, are hereby desired to take Notice, That there is not in the said Letter the least Item or Circumstance, but what will be by undeniable Evidence made out to be the Truth. So, the said Mr. *Prance* having not as yet vouchsafed an Answer to that Letter, he will speedily receive a further Letter relating to that Murder; wherein the further Truth will not only be fully set forth, and other Circumstances set out; but also it will thereby plainly appear, that the Reputation of that dead Knight is so far from being therein murdered, or the Justice of the Nation from being questioned; as that it will concern Mr. *Prance*, Mr. *M. G.* and all Parties on that side, to lay their Heads together more effectually than they did on *Wednesday* Morning last: For Truth seeks no Corners; and, were it not for a vicious and unsanctified Generation of Vipers, need not require an Advocate. For, though a Lie may prevail for a time, and eclipse the Truth, yet at length Truth will shine forth, with the assistance of that God, who is the Author of Truth it self.

Then a Paragraph out of another of the like Intelligences, was read. The Intelligence was Number 127. *Saturday*, March 11. 1681.

March 9. 1682. **W**Hereas *Dick Janeway*, in this day's *Mercury*, promises an Answer to the late Letter to Mr. *Prance*, &c. This is to give

him, and all the World Notice, That such an Answer is impatiently expected by the Author of that Letter, who questions not, but to prove every tittle of that Letter, to the Satisfaction of all Mankind: And besides, he is very desirous that the *Courantier* (according to his last *Pacquet* of Advice from *Rome*) would go on, and use his Interest to procure the Lord Mayor, Court of Aldermen, and Common-Council of *London*, to inspect the Truth of that Letter; whereby it will appear inevitably, that there is not one *Papist*, or *Popishly affected* Person concerned in that Letter, or in the Proof of the Particulars thereof; but the same (with divers other material Circumstances relating to the Murder of Sir *E. B. Godfrey*, and the *Fraud* and *Blind* put upon the World in relation thereto) will be more fully, plainly, and manifestly proved, without giving ill Words, or scurrilous Language, or Reflections to any Persons that really are, or supposed to be therein concerned, in any Circumstance whatsoever.

Mr. *Serj. Maynard*. You see what they have done; they say, What was testified against the Murderers of Sir *Edmundbury Godfrey*, they say, was a Lie. They go over all the Evidence given against these Fellows, and undertake, by undeniable Witnesses to prove the contrary.

L. C. J. To the Defendant's Counsel, What say you to it?

Mr. *Saunders*. I am of Counsel for *Pain*, my Lord, the Charge against *Pain* is, That he should own, that he did bring one of these Letters to be Printed; I have forgot whether Sir *Philip Lloyd* said the First or the Second.

L. C. J. The Second he says.

Mr. *Saunders*. If *Pain* did own it, I think he did more ingenuously, than when he did make it, or bring it to the Press: But, my Lord, it was a rash unadvised Act; but not out of any Malice: My Lord, we will prove that *Pain* was not a *Papist*, nor any of his Family. My Lord, this cannot justify or excuse them, it will only extenuate their Fault. We will call some Witnesses.

L. C. J. I will hear any thing in this Case, be as large as you will, you shan't say you are stinted; for it is a Business of mighty Concern.

Mr. *Gooding*. I am of Counsel, my Lord, for *Pain*: My Lord, We have made Application to Persons to intercede for us; we are sorry for what we have done, and have offered to give any Satisfaction.

L. C. J. To me he said, he would make it out by Five Hundred Witnesses: They would make it as plain as the Day.

Mr. *Thompson*. Since the last time that was appointed for the Tryal, they have Printed, That they would prove it by Threescore Witnesses; and were very sorry it did not come on.

Mr. *Talden*. I am of Counsel, my Lord, for *Thompson*, who, I think, was unfortunately drawn into the Business; and that by *Pain* and *Farwell*, though they turn all upon him now. It was a great piece of Ingenuity for him to discover his Authors; and it had been very Mischievous if they had not been discovered.

L. C. J. What say you to the two Protestant Intelligences?

Mr. *Talden*. They are as much the Author of them, as of the other. *Thompson* says, the Authors would be able to prove it by undeniable Witnesses:

Witnesses: *Thompson's* Intelligence is open to any Man that will put any thing into it, and he is paid for his Pains.

Mr. *Osborne*. I am of Counsel for *Farwell*, my Lord, It was a Foolish thing to do as we have done: But that is no Satisfaction, my Client says he hath several Witnesses.

L. C. J. Call them, they shall be heard.

Mr. *Farwell*. I begin with *Hazard*, my Lord, he and I went to the Place.

Then Hazard was sworn.

Mr. *Hazard*. I went along with Mr. *Farwell*. He was at the *Rainbow-Coffee-House*, it was in the Morning, and he desired me to go to the Place where Sir *Edmond-bury Godfrey* was found.

L. C. J. What Day was it?

Mr. *Hazard*. I can't tell, I went along with him, and stay'd as long as he did. I saw Sir *Edmond-bury Godfrey* lying upon the Table, his Shoes were clean as if he had been on an *Hay-mow*, and his Eyes were closed.

L. C. J. Where was he?

Mr. *Hazard*. Upon a Table in the *White-House*. There were Gobbers of Blood (that I will aver, my Lord) by the Ditch-side, and likewise at a Place where there were two or three things to go over, there was more Blood; I can't tell how he was carried, or how he came there, but I saw him at the *White-house*.

Mr. *Williams*. Who went along with you, besides Mr. *Farwell*?

Mr. *Hazard*. No body.

Mr. *Williams*. Did he bring you to the Place where the Body lay?

Mr. *Hazard*. Yes.

Mr. *Serj. Maynard*. What did *Farwell* tell you when he desired you to go with him?

Mr. *Hazard*. Why, Word was brought by one *Hancock* a Wood-Monger, to the *Coffee-house*, some would not believe him, but sent a Porter to Sir *Edmond-bury Godfrey's* House, and then when the Porter came, and said the Body was found, and carried to a *White-house* on *Primrose-hill*, he spake to me to go and see the Body, and I fetched my Coat, and was there quickly.

Mr. *Williams*. When you came near the Ditch, did *Farwell* shew you the Place?

Mr. *Hazard*. He and others that were there.

Mr. *Williams*. I ask you this, Did any body shew you the Place where the Body lay, besides *Farwell*?

Mr. *Hazard*. No.

Mr. *Osborne*. Did he go to the Place directly, or about over Ditches?

Mr. *Hazard*. Truly, I know the way to *Primrose-hill* as well as he. We went as direct a Way as we could.

L. C. J. The straightest way to the Place?

Mr. *Hazard*. Yes: We went over several Ditches.

Sir *Fr. Winn*. As you were going over several Ditches, there was no body with you, but *Farwell*, was there?

Mr. *Hazard*. No.

Mr. *Williams*. Did you enquire of any body as you went along?

Mr. *Hazard*. I can't remember such a small Circumstance.

Then William Batson was sworn.

Mr. *Osborne*. What do you know about the Blood that was in the Ditch where Sir *Edmond-bury Godfrey* was found?

Mr. *Batson*. The Morning after the Murder

was discovered, and that Sir *Edmond-bury Godfrey* was found in the Fields, I went with two or three Neighbours, and went to the *White-house*, and I saw him lye upon the Table in the *White-house*, and coming back again, they shew'd me in a Ditch where they said he lay, some Blood, I cannot say it was his Blood; and going a little farther, I saw some more whitish Blood, and this is all I can swear.

L. C. J. Was it frosty Weather?

Mr. *Batson*. My Lord, I can't tell whether it was, but I'll assure you the Blood looked to me more like Blood that was laid there, than any thing else.

One Fisher was sworn.

Mr. *Farwell*. Was you there when Sir *Edmond-bury Godfrey* was stripped?

Mr. *Fisher*. Yes, I stripped him of his Cloaths, pulled off his Hose and Shoes, I was Carpenter to my Lord *Wooton*, and I was sent for in *October*, a Day or two before, and I came to get the House covered up, and to take Order with my Partner: And as I went, there was a Report that Sir *Edmond-bury Godfrey* was found and laid up in the *White-house*, and when I came, the Coroner and the Jury were there, and I got into the Room where Sir *Edmond-bury Godfrey* lay upon the Table and took his Hat off; and I saw two Wounds within an Inch and a half one of another, one went no further than his Bone, and the other went through his Back. And, my Lord, immediately there was an Order come down from the Coroner, to get him stripp'd. They ask'd me if I would give an Hand, I told them yes. I pull'd off his Shoes, and they were clean, and I pulled off three pair of Stockings and a pair of Socks; his black Breeches and his Drawers, and they came off very well; there was a Man in the Company that desired to help, so I got upon the Table, and set him upright with his Breech upon the Table, and his Feet hanging down; we unbutton'd his Coat, and pull'd it off, I came to his Flannel-Shirt, and when I came to his Back, there was Blood. But I did not see any Blood till I came to his Back-part. About his Throat there was something that had girt him.

L. C. J. He looked as if he were strangled, did he?

Mr. *Fisher*. Yes, and his Neck was so weak that you might turn it any where.

L. C. J. To the Defendant *Farwell*.

How do you pretend he murdered himself? That he ran himself through?

Mr. *Farwell*. I make no Inference, my Lord. But I would only prove that what I write is true, I writ only the first Letter; and there are three Heads I am charged with; upon that Letter, and that about the Blood is one. My Lord, I was concerned they should pretend there was no Blood at all, when I came there, there was near my Hat full of Blood.

L. C. J. Can you tell who laid it there?

Mr. *Farwell*. My Lord, If you will hear two Witnesses more, I will satisfy your Lordship who laid it there. My Lord, this Man was one of them that helped to remove the Body out of the Ditch.

Another Witness, John Rawson, called by Mr. Farwell, and sworn.

Rawson. My Lord, I was there taking him up, we fetched the Constable, and pulled him out of the Ditch, and when we had done, we pulled the Sword out, and removed him to the House, and

and there was Blood upon some Posts (explaining himself to me, on a couple of Stumps to go over upon) and going into the Door, his Back did sweep a little against the side, and there was some Water and Blood lighted there, and likewise lay upon the Table where he lay, and upon the Floor.

Mr. Farwell. Did the Blood of his Body fall upon the Floor, and go through the Floor into the Cellar?

Mr. Rawson. Some drops were there, I won't swear whether it were Blood or no, my Lord.

Mr. Farwell. My Lord, I desire the same Question may be put to Mrs. Rawson.

Mrs. Rawson sworn.

Mrs. Rawson. My Lord, if you please, I have not a word to say, but there was Blood and Water ran through the Table, that is all I can say.

Mr. Farwell. My Lord, as to the difference between Mr. Prance's Evidence and Mr. Bedloe's, I desire I may prove the Difference between them.

L. C. J. You shall make any Proof you will.

John Stanley, called by Mr. Farwell, and sworn.

Mr. Farwell. I call him to prove the Copies of the Journals of the House of Lords.

L. C. J. What would you infer from the Journals.

Mr. Farwell. My Lord, they charge me that I should say there is a great deal of difference between the Evidence Mr. Bedloe gave in the House of Lords, and the Evidence that Prance gave at the Tryal of Green, Berry and Hill.

L. C. J. Would you prove any Evidence given by Bedloe out of the Journals?

Mr. Farwell. I can prove he gave that Evidence before the House of Lords.

But Mr. Farwell afterwards went off from that

Proof, and called Mr. Hobbs, Mr. White,

Mr. Chafe the Father, and Mr. Chafe the Son, and Mr. Laxinby, who were sworn.

Mr. Farwell. I ask Mr. Chafe, what he observ'd about Sir Edmondbury Godfrey.

Mr. Chafe the Son. My Lord, on Fryday Morning, the Day after the Body was found, I went to Primrose-hill, in Company with my Father, to see the Body which they said was found, I came into the Field where the Company in the Field said the Body had been laid, the Body had been then carried into the House; I looked into the Ditch where they said the Body was laid, I could not see Blood in the Ditch, but four or five Yards aside off the Ditch, there seem'd some Blood to me, which the Constable said, followed the Sword when it was pulled out of the Body; I saw the Body in the House, and saw the two Wounds; he had a great Contusion on the left Ear, and his whole Face was very much bruised.

L. C. J. Do you believe there was any Violence offered to him?

Mr. Chafe. My Lord, I believe he was strangled, for I don't believe those Injuries that were offered about him, could be after he was dead.

L. C. J. What say you, Mr. Hobbs?

Farwell. I desire he may be asked, Whether he did not propose to Mr. Godfrey, that the Body might be opened, that any Doubt may be lay'd aside, concerning his being Murdered in that Place?

Mr. Hobbs. My Lord?

L. C. J. Had you any doubt, whether he was Murdered or not?

Mr. Hobbs. Indeed, my Lord, I thought he was strangled, that was my Opinion; I can't tell whether I was mistaken. I said to Dr. Goodall it would be very well if Mr. Godfrey would send for a Surgeon and a Physician from the Court, and others from the City, to satisfy all Persons.

Mr. Farwell. What Colour was his Face?

Mr. Hobbs. My Lord, it was bloted.

L. C. J. Did it look as if Violence had been used to him?

Mr. Hobbs. Ay, my Lord; and the bloody Vessels of his Eyes were so full, as if he had been troubled with sore Eyes.

Mr. Farwell. Did you observe any Fly-blows in his Face?

Mr. Hobbs. No, my Lord, not that I know of.

L. C. J. What say you, Mr. Chafe?

Mr. Chafe. My Lord, on Fryday when I came to see the body at the White house I found a great Contusion, and two wounds, one yielded towards the right; the other went into the body. I troubled my self no more at that time, but the next day I was desired by Dr. Lloyd that I would go to his House and see the body again, and there I found a swelling upon the left Ear, as if a knot had been tyed, there I found him beaten from this place to this (pointing to the Neck and Stomach) I never saw any man beaten so in my life. Before this business was broached, Mr. Farwell did take me aside at Man's Coffee-House, and did tell me what proof he could make of this business, I told him, Mr. Farwell I love you well, don't meddle with the business, for I know it is impossible any thing can be said against it that hath the face of truth: I did so a second time (my Lord) when the book came out, I found one before I went to New-Market, and the other at New-Market; I was very much troubled to see them. The Night before Easter, the Eve of Easter-day, I met with Mr. Farwell at an House where I had been with a good friend of his and mine, and Farwell came and asked for me, and he came up to the Room as they called for another Bottle of Wine, I told them it was needless, only since Mr. Farwell is come up, said I, I will drink one glass with you. And he told me then, that 6 Months before I had given him good Counsel if he had taken it.

Mr. Farwell. My Lord, I desire Mr. Smith to be called.

L. C. J. Let him. But he came not then.

Mr. Brown is called by Mr. Farwell; and sworn.

Mr. Farwell. I desire Mr. Brown may be asked whether his Eyes were not fly-blown?

L. C. J. 'Tis propos'd to you by Mr. Farwell, whether the Eyes of Sir Edmondbury Godfrey were not fly-blown?

Mr. Brown. No, my Lord, I did not see any Fly-blows.

Mr. Farwell. Whether there were any specks, that one might call Fly-blows?

Mr. Brown. My Lord, I did not see any specks that one might call Fly-blows.

Mr. Farwell. I desire that I might call two Witnesses to prove that he said so.

L. C. J. What will you get by that, Mr. Farwell, to disparage your Witnesses?

Mr. Brown. My Lord, Mr. Farwell would have had me said so, but I never said so.

Then Smith came.

L. C. J. What do you ask Smith?

Mr. Farwell. Only about the blood.

Mr. Brown. My Lord, he came to me another time, and told me I was wrong in my Affidavit, as if he knew what I could make Affidavit of better than my self.

Mr. Farwell. My Lord, I was not the party that told him so.

Mr. Brown. He was at my house twice, at Mary-bone, at the sign of the Sun.

L. C. J. Was Pain with him there?

Mr. Brown. My Lord, there was a Man with Plate-buttons with him there. I don't know Pain.

Mr. Smith Sworn.

L. C. J. Well, what say you, Mr. Smith, it is required of you by Mr. Farwell, here to declare, whether you took up any of Sir Edmondbury Godfrey's blood, and brought it home in your handkerchief?

Mr. Smith. No, my Lord, I know nothing of that.

Mr. Farwell. I desire Rawson and his Wife may be called again.

Rawson appears.

L. C. J. What say you, 'tis required by Mr. Farwell, whether you saw any fly-blows in Sir Edmondbury Godfrey's Eyes?

Mr. Rawson. There was something like fly-blows, but I can't say they were fly-blows.

L. C. J. Did you observe the flies were busie at that time of the Year?

Mr. Rawson. My Lord, I did not see them.

[Then the people laughed.]

Mr. Farwell. I desire Rawson's wife may come.

Mr. Rawson. I must fetch her then.

Rawson's Wife appears.

L. C. J. Look you, Mr. Farwell requires of you to tell us whether there were any fly-blows in the Eyes of Sir Edmondbury Godfrey?

Mrs. Rawson. If it please you, my Lord, there were a great many people said there were fly-blows, I took no great notice of them.

L. C. J. He asks you what you say to his Mouth, and his Nostrils, were there fly-blows?

Mrs. Rawson. If it please you, my Lord, I can't say nothing to it, for I did not much mind it, but they seemed fly-blows.

L. C. J. Have you any more Witnesses, Mr. Farwell?

Mr. Farwell. I pray Mr. Lazingby (my Lord) may be asked whether men that kill themselves look as Sir Edmondbury Godfrey did?

L. C. J. Mr. Lazingby, Mr. Farwell requires of you, whether you have seen men that have killed themselves look in such a manner about the Neck and Face?

Mr. Lazingby. My Lord, he appeared to me to be strangled and that which strangled him, was kept about his Neck till he was cold. My Lord, People that are hanged and let down while warm, the blood drains away by the Vessels that are broken, and their Faces are rather less, and their Faces become very pale; but the thing wherewith he was strangled remaining about his Neck, the blood could not drain away, but it made his Face look bloody. The two

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Mr. Chases, the King's Apothecary was there when I was there, and the blood that was some four Yards from the Ditch, I put my finger in it, and smelt to it, and it smelt like that which comes from a body, after a fortnights time dead, rather than a weeks; my Lord, it was blood and water. The water will separate from the blood.

Sir Fr. Winn. But you believe he was strangled?

Mr. Lazingby. Yes, his Neck from this place hither (pointing to the upper part of his Neck, and then to his Stomach and Breast) was very much discoloured and black, and his mouth was discoloured. Now when ever a man is bruised whilst he is alive, or whilst he is warm, that part after the person is dead will soonest corrupt.

L. C. J. It stands to reason that the bruised part will first corrupt.

Mr. Lazingby. My Lord, after Mr. Chase the Apothecary and I had seen him at the White-house, I went up to drink a Glass of Beer, and Mr. Chase's Son unbuttoned Sir Edmondbury Godfrey's Collar, which was more than I saw, when I was come in, and unbuttoning the Collar, there were 2 great Creases both above and below, so they sent for me down to come and see it, so I put the Collar together and I perceived the Collar made the mark like a straight Ring upon a finger, the Neck being swelled above the Collar and below, by the strangling with a Cord or Cloath.

Sir Fr. Winn. Do you think he killed himself now, Mr. Farwell?

Mr. Lazingby. There was something in the Cover of his Eyes like matter, but I can't say it was fly-blows. His Eyes were open, my Lord, and his Eyes were Blood-shed, as Mr. Hobbs hath given you an account, as if he had an extraordinary great cold, or a man that had a blow upon the Temples or Forehead.

Mr. Farwell. Whether were his Eye-lids closed?

Mr. Lazingby. My Lord, his Eyes were open when I saw him.

Mr. Farwell. When I saw him about 6 a Clock in the morning, his Eyes were shut.

Mr. Lazingby. I felt upon his Cloaths. I admired that his Cloaths were not wet, there having been so great a storm the afternoon before?

L. C. J. And his Cloaths were not wet?

Mr. Lazingby. His Cloaths were as dry as mine.

Mr. Farwell. My Lord, they made a great fire there, and dried his Cloaths.

L. C. J. Come Mr. Farwell, there is no man so blind as he that won't see. Will you call any more Witnesses?

Mr. Farwell. I will call no more Witnesses; but I suppose they will Offer against me that I am a Papist.

Mr. Serj. Maynard. No, no.

L. C. J. Truly your Religion is not worth the enquiring into; 'Tis not much to the purpose what Religion you are of.

Mr. Serj. Maynard. Gentlemen, you hear he hath been able to make no defence for himself, but for the satisfaction of the World, my Lord hath taken great pains in hearing him. I shall speak but very few words, and call a Witness or two of some new matter; that if it be possible.

H

possible to convince him, we will do it. We need not do it because his own Witnesses tell you of the several Bruises and Wounds he had, that there were no fly-blows, no putrified Matter. How can a man that stabs himself, bruise and beat himself in the manner that you have heard? There is never a Witness that hath spoken on his side, but hath spoken against him, to prove himself as malicious a fellow as can be. What had he to do with this? Sir *Edmundbury Godfrey* was murdered, was found, inquiry made after it, and prosecution thereupon, now comes this fellow and permits several Arguments against it, every one of them from matter of fact that is false, and yet publishes it to the World, that he will prove it by 500 undeniable Witnesses. We will now call some Witnesses to prove him as wicked a Lier as lives. I say what had he to do with it, only meer malice? He would have me ask him, what Religion he is of? I shall not ask him, for I don't think he is of any, none of any Religion can be so Wicked to own such a thing. We shall desire the favour to call a Witness or two, to prove something more than hath yet been proved in this Murder, tho' there was Evidence enough upon the Tryal to prove it.

Mr. *Sol. Gen.* Gentlemen, Mr. *Farwell* does pretend that he hath only told so many Lies, and hath left the World to make use of it. And hath brought Witnesses to colour this matter over, and in hopes to make you believe the matter is true. But Mr. *Farwell* hath forgot himself, his Paper is quite otherwise, for he hath argued upon it, and made Inferences, that therefore Sir *Edmundbury Godfrey* murdered himself, therefore he is Guilty of the highest malice in the World. He tells a great many falsities, and from those falsities hath inferred others. The Paper is full of Arguments.

L. C. J. Gentlemen, I did give him leave to go into what Evidence he would in this Case, not that I thought it material, for if he could have proved never so much, yet his Malice had never been the less to have gone and aspersed the Government. What had he to do to meddle with it? To what purpose should he write Books concerning the matters of Government, to traduce the Justice of the Nation? The people had suffered as *Malefactors*, and what had he to do with it? If they had suffered Innocently, he ought to have done no such thing as this is.

Mr. Serjeant *Maynard*. My Lord, but one Witnesses.

L. C. J. Pray call whom you will.

Mr. Serjeant *Maynard*. *John Oakely*. We will prove that he was way-layed that very day he was strangled.

Mr. *Sol. Gen.* We have no need to call any Witnesses now, to overdo a thing. We may leave it here.

Jury-Man. Pray, my Lord, if they have any more Witnesses, let us hear them.

L. C. J. 'Tis nothing to this purpose to call any for the King, nor hath *Farwell's* Evidence signified any thing to this. He did design and would (no doubt of it) have been very much satisfied if he could have made but some probable Evidence that Sir *Edmundbury Godfrey* killed himself, and I was desirous to hear what they would say for themselves. But you hear what a kind of Evidence it is, not a Witness he hath called,

but is as much against him as can be, and does evince it plainly, that the man was killed, and that he was killed by strangling, and so the Evidence was upon the Tryal of *Green, Berry, and Hill*. If he could have raised a doubt about it, yet his Offence had not been mitigated by it, for a private Person is not to arraign the Justice of the Nation; but I was willing to hear what could be said in the Case, whether a doubt could be made in the World, that Sir *Edmundbury Godfrey* was not murdered. And you see how his very Evidence hath in all things confirmed the Evidence *Prance* hath given, that he was killed, and that he was killed by strangling. I must leave it with you, Gentlemen, they are all three in this Mischief, 'tis a Combination of them, to affront the publick Justice of the Nation, and what is the end of it? The end of it is to make people believe there is no Popish Plot, but it is plain he was killed by the Popish party; as *Prance*, upon his Evidence against *Green*, and the others attested. But if they could have made it out that he killed himself, all of them would have cried out the Popish Plot was a sham, nothing but a thing raised by the Protestants against the Papists, and all the Plot must have gone for nothing. Gentlemen, I do leave it to you, whether upon this Evidence you do not believe them all to be Guilty of this Design, of Traducing the Justice of the Nation.

The Jury thereupon, without going from the Bar found them all three Guilty of the Information.

And the People gave a great Hum.

Monday, July 3. 1682.

Nathaniel Thompson, William Pain, and John Farwell, were brought up by Rule, to the Bar of the Court of the King's Bench to receive their Judgment: Mr. Thompson the Counsellor moved for Judgment, and particularly pray'd they might have some corporal punishment; acquainting the Court that since their Tryal (tho' they had as much time and liberty given them by the Lord Chief Justice, to call their Witnesses, and examine whom they would, as they could desire,) the very next News-Book Thompson put out, he took upon him to give an Account, as tho' Justice had not been done him; and further said, if there was any doubt of the Fact with Mr. Thompson, or Mr. Farwell, or Mr. Pain, there were Affidavits to satisfy the world about it.

Then Mr. Spence's Affidavit was read.

Richard Spence Citizen and Upholder of London, living in Arundel Street in the Strand in the Parish of St. Clement's Dane, in the County of Middlesex, having been twice subpoena'd to give Evidence for the King, upon an Information, exhibited in the Crown-office against Nathaniel Thompson, William Pain and John Farwell, and not being called at their Tryal to give Evidence in

in open Court; maketh Oath that upon *Thursday* the tenth day of *October* 1678. it being the *Thursday* before Sir *Edmondbury Godfrey* was missing from his own House in *Hartshorne Lane* in the *Strand*: As he this Deponent was coming from *St. James's Market* to go to his own House, about seven of the clock at night, there were then at the Water-Gate of *Somerset-House*, five or six men standing together; who laid hold on this Deponent as he was passing by them, and they taking hold of both this Deponent's Arms, dragg'd him down about a yard within the Water-Gate of *Somerset-House*, it being dark; but one of the said Men, which this Deponent believes to have been *Hill*, (for that this Deponent knew *Hill* very well, as also his Master Doctor *Godwyn*,) cryed out and said this is not he, upon which they immediately let this Deponent go.

Jurat. 10 die Julii,
1682. *Coram me,*
W. Dolbin.

RICHARD SPENCE.

Whereupon the Clerk of the Crown said, that it was one Captain *Spence*, whom he knew very well, and that he was a Tall black Man, and like Sir *Edmondbury Godfrey*.

Then John Oakely's Affidavit was read.

John Oakely, of the Parish of *St. Martins* in the Fields in the County of *Middlesex*, Servant to Mr. *Robert Breedon* of *Hartshorne Lane* in the said Parish and County, Brewer, maketh Oath that on *Saturday* the 12th day of *October*, in the year of our Lord 1678, about eight or nine of the clock in the Evening, he was in the City of *London*, in the Company of his Father *Robert Oakely* of *Biffiter* in the County of *Oxon* Maulster, and his Father came with him so far as *Ludgate*, where they parted. And this Deponent going home-wards to his Master *Breedon's* House, coming by *Somerset-House* in the *Strand*, when he came near the Gate of that House which leads down to the Water-side, commonly called the Water-Gate, which was about Nine of the clock at Night, he there saw Sir *Edmondbury Godfrey*, and pass close by him and put off his Hat to him; and Sir *Edmondbury Godfrey* put off his Hat again to him; and after that this Deponent had passed beyond Sir *Edmondbury Godfrey*, he this Deponent turned about and looked upon him again, and Sir *Edmondbury Godfrey* stood still, and there was a Man or two near Sir *Edmond*. And this Deponent further saith that he knew Sir *Edmondbury Godfrey* very well, for that he saw him almost daily pass by his Master *Breedon's* House in *Hartshorne Lane*, going or coming from

his own dwelling House, which was also in *Hartshorne Lane*. And this Deponent further saith, that about two or three days after, when the Rumor was that Sir *Edmondbury Godfrey* was missing, he acquainted his fellow-Servant *Elizabeth Dekin*, that he saw Sir *Edmondbury Godfrey* near the Water-Gate at *Somerset-House* in the *Strand*, that very *Saturday* night that he was reported to have been missing from his House in *Hartshorne Lane*. And this Deponent further saith, that he told the same thing to his Uncle *Ralph Oakely* of the Parish of little Saint *Bartholomew*, about a week after the time that Sir *Edmondbury Godfrey's* body was found, and also that he told the same thing to his Father the afore-said *Robert Oakely*, and to several others in a short time after.

Jurat. 22 die Junii,
1682. *Coram me,*
John Moore Mayor.

JOHN OAKELY.

Sworn to again the 1st of *July*, 1682. Before Judge *Dolbin*, and is left *Examinat.* filed up in the *Crown-office*.

Vide *Green, Berry and Hill's Tryal*, folio 16, as to the time of Sir *Edmondbury Godfrey's* being at *Somerset-House*.

After which the Court consulted together, and Mr. Justice *Jones* having first set out the Greatness of their Crime, gave the Judgment of the Court, which was, that *Thompson* and *Farwell* should stand upon the Pillory, in the Palace-yard, the last day of the Term, between the hours of Ten and One of the clock, for the space of an hour, and each of them to pay an Hundred pound Fine, and to be Imprisoned till they had paid it. And as for *Pain*, he told him because the Court did not conceive him altogether so guilty, they would inflict no corporal Punishment on him, but did adjudge him to pay an Hundred pound Fine, and to be Imprisoned till he pay'd it.

Afterwards the Court was moved to explain their Judgment, it being apprehended that it was pronounced upon the Pillory; and the Court did declare that their intention was (and so the expression upon the Pillory was to be understood) that they should stand in the Pillory.

Accordingly *Wednesday* the 5th of *July*, 1682. *Thompson* and *Farwell* stood in the Pillory in the Old Palace-yard at *Westminster*, with this Writing over their Heads.

For Libelling the Justice of the Nation, by making the World believe that Sir *Edmondbury Godfrey* murdered himself.



T H E T R Y A L O F

Ford Lord Grey of Werk, Robert Charnock, Anne Charnock, David Jones, Frances Jones, and Rebecca Jones.

Michaelmas-Term, Jovis 23. Nov. A. D. 1682. 34 Car. II. in B. R.

The KING against FORD Lord GREY of *Werk*,
and O T H E R S.



HERE having been an Information preferred against the the Right Honourable Ford Lord Grey of *Werk*, and others, by His Majesty's Attorney General Sir Robert Sawyer, the first day of this Michaelmas-Term (a Copy of which Information follows) and the Lord Grey having then pleaded to it *Not Guilty*, and the other Defendants the like afterward, and the King's Attorney joyned Issue upon it; Tuesday the 21st of November, was appointed for Tryal of this Cause; but it was then adjourned to this day, because one of the Witnesses for the King was not ready; but this day it came on about

* Sir Francis Pemberton,
C. J. Sir Thomas Jones, Sir
William Dolben, and Sir
Thomas Raymond.

nine in the Morning, at the King's-Bench-Bar, and held till two in the Afternoon, * all the Judges of the said Court being present.

First, Proclamation was made for Silence, and then for Information, if any Person could give any, concerning the Misdemeanor and Offence whereof the Defendants stood Impeached: Then the Defendants being called, and appearing, were bid to look to their Challenges, and the Jury being all Gentlemen of the County of *Surrey*, were Call'd, Challenge'd and Sworn in this Order.

Cl. of Crown.

1. Sir Marmaduke Gresham, Jur.
 2. Sir Edward Bromfield, Jur.
 3. Sir Robert Knightley, Jur.
- Sir John Thompson.

Mr. Serj. *Jefferies*. We challenge him for the King.

Mr. *Holt*. Then we challenge *toutz per availle*, unless the King shew his Cause of Challenge; for by the Statute of 24 *Ed. 1.* the King cannot challenge without Cause.

Mr. Serj. *Jefferies*. But by the Course of Practice, all the Pannel must be called over before the King shew his Cause.

Mr. *At. Gen.* Before the Party can have his Challenges allowed, he must shew his Cause; but they must go on with the Pannel, in the King's Case, to see if the Jury be full without the Persons challenged, and that is sufficient.

L. C. J. If they challenge any Person for the King, they must shew Cause in due time. For I take the Course to be, that the King cannot challenge without Cause, but he is not bound to shew his Cause presently; it is otherwise in the Case of another Person.

Mr. Serj. *Jefferies*. That hath always been the regular Course.

Mr. *Holt*. Our challenging *toutz per availle*, doth set all the rest aside till Cause be shewn.

L. C. J. The Statute is, the King shall shew Cause; but when it comes in a Case between the King and another Party, that they both challenge, the other Party shall shew Cause first.

Mr. *Holt*. My Lord, we challenge *toutz per availle*.

L. C. J. You must shew a reason for it then.

Mr. *At. Gen.* The King shall not be drawn to shew his Cause, if there be enough in the Pannel besides.

Mr. *Williams*. That is to say then, that the King may chuse whom he pleaseth against the Statute.

Mr. Serj. *Jefferies*. No, Sir, we desire none but honest and indifferent Gentlemen to try this Cause.

L. C. J. The old Challenge is taken away, by that Statute, from the King, *quia non sunt boni pro Domino Rege*, and therefore if the King challenge any, he must shew Cause, but it must be in his time, and not before you shew yours. Let him stand by a while.

Cl. of Cr.

Cl. of Cr. *John Sandys, Esq;*
Mr. Serj. *Jefferies*. We challenge him for the King.

Mr. Holt. For what Cause, Sir?

Mr. Serj. *Jefferies*. We will tell you in good time.

Cl. of Cr. 4. *Sigismund Stiddulph*; Jur. *John Weston*.

Mr. *Weston*. My Lord, I am no Freeholder.

Mr. Holt. He challenges himself.

L. C. J. Well, he must be set aside.

Cl. of Cr.

5. <i>Thomas Vincent</i> .	} Jur. {	9. <i>Thomas Newton</i> .
6. <i>Philip Rawleigh</i> .		10. <i>John Halscy</i> .
7. <i>Robert Gavel</i> .		11. <i>Tho. Burroughs</i> , and
8. <i>Edward Bray</i> .		12. <i>John Pestyward</i> .

Cl. of Cr. Gentlemen, you of the Jury that are Sworn, hearken to your Charge.

Surrey, ff. Sir *Robert Sawyer*, Kt. His Majesty's Attorney-General, has exhibited an Information in this Court, against the Right Honourable *Ford Lord Grey of Werk*; *Robert Charnock*, late of the Parish of *St. Botolph Aldgate*, London, Gent. *Anne Charnock*, Wife of the said *Robert Charnock*; *David Jones*, of the Parish of *St. Martin in the Fields*, in the County of *Middlesex*, Milliner; *Frances Jones*, Wife of the said *David*; and *Rebecca Jones* of the same, Widow; for that they (with divers other Evil-disposed Persons, to the said Attorney General yet unknown) the 20th day of *August*, in the 34th Year of the Reign of our Sovereign Lord the King that now is, and divers other Days and Times, as well before as after, at the Parish of *Epsom* in the County of *Surrey*, falsely, unlawfully, unjustly and wickedly, by unlawful and impure ways and means, conspiring, contriving, practising and intending the final Ruin and Destruction of the Lady *Henrietta Berkeley*, then a Virgin Unmarried, within the Age of 18 Years, and one of the Daughters of the Right Honourable *George Earl of Berkeley* (the said Lady *Henrietta Berkeley*, then and there being under the Custody, Government and Education of the aforesaid Right Honourable *George Earl of Berkeley* her Father) they the said *Ford Lord Grey*, *Robert Charnock*, *Anne Charnock*, *David Jones*, *Frances Jones*, and *Rebecca Jones*, and divers other Persons unknown, then and there, falsely, unlawfully and devilishly, to fulfil, perfect, and bring to effect, their most wicked, impious and devilish intentions aforesaid; the said Lady *Henrietta Berkeley*, to desert the aforesaid Right Honourable *George Earl of Berkeley*, Father of the aforesaid Lady *Henrietta*; and to commit Whoredom, Fornication and Adultery, and in Whoredom, Fornication and Adultery to live with the aforesaid *Ford Lord Grey* (the said *Ford Lord Grey*, then and long before, and yet, being the Husband of the Lady *Mary*, another Daughter of the said Right Honourable *George Earl of Berkeley*, and Sister of the said Lady *Henrietta*) against all Laws, as well Divine as Human, impiously, wickedly, impurely and scandalously, to live and cohabit, did tempt, invite and solícite, and every of them, then and there, did tempt, invite, and solícite. And that the aforesaid *Ford Lord Grey*, *Robert Charnock*, *Anne Charnock*, *David Jones*, *Frances Jones*, and *Rebecca Jones*, and other Persons unknown, with Force and Arms, &c. unlawfully,

unjustly, and without the Leave, and against the Will of the aforesaid Right Honourable *George Earl of Berkeley*, in prosecution of their most wicked Conspiracies aforesaid; the said Lady *Henrietta Berkeley*, then and there, about the Hour of Twelve in the Night time, of the said 20th day of *August*, in the Year aforesaid, at the aforesaid Parish of *Epsom* in the County of *Surrey* aforesaid, out of the Dwelling-house of the said Right Honourable *George Earl of Berkeley* there situate and being, and out of the Custody and Government of the said Earl of *Berkeley*, did take, carry and lead away. And the said Lady *Henrietta Berkeley*, from the said 20th day of *August* in the Year aforesaid, and continually afterwards, unto the day of the Exhibition of this Information, at the Parish of *Epsom* aforesaid, in the County of *Surrey* aforesaid, and in divers secret places there with the said *Ford Lord Grey*, unlawfully, wickedly, and scandalously to live, cohabit and remain, did procure and cause, and every of them did procure and cause, to the great displeasure of Almighty God, to the Ruin and Destruction of the said Lady *Henrietta Berkeley*, to the Grief and Sorrow of all her Friends, and to the evil and most pernicious Example of all others in the like Case offending; and against the Peace of our said Sovereign Lord the King, his Crown and Dignity. To this Information, the Defendant, the Lord Grey, and the other Defendants, have severally pleaded *Not Guilty*, and for their Tryal, have put themselves upon the Country, and the King's Attorney likewise, which Country you are: Your Charge is to inquire whether the Defendants, or any of them, are Guilty of the Offence and Misdemeanor whereof they stand Impeached by this Information, or not Guilty: If you find them or any of them Guilty, you are to say so; if you find them, or any of them not Guilty, you are to say so and no more, and hear your Evidence.

For which Evidence to come in, Proclamation was made, and then Edward Smith, Esq; a Benchor of the Middle-Temple, open'd the Information.

Mr. *Smith*. May it please your Lordship, and Gentlemen, you of the Jury; Mr. Attorney General hath exhibited an Information in this Court, against *Ford Lord Grey of Werk*, *Robert Charnock*, *Anne Charnock*, *David Jones*, *Frances Jones*, and *Rebecca Jones*, wherein is set forth, That the Defendants, the 20th of *August*, in the 34th Year of this King, at *Epsom* in your County, did conspire the Ruin and utter Destruction of the Lady *Henrietta Berkeley*, Daughter of the Right Honourable *George Earl of Berkeley*; and for the bringing about this Conspiracy, they have seduced her to desert her Father's House, tho' she be under the Age of 18 Years, and under the Custody and Government of her Father; and solícited her to commit Whoredom and Adultery with my Lord Grey, who was before married to the Lady *Mary*, another Daughter of the Earl of *Berkeley*, and Sister to the Lady *Henrietta*. That after they had thus inveigled her, they did upon the same 20th day of *August*, carry her away out of the House, without the Earl's Licence, and against his Will, to the Intent she might live an ungodly and dishonourable Life with my Lord Grey. And after they had thus carried her away, they obscured her in secret places,

places, and shifted about from place to place, and continued this Course of Life ever since. And this the Information says, is to the Displeasure of Almighty God, the utter Ruin of the young Lady, the Grief and Affliction of her Friends, the evil Example of all others in the like Case offending, and against the King's Peace, his Crown and Dignity. To this all these Defendants have pleaded *Not Guilty*; if we shall prove them or any of them Guilty of any of the Matters charged in this Information, you shall do well to find them Guilty.

Mr. *At. Gen.* My Lord, and Gentlemen of the Jury, The Course of our Evidence will be this; That this unhappy Gentleman, my Lord Grey, has for four Years together, prosecuted an Amour with this young Lady; and when it came to be detected (some little Accident discovering somewhat of it) my Lady Berkeley did find there was some Business of an extraordinary nature between them, and thereupon forbid my Lord Grey her House. My Lord Grey he made many pretences to my Lady, that he might come to the House to give them a Visit before he departed, being to go into the Country; and he takes that opportunity to settle this matter of conveying the young Lady away in a very short time. And early on the Sunday Morning, she was, by *Charnock*, another of the Defendants, conveyed from the House of my Lord Berkeley at *Epsom*, and brought here to *London*. We shall in the Course of our Evidence shew how she was shifted from place to place, and the several pursuits that were made in search after her. We shall discover to you, how she was hurried from one Lodging to another, for fear of Discovery. Nay, we shall prove, that my Lord Grey has owned and confessed that he had her, that she was in his Care and Custody, and that he owned the several Instances of his Amours. But I had rather the Evidence should speak it, than I open so much as the Nature of it.

Mr. *Sol. Gen.* My Lord, we shall call our Witnesses, who will very fully make out this Evidence that Mr. *Attorney* has opened to you. That my Lord Grey did a long time make Love to this young Lady, tho' he were before married to her Sister. This Treaty was discover'd by my Lady Berkeley, last Summer, upon an Accident of surprizing the young Lady in writing a Letter to my Lord, and thereupon my Lady Berkeley chargeth my Lord Grey with these Applications to her Daughter that did so much misbecome him. My Lord Grey was then so sensible of his Fault, that he seem'd very full of Penitence, and assured my Lady, he would never do the like again, and earnestly desired her by all means, to conceal it from my Lord Berkeley; for if this should once come to be known to him, he and the young Lady would not only be ruined, but it would occasion an irreparable Breach between their two Families, and of all Friendship between my Lord Berkeley and him. And therefore he desired my Lady Berkeley (who had justly forbid him her House for this great Crime) lest the World should inquire into the Causes of it, and so it should come to be known, that his Banishment from her House, might not be so soon or sudden: But he begged of her Ladyship, that he might be permitted to make one Visit more, and with all the Protestations in the World assured her, it was not with any purpose of Dishonour, that he de-

sired to come and see her; but that his Departure might be by degrees, and so the less taken notice of. When my Lady had thus charged my Lord with his unworthy Carriage to her Family, and he had seem'd thus penitent for it; she charges her Daughter also, with her giving any allowance to these undecent Practices of my Lord's; she thereupon falls down on her Knees to her Mother, to ask her Pardon for her great Offence, and with Tears in her Eyes, confess'd she had done very much amiss, and did humbly hope she might obtain her Forgiveness for it, being young, and seduc'd by my Lord Grey, and promised she would see him no more, nor have any thing more to do with him. My Lord Grey he is permitted to come once more to the House, upon those Asseverations and Promises of his, that it should be with no dishonourable purposes in the World. It was, it seems, in his way to his own House at *Sussex*, but coming thither, he takes an occasion to continue there, and stay a little too long for a Visit; whereupon my Lady Berkeley began to suspect it was not a transient Visit he came to make at her House, but that he had some ill design in prosecution of the same Fault that he had been so long guilty of. And that Suspicion of her's was but too well grounded, as appear'd afterwards. Our Witnesses will tell you, that my Lord Grey, just before his Departure, was observed to be very solicitous and earnest with his Man *Charnock* (whom we shall prove by undeniable Evidence to be the Man that convey'd her away) giving him some Directions with great earnestness, what to do was indeed not heard, but the Event will plainly shew it. For my Lord Grey himself, he went on his Journey into *Sussex*, and lay at *Guildford* that Night she was carried away, and the next Morning she was missing. Thereupon my Lady sends after my Lord Grey, justly suspecting him to be guilty of this Violence and Outrage offered to her Daughter and Family, and they overtook him at *Guildford* before he was got any further on his Journey, and there acquaint him the Lady was carried away, and that my Lady suspected (as well she might) he knew whicher. Then immediately he makes haste up to Town, and writes my Lady a Letter, that truly he would take care to restore Peace to the Family that by his Folly had been so much disturbed: And there were some hopes of retrieving the matter, that this Scandal upon so noble a Family might not be made publick; for certainly an Offence of this nature was not fit should be so, nor indeed was ever heard of in any Christian Society; I am sure, I never read of any such Cause in the Courts of Law. And it was impossible any way to have prevented the Scandal, but that which my Lady took, to pass over all, by desiring to have her Child restored again to her, before such time as it was gone so far, as there is too great Reason to suspect it now is. But after that, my Lord Grey was so far from performing what he had so solemnly promised, and making the matter up, that he stood upon Terms; he was Master of the Lady, and he would dispose of her as he thought fit: Third Persons and Places must be appointed where she must be disposed of; with Capitulations, that he should see her as often as he thought fit; which was (if possible) a worse Indignity than all that he had done before.

We shall prove to your Lordship, that he did, a long time before this Violence was offered, make applications to this young Lady, and that must (as any Man will believe) be upon no good Account. We shall shew all the base Transactions in carrying away the Lady, after that Confidence which my Lady reposed in his Protestations to do nothing dishonourably, so as to admit him to make a Visit; which certainly was the greatest Breach of the very Laws of human Society, against all the Laws of Hospitality, besides the great Transgression of the Laws of God and Men. Yet even then, he seduced the Lady away. For we shall plainly prove she was carried away by his Coach-man that once was, afterwards his Gentleman, and how she was from time to time conveyed to and fro.

Mr. Serj. Jefferies. This Story is indeed too melancholy to be often repeated, the Evidence had better tell it: Only this one Aggravation I would take notice of, which will be made out in the proof to you of this matter charged; and that is this, That my Lord Grey, after such time as it was known she was in his Power, gave one Reason for his not delivering her up (and I am sorry to see his Lordship should think it a Reason) he had inquired how far the Law would extend in such a case, and that he knew, and could give a Precedent for it (which the Witness will tell you of) that the Law could not reach him; and that as long as he had run such a Course for obtaining that which was his greatest Pleasure, he would not now part with her, but upon such Terms, that he might have access to her when he pleased. To such a height of Confidence was this Gentleman arrived, in this barbarous and infamous Wickedness. But as I said, it is a Story too black to be aggravated by any thing but by it self; we shall therefore call our Witnesses, and prove our Fact.

About this time the Lady Henrietta came into the Court, and was set by the Table at the Judges Feet.

Earl of Berkeley. My Lord, my Daughter is here in Court, I desire she may be restored to me.

Mr. Serj. Jefferies. Pray, my Lord Berkeley, give us leave to go on, it will be time enough to move that anon. Swear my Lady Berkeley — (which was done, but she seem'd not able to speak.) —

Mr. Sol. Gen. I perceive my Lady is much moved at the sight of her Daughter. Swear my Lady Arabella her Daughter. (Which was done.)

Mr. Serj. Jefferies. Pray, Madam, will you acquaint my Lords the Judges, and Jury, what you know concerning the Letter you discovered, and how you came by that discovery?

Lady Arabella. My Mother coming to my Lady Harriett's Chamber, and seeing there a Pen wet with Ink, examined her where she had been writing. She, in a great Confusion, told her she had been writing her Accounts. My Mother not being satisfied with her Answer, commanded me to search the Room. Her Maid being then in the Room, I thought it not so much for her Honour to do it then. I followed my Mother down to Prayers; after Prayers were done, my Mother commanded my Lady Harriett to give me the Keys of her Closet and her Cabinet. When she gave me the Key, she

put into my Hands a Letter, which was written to my Lord Grey, which was to this effect. — *My Sister Bell did not suspect our being together last Night, for she did not hear the Noise. Pray come agen Sunday or Monday, if the last, I shall be very impatient.* — I suppose my Lady Harriett gave my Lord Grey Intelligence that this was found out; for my Lord Grey sent his Servant to me, to acquaint me he desired to speak with me. When he came in first, she (I mean my Lady Harriett) fell down upon the Ground like a Dead Creature. My Lord Grey took her up, and afterwards told me, said he, *You see how far it is gone between us*; and he declared to me, he had no Love, no Consideration for any thing upon Earth but for her; *I mean dear Lady Hen*, said he to me; for I say it just as he said it. And after this, he told me, he would be revenged of all the Family, if they did expose her. I told him it would do us no Injury, and I did not value what he did say; for my own particular, I defied him and the Devil, and would never keep Counsel in this Affair. And afterwards, when he told me he had no Love, no Consideration for any thing upon Earth but her, I told my Lady Harriett, *I am very much troubled and amazed, that you can sit by and bear my Lord Grey say and declare, he has no Love for any but you, no Consideration for any one upon Earth but you, when it so much concerns my Sister; for my part, it stabs me to the Heart, to hear him make this Declaration against my poor Sister Grey.* —

[Here she stopt a while.]

Mr. Serj. Jefferies. Pray go on, Madam.

Lady Arabella. After this she said nothing; I told her I suspected my Woman had an Hand in it, and therefore I would turn her away. This Woman, when my Lady Harriett ran away, being charged with it, swore she had never carried any Letters between them; but after my Mother's coming to London, both the Porter at St. John's, and one Thomas Plomer accused her that she had sent Letters to Charnock, who was my Lord Grey's Coach-man, now his Gentleman. I told her then, I did much wonder, she being my Servant, should convey Letters between them without my knowing: She then confess'd it to me, but withal she told me, *How could I think there was any ill between a Brother in Law and a Sister?* And upon this she confess'd to me she had sent Letters to Charnock, tho' before she had forsworn it.

Mr. At. Gen. Madam, have you any thing further to testify in this Cause? Have you any Matters that you remember more?

Lady Arabella. There is more of it to the same effect; but all of it is only to this effect.

L. C. J. My Lady Arabella, pray let me ask you, have you any more to say to this Matter?

Lady Arabella. It is all to this purpose.

Mr. Serj. Jefferies. Then if you please, Madam, to turn now your Face this way towards the Gentlemen of the Jury, who have not heard what you said, and give them the same relation that you gave to the Court; and pray be pleas'd to lean over the Seat, and expose your self a little, and let them have the same Story you told before, and pray tell the time when it was.

[Then she turned her Face towards the Bar.]

Lady Arabella. It was in July, Sir.

Mr. Serj. Jefferies. Pray, Madam, tell what happen'd then.

Lady

Lady Arabella. In July last, some time then, my Mother came into my Lady Harriett's Chamber, and seeing a Pen wet with Ink, she examined her who she had been writing to. She, in great Confusion told her, she had been writing her Accounts, but my Mother was not satisfied with that Answer. — The sight of my Lord Grey doth put me quite of Countenance and Patience. —

[Here she stop'd again.]

[My Lord Grey then was by the Clerks under the Bar, and stood looking very stedfastly upon her.]

L. C. J. Pray, my Lord Grey, sit down (which he did) It is not a very extraordinary thing, for a Witness, in such a Cause, to be dashed out of Countenance.

E. of Berkeley. He would not, if he were not a very impudent barbarous Man, look so confidently and impudently upon her.

Mr. Serj. Jefferies. My Lord, I would be very loth to deal otherwise than becomes me, with a Person of your Quality, but indeed this is not so handsome, and we must desire you to sit down. Pray go on, Madam.

Lady Arabella. After this, my Mother commanded me to search my Lady Harriett's Room; Her Maid being then in the Room, I thought it not so much for her Honour to do it then. I followed my Mother down to Prayers. After Prayers were done, my Mother commanded my Lady Harriett to give me the Keys of her Cabinet and of her Closet, and when she gave me the Keys, she put a Note into my Hand, which was to my Lord Grey; and that was to this Effect — *My Sister Bell did not suspect our being together last Night, for she did not hear any Noise: Pray come again Sunday or Monday, if the last, I shall be very impatient.* — I suppose my Lady Harriett gave my Lord Grey intelligence of this, for he sent a Servant to tell me he desired to speak with me. Upon his first coming in, my Lady Harriett fell upon the Ground like a Dead Creature, and my Lord Grey took her up, and said, *Now you see how far it is gone between us: I love nothing upon Earth but her, I mean dear Lady Hen, said he to me, and if you do expose her, I will be revenged upon you and all the Family, for I have no Consideration for any thing but her.* After that I told him, We defied him, he could do us no Injury; and for my own particular, I defied him, and the Devil and all his Works, and would not have any thing to do with such a Correspondence. After this, I told my Lady Harriett, I was much troubled and amazed, that she should sit by and hear my Lord Grey, her Brother in Law, say he had no Consideration for any thing on Earth but her. For my part, said I, Madam, it stabs me to the Heart, to hear this said against my poor Sister Grey. I told her I suspected my Woman had an Hand in this Affair, and therefore I would put her away. Afterwards, the same Day my Lady Harriett run away, this Woman came to me; and I then told her, *You have ruined her, and asked her, Why would you send Letters between my Lord Grey and my Lady Harriett?* She denied it, and swore she never did it, but when we came to London, the Porter of St. John's came, and accused her of conveying Letters to Charnock, my Lord Grey's Gentleman, formerly his Coach-man. I then asked her again about it; she then acknowledged to me she had done it, But Madam, said she, how could I think there could be any prejudice or ill between a Brother in Law and a Sister

in Law? Said I, *Were not you my Servant? Why did you not tell me? Besides, you know we have all reason to hate Charnock for a great many things.* This is all I have to say that is material, all else is to the same effect.

Mr. Serj. Jefferies. Now this Matter being thus discovered to the Countess of Berkeley, this unfortunate Young Lady's Mother; she sent for my Lord Grey, and we shall tell you what happen'd to be discoursed between them two, and between the Lady and her Mother, and what Promises of Amendment he made. My Lady Berkeley, pray will you tell what you know.

[She seem'd unable to do it.]

— She is very much discomposed, the sight of her Daughter doth put her out of Order.

Lady Arabella. I have something more to say, that is, I told my Lady Harriett, after my Lord Grey had made his declaration of his Love to my Sister, to me, That if ever he had the Impudence to name her Name to me, I would immediately go to my Father, and tell him all.

[Then the Countess lean'd forward, with her Hood much over her Face.]

Mr. At. Gen. Pray, my Lady Berkeley, compose your self, and speak as loud as you can.

Lady Berkeley. When I first discovered this unhappy Business, how my Son in Law, my Lord Grey, was in love with his Sister, I sent to speak with him, and I told him he had done barbarously and basely, and falsely with me, in having an Intrigue with his Sister in Law. That I looked upon him next my own Son, as one that was engaged to stand up for the Honour of my Family, and instead of that, he had endeavour'd the Ruin of my Daughter, and had done worse than if he had murdered her, to hold an Intrigue with her of Criminal Love. He said, he did confess he had been false, and base, and unworthy to me, but he desired me to consider (and then he shed a great many Tears) what it was that made him guilty, and that made him do it. I bid him speak. He said, he was ashamed to tell me, but I might easily guess. I then said, What? Are you indeed in Love with your Sister in Law? He fell a weeping, and said, he was unfortunate; but if I made this Business Publick, and let it to take Air (he did not say this to threaten me, he would not have me to mistake him) but if I told my Lord her Father, and his Wife of it, it might make him desperate, and it might put such Thoughts into his Wife's head, that might be an occasion of parting them; and that he being desperate, he did not know what he might do, he might neither consider Family, nor Relation. I told him this would make him very Black in Story, tho' it were her Ruin. He said that was true, but he could not help it; he was miserable, and if I knew how miserable, I would pity him: He had the Confidence to tell me that. And then he desired, tho' he said I had no reason to hear him, or take any Counsel he gave me (and all this with a great many Tears) as if he were my Son Dursley, that I would keep his Secret. For my Lord, if he heard it, would be in a great Passion; and possibly, he might not be able to contain himself, but let it break out into the World. He may call me Rogue and Rascal perhaps in his Passion, said he, and I should be sorry for it, but that would be all I could do, and what the evil Consequence might be, he knew

knew not, and therefore it were best to conceal it. And after many words to pacify me, tho' nothing, indeed, could be sufficient for the Injury he had done me; he gave it me as his Advice, that I would let my Daughter *Harriett* go abroad into Publick Places with my self, and he promised, if I did, he would always avoid them. For a Young Lady to sit always at Home, he said, it would not easily get her out of such a thing as this. And upon this, he said again, he was to go out of Town with the D. of M. in a few Days, and being he had been frequently in the Family before, it would be looked upon as a very strange thing, that he went away, and did not appear there to take his Leave. He promised me, that if for the World's sake, and for his Wife's sake (that no one might take notice of it) I would let him come there; and sup before he went into the Country, he would not offer any thing, by way of Letter, or otherwise, that might give me any Offence. Upon which I did let him come, and he came in at Nine a Clock at Night, and said, I might very well look ill upon him, as my Daughter also did (his Sister *Bell*) for none else in all the Family knew any thing of this Matter but she and I. After Supper he went away, and the next Night he sent his Page (I think it was) with a Letter to me, he gave it to my Woman and she brought it to me; where he says that he would not go out of Town.—If your Lordship please I will give you the Letter—But he said, he fear'd my apprehensions of him would continue.—There is the Letter.

L. C. J. Show it my Lord Grey, let us see if he owns or denies it.

Lord Grey. Yes, pray do, I deny nothing that I have done.

Mr. Just. Dolbin. Be pleased, Madam, to put it into the Court.

Mr. At. Gen. It is only about his keeping away.

L. C. J. Shew it my Lord Grey.

Mr. Serj. Jefferies. With submission, my Lord, it is fully proved without that.

L. C. J. Then let the Clerk read it, Brother.

Cl. of the Crown. There is no Direction, that I see upon it, it is Subscribed Grey.

[Reads.]

MADAM,

AFTER I had waited on your Ladyship last Night, Sir Thomas Armstrong came from the D. of M. to acquaint me that he could not possibly go into Suffex; so that Journey is at an end. But your Ladyship's apprehensions of me I fear will continue: therefore I send this to assure you, that my short stay in Town shall no way disturb your Ladyship; if I can contribute to your Quiet, by avoiding all places where I may possibly see the Lady. I hope your Ladyship will remember the promise you made to divert her, and pardon me for minding you of it, since it is to no other end that I do so, but that she may not suffer upon my Account: I am sure, if she doth not in your Opinion, she never shall any other way. I wish your Ladyship all the Ease that you can desire, and more quiet Thoughts than ever I expect to have. I am, with great Devotion,

Your Ladyship's,

Most Humble, and

Obedient Servant,

Grey.

Mr. At. Gen. Madam, will you please to go on with your Evidence.

Lady Arabella. I have one thing more to say: After this, three or four Days after this ugly Business was found out, I told my Lady *Harriett*, she was to go to my Sister *Dursley's*. She was in a great Anger and Passion about it, which made my Mother so exasperated against her, that I was a great while before I got my Mother to go near her again.

Mr. Serj. Jefferies. My Lady *Berkeley*, will you please to go on.

Lady Berkeley. When I came to my Daughter (my wretched unkind Daughter, I having been so kind a Mother to her, and would have died rather (upon the Oath I have taken) than have done this, if there had been any other way to reclaim her,) and would have done any thing to have hid her Faults, and died ten times over, rather than this Dishonour should have come upon my Family. This Child of mine, when I came up to her, fell into a great many Tears, and begged my Pardon for what she had done, and said, she would never continue any Conversation with her Brother in Law any more, if I would forgive her; and she said all the things that would make a tender Mother believe her. I told her, I did not think it was safe for her to continue at my House, for fear the World should discover it, by my Lord Grey's not coming to our House as he used to do; and therefore I would send her to my Son's Wife, her Sister *Dursley*, for my Lord Grey did seldom or never visit there, and the World would not take notice of it. And I thought it better and safer for her to be there with her Sister, than at home with me. Upon which this ungracious Child wept so bitterly, and begg'd so heartily of me that I would not send her away to her Sister's, and told me, it would not be safe for her to be out of the House from me. She told me, she would obey me in any thing; and said, she would now confess to me, tho' she had denied it before, that she had writ my Lord Grey word that they were discovered, which was the reason he did not come to me upon the first Letter that I sent to him to come and speak with me. And she said so many tender things, that I believed her Penitent, and forgave her, and had Compassion upon her, and told her (tho' she had not deserved so much from me) she might be quiet (seeing her so much concerned) I would not tell her Sister *Dursley* her Faults, nor send her thither, till I had spoken with her again. Upon which, she, as I thought, continuing Penitent, I kissed her in the Bed when she was Sick, and hoped that all this ugly Business was over, and I should have no more Affliction with her, especially if my Lord removed his Family to *Durdants*, which he did. When we came there, she came into my Chamber one Sunday Morning before I was awake, and threw her self upon her Knees, and kissed my Hand, and cried out. Ob Madam! I have offended you, I have done ill, I will be a good Child, and will never do so again; I will break off all Correspondence with him, I will do what you please, any thing that you do desire. Then, said I, I hope you will be happy, and I forgive you. Ob! do not tell my Father (she said) let not him know my Faults. No, said I, I will not tell him; but if you will make a Friend of me, I desire you will have no Correspondence with your Brother in Law; and

and tho' you have done all this to offend me, I will treat you as a Sister more than as a Daughter, if you will but use this Wicked Brother in Law as he deserves. I tell you that Youth and Vertue and Honour, is too much to sacrifice for a base Brother in Law. When she had done this, she came another day into my Closet and there wept very much, and cry'd out, *Oh Madam! 'tis he, he is the Villain that has undone me, that has ruined me, Why?* said I, *What has he done?* *Oh!* said she, *he hath seduced me to this.* *Oh!* said I, *fear nothing, you have done nothing I hope that is ill, but only hearkning to his Love.* Then I took her about the Neck and kissed her, and endeavoured to comfort her. *Oh Madam!* said she, *I have not deserved this kindness from you; but 'tis he, he is the Villain that hath undone me: But I will do any thing that you will command me to do; if ever he send me any Letter, I will bring it to you unopened; but pray do not tell my Father of my Faults.* I promised her I would not, so she would but break off all Correspondence with him.—

[Here she swooned, and soon after recovered and went on]

—Then my Lord Grey's Wife, my Daughter Grey, coming down to Durdants, he was to go to his own House at Up-Park in Suffex, and he writ down to his Wife to come up to London.— It is possible I may omit some Particular things that were done just at such or such a time, but I speak all I can remember in general. My Lord Grey, when I spoke to him of it, told me, he would obey me in any thing, if I would banish him the House he would never come near it; but then he pretended to advise me like my own Son, that the World would take notice of it, that therefore it would be better for me to take her abroad with me, he would avoid all places where she came, but he thought it best for her not to be kept too much at Home, nor he absolutely forbid the House, but he would by degrees come seldomer, once in six Weeks or two Months. But to go on to my Daughter Grey's coming down to Durdants; he writing to his Wife to come up to London, that he might speak to her before he went to his own House at Up-Park, my Daughter Grey desired he might come thither, and it being in his way to Suffex, I writ him word, that believing he was not able to go to Up-Park in one Day from London, he might call at my Lord's House at Durdants, and dine there by the way, as calling in, intending to lie at Guilford, for it is just the half way to Guilford. He, instead of coming to Dinner, came in at Nine a Clock at Night (I am sure it was so much) for it was so dark, we could hardly see the Colour of his Horses, from my Lord's great Gate, to the place where we were in the House: And coming at that time of Night, I thought if I turned him out of the House, my Lord would wonder at it, and so would all the Family. Therefore I was forced, as I then thought in point of discretion, to let him lie there that Night, which he did, and he told me, *Madam, I had not come here, but upon your Ladyship's Letter, nothing else should have brought me.* Because I was to give him leave to come, knowing the Faults he had committed against the Honour of our Family. Upon which I told him, *My Lord, I hope you have so much Honour and Generosity in you, after the Promises you have made me, and the Confidence and In-*

dulgence I have shewn you, that you will give my Daughter no Letters, and I will look to her otherwise, that you shall have no Conversation with her. He desired me to walk up with him into the Gallery, and there he told me he had brought no Letters, and would have had me looked in his Pocket. I told him that would be to no purpose, for his Man Charnock (whom we knew he did not prefer from being his Coach-man to be his Gentleman, but for some extraordinary Service he did him, or he thought he would do him) might have Letters enough, and we be never the wiser: But I trusted to his Honour and his Christianity; and I told him, that his going on in any such way would be her utter Ruin. He told me he would not stay there any longer than the next Day; nay, he would be gone immediately if I pleased, and he sent his Coach to London, and had nothing but Horses left. But his Wife desiring her Husband to stay, I had a very hard Task to go through, being earnestly prest, both by her and my own Lord's importunities for his stay. But my Lord Grey, whilst he was there, did entertain me with his Passion, he had the Confidence to do it, and he wished himself the veriest Rake-hell in the World, so he had never seen her Face since he was married. And, said he, *Madam, you will always think me a Villain, and never have a good Opinion of me, I shall be always unfortunate, both in my self, and your bad Opinion of me.* Seeing this, I thought it was time to do something more; and I told him that Night he should stay no longer, he should be gone; and his Wife seemed to be much concerned, and would fain have him stay. For by this time she began to find out that there was some disorder in her Mother and the Family, tho' she knew not what it was; and she sent her Sister Lucy to beg he might stay: I told her I would not suffer it: However, she proposed an Expedient how her Sister Harriett should take Physick, and keep her Chamber while he was there. That I was in a sort compelled to do, and I told him, upon their importunity for his stay, that his Sister Harriett should be seen no more by him, but take Physick while he stayed there: To which he replied, *Madam, indeed it is rude for me to say it to you, but I must say it, give me my Choice, either to be drown'd or hanged.* Upon this I was extremely disturbed, and the next Morning, I told him, I was not satisfied he should stay in England; he had ordered his Wife to go into France, and she was to go within a Month after, I would have him go with her; he told me, he had Law-Suits and he could not: I told him, he had told me before, they were of no great consequence, and therefore they could not hinder him; and I pressed him very much, and I fell into a great Passion at last; and told him, if he would not go, I would tell her Father, and he should take care of her, to send her where she should be safe enough from him. For I was sensible the World would take notice if he came not thither; and said I, *I am not able to bear you should.* Upon this, he promised me with all the Oaths, Imprecations and Promises in the World, that he would go and follow his Wife into France at Christmas, and stay there 8 Months; and by that time, I did hope this unfortunate miserable Business might be over: For I had a great kindness for my Child, and would have done any thing to save her,

her, if it had been in my Power, or would yet do any thing: I would give my Life that the World did not know so much of it as now it must this Day. The World knows I had always the greatest Kindness and Tenderneſs for her, which was ſuch, that ſome that are now here have ſaid ſince, that it was my Indulgence to her, and not making it known to my Lord, that encouraged this laſt ill Buſineſs. And thereupon my Lord Grey was ordered by me to go away, and he promiſed me ſo to do, which was upon Saturday. I then went up to her Chamber and ſaw her very melancholly, and did what I could to comfort her. Said I, *I warrant you, by the Grace of God, do but do what you ought, and I will bring you off of this Buſineſs, be chearful, and be not ſo much caſt down* (for I thought ſhe was troubled at my Carriage to her) *and tho' I ſaid ſome ſevere things to you at Dinner* (as I did talk of her going away, and being ſent abroad) *be not troubled, for I only meant it out of Kindneſs to you; for all I deſign, is only to ſeek an Occaſion of getting him away; and therefore, as long as he ſtays, I will ſeem to whisper with you, and look frowningly upon you, that if he hath any Tenderneſs for you, he may ſee I am angry with you, and do the more to leave you at quiet: But take no notice of it, for I now ſmile to you, tho' I frowned before him, be not affrighted.* In the Afternoon I told her the ſame thing again. But then, ſaid ſhe, *he will ſhew my Letters to him, and that will ruin my Reputation for ever, and that troubles me, but yet it need not, for I never writ to any Man but him, and if he doth ſhew them, he will expoſe himſelf for a baſe unworthy Man, and I can but deny it, and he can never prove it.* This is true, ſaid I, *and very well ſaid, and therefore be not afraid of him, but truſt to the Friendſhip of your Mother, and do as you ought to do, and I am confident we ſhall bring you clear off from this ugly Buſineſs.* And then ſaid ſhe, *But oh Madam! my Siſter, my Siſter Grey, will ſhe forgive me this?* I told her, her Siſter Grey was good-natured and religious, and I made no doubt ſhe would forgive her the Folly of her Youth, and if ſhe would take up yet, ſhe was young, and her Siſter would impute it to that, and, ſaid I, *I am ſure ſhe will forgive you; and I told her, I would do all that lay in my power to aſſiſt her; and I bid her be chearful and truſt in God and in my Friendſhip.* She was to blame, indeed, ſhe acknowledged, but ſhe was young, and he was cunning, and had made it his Buſineſs to delude and intice her. I told her it was true, and therefore now ſhe muſt conſider with her ſelf, what was to be done to bring her off; which I doubted not, if ſhe would do but as ſhe ought; ſhe promiſed me ſo to do; and yet that very Night when I was in my Sleep ſhe ran away. —

[Here ſhe ſwooned again.

Mr. Serj. Jefferies. What time went my Lord Grey away, Madam, that day?

Lady Berkeley. He went away about four a Clock in the Afternoon.

Mr. Serj. Jefferies. And the enſuing Night the Lady was gone?

Lady Berkeley. Yes, that Night ſhe went away too.

Mr. Serj. Jefferies. My Lord, I crave leave to acquaint you with one Circumſtance that has been already hinted, that is about Charnock, a Perſon that is taken notice of by both the Ladies that have given Evidence, and one of the Defendants in this Information. This Man, as

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they ſeem to intimate, for ſome extraordinary Service he had done my Lord Grey, or was deſigned for the doing of, was removed from the Degree of his Coach man, to the waiting upon him in his Chamber. He at this time came with my Lord Grey to Durdants, a Houſe of my Lord Berkeley's near Eſſom, and which was in the way to my Lord Grey's Houſe in Suffex, that is called Up-Park. And they being there, notwithstanding all thoſe Proteſtations and Promiſes made by my Lord Grey to his Lady Mother, as you have heard, to meddle no more in this matter, yet we ſhall give you an account, how that the Day before the Night that the young Lady went away, my Lord Grey was very importunately buſy with his Man Charnock; what Diſcourſes they had, or what Directions he gave him perhaps may not be known; but his earneſtneſs in talking with him, and his impatience and reſtleſſneſs we ſhall prove; and then give you a very full Proof that Charnock was the Perſon that took her away; and then let the Jury and the Court make the Concluſion.

Mr. At Gen. It may be, my Lord, we ſhall not be able to prove the actual Taking away from thence, but only by undeniable Circumſtantial Proof. Such Impieties uſe not to be acted openly.

L. C. J. Truly, as far as I can ſee, here has been more done barefaced, than one would think ſhould be done in any Chriſtian Nation.

Then a Clergyman that ſtood by was ſworn, but his Name not told.

Mr. Serj. Jefferies. Pray, Sir, will you tell my Lord and the Jury what you know.

Mr. — My Lord, I was at Durdants, my Lord Berkeley's Houſe near Eſſom in Surrey, at the time of this ill Accident, and ſome time after. And upon the Saturday in the Afternoon I (immediately after Dinner was over at my Lord's own Table) walked into the great pav'd Hall; and ſtood in the Door that looked towards the Downs; and my Lord Grey came into the Hall alone, and walked three or four times very thoughtfully, and then leaned upon the Window, and often looked upon the Ground, and within a little while he ſteps into the Steward's Hall, where the Gentlemen were at Dinner, and he calls to Charnock, who came out to him. He takes him out of the Hall to the Foot of the Stair-caſe, and there they talked together a great while, and after ſome time my Lord Grey went away, and Charnock did ſo too, I think to his Dinner again, I cannot tell any thing to the contrary. The Reflection I made upon this Paſſage then was, That my Lord Grey was very punctual in giving his Servant Orders, which I thought he was to carry to London with him, but I ſuſpected nothing of this matter, nor any thing elſe that was ill then. Mr. Charnock then paſſing by me, ſaid I, Mr. Charnock, *How long will it be before you are going?* He made me no Answer, not one word. Thereupon I went into the Library, and between that and Mr. Charnock's Chamber there was but a very thin Wall, and preſently after I came into the Library, my Lord Grey ſent one (as the Meſſenger ſaid) for Mr. Charnock, and he went down to him, as I ſuppoſe, and in a little time came up again. And after that, I do believe I did hear another Meſſenger come from him to Mr. Charnock again, I will not ſwear that, for I am not ſure of it; becauſe, being at that time buſy in reading, I made

made no Reflection upon it till afterwards. But about a Fortnight or three Weeks after, there comes a Gentleman to see me at my Lodgings, and falling into discourse what News there was; our first Discourse was of the Lady's being missing; he said, it would be sad he feared when she was heard of. *Why*, said I, *what do you mean?* I suppose Mr. Forrester and she are together, for that was the talk of the Town. No, said he, it is no such thing; but if you will make it a Secret, unless it comes to be made a publick Business, I will tell you; I do not doubt my Lord Grey carried her away with a design to debauch her. That is hard to be believed, said I, I cannot believe it. *Why*, said he, you were there when he went away? Yes, said I, but how long was that before the Lady was missing? said he, It was that Afternoon. Then came into my mind his earnest discourse with Charnock, and that which I observed about it, and the sending so often for him; and I told that Person of it. *Why* Charnock, said he, was the Man that took her away.

Mr. Serj. *Jefferies*. Who was it that said so to you, Sir? Name him.

Mr. — Mr. Rogers, my Lord Berkeley's Chaplain.

Mr. Serj. *Jefferies*. If your Lordship please to observe the particular times, when my Lord Grey was so earnest in giving Charnock Directions, that was on the Saturday at Noon, and it was that Night the young Lady went away.

L. C. J. When came my Lord Grey to my Lord Berkeley's?

Mr. At. Gen. The Tuesday or Wednesday before, I think, some Days it was.

Mr. Serj. *Jefferies*. But upon the Saturday Night it was she went away; this unfortunate Lady that we have produced, her Mother, and so the Lady her Sister, spoke both of their Fears of Charnock. Now we shall prove, that this Charnock was on the Sunday Morning, at eight of the Clock in the Morning here in London, with a young Lady, in what Habit that young Lady was, our Witnesses will tell you; and others will give you an account what Habit this Lady went away in, and then it will be seen who she was. Call *Eleanor Hilton*.

Mr. At. Gen. But if you please, Mr. Serjeant, I think it will be proper first to examine my Lady Lucy, who upon the missing this young Lady followed my Lord Grey to Guilford, and overtaking him, acquainted him with it, and immediately he took Post and came to London. Pray swear my Lady Lucy.

[Which was done, she being in a Box by the Bar.

L. C. J. Well, what do you ask that Lady?

Mr. Serj. *Jefferies*. We produce her, my Lord, to hear what pass'd between her and my Lord Grey at Guilford. Pray, Madam, will your Ladyship acquaint the Court what occasion you had to go to Guilford, and what you said to my Lord Grey, and what he said to you, and did afterwards.

Lady Lucy. My Lord, as soon as my Lady Harriett was missing, supposing my Lord Grey could best give an account where she was, I went after him to Guilford, and he was gone half an hour from thence before I came thither, but by sending Post after him, he was overtaken, and came back to me. I told him my Lady Harriett was gone away, and I conjured him by all that was sacred and dear to him, to prevent so great a Misfortune as this would be to the Family. He

then pretended he did not know any thing of her going, but promised me, that if he could find her out, he would endeavour to perswade her to return Home, but he would not force her. After several Discourses, which it is impossible for me to remember particularly (saying that he had done nothing that was illegal, and if she did not any thing, we could do nothing against him;). He at last parted from me, to go to London, as I suppose. I begged of him that I might be permitted to go along with him, that I might speak to her, supposing I might retrieve this Business, and recover her, before it were gone too far, but he denied it me, and went away. After that I met him, a Day or two after, I think, I cannot tell justly the time, and he pretended, he did not know where she was, but only he knew where to send to her; and he would do all he could to get her to return Home. He was sensible of what a Misfortune this was to the Family. But soon after, he went to Up-Park again, as he said, to shew us that he was not with her. And he afterwards writ me a Letter, wherein he says, he could not perswade her to come Home, but the Conclusion of it was, "He would do all he could to restore Peace and Quiet to the Family, which by his Follies were so miserably disturbed."

Lady Arabella. My Lord, I desire to speak one thing, About six Weeks ago I met my Lord Grey at my Lord Chief Justice's Chamber, and he told me, he had my Lady Harriett Berkeley in his Power, or in his Protection, or to that effect, he said.

Mr. At. Gen. Pray tell, Madam, when that was?

Lady Arabella. About six Weeks ago, I cannot justly say the Day.

Mr. Serj. *Jefferies*. But if your Ladyship pleases, my Lady Lucy, it will very much satisfy the Jury, if you would shew the Letter you speak of.

Mr. Williams. Ay, pray Madam, shew the Letter.

Lady Lucy. It was a Letter before that which he writ to me at Durdants.

L. C. J. When was that Letter you speak of written?

Lady Lucy. About a Week after my Sister was gone, I cannot exactly remember the Day.

Mr. Williams. Pray, Madam, can you produce that Letter?

Lady Lucy. No, I have it not here.

Mr. Serj. *Jefferies*. Then swear *Eleanor Hilton*.

[Which was done.

Mr. Sol. Gen. Is your Name *Eleanor Hilton*?

Mrs. Hilton. Yes, it is, Sir.

Mr. At. Gen. Pray speak out, that my Lord and the Jury may hear you. Do you remember the 20th of August last? Did Charnock come to your House with a young Lady? Did you see her, and what time of the Day was it?

Mrs. Hilton. I cannot tell what Day of the Month it was.

Mr. Serj. *Jefferies*. What Day of the Week was it?

Hilton. It was on a Sunday.

Mr. Sol. Gen. What Month was it in?

Hilton. I cannot tell, truly.

Mr. Serj. *Jefferies*. About what time of the Year was it?

Hilton. About eight or nine Weeks ago, or something more.

Mr. Serj.

Mr. Serj. *Jefferies*. Well, what did you see then ?

Hilton. There was a young Lady that came to our House, she came of her self, *Charnock* he was not with her ; he came before indeed, and asked me if I had any Room to spare, and I shewed him what we had ; he went away, and I saw no more of him ; afterwards, as I said, she came ; but who she was, or what she was, I cannot tell.

Mr. Serj. *Jefferies*. Can you describe her Cloaths ?

Hilton. She had a Coloured Night-gown on, of several Colours ; I cannot say what particular Stuff it was : And she had a Petticoat on White and Red.

Mr. Serj. *Jefferies*. Did you see her Face ?

Hilton. I cannot say I did fully.

Mr. At. Gen. Do you think you should know her again, if you should see her ?

Hilton. I cannot say that.

Mr. Serj. *Jefferies*. (to the Lady Harriett) Pray, Madam, will you stand up a little, and turn up your Hood. [Which she did.

Hilton. Truly, I cannot say that is the Lady.

Mr. At. Gen. Do you believe it was she ?

Hilton. I cannot say it, truly.

Mr. At. Gen. Have you seen her Picture since, and is this Lady like that Picture ?

Hilton. Mr. Attorney. She says, she cannot say it is the same Lady.

Mr. Sol. Gen. Pray, Mistress, to what purpose was she brought to your House ?

Hilton. They did not tell me that.

Mr. At. Gen. Was it not to lodge there ?

Hilton. She staid there but a while, and went away again.

Mr. At. Gen. Whither did she go then ?

Hilton. To one Patten's in Wild-street.

Mr. Serj. *Jefferies*. You went with her, Mistress, Did not you ?

Hilton. Yes, I did so.

Mr. Serj. *Jefferies*. Pray, was there any Letter or Note brought to your House for *Charnock* ?

Hilton. Yes, I brought it to Mrs. *Charnock*.

Mr. Serj. *Jefferies*. Did you hear any Reason given for her Removal from your House ?

Mr. At. Gen. Pray did she go to Bed at your House ?

Hilton. She did lie down.

Mr. Serj. *Jefferies*. What time of the Day was it ?

Hilton. About nine or ten a Clock in the Morning.

Mr. Sol. Gen. Pray, did she say she had been at Church, or what did she say ?

Hilton. She said somewhat to that purpose, she said she was weary.

Mr. Serj. *Jefferies*. What Company came to the Lady, while she was at your House ?

Hilton. No body but Mrs. *Charnock*.

Mr. Serj. *Jefferies*. Did you see Mrs. *Charnock* in her Company ?

Hilton. Yes.

Mr. Serj. *Jefferies*. You saw her come in to her ?

Hilton. Yes.

Mr. Serj. *Jefferies*. Did she behave her self to her, as to a Lady of Quality ?

Hilton. I cannot tell that, truly.

Mr. Serj. *Jefferies*. Why, how did she carry it to her ?

Hilton. Whether she was in Bed or no, I cannot tell ; but when she came in, the young Lady said, How do you Mrs. *Charnock* ? She said, Your Servant, Madam, or to that purpose, I cannot exactly tell.

Mr. Serj. *Jefferies*. You brought the Note to Mrs. *Charnock*, you say ?

Hilton. Yes.

Mr. At. Gen. Did she stay at Mrs. Patten's after that ?

Hilton. I suppose she might.

Mr. Sol. Gen. Pray recollect your self a little, and tell us what Colour was her Mantreau ?

Hilton. Truly, it was all manner of Colours, Red, and Green, and Blue, and I cannot tell what Colours.

Mr. At. Gen. What coloured Petticoat ?

Hilton. Red and White.

Mr. Sol. Gen. How long after this, did you hear my Lord *Berkeley's* Daughter was missing ?

Hilton. A while after.

Mr. At. Gen. How long ? Was it that Week ?

Hilton. I cannot tell, it was not long after.

Mr. At. Gen. Was it the same Lady that came to your House in those Cloaths, that went to Patten's at Night ?

L. C. J. Why, she says she went with her, do not examine her the same things over again.

Mr. At. Gen. Were you examined before Sir *William Turner*, about this Matter ?

Hilton. Yes, I was.

Mr. At. Gen. Was it the Day of the Month you then said it was ?

Hilton. I suppose it might ; I cannot tell the Day of the Month.

Mr. At. Gen. Was it the Month ?

Hilton. It is like it was.

L. C. J. She has fix'd it now to be about eight or nine Weeks ago.

Mr. Serj. *Jefferies*. Did she give any Reason why she was removed ?

Hilton. None at all.

Mr. Serj. *Jefferies*. Now, my Lord, we will bring it down to be this very Lady. My Lady *Arabella*, Pray, Madam, what Cloaths did my Lady *Harriett* go away in ?

Lady *Arabella*. My Lady *Harriett* had such Cloaths as they speak of, I cannot say she went away in her Night-gown, but here is one that can : But there was a striped Night-gown, of many Colours, Green, and Blue, and Red.

L. C. J. She does remember she had such a one, but she cannot say she went away in it.

Mr. Serj. *Jefferies*. Was there not a Chequer'd Petticoat Red and White ?

Lady *Arabella*. She had such a Petticoat, but I cannot say she went away in it ; she had also a White Quilted Petticoat.

Mr. Serj. *Jefferies*. Then swear Mrs. *Doney* (which was done.) My Lord, we call this Gentlewoman to gave an account what Habit she went away in ; for she lay with her always.

Mr. At. Gen. Did you lie with my Lady *Harriett Berkeley*, when she stole away ?

Mrs. *Doney*. Yes indeed, Sir, I did lie in the Chamber that Night, and she went away with her Morning Cloaths, which lay ready for her there, against she did rise in the Morning. It was a striped Night-gown of many Colours, and a Petticoat of White and Red, and a Quilted Petticoat.

Mr. At. Gen. Was she so habited, that came to the House, Mrs. Hilton?

L. C. J. She has said so already.

Mr. Serj. Jefferies. Now you are pleased to observe, that besides the Circumstance of the Cloaths, there is mention made of a Note; Mrs. Hilton says she received a Letter and gave it to Mrs. Charnock; and that soon after they went to Patten's House in Wild-street. We shall call the People of that House, to give an account what Gentlewoman it was that came to their House. Pray swear Mr. Patten.

[Which was done.]

Mr. Sol. Gen. Pray, will you tell my Lord and the Jury, whether Mr. Charnock and his Wife came to your House, and with whom, and about what?

Mr. Patten. My Lord, about the latter end of July, or the beginning of August, Mr. Charnock and his Wife came to my House when we were just removed, to take some Lodgings for a Person of Quality; but they did not say who. Said I then, *We have no Lodgings now ready*; said they, *We shall not want them yet, till towards the middle of September*. Says my Wife, *I suppose by that time our House will be ready; and if it will do you any kindness you may have it*. About the 20th of August, being Sunday, Mrs. Hilton brings a Gentlewoman with Mrs. Charnock, to my House; and when they were come, they called me up, and seeing them all three there, I told Mrs. Charnock, *We have no Lodgings fit for any body of any Quality, at present*. Says Mrs. Hilton, *Let's see the Candle*, and runs up stairs into a Room where there was a Bed, but no Hangings; when they came in, they locked themselves into the Room. My Wife's Daughter being in the House, I desired her to send for my Wife, who was then abroad; which she did. They desired my Wife's Daughter to lodge with the Gentlewoman that they brought thither, and they were making the Bed ready. I sent them up word, *That I desired they would walk into the Dining-room for the present*; they sent me word down again, *They did not desire to do that, for they were afraid the Light would be seen into the Street*; and withal, if any body came to enquire for Mrs. Charnock or Mrs. Hilton, I should say there was no body there. Presently after, I think (or before, I cannot justly say which) a Letter was carried up stairs to them, upon which they came down stairs, and away they went up the Street, and when they were gone a little way on foot, Mrs. Charnock desired them to turn back again, for she hoped to get a Coach, and she did so, and went away.

Mr. At. Gen. So they did not lodge there?

Mr. Patten. No, they did not.

Mr. Serj. Jefferies. Did they say any thing of care that was to be taken, how they pass'd by my Lady Northumberland's?

Mr. Patten. My Lord, I do not well remember that: But the next day Mrs. Hilton comes again to our House, and she runs up Stairs into the same Room, and sits her down upon the Bed-side. Said I to her, Mrs. Hilton, *What Gentlewoman was that that was here last Night*? Says she, *I cannot tell, but I believe she is some Person of Quality, for Mrs. Charnock brought her to our House at seven a Clock in the Morning. But whoever she is, she is much troubled, we could get her to eat nothing, but her Eyes were very Red with Crying, and we came away to*

your House at Night; because hearing some noise of People in the Street, she was afraid some of her Father's Servants were come, but it was only some People that were gathered about to observe the Blazing Star. So we whip'd out of the Door, and so came to your House, for we had never a Back-door out of our own.

Mr. At. Gen. Pray give an Account what Habit the Gentlewoman was in that came to your House.

Mr. Patten. She had a Striped Flower'd Gown, very much sullied, it was slung about her, just as if she had newly come out of Bed. I did see her Face, But when I had just looked upon her, she clapped her Hood together over it presently.

Mr. Serj. Jefferies. Do you think you should know her again if you see her?

Mr. Patten. I believe I might.

Mr. Serj. Jefferies. Pray, Madam, stand up again, and lift up your Hood.

[Which she did.]

Mr. Patten. This is the Lady. I saw her Face twice, once as I told you, and then when she went away, I dop'd down and peep'd up, and looked her in the Face again, tho' she hid it as much as she could.

Mr. At. Gen. Thus we have proved it upon Charnock and his Wife.

Mr. Serj. Jefferies. He gives an Account of the 20th of August, which was the Day after she went from her Father's House. Pray call Mrs. Fletcher.

Mr. At. Gen. We shall now prove, that they went from thence to one Jones's; that my Lord Grey came there to take Lodgings, and after she was brought came thither again, and tho' he changed his Hair into a Perriwig, yet he was known for all his Disguise.

Mr. Sol. Gen. My Lord, you see that it is proved upon three of the Defendants, my Lord Grey, and Charnock, and his Wife; now we shall prove it upon the other two, the Jones's. Swear Mary Fletcher.

[Which was done.]

Mr. Serj. Jefferies. Sweetheart, pray tell the Court, where you lived, and when my Lord Grey came to your House; tell the time as near as you can, and the Day of the Week?

Fletcher. Sir, he came to David Jones's on the Tuesday after my Lady Berkeley was missing.

L. C. J. Where does David Jones live?

Fletcher. At Charing-Cross just over-against the Statue. And living there, my Lord Grey came there in a Hackney-Coach, first on the Monday without a Perriwig, or any thing of that; and desired Mr. Jones to come to the Coach-side, which he did, and after a little Discourse with Mr. Jones, they came both into the House, and went up two pair of stairs to look upon Lodgings. After that, I had order to make ready the Room for some Lodgers who were expected to come that Night, but did not till the next Day. About Tuesday at Nine of the Clock, my Lord Grey comes again in a Coach to the Door, and threw his Cloak over his Face, he was then without his Perriwig too, and desired to speak with Mr. Jones: I and my Fellow Servant standing at the Door, he desir'd to speak with my Master. I went to him and told him, and he came up, and after he had been at the Coach-side, he bid us go down, and keep down in the Kitchen, and would not let us come up any more.

more. And afterwards, my Fellow-Servant and I were bid to go to Bed, and my Mistress shut up the Shop-windows herself.

Mr. Serj. *Jefferies*. Well, go on, what happen'd after that?

Maid. Afterwards there was the Warming-pan, and the Candlestick, and other things were carried up into the Chamber by my Mistress's Sister. Says my Fellow-Servant, *There is some great Stranger sure, come to lodge here, that we must not know of.* Ay, said I, *this is some great Intrigue or other.* After a while came in some Company that stayed all Night. I know not who they were, nor how they came.

Mr. Serj. *Jefferies*. Well, what was done the next Morning?

Maid. I was never admitted into the Room while they were there, but through the opening of the Door I did see one Lady in Bed, but I cannot say who she was, nor what she was.

Mr. At. Gen. Do you know her if you see her again? Look at that Lady; is that she?

Maid. No, I do not know her; I cannot say that is she: My Mistress, and my Mistress's Sister stood both before me, when I just peep'd into the Room, and when she perceiv'd that, I did see her pull the Cloaths over her Face.

Mr. Sol. Gen. How long did she stay there?

Maid. Nine Nights.

Mr. Serj. *Jefferies*. Do you know my Lord Grey well?

Maid. Yes, I have seen him often.

Mr. Serj. *Jefferies*. And did you know him notwithstanding his Disguise?

Maid. Yes.

Mr. Serj. *Jefferies*. What did Mrs. Jones say to you about my Lord Grey?

Maid. She said to us, *What Fools were we, to say this was my Lord Grey, it was a Country Gentleman.*

Mr. Serj. *Jefferies*. But you are sure it was my Lord Grey?

Maid. Yes, I am sure it was he.

Mr. At. Gen. Did any Body else lodge at your House at that time.

Maid. Yes, Captain Fitz-Gerrard.

Mr. At. Gen. What Discourse had you with him about this Lady?

Mr. Williams. You, Woman, did my Lord Grey stay there?

Maid. I cannot say he did.

L. C. J. Mr. Attorney, if the Question you ask, be to introduce another part of your Evidence from Captain Fitz-Gerrard himself, it may be something; otherwise that can be no Evidence against the Defendants, what Discourse was with another.

Mr. Serj. *Jefferies*. It is so, my Lord, And therefore we ask you, Sweetheart, what past between you and the Captain?

Maid. Captain Fitz-Gerrard, the Monday Morning seven-night, after my Lord Grey first came, called me to his Bed-side, and asked me if I knew what Lady that was that lodged in the House, and what Cloaths she wore, and whether she were Young or Old, and whether she were married or no? I told him, I could not tell any thing, for I could never see her.

Mr. Serj. *Jefferies*. Do you know what Linnen she brought with her? Did you wash any for her?

Maid. Yes, one Shift.

Mr. At. Gen. What kind of Shift was it?

Maid. I said, *It could be no Person of Quality, by her Shift.*

Mr. Serj. *Jefferies*. Why so?

Maid. Because the Body was finer than the Sleeves, and Ladies use to make the Sleeves finer than the Body.

[At which there was some laughing.]

Mr. Williams. A very pretty Evidence!

Mr. Serj. *Jefferies*. Pray call Mrs. Doney again, because you shall not make so slight a business of the Shift as you pretend, for such Actions as these must be detected by Circumstances.

Mr. At. Gen. Mrs. Doney, pray did you shew this Woman another of my Lady Harriett Berkeley's Shifts?

Mrs. Doney. Yes, I did.

Mr. Serj. *Jefferies*. Was it the fellow of that she went away with?

Mrs. Doney. Yes, it was.

Mr. Serj. *Jefferies*. Woman, do you believe, upon your Oath, that was the fellow of the Shift you saw?

Maid. Yes, Sir.

Mr. Serj. *Jefferies*. Was the Body of that you saw from this Gentlewoman, finer than the Sleeves?

Maid. Yes, it was.

Mr. At. Gen. Then pray Swear Captain Fitz-Gerrard.

[which was done.]

Mr. Sol. Gen. Pray Sir, will you tell the Court and the Jury, what Passages fell out at your Lodgings?

Capt. Fitz-Gerrard. My Lord, It was my Fortune, six Months ago, to take a Lodging at Mr. Jones's, and while I kept my Lodgings there, I had occasion sometimes to go to Windsor, to wait upon His Majesty; and one Night coming home to my Lodging, my Servant that waits upon me in my Chamber, told me, there was a Lodger lately come to the House, who lay in the upper Rooms. I asked who it was, he told me, the Maid of the House told him it was a Mistress of my Lord Grey's. I asked how long she had been there, he said it was but two or three Days since she came. I never thought of this for four or five Days after, nor thought my self obliged to take notice of the Discourse of the Servant in the House; but being in Covent-Garden in Company, there was some Discourse about my Lady Harriett Berkeley's being gone from her Father's, as it was the talk of the Town. I came home about Nine a Clock at Night, and having no Servant just then ready to wait upon me, Mr. Jones himself came very kindly to put me to Bed. I had some Fancy, upon the Discourse of the Town, this might be my Lady Harriett. Upon which, I said to Mr. Jones, *You cannot but hear of the Report of my Lady Berkeley's being run away from her Father, and I know you have a Dependence upon my Lord Grey, and I have a Suspicion you conceal her in your House.* If you do, said I, you do a very dishonest thing, a very ill thing, and occasion a great deal of trouble and disquiet to a Noble Family. And possibly my Lord and my Lady may not know she is alive; therefore, I desire you as a Friend, to make a discovery of the Lady, that they may know where she is. He seemed very angry upon my saying of this, and told me, *As long as I lodged in his House quietly, I need not trouble my self who lodged there besides.* Upon that I thought more earnestly upon this thing; and I told him again, *I am resolved to go into the Room, and know who* this

this Lady is that lies here, for now I suppose there is something more in it. Says he again, No Body shall offer such a Rudeness in my House. Said I, I assure you I will do it. He grew very angry, but I went from him to my Sword, and was going up. Says he, Pray, Mr. Fitz-Gerrard, do not offer such a thing as this is; you would take it unkindly your self, to have your House searched at this time of Night. Well, said I, upon Condition that I may see her to morrow Morning before she goes away, who she is, I will make no disturbance in your House to Night. Upon that he left the Room, promising me, I should to morrow Morning see who the Lady was. I went out early the next Morning, upon some necessary Business, and coming home between Eleven and Twelve a Clock, said I to him, Now is a very civil time to see this Lady, who she is, for it is not fit you should receive any Person into your House, in such Circumstances, when there is such Cause of a Suspicion. Says he, She is now gone out of the House. And this is all that I can say in this Matter. I never saw the Lady there then, nor did I ever see her in my Life, but once or twice at Epsom.

L. C. J. Did they lock the Door upon you, Captain?

Capt. Fitz-Gerrard. No, they did not.

Mr. Serj. Jefferies. And you know nothing more?

Capt. Fitz-Gerrard. I neither knew when she came, nor who she was.

Mr. At. Gen. Then swear Mr. Smith here, who married one of my Lord Berkeley's Daughters.

[Which was done.]

Mr. Smith. Before my Lord Berkeley made this Affair publick, he used all means possible to know where my Lady Harriett was; and after it was known to him what concern my Lord Grey had in it, there were all Means used to make it up: And discoursing with my Lady Berkeley about it, it was proposed that she should be married, but that would cost a great deal of Money; that my Lord did not stick at, nor my Lady, if any Divine of the Church of England did think it proper to treat with any Person about it, after such a secret Correspondence between her and my Lord Grey. And my Lord said, If my Lord Grey would not prosecute her with any more Visits, he would give a Sum of Money to marry her. Said I, Then, my Lord, will you give me leave to wait upon my Lord Grey in it? He answered, Yes. So I went to him, and offered him that my Lord Berkeley would give 6000 l. with her, if he would place her in a third Hand, where it might be convenient to treat with any one about it. He talked with me as if he knew where she was, but would not discover it. Says he, You must always suppose, I will take your Proposal in this manner, if she is in my Power, which it may be she is, it may be not. Said I, My Lord, you make that (if) only as a Subterfuge, for to be sure, you know where she is. Says he, She is beyond Seas, and if you will give me leave to visit her sometimes, I will promise she shall come again; but that depends upon Time and Tide, it cannot be so very soon. Said I, My Lord, you may as well send Horses to Dover, and so over to Calais, for I suppose she may not be far. He said, it would be a Work of Time, but he would write to her. I desired he would write that Night. For, said I, my Lord, if this Business be taken in time, she may yet be saved, if you will contribute what you can to it. He promised me to write that Night to her, but it would be some time before

she got to Town. Then, discoursing further with my Lord about it. Says he, If I should bring her to Town, I will not use any Force or Persuasion to her, if she be obstinately bent not to come home again, Betray her to be sure I will not. I am sure, my Lord, said I, that your Persuasions would do very much with her, and a great deal of good may come of it, if the Matter be speeded. But, says he, if I should bring her to Town, then my Lord Berkeley would disturb her with my Lord Chief Justice's Warrant. Said I, If you will bring her to Town, I will ask my Lord and my Lady, how long time they will allow for the making up of this Treaty; and in the mean time, she shall be free from any disturbance. Says my Lady Berkeley, when I spoke to her of it, Tho' my Lord Grey has been so barbarous to a Family, that has been so kind to him; yet, if I give him my word, I will keep it inviolably to him; and I do promise him, if he will bring her to any place where my Daughter Lucy may visit her, I will engage there shall be no Search made after her. And if he can contribute to carry her into a Place where she may be safe, and not visit her himself, he shall have 2000 l. to do it. This Message of my Lord's being barbarous, Madam, said I, is not fit for me to carry to my Lord Grey, but you will promise not to take her away, if he bring her to Town, but from the moment you know where she is, she shall be safe. Thereupon my Lord Grey promised to write to her, whether he did or nor, I cannot tell. Afterwards, he said he had writ, but she would not come.

Mr. At. Gen. What Expence has my Lord been at in looking after her?

Mr. Smith. A great Expence, I cannot tell particularly.

Mr. Serj. Jefferies. My Lord, we have but one Witness more, and that is a Gentleman, who, by Order from my Lord and Lady Berkeley, kept my Lord Grey Company, and he will tell your Lordship what my Lord Grey confessed to him, what a Passion he had for the Lady, and what methods he used to get rid of it, but could not. Swear Mr. Craven.

[Which was done.]

Mr. Sol. Gen. Will you tell my Lord and the Jury, whether you were sent by my Lord Berkeley, to be with my Lord Grey at Up-Park, and what pass'd there between you?

Mr. Craven. My Lord, the Wednesday after my Lady Harriett Berkeley went away, my Lady Berkeley told me, my Lord Grey had proffered he would go down into the Country for six Months, to shew that he had no Designs upon her; and therefore, if she would propose some Friend of hers to go along with him to keep him Company, he would be very well satisfied with it; and then my Lady Berkeley told me, she would fix upon no body but me, if he would take me with him. Then I met my Lord Grey on Wednesday Morning at Sir Thomas Armstrong's, and afterwards, went down to his House to him. When I came there, he met me on Horseback, and came up civilly and kindly to me. I thought fit to give him a Caution, having received such Orders from my Lady. My Lord, said I, I am sorry I am forc'd to come upon such an account as this, to be a Guard over your Words and Actions, and I am very much troubled that this unfortunate thing has happen'd, and you are reputed to be the Occasion of it. Says he, I do own, Craven, I have done a very ill thing; but that is past, I cannot help that now; but the thing that is to be thought on is, what is to be done for the future. My Lord, said I, the best way, if I may give you my Advice, were to send her home again,

again before any Report be spread abroad of the Ruffiness. How can that be? Says he, I do not know where she is, but I have had a Letter from her, as I told my Lady, I did believe I should find a Letter here when I came down. I will shew you the Letter, which he did. My Lord, said I, this Letter will be thought as of your own penning before you came out of Town. I cannot tell what they will think, said he, but here it is. Said I, My Lord, I have a great Respect for your Lordship, and do very much desire, for your own Reputation and Honour, as well as theirs, it may be made up in some way before it be too publick. We were discoursing of this. How shall that be done? says my Lord Grey. My Lord, said I, if you would consent to this, to send her over into France to Calais or Diep, we will there find some body that will help her into a Nunnery; and when she is there, she may write to her Mother, that she found she had an Intention to marry her to a Match she could not by any means approve or like of, and therefore she went away to prevent her being forced to it; and this would be as plausible a thing as any in the World. And when that Letter should come, my Lady Berkeley should shew it about to her Friends; nay more, she should go over her self to fetch her back again, that she might receive her into her House with Honour. He said, That was a very plausible thing, and he would do it, if he could tell where she was; but her Letter to him was, that she was gone from her Father, but she did not think fit to let him know where she was, for fear he should deliver her up again. Then my Lord Grey asked me in what Condition they were all at my Lord Berkeley's about it. Said I, They are in such a Confusion and Trouble they are all Mad almost. Says he, How does my Lord bear it? Said I, He is so afflicted that it will go near to break his Heart. Says he, He is indeed one of the Men in the World that is to be pittied; she pitties him very much, but for her Mother she doth not care. One Day when we went out a Shooting, as we did several Days together; Mr. Craven, says he, I will tell you the whole Intrigue between my Lady Harriett and I. I have had a great Affection for her ever since she was a Child, and have always been taking great delight in her Company; and keeping her Company so often till she grew up, my Passion grew to that height, that I could stifle it no longer, but I was forced to tell her of it, and then I could not speak to her of it, but writ. But withal I begged her to take no notice of it to any Body, for if she did, it would ruin us both. She was very angry to hear of it, and neither by writing nor speaking could I perceive she had any Affection for me again, till the Parliament sat at Oxford; and then I did pursue my Love and my Amours, and at last, she one Day told me, said she, I have now consider'd of it, and if you do not leave writing or speaking to me of this Matter, the very first time you write or speak to me again I will tell my Father and Mother of it. That struck him so, he said, that he did not know almost what to say or what to do, and he walked up and down just like a Ghost; but he bid it as well as he could, that it should not be perceived by others. But that Parliament being quickly dissolved, he did intend to go down to Suffex to his House there, being he found she was resolved against admitting his Affection, and he would stay there several Years, till he had weaned himself of his Passion, and by that time she would be disposed of otherwise, and he might be at Ease. And he hiding his trouble as much as he could from my Lord Berkeley and my Lady, forbore to speak to her, but only when he saw her he could not forbear looking earnestly upon her and being troubled.

My Lord Berkeley, not knowing any thing of it, asked him to go to London with us and not to Suffex; he was very much persuaded by my Lord and my Lady to it; and at last, my Lady Harriett Berkeley came to him, and told him, Said she, You are very much persuaded by my Father and Mother to go to London and not to Up-Park, why do not you go with them? Madam, says he, you have stopp'd my Journey to London, you have bindred my going with them, for I will rather suffer any thing than render you any disturbance, and if I go to London with you, I shall not be able to contain my self; but if I go to Suffex, I alone shall have the trouble of it. But one day, when my Lord of Aylesbury was leading my Lady Berkeley, and my Lord Grey was leading my Lady Harriett, she took my Lord Grey's Hand and squeez'd it against her Breast, and there was the first time he perceiv'd she lov'd him again; and then she told him he should go to London with them; and he did go, and from that time, for a twelve month before she went away, he did see her frequently, almost every Night, pursuing his Amour in writing and speaking to her as often as he could have Opportunity. And tho' my Lady Berkeley put a French-Woman to lie with her, yet she did use to rise from the French-Woman, and he did use to see her. And one Day, says he, do not you remember you came to the Chamber Door, and she was angry at your coming, and that the Door was not bolted, and if you had come in, you had found me there?

Mr. Serj. Jefferies. Do you remember any such thing?

Mr. Craven. I do not, unless it were at Durdants. And, says he, you cannot imagine what I have suffered to come to see her. I have been two Days locked up in her Closet without Meat or Drink, but only some Sweetmeats.

Mr. Serj. Jefferies. What did he say of his making Addresses to other Ladies to take off his Passion?

Mr. Craven. He said, He did all he could, for he would fain have avoided bringing such an Infamy upon his own Family and his Lady's, and he did endeavour to cool his Passion, by making Love to two other Ladies, whom he courted, and enjoyed both of them, but yet all did signify nothing, he could not subdue it.

Mr. At. Gen. Pray tell us what Terms he insisted upon, for his parting with her, and what he said the Law was in the Case?

Mr. Craven. I told him, my Lord, besides the Dishonour you bring upon your self and two Noble Families, you should do all that in you lies, to avoid the Punishment that will come upon you for it by the Law. Oh, says he, you mistake your self in that, for you must think I have consider'd of all that before; they cannot do any thing in Law against me for it; let them examine the Case of Mrs. Henneage and my Lord Cavendish.

Mr. At. Gen. What, did he say he would not part with her but upon Terms?

Mr. Craven. He said, I cannot persuade her, and I will not betray her. Truly, said I, My Lord, you had better betray her, and when she comes to be sensible of her own good, she will thank you for it. Then he owned he had her in his Power, but would not part with her never to see her again.

Mr. At. Gen. What were the Terms he stood upon?

Mr. Craven. My Lady Berkeley sent me to the Coffee house, and desired me to ask him, If he would give her an Answer to what she had met him at my Lord Chief Justice's about. My Lord told me,

He did not approve of sending her to the place proposed, but he would send her to his own Sister, his Brother in Law Mr. Nevil's. I told my Lady of it, who said, if he did state the Case right to Mr. Nevil, she was sure he would not receive her, nor let him come to her if he did. After that, Mr. Petit's was proposed, so he might visit her. But he did say, If that be the Design, that they would have her from me, and I not to come at her when I please, they shall never see her while they live, nor will I ever deliver her.

Mr. Serj. Jefferies. We rest here, to know what they on the other hand say to it, and we think this Foul Fact is fully proved.

Lord Cavendish. My Lord Chief Justice, I desire to be heard one word in this Matter. This Gentleman, Mr. Craven, that was last examined, has been pleased to tell a very long improbable Story in it self, and amongst other things that he has said, he has been pleased to make use of my Name impertinently enough; for he speaks of a Case that that Noble Lord, he says, was pleas'd to mention to him. If he did mention that Case to him, and did name my Name, he also mentions the Case of two Ladies, he says, my Lord was concerned with. I desire to know how he came to name my Name, and not name the two Ladies he speaks of, that that Noble Lord made his Courtship to and enjoy'd?

L. C. J. My Lord Cavendish, I could have wished he had not named your Lordship, because it was not at all to the purpose.

Lord Cavendish. My Lord, I am not concerned at it at all, more than at the Impertinency of his using my Name.

L. C. J. I could have wished indeed, the Gentleman had spared your Lordship's Name.

Lord Cavendish. I desire to know why my Name was mentioned more than the two Ladies Names?

Mr. Craven. My Lord Grey did not mention the two Ladies Names to me.

Lord Grey. No, nor my Lord Cavendish's neither, it is all a Lie.

Lord Cavendish. I will believe my Lord Grey's Word, more than I will his Oath.

L. C. J. That your Lordship may do if you please. But we must not do so here. Come, what say you to it on the other side?

Mr. Williams. May it please your Lordship, and you Gentlemen of the Jury, I am of Counsel in this Case for my Lord Grey and the other Defendants. And that we may come closely to the Question; I desire I may first state the Question before you upon this Information, and then you will the better judge how far the Evidence that has been given, is pertinent to the Issue that you Gentlemen are to try. The Parts of the Information are these: That my Lord Grey, and the rest of these Defendants, should Conspire together to Ruin and Destroy this Young Lady, and in the Execution thereof, they did often sollicite and intice her to commit Adultery with my Lord Grey; and in prosecution of these their ill Purposes and Designs, she was by Force and Arms taken away from the Custody and Tuition of the Earl of Berkeley her Father, and being so taken away, my Lord Grey and the rest of them, did procure her to live scandalously with my Lord Grey, in Whoredom and Adultery. These are the Parts of the Charge, and the Question is, whether we are Guilty of it.

For the Evidence, I dare presume to say, that they have not made any direct Proof of the Matter charged. On the other side, they have, I do agree, offer'd something conjectural, upon which a Man may imagine and think what he will; but how far you are to conclude the Defendants Guilty, out of those Presumptions, must be left to you, I know you will very well consider of it. It is plain, we are in a very tender Case; it is a Case of Honour on all sides, and I have often heard it, and always believ'd it, That Persons of Honour and Quality in the World, would rather lose their Lives than their Honour. And I believe it is the Opinion of my Client, my Lord Grey, as well as of the Prosecutors in this Information. And therefore, you Gentlemen, I doubt not, will expect to have a clear Evidence to convict him of this Crime. And it is not only his Honour is concerned, but that also of another great, illustrious and noble Family, to which he is by Marriage allied. So that the acquitting of my Lord Grey of this Matter, doth, in a great measure, acquit the other Family of so great a Scandal. For that will falsify the Information, and by your Verdict you will remove those Stains, that else may stick on both sides. We are equally between the two Families, and your Consideration will be, whether you will lay a Stain upon both of them, or acquit them both. Now there has been no proof against my Lord Grey, of any one point in the Information.

L. C. J. No? Sure you are much mistaken, it is a direct proof against my Lord Grey, I must tell the Jury so, and therefore apply your Defence to it as you can.

Mr. Williams. Truly, My Lord, I hope it is not, and our Case is best stated, by laying open the Truth of the Fact, and then the Matter will plainly appear. I cannot go about to justify the Passion and the Folly, for I may well call it so, of my Lord Grey and this Young Lady in this Case. It is unfortunate enough, to be accused of a thing of that Nature, and it may be a great deal worse to be convicted. I shall agree there have been those Transactions between them, that it may be, we cannot justify in strictness every thing that my Lord Grey has done. But yet, we say he is not guilty of this Information. We do agree, there has been an extraordinary Passion, nay, I must say, a very unjustifiable one, between this Lady and my Lord Grey: But to conclude out of that, that because there was such an unreasonable, unjustifiable, extraordinary Affection between them, therefore we must infer and conclude him Guilty of this Information, is a very forced and unreasonable Construction; for there are Degrees in Love, and we must not conclude the worst thing a Man can be guilty of, because he is guilty of some Degree. Then, to come home to the Case of my Lord Grey, we shall prove, and give your Lordship and the Jury undeniable Satisfaction, that my Lord Grey is so far from having inveigled away this Young Lady, or being any way instrumental to the conveying her away, that he used all means he could to have prevented any thing of that Nature before, by discovering to my Lady Berkeley her Mother, my Lady Arabella, and my Lady Lucy, her Sisters, all Persons of great Honour, and her nearest Relations, that she did intend to go away, by warning them, and giving them full Notice, that there might be such an Intention

in the young Lady: We shall prove likewise, that no Man in the World could do more, when she was gone, to retrieve her. We shall make it out by undeniable Circumstances, proved even by their own Witnesses. It happen'd that my Lord Berkeley and his Family withdrew to a Country-House of his near *Epsom*, in your County, Gentlemen. My Lady had some Jealousy, as she has been pleased to testify, that there might be some extraordinary Passion between my Lord Grey and the young Lady; having discovered it by some Letters, as she hath given Evidence. My Lord Grey acquainted her with his Suspicion, that she intended to go away, and was so just, that he did not conceal any one thing that he knew; yea, to acquit himself that he had no ill design himself, and if she did get away it was none of his Fault, he produc'd a Copy of a Letter of Admonition, which my Lord Grey himself had written to her: And when my Lady had heard his Advice about it, and his Counsel he gave her, she said, *her Father could not have given her better Counsel*. This was so early as *July*, in the beginning of *August*, my Lord Berkeley going down to his Country-House at *Epsom*, and the Family removing thither. Then my Lord Grey was sick here in Town; and in this Sickness of his, there was a Letter sent to my Lord Grey from his Lady, desiring him to come down to my Lord Berkeley's; but it seems he had been under some Engagement to my Lady Berkeley, not to come without her Leave, and having Regard to his Word past to my Lady, he would not do it. My Lady Berkeley, in a few Days after, sent for him her self, and therein thanks him that he was so just to his Word and Honour, that he would not come down without her Invitation. Upon *Tuesday* before this unhappy Lady went away from her Father's House, my Lord Grey came to my Lord Berkeley's. When he came down, he was very kindly receiv'd by my Lord and my Lady. On the *Thursday* following my Lady Berkeley acquaints my Lord Grey, that this young Lady had a design to leave her Father and Mother's Family, and run away. My Lord Grey was so frank with her, as to tell her; *Madam, I have long suspected such a thing, as I have told you; but, Madam, your Daughter Harriett is all Day in your Eye, you may lock her up at Night, and secure her if you please*. This was a timely Caution given before she made her Escape. On the *Friday* following, comes a Letter from an unknown Hand to my Lady Berkeley; that intimated, *That except they had a great Care of their Daughter, and a strict Eye over her, she and her Father should not long enjoy her Company*. My Lady Berkeley shews this Letter to my Lord Grey, says he, *Madam, this is no more than what I have often told you, I have given you some Intimations already, and my Thoughts and Advice about it; and whoever it be that writ this Letter, I am afraid her Apprehensions of some ill Usage may put her upon some such Design*. And he repeated it again, *Madam, let me caution and advise you, have her always in your Eye, and lock her up safe at Night*. This was repeated over and over, to my Lady Lucy and my Lady Arabella. Thus it continued till *Saturday*, my Lord Grey resolv'd to go to his Country-House at *Up-Park*, and took his Leave of my Lord Berkeley and his Family accordingly, and went that Night to *Guilford*, and there he lay, and rose the next Morning to go onwards

of his Journey, but was pursued, it seems, by my Lady Lucy. For she tells you, *When this young Lady had left her Father's Family, she immediately on the Sunday Morning came to Guilford, and sent after my Lord, who was newly gone on his Way, and was found in his Way to his House in Suffex*. Having received my Lady Lucy's Commands, he returns to *Guilford*, and there he had the first Notice given him of my Lady Harriett's Escape; says he to my Lady Lucy, *This is no more than I have fairly warn'd you of before; had you taken my Counsel. Was she lock'd up?* No, said she, *she is gone away, and your Lordship must needs know where she is, and therefore pray get her to return home again*. Says my Lord Grey, *I assure you, I know nothing at all of it, and to give you all the satisfaction I can in the World, I did not only warn you of it before, but I shall be as industrious as any of you all, you shall find, to recover her again*. For that purpose, I will see if she have crossed the River, or is gone any other Way; and if I can make any Discovery, by Letter or any other way, I will send you word immediately, and I am so sincere with you, that if any Letter come to your Family for me, I give free Liberty to my Lord and all his Family to open them themselves, and see what is in them; and if I do receive any from her any other way, a true Copy of it shall be sent; and more than all this, if my Lord be not satisfy'd with what I have said, let my Lord or my Lady send, and set what Spy upon me and my Actions they please. And it seems he was taken at his Word, and they made choice of a very proper Gentleman, and you heard what Discoveries he has made, and how he has worded the Matter. For first he makes my Lord Grey at one time a very subtle Lover, full of all Intrigues, and one that could conceal all within himself, and yet (when it would do him so much Injury) so open, as absolutely to unbosom himself to one that was an absolute Spy upon him and his Actions, and tell him such things, as no Man in the World sure is such a Fool as to tell another in his Circumstances. But that I leave to the Jury (as my Lord Carvendish has said) to consider of the Impertinency of his long Story. When he had parted from my Lady Lucy he comes to *London*, and useth all the Diligence he could to find her out. On *Wednesday* again he leaves *London*, when he could not find her, and goeth to his own House: Upon *Thursday* this Gentleman Mr. Craven comes thither to him. There he finds a Letter from my Lady Harriett, and because he would be exact to his Word, he keeps a Copy of the Letter, and sends the Original of it to my Lord Berkeley's. Now no Man will imagine, if he had such an Intrigue with this Lady, as they would make the World believe, that he would ever have sent such a Letter out of his Custody, which would have been a colourable Excuse for him. Nay, we do not rest here, but by the way we produce this Letter to this Gentleman, who it seems was our Guardian, and told him moreover, *Here is my Answer to this Letter*, and sends a Copy of his Answer with the Letter from her to my Lady Berkeley. Then there comes a second Letter, and he, according to his Word, discovers that, and there is not one Circumstance in all his Carriage that doth accuse him. After this second Letter was imparted to my Lord Berkeley's Family, he continued a while at *Suffex*, and afterwards when he returned to *London* he used all the means imaginable, for a Person that was so near concern-

ed, in point of Relation, and in regard of his own Reputation, to have found her out, but could not. These are the Circumstances of my Lord Grey's particular Interest in this Matter, and when we have made out these Circumstances, we hope the World will believe him not Guilty. It seems the young Lady is now in Court; she is so just, it seems, as to come to do my Lord Right, and that one thing will knock all their Conjectures on the head; for she best knows what has been done, and the Jury will consider, whether this be imaginable, that my Lord Grey should conceal her all this while, and produce her now, when if any Violence have been offered her, she may freely tell it. And as for the Man that could tell so very readily this was the very Lady that came to his House, when she had so hooded and muffled up her self, we must leave him and his Credit to the Jury. We shall therefore desire, when we come to the Close of our Evidence, that this young Lady may be here examined upon her Oath, and then I hope the Truth will come out.

Mr. Thompson. My Lord, because your Lordship seems to be somewhat satisfied that there is a direct Proof of the Matter charged against my Lord Grey, therefore I suppose it will not be amiss to open the Fact, and in three words to state the Charge, and the nature of their Evidence to maintain it.

L. C. J. Come, come, call your Witnesses and make out your Defence.

Mr. Just. Dolbin. If you can prove what Mr. Williams says, you do something, but do not think to make long Speeches, go on to the Evidence.

L. C. J. Pray, Mr. Thompson, do not you believe we want any of your Help to recollect the Evidence given, or to direct the Jury about it, do you disprove it if you can.

Mr. Thompson. My Lord, the Course of Practice I always took to be so, to open and observe upon the Evidence given, and then answer it. But I submit to your Lordship for that; you may do as you please.

Lord Grey. Then, my Lord, I desire I may speak something my self. Certainly, my Lord, no Man ever lay under a more infamous Accusation, than I now do; and therefore I hope your Lordship will pardon me, if I defend my self as well as I can from it; and undoubtably, if in any Case a Man be allowed to speak for himself, it must be allowed to me in this. My Honour lies here at stake, and if my Life did so too, I am not, nor should be more concerned to save that, than I am to clear my Reputation, which is and ought to be very dear to me. My Lord, were I guilty of the Villanies that here are laid to my Charge, I certainly should need no other Punishment, I am sure, I could not have a worse, than the Reflections of my own Conscience for them, and I ought to be banish'd the Society of Mankind. My Lord, I must confess, I have been so unhappy (tho' it is more than they could else prove) as to have a very great Kindness for this unfortunate young Lady, my Lady Harriett Berkeley; but yet, nor so criminal as one as the Witnesses that have been produc'd would have you to believe, nor as the Information would insinuate. I do here protest, I was no way assisting to her Escape; nor privy to it, nor have I ever at all since detained her

from her Father, tho' I have suffer'd a Fortnight's close Confinement and Imprisonment for it; and all this I doubt not to make out to your Lordship's and the Jury's Satisfaction. I shall say no more of the Justice of my Cause, but endeavour to prove it; and, my Lord, this is that which I say to it. The Evidence that has been given, consists most of such and such Discourses that have been between the Witnesses and my self, and those I shall give what Answer is fit to be given to them. A Negative, as your Lordship very well knows, is not to be proved. Particular Discourses we have had, of the same nature as Mr. Williams has opened, about my cautioning them concerning her Attempts to go away; and I shall appeal to my Lady Berkeley her self, whether that be not so. If my Lady Berkeley own it to be true, I hope that is very good Proof. My Lord, about the time that they speak of, concerning the Letter, which I take to be in June or July, I was sent for by my Lady Berkeley into her Chamber; when I came there, my Lady told me there was a Letter, which she said, was design'd to go from her Daughter to me. I asked her, if she had read the Contents of the Letter, she said, No. I asked her, whether the Direction of the Letter were to me, she could not tell that. But my Lady had told me, her Daughter had given her the Account of what had pass'd between us, that she was satisfied there was a Correspondence of Love between us. To remove all Fears, I proffer'd to absent my self. I desire my Lady may answer whether this be not so.

L. C. J. That will be to intricate the Business, to go on thus. Pray, my Lord, if you will ask any Question of any body, tell them your Counsel, and let them ask them, but to make long Discourses all day is not to be permitted.

Lord Grey. My Lord, I will ask then my Questions all together by and by. My Lady Berkeley going down with my Lord to Durdants, desired that my Wife might go down with her, to which I readily consented. Soon after that, I fell sick and kept my Bed a while. When I was well again, and going into Sussex, I sent for my Wife to Town, and would not go fetch her, because I would keep my word with her Ladyship. My Lady Berkeley thereupon wrote me a Letter, wherein she thank'd me for not coming according to my Promise, and commended my Modesty in it; and said, There would be no apprehension of any ill from me, if I did come thither for a short time. And thereupon being invited by her Ladyship, to take her House in my way to Sussex, I did come down thither. And I urge this, to shew that there was no Conspiracy or Design of any such thing in me, for I had not gone to Durdants, if I had not been sent for, and so there was no Design in my going. When I came thither it was the Tuesday, and on the Thursday, my Lady Berkeley did acquaint me, she was under great Apprehensions and Fears; and I asked her the Reason of it. She told me, That she had been at some Ease; her Daughter having made a great Submission to her, and Promise of constant Obedience; and that she would do all as she would have her, if she would but give her Leave to go to Town with her; but yet, for all this, one Morning she puts on her Hoods and Scarfs, and was going away, and had done it, but that the French-Woman and another prevented it. I told my Lady Berkeley then, Madam, said I, I have good Reason to believe she may have some such Intention. I did not give my Reason

son at that time, but I shall by and by: But, said I, if she do go away, I cannot imagine but that it is possible she may send to me, and I will give your Ladyship notice as soon as ever I know; and tho' you seem to be satisfy'd, and to think your Daughter secure here, yet you do not think her so indeed, and you must needs use her ill, or she would have no thoughts of going from you. For my part, if she do go away and come to me, I will shun it as I would Death, and you have now fair warning, she is all Day in your Eye, pray be sure to lock her up safe at Night. Upon Friday following comes a Letter without a Name to it, and Mr. Williams has open'd to you the Contents of the Letter. She read the Letter when her Daughter was in the Room, who asked what the Letter was, and being denied to have any account of it, was in the greatest Confusion in the World, and leap'd and run down Stairs like a mad Thing, and my Lady her self was very much disturbed at it. When I saw the Letter, Madam, said I, *This Letter ought to confirm you in the Resolution of taking my Advice; it can come from no Body, but some one that is to assist in the executing of this Design, but thinks it too dangerous to engage in, and gives you this warning to prevent it. You have sufficient Caution given you to make you careful.* Whereas, my Lord, If I had been in any sort of Conspiracy of that Nature, to take her away, my Lady Berkeley certainly should have been the last Woman in the World that I would have communicated it to. My Lord, I went away from Durdants on the Saturday, and so to Guilford, where I lay that Night, and went on my Journey the next Morning, but was overtaken on the Road, by a Messenger from Lady Lucy, who was come to Guilford to speak with me; when I came back to her, she told me, *my Lady Harriett was gone away that Night, and they did believe I knew where she was.* Said I, Madam, *I have as great a Share in this Misfortune as any of you all, because of your Suspicion; but sure you must have used her very ill and make her do this; and you are much to blame, when you had all that warning from me; why did you not secure her, and lock her up as I advis'd you?* Said she, *She was lock'd up, but the Key was left in the Door.* Upon this I went to London, and I had appointed my Lady Lucy to meet her on Monday Morning, to give an Account what I could learn; but I told her, that I had heard nothing of her, nor is there any Proof that I did see her at any time, till I own'd it before your Lordship at your Chamber. She seem'd not to believe me when I told her so. Madam, said I, *It is certainly true; and to convince you that I have no hand in this Matter, I will go immediately into Suffex, and there I will stay as long as you will have me; and if you please to go your self with me, or send any body else, to observe what I do.* She thought it not fit for her self to go with me: But my Lady Berkeley and she afterwards pitch'd upon Mr. Craven, who had been a long time a Servant in the Family, and I agreed with my Lady in that, to have him, and receive him as a Spy upon me. Discouraging with my Lady Lucy, said I, Madam, *Now I will tell you the Reason, which I forbore to tell my Lady Berkeley, why I had good Ground to suspect my Lady Harriett had a Design to go away, and it was this; My Lady Harriett came to me one Day, about six Weeks or more ago, in the Court-Yard at St. John's, and says she to me, I am used like a Dog, I live the Life of a Slave here, I can endure it no longer; by the Eternal God that made me, I will*

not be alive long, unless I can set my self at Liberty. This I said to my Lady Lucy; and these, said I, were Reasons enough for me to warn you to look well after her. I did, according to Agreement, go into Suffex immediately, and I then told my Lady Lucy, I believed I might have a Letter from my Lady Harriett, by the Wednesday Night's Post, because, said I, *she cannot write sooner than that, and if I have, I will send you word.* When I was there, Mr. Craven came the next day to my House; and as soon as he came; said I, *Here is a Letter I have received from my Lady Harriett, and if you will, you may take a Copy of it.* I took a Copy of it my self, and sent the Original of it to my Lady Lucy, though they have not thought fit to produce the Letter now in Court, that your Lordship and the Jury might see it. But here is mine, which was the first Account what was become of her after she went away, that I received, except what Account I had from my Lady Lucy at Guilford; and this will shew to all the World, that I was not so much privy to her going away, as they say I was. I had denied to assist her in it, when she complained to me of her ill Usage; and when she attempted to go away before, I, upon my Lady's telling me of it, gave her sufficient Caution. And for the truth of all this, I appeal to those very Witnesses that have been produc'd against me. When I had shewn this Letter to Mr. Craven, I sent it away by a Servant of my own, to my Lord Berkeley's; and writ to my Lady Lucy, and desired her to pen whatever Answer she should think fit to send. My Lady Lucy did write to me back again, and told me the Substance of what I was to write, but the penning of it she did leave to me, for she believed I would do it effectually. I did write an Answer to my Lady Harriett's Letter, and that Answer I shew'd to Mr. Craven, and asked him if it were sufficient, and he seem'd to approve of it. The Lady her self is in Court, I know not whether she can give an Account of the Letter, I suppose she can tell you what an one it was. I had afterwards another Letter from her in Answer to mine, and that I have here, and it will appear by both of those Letters, whether I had any Interest in her going away. Tho' perhaps that would not have been such a Crime neither, and yet I think withal, that there is not a tittle of Proof that I had any hand in it, nor one Proof of any Circumstance like it. And if there be any Crime, it must be the taking her away, to such an Intent and Purpose as is charged in the Information. Before I came to Town, I was sent for about some other Business, yet I would not come till I had my Lady's Consent; for I sent her word, *my Lady Harriett writ in her Letter, that she was going beyond Sea, and if I went to London I might prevent it, but I would not go without my Lady's or Mr. Craven's Consent and Approbation.* When I came to Town, I was one Day at the Coffee-house in Covent-Garden, I was then sent to by this Lady, who was in an Hackney-Coach at the Door, and when I came to the Coach-side to her, she gave me a tedious History of her ill usage at home, which made her come away. And when your Lordship's Warrants were out to search for her, I came up to your Lordship, and I dare appeal to your Lordship, whether I did not acquaint you, that she only sought for Protection, and was willing to return home, so she should be satisfied she should

should not be ill treated again. You then told me, *I could not protect her against her Father.* I then told your Lordship and my Lady Berkeley, *She was not in my House, nor in my Custody.* They replied, *She was in my Power;* but how could she be in my Power? When she was not in my Custody, nor in my Lodging. But my Crime was, that I knew where she was. And if I do deserve Punishment for keeping my Word and Faith with her, which I gave her in a Letter, upon her Importunity not to betray her, I must submit to it, I could not in Honour do otherwise. My Lord, I desire this first Letter may be read, which was first sent by my Lady Harriett to me.

L. C. J. Surely, my Lord, for all your long Discourse, you cannot but apprehend your self mistaken, when you say there is no Crime charged in the Information, but the taking her away to such an Intent and Purpose. Surely there are other things besides that. And what you speak, if not proved, your Lordship knows, must pass for nothing.

Mr. Williams. My Lord, your Lordship has made a right Distinction between Discourses and Proofs. Therefore Discourses between Strangers and third Persons, are not to be stood upon, but the Proofs are; and all the Evidence together must be left to the Jury, to consider what is material and pertinent, and what not. We shall therefore go on to our Evidence; and shall begin with my Lady Berkeley first, and ask her Ladyship some Questions. And we desire to know whether she hath seen this Letter?

L. C. J. But take notice, the Letter you propose, we cannot read it.

Mr. Williams. But, my Lord, it was agreed between my Lady Lucy and my Lord Grey, that if he received any Letters from my Lady Harriett, he should communicate them to my Lady Berkeley, and this Letter coming to him, he first shews it to Craven, this Man that was thus set as a Spy upon him, and after sent it to my Lady Lucy, and whatsoever Answer they would have sent, was promised should be, and accordingly was first shewn to Craven, and then sent. If this were the Agreement, and these Letters were thus written, then sure we may read them.

L. C. J. You may ask my Lady Berkeley any Questions, but must not read any such Letters.

Mr. Serj. Jefferies. Pray, *Mr. Williams*, let us go according to the Course of Law, and give no Evidence, but what is fit to be given as Evidence.

Mr. Williams. Then thus, Madam, pray can you remember the Discourse that past between my Lord Grey and your Ladyship in June, concerning your Daughter and him?

Lady Berkeley. Where?

Mr. Williams. At St. John's.

Lady Berkeley. I do not well know what Discourse you mean; but any particular Discourse that was there I will answer to.

Mr. Williams. That Discourse that past between you the first time that you acquainted my Lord Grey that you suspected there was too much Familiarity between him and your Daughter?

Lady Berkeley. The first time, do you say?

Mr. Williams. Yes, Madam, I think you were pleas'd to say, that upon your first Discovery, you sent for him and talked with him.

Lady Berkeley. I did not say upon my first Discovery, but when I had discover'd it. For I would be very punctual to the Truth in my Evidence.

Mr. Williams. You say, your Ladyship had some Discourse with him in June.

Lady Berkeley. I think it was in June.

Mr. Williams. Pray, Madam, can you remember what my Lord Grey promised your Ladyship then?

Lady Berkeley. He told me then, *he would obey me in any thing, even if I would banish him my House.*

Mr. Williams. Was there any Letter then produc'd by your Ladyship or my Lord Grey?

Lady Berkeley. Of what concern?

Mr. Williams. Any Letter that related to your Daughter?

Lady Berkeley. No, but I told him of a Letter that was found, that she had writ to him.

Mr. Williams. Madam, pray, have you that Letter, or any Copy of it?

Lady Berkeley. No, it was torn to pieces, I can bring the pieces, I believe, if there were occasion.

Mr. Thompson. Your Ladyship read it, I suppose?

Lady Berkeley. No, my Daughter Bell read it, and tore it in pieces.

Mr. Williams. Was there any Discourse between your Ladyship and my Lord Grey, about any other Letter?

Lady Berkeley. Not at that time.

Mr. Williams. Was there at any other time?

Lady Berkeley. Yes, at the Charter-House at my Lord's House, one day my Lord Grey desired me to walk into the Gallery, *for he had something to communicate to me*, and the Discourse that past between us then was this, *he shew'd me there a Letter of the Passionate Love he had for her, with some good Counsel in it.*

Mr. Williams. Did your Ladyship approve of the Counsel he gave her?

Lady Berkeley. Never when there was so much Love and Passion in the Letter.

Mr. Williams. Pray, Madam, recollect yourself, were you not pleas'd to like of that Letter?

Lady Berkeley. I could never like of the Passionate Expressions in it; there might be something in it well said enough, but with the greatest Expressions of Passion and Love; in so much, that he himself said of it, *Madam, I'm asham'd of that part*, and would have had me overlook'd it.

Mr. Williams. Did your Ladyship say, *Her Father could not give her better Advice?*

Lady Berkeley. Not that I know of.

Mr. Thompson. Pray, Madam, did you ever say so?

Lady Berkeley. Surely I did not: For I could not but think he could give her a great deal better Advice.

Mr. Williams. Does your Ladyship, pray Madam, remember any Discourse between my Lord Grey and you, upon the Thursday before your Daughter went away?

Lady Berkeley. I cannot tell for Thursday.

Mr. Williams. Does your Ladyship remember the Letter you received from an unknown Hand?

Lady Berkeley. Yes, I do.

Mr. Williams. Did you shew that Letter, or read it to my Lord Grey?

Lady Berkeley. My Lord Grey came up to me, and

and seem'd to be very careful of my Concerns, Madam, said he, *Pray take care, for I saw a Letter directed to your Ladyship, without the Mark of the Post, or the Penny-Post upon it. And, said he, I give you this Caution about it before it comes to you, because my Lord was by: I arose up and went to the other side of the Room, and my Lord Grey followed me, and when I took up the Letter, I saw something that I thought to be very odd and unusual in his Carriage, as if he were in great disorder, as I was; and I went to my Chamber, thither my Lord Grey followed me, and that Letter he would see, because, he said, it had put me in some disorder, I told him he should not see it as then. I sent for my Daughter Lucy into my Closet, and shew'd it her, and she was in great disorder about it too.*

Mr. Williams. Pray, Madam, can you remember whether that Letter did caution you to look well to your Daughter, or else you were not like to have her Company long?

Lady Berkeley. The Letter did say some such thing, I must look after my Daughter, or I should lose her.

Mr. Thompson. And this was on the Friday before she left your Ladyship, Madam, was it not?

Lady Berkeley. Yes, it was so, I think.

Mr. Williams. Pray, Madam, what did my Lord Grey say upon that?

Lady Berkeley. He was extremely earnest to see the Letter, because, he said, *it had so disorder'd me; and at last I was perswaded to let him see the Letter; he turned the Letter up side down, and looked on the Subscription. Madam, says he, Is this all that disorders you so much, I am us'd to have many such Letters by the Penny post; this is nothing but to amuse you. It is a very silly Letter, and written by some Woman, as you may see by the Spelling.*

Mr. Williams. Did he caution you to lock up your Daughter a Nights to secure her?

Lady Berkeley. Not one Word upon this Letter; but the next Morning again talking about this Letter, he said, *It was a foolish Letter, and what should I trouble my self about it for?*

Mr. Williams. But, Madam, had you any Caution given you by my Lord Grey about this time, to take care of your Daughter?

Lady Berkeley. Not that I remember, to lock her up.

Mr. Williams. What then did he say?

Lady Berkeley. I will tell you what he said to me once or twice. Madam, *whatever you do, do not make her desperate.* I asked him what he meant by that Word? Said he, *It is not necessary to explain that Word to you, I meant nothing but do not use her ill.* Now, my Lord, I was so far from that, that I us'd her with all the Tenderneſs of a Mother, like a Sister rather than a Daughter; nay, he himself has confess'd, she was better us'd than he imagin'd she was.

Mr. Williams. Did your Ladyship, at any time, intimate to my Lord Grey, that you had any Apprehensions of her intending to go away?

Lady Berkeley. I did tell him, That when I was at London, my Woman that lay with her, did rise about eight a Clock, and left my Daughter alone in the Room, and when she came up again, my Daughter had put on her Hood and Scarf, and her Petticoat was pin'd up, as ready to go out, and the Woman being affrighted at this, called up my other Daughter, and so prevented it; and after came and told me she

had pin'd up her Petticoat thus about her, and she did not know what she meant to do. Upon this, I went to my Daughter, and, said I, *What is the reason that you pin'd up your Petticoat, and put on your Hood and Scarf?* Says she, *I had not my Scarf on.* But says my Woman to me, when I came into the Room, *You thrust something into your Gown.* It is true, I did so, Madam, said she, *but it was upon this account, I had got a Sheet of Paper, upon which I intended to write, and seeing her come in, I put it in my Gown.*

Mr. Williams. Pray, Madam, did my Lord Grey at any time caution your Ladyship about your Daughter, to lock her up, or tell you his Opinion that he thought she would leave you?

Lady Berkeley. I cannot positively say that; but he us'd to say to me, Madam, *do not make her desperate; I do not know that ever he advised me, as to the locking of her up.*

Mr. Thompson. Did he desire you, Madam, to take care that she did not go away from you?

Lady Berkeley. I do not remember it.

Mr. Williams. Pray, Madam, can you tell who brought that Letter from an unknown Hand to you at Durdants?

Lady Berkeley. It came down with other Letters to my Lord's Steward.

Mr. Serj. Jefferies. But your Ladyship says my Lord Grey was very solicitous about that Letter.

Lady Berkeley. Yes, Sir, he came to me, and very earnestly cautioned me about it, For, said he, *I see there is neither the General-Post nor the Penny Post Mark upon it.* And knowing himself guilty of what he was guilty of, he might be afraid lest my Lord should see it, and so his Business come out.

Mr. Williams. Pray, my Lady Lucy, do you remember that ever my Lord Grey advised the locking her up?

Lady Lucy. Upon discoursing of the Letter that came from an unknown Hand, my Mother said to my Lord Grey, *Sure that is such a horrid thing that it can never be done; my Lord Grey might then reply and say, If you fear it, you may lock her up; but I do deny that ever I heard him say any thing to caution my Mother, that he thought she was going.*

Mr. Williams. Madam, the Question I ask your Ladyship is, whether my Lord Grey did or no direct or advise to lock her up?

Lady Lucy. Upon my Mother's Discourse concerning the unknown Letter, and how sad a thing that would be, he might say, *That if she fear'd that, she might lock her up; but he never did say that he did think she would go.*

Mr. Thompson. Pray, when was this, Madam, how long before she left the Family?

Lady Lucy. The Day before.

Mr. Williams. Then, Madam, for the Discourse you had with him at Guilford, what said he, he would do?

Lady Lucy. It was at London, that he pass'd his Word to go down into the Country.

Mr. Williams. What did he promise you to do there, Madam?

Lady Lucy. He said he would not stir from Up-Park till he heard from my Father.

Mr. Williams. What did my Lord say to you, Madam, about the Letters he should receive?

Lady Lucy. He did say he would send us all the Letters that came to him from her, and if any came to our Hands we were to open them.

Mr. Wil-

Mr. Williams. Was my Lord Grey willing to receive a Spy, Madam, upon him?

Lady Lucy. Yes, he was.

Mr. Williams. Was there any Letter sent to your Ladyship from my Lord Grey?

Lady Lucy. Yes, there was a Letter with one in it from my Lady Harriett.

Mr. Williams. Have you those Letters by you, Madam?

Lady Lucy. No, I have neither of them here.

Mr. Williams. Can you tell the Contents of it?

Lady Lucy. I have told them already.

Mr. Williams. Pray, Madam, will you please to recollect your self a little, when you were at Guilford, and told my Lord Grey that my Lady Harriett was gone away, did not my Lord tell you, you had not observed the Directions and Advice he gave about her, to lock her up, and did not you then answer him, Yes, the Door was lock'd, but the Key was left in?

Lady Lucy. I did reply, the Woman had not lock'd it carefully enough after her.

Mr. Williams. Did you not say, that the Door was lock'd but the Key was left in?

Lady Lucy. I do not remember a Word of that.

Mr. Williams. Madam, will you please to cast your Eye upon that Letter, and see if that Paper be a true Copy of the Letter you had?

L. C. J. What Paper is that you offer, Mr. Williams?

Mr. Williams. It is a Letter from the Young Lady, to my Lord Grey.

L. C. J. You know no Use can be made of that Paper, why do you offer it? It is contended that my Lord had the Lady in his Power, and then would not she write any thing?

Mr. Williams. Then, my Lord, there is the Young Lady her self, we desire she may be examined.

Mr. Serj. Jefferies. But before we part with my Lady Lucy; if you have done, we desire to ask her a Question; It is here insinuated, as if there had been some Hardship put upon this Young Lady, or some ill Usage in her Father's Family; Now for the Honour of that Noble Family, I would have that Point clear'd, and therefore, pray Madam, did you ever observe any Unkindness, any Severity or harsh Usage, that was used to this Lady, by my Lord or my Lady at any time?

Lady Lucy. So far from that, that all of us had a Jealousy that she was loved best.

Mr. Serj. Jefferies. Pray take notice of that, Gentlemen.

L. C. J. Pray, Madam, let me ask you one Question. After my Lady had discovered this Evil Affection between my Lord Grey and this Young Lady, did she then put any indecent Severities upon her, or use her very hardly?

Lady Lucy. My Lord, I came out of France but two Days before she went away. I saw no such thing.

Mr. Williams. We ask her about my Lord Grey, and you ask her about a third Person.

Mr. Serj. Jefferies. Oh good Mr. Williams, we know why we ask her that Question. It is an extraordinary Case. Pray my Lady Arabella, will you answer the same Question?

L. C. J. Ay Madam, pray let me ask you, after this ill business between my Lord and her was discovered, did my Lady Berkeley (I cannot

say my Lord, for he knew nothing of the Matter till she was gone away) use her ill or unkindly?

Lady Arabella. No, no, my Lord, no Mother in the World could be more indulgent and kind. She did indeed find it necessary to have a stricter Eye over her, and she did put a Woman about her to look after her, and did not permit her to write any Letters. She had, or expressed a greater kindness for her, than any of us all besides.

Lady Berkeley. Ay, and that my Lord Grey knows to be true.

L. C. J. No, no, when my Lord Grey was in his Passion, he might say so, but he has no Proof to shew of it.

Mr. Serj. Jefferies. My Lady Lucy and my Lady Arabella, what Person did you fear should take her away, pray?

Lady Arabella. We were not afraid of any Body but my Lord Grey.

Lady Lucy. There was no Reason for fear of any Body but him.

Mr. Williams. My Lord, there is the Young Lady, we desire she may be Sworn.

Mr. At. Gen. We oppose it, Sir, and have very good Reason so to do, and we think it is time to do it now, if ever.

L. C. J. Why should she not be Sworn, Mr. Attorney?

Mr. Just. Dolbin. If the Lady her self have the Confidence to be Sworn, I see no Reason why she should not.

Mr. At. Gen. This Case, my Lord, is in the Nature of a Ravishment of Ward, for it is for taking a Young Lady out of the Tuition and Custody of her Father, who is her Guardian by Nature, and it is apparent in the Proofs, she is highly Criminal in this very Matter her self, in consenting to go away in such a Manner, and to such an evil Purpose; and now she comes to excuse one, that is not only a Partaker in her Fault, but the first Seducer. Now, my Lord, when we have proved this Matter of Love upon her, that is laid in the Information, sure she cannot be a Witness for them, she would be a Witness to excuse her self.

L. C. J. Mr. Attorney, I do think truly, that notwithstanding what you say, she may be a Witness, being no Party to the Information. But withal, I think there is very little Credit to be given to what she says.

Mr. Williams. Sure these Gentlemen forget themselves much in offering to hinder or oppose one's being a Witness, that is no Party in the Cause.

Mr. Serj. Jefferies. Truly, my Lord, we would prevent Perjury if we could.

[Then she was sworn.]

L. C. J. Brother Jefferies, we cannot oppose it, if they will press it, and she consent, but I tell you what I think of it.

Mr. Williams. If she be Sworn, my Lord, we would ask her a Question or two. Madam, we would desire your Ladyship to answer whether my Lord Grey had any hand in your Escape?

Lady Henrietta. No, Sir.

Mr. Just. Dolbin. You are upon your Oath, Madam, have a care what you say, consider with your self.

Lady

Lady *Henrietta*. Yes, I know I am upon my Oath, and I do upon my Oath say it.

Mr. *Williams*. Did my Lord Grey advise you to it?

Lady *Henrietta*. No, I had no Advice from him, nor any Body about him, nor did he know any thing of it, it was all my own Design.

Mr. Serj. *Jefferies*. Madam, I would ask you this Question, and pray consider well before you answer it. Did you see my Lord Grey on the Sunday after you went away from your Father's?

Lady *Henrietta*. No, I did not.

Mr. Serj. *Jefferies*. Did you see him on Monday?

Lady *Henrietta*. No.

Mr. Serj. *Jefferies*. Did you on Tuesday?

Lady *Henrietta*. No.

Mr. Serj. *Jefferies*. Did you on Wednesday?

Lady *Henrietta*. No.

Mr. Serj. *Jefferies*. Good God! Pray, Madam, how long afterwards was it that you saw him?

Lady *Henrietta*. Sir, it was a great while after.

Mr. *Williams*. How many Days or Weeks after was it?

Lady *Henrietta*. Sir, I cannot tell.

Mr. Serj. *Jefferies*. As near as you can, Madam, when was it?

Lady *Henrietta*. I can remember the first place that I saw him at after, but the time exactly I cannot.

Mr. *Williams*. Where was that, Madam?

Lady *Henrietta*. It was in a Hackney-Coach.

Mr. *Williams*. That was the time, I suppose, that you sent for him out of the Coffee-House in Covent-Garden?

Lady *Henrietta*. Yes, I did so.

Mr. *Williams*. Pray, Madam, did you write any Letter to my Lord Grey after your going away?

Lady *Henrietta*. Yes, I did by the next Post.

Mr. *Williams*. When did you write that Letter, Madam?

Lady *Henrietta*. I did write it upon the Tuesday after I came away. I hope that is no Offence.

L. C. J. No? Is it not? You should have writ to somebody else sure.

Lady *Henrietta*. I thought him the fittest Person for me to write to, and I did not imagine it would be any ways scandalous for him, he being the nearest Relation I had in the World, except my own Brother, that could protect me.

Mr. *Williams*. Had you any Answer from my Lord Grey to that Matter, Madam?

Lady *Henrietta*. Yes, and a very harsh Letter it was.

Mr. *Williams*. Did you write him any other Letter.

Lady *Henrietta*. Yes, but I received no Answer of it at all.

Mr. *Thompson*. Pray, Madam, did my Lord Grey, at any time, perswade you to return to your Father's?

Lady *Henrietta*. Yes, he did so several times.

Mr. Serj. *Jefferies*. Pray, Madam, do you know *Charnock*, that was my Lord Grey's Gentleman?

Lady *Henrietta*. Yes I do.

Mr. Serj. *Jefferies*. Upon your Oath, did not he carry you away from *Durdants*?

Lady *Henrietta*. No.

Mr. Serj. *Jefferies*. Nor did not his Wife assist you in it?

Lady *Henrietta*. No.

Mr. Serj. *Jefferies*. Nor was she not with you on the Sunday Morning?

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Lady *Henrietta*. No, nor was not with me.

Mr. *At. Gen.* Were you not at Mrs. *Hilton's* then, Madam?

Lady *Henrietta*. No.

Mr. *At. Gen.* Were you at *Patten's*?

Lady *Henrietta*. No.

Mr. *Sol. Gen.* Nor at *Jones's*?

Lady *Henrietta*. No, nor at *Jones's* upon my Oath.

Mr. *At. Gen.* Pray who did come with you from *Durdants*?

Lady *Henrietta*. I shall not give any Account of that, for I will not betray any Body for their Kindness to me.

Mr. *Wallop*. If it be no Body in the Information, she is not bound to tell who it was.

Lady *Henrietta*. If I have vowed to them before, not to discover, I will not break my Vow to them.

Mr. *Just. Dolbin*. If they ask you of any Body in the Information, you have heard their Names, you must tell if it were any of them, but you are not bound to tell if it were any one else.

Lady *Henrietta*. No, it was none of them. I went away upon another Account.

L. C. J. If you have no further Questions to ask her, pray, Madam, sit down again.

Lady *Henrietta*. Will you not give me Leave to tell the Reason why I left my Father's House?

Mr. *Just. Dolbin*. If they will ask you it they may. You are their Witnesses.

Mr. *Williams*. No, my Lord, we do not think fit to ask her any such Question; she acquits us; and that is enough.

Lady *Henrietta*. But I desire to tell it my self.

L. C. J. Truly, I see no Reason to permit it, except we saw you were a more indifferent Person to give Evidence than we find you.

Lady *Henrietta*. Will you not give me Leave to speak for my self?

Mr. *Just. Dolbin*. My Lord, let her speak what she has a Mind to, the Jury are Gentlemen of Discretion enough, to regard it no more than they ought. But, Madam, for God's sake consider you are upon your Oath; and do not add wilful Perjury to your other Faults.

Lady *Henrietta*. I have been very much reflected upon here to Day, and my Reputation suffers much by the Censure of the World, and therefore—

L. C. J. You have injur'd your own Reputation, and prostrated both your Body and your Honour, and are not to be believed.

Mr. *Just. Jones*. You are, Madam, to answer only such Questions as are asked you pertinent to the Issue that the Jury are to try, and if the Counsel will ask you no Questions, you are not to tell any Story of your self.

Mr. *Ireton*. My Lord, as to the Evidence of *Patten*, the Case is quite otherwise than they would represent it to be, about *Charnock's* coming thither for Lodgings, for Mrs. *Patten* is a Midwife, and used to lay Mrs. *Charnock*, and it was for her to Ly-in at *Patten's* House, because it would be inconvenient to Ly-in at my Lord Grey's.

L. C. J. What does that signify? But prove what you can.

Mr. *Thompson*. Where is Mrs. *Patten*, they would not produce her, because they knew it was against them.

[She appearing was sworn.]

L. C. J. Well, what do you ask of this Woman now?

L

Mr. Ire-

Mr. Ireton. I would ask her, my Lord, whether were there any Lodgings bespoke in your House against September?

Mrs. Patten. I know nothing of that.

Mr. Ireton. Was there any body in June or July at your House to bespeak Lodgings?

Mrs. Patten. I cannot tell the Month nor the Day.

Mr. Thompson. Pray Mistress speak what you do know.

Mrs. Patten. Mr. Charnock and his Wife did come to my House last Summer.

Mr. Williams. What was their Business?

Mrs. Patten. For Lodgings.

Mr. Thompson. Did they tell you who they were for? Did they talk about Lying-in?

Mrs. Patten. They were only for his Wife.

Mr. Ireton. Did he tell you what time he should come?

Mrs. Patten. He did tell me they were not fit to come into yet, but they might at such a time, but she did not know her own Reckoning: But they were not taken.

Mr. Ireton. Are not you a Midwife?

Mrs. Patten. I was Mrs. Charnock's.

L. C. J. What is that to this purpose?

Mr. Serj. Jefferies. Now you are sweetly brought to Bed.

Mr. Ireton. Pray, Woman, will you tell what they said to you.

Mrs. Patten. Mr. Charnock and his Wife came to our House for Lodgings. I asked her who they were for, she said they were for a Gentlewoman. I asked her who she was. Says she, *For my self to Ly-in here.* Said I, *how comes that about?* Says she, *about the time that I Reckon, my Lord's Family will be in Town, and I find it not convenient to Ly-in at our own House; then my Father and Mother have sent for me into the Country, to Ly-in there, but I cannot think of going thither, because of changing my Midwife. Then, said I, truly, Mrs. Charnock, any thing in my House is at your Service.* Said she, *I think it convenient rather to be here than to go into the Country; but I do not desire that my Lord's Family should know that I intend to Ly-in here, for I would not inconvenience my Lady's House, and yet my Lady, it may be, will not permit me to go out.*

L. C. J. But, Mistress, there came one to your House from Mrs. Hilton's, Who was that?

Mrs. Patten. I do not know, I was not at Home then.

L. C. J. Did you not come home before they went away?

Mrs. Patten. No, Sir.

Mr. Serj. Jefferies. Was that Woman they brought to Ly-in, in your House, Mistress?

Mrs. Patten. Who do you mean, Sir?

Mr. Serj. Jefferies. The other Gentlewoman that came with Mrs. Charnock and Mrs. Hilton. The Lady that spoke just now.

Mrs. Patten. I do not know, I never saw her Face in my Life, that I know of, what my Husband saw I cannot tell, I saw her not, it may be she, it may be not, for any thing I know.

L. C. J. Well, Gentlemen, have you done, will you call any more Witnesses?

Mr. Williams. We have done, unless they call any more.

Mr. Serj. Jefferies. We shall only call a Noble Lord, my Lord of Aylesbury, to testify what he knows, being very much conversant in the Family, of the Treatment he has observed of this Lady.

L. C. J. That needs not, for there is no body that fixeth any thing of the Matter upon my Lord or my Lady.

Mr. Wallop. We do hope in your Lordship's Observations upon the Evidence to the Jury, you will please to take notice, that there is no Colour of Evidence of any Actual Force upon the Lady which is laid in the Information, that my Lord did *vi & armis abducere*, &c.

L. C. J. Oh, Mr. Wallop, fear not, I shall observe right to the Jury; but you have read the Book that is written concerning Juries lately, I perceive.

Mr. Serj. Jefferies. He has studied such Books no doubt, and has learn'd very good Counsel from *Whitaker*.

L. C. J. Look you, Gentlemen of the Jury, here is an Information on the behalf of the King, against my Lord Grey, and the other Defendants; and it doth set forth, that my Lord Grey having married one of the Daughters of the Earl of Berkeley, and having opportunity thereby of coming to the Earl of Berkeley's House, he did unlawfully sollicite the Lady Henrietta, another Daughter of the Earl of Berkeley's, a young Lady, to unlawful Love; and that he did intice her from her Father's House; and that he did cause her to be conveyed away from thence against her Father's Consent; and that he did unlawfully use her Company afterwards in a very ill manner, an unjustifiable manner; and this, Gentlemen, is the Substance of the Information; in truth it is laid, that he did live in Fornication with her. Now, Gentlemen, to this my Lord Grey and the other Persons, the Charnocks and the Jones's have all pleaded not Guilty to it. Now then, the Question before you is, whether there was any such unlawful Solicitation of this Lady's Love; and whether there was any Inveiglement of her to withdraw her self and run away from her Father's House without his Consent; and whether my Lord Grey did at any time frequent her Company afterwards. Gentlemen, the Evidence that has been given, you have heard what it is, and it is very plain, (if you do believe these Witnesses that speak it from my Lord's own Mouth) that he hath a long time unlawfully solicited her to Lust. For there is nothing else in it, Gentlemen (that is the plain English of it all) he has inticed her to unlawful Lust. My Lady she gives Evidence of it from his own Mouth, that there was an Intrigue of unlawful Love between them: She says my Lord Grey condemn'd himself for it several times, but yet prosecuted it; he own'd it was a most disingenuous and dishonourable thing in him, which indeed it was; he did therein in truth make a right Estimate of the thing. He did own he had betray'd the Family, and brought it into great Scandal, and had abus'd both Father and Mother by this unlawful Solicitation of their Daughter to this unworthy wicked Affection; but he excused it all with the greatness of his Passion, and that was all; he pray'd her to consider, *it was a great and passionate Love, a Love that he could not resist; he loved her above all Women living*, and many fair Promises of Amendment and desisting he made, but you see how he has perform'd them. You hear my Lady Arabella tells you there was a Letter written by my Lady Harriett, this Lady that appears now in Court as a Witness for my Lord Grey, which she had out of her own Hand, and she tells you the Effect of

of it ; it was to invite my Lord another Night as he had been with her a former Night, and to shew the greatness of her longing for him, she desires it might be quickly, not to stay till *Monday*, for if he did she should be mighty impatient, if he delay'd so long ; and withal she told him, her Sister *Bell*, which I take to be my Lady *Arabella*, had not discovered it, nor heard the Noise that was between them that Night they were together. My Lady *Lucy*, she tells you he owned there was an unlawful Love between him and her Sister, it must needs then be true if he owned it to her, and he said that it put him upon mighty Inconveniences, and he owned he had done so much wrong to the Family, that he could never repair it. You hear my Lady tells you she forbid him the Family ; and you hear likewise, what little Designs he had, and what he pretended that he might continue to come to the Family, if you believe my Lady. For he pretended that this would be the way to make it publick, if he were forbid the House altogether ; but he would be under her Direction, he would do nothing but what she should approve of ; that he would not apply himself to her Daughter to speak to her, nor write to her. And you hear that for all this, he did before my Lady *Arabella* vent a great deal of Passion for her, that she was the only Person in the World he had any Love for ; that my Lady *Arabella* tells you she heard him say, when he had seen her fall down like a dead Woman. When he had made my Lady a Promise that he would not come down without Leave, he sends his own Wife thither first to beg that he might come down, and very earnest and importunate she was with her Mother, not knowing any thing of the Intrigue, but was made instrumental to get Leave to come down. And at length, Leave was given him to dine there, as he went to *Suffex*, but he comes at nine a Clock at Night, and then Excuses were made by him for it ; and my Lord *Berkeley* desiring him to stay, who was not acquainted with the unlawful Affection that was between his Daughter and him, and accordingly he did stay till *Saturday*. You hear, Gentlemen, what is said to you now, as to her carrying away, for all that has been hitherto observed to you, has been only to the unlawful Solicitation of this Lady to unlawful Love. My Lady tells you, that that very Night that my Lord *Grey* went from her House was her Daughter carried away. You see then, the Question will be, whether my Lord had any hand in carrying her away, and for that you must weigh these Circumstances. It is pretty manifest that this Coach-man, that is *Charnock*, did carry her away. Now the Chaplain tells you, that my Lord was earnest in several Discourses that day with *Charnock*, and under some great Trouble, he could discern that in his Countenance, and several times he was sent for to him, as tho' there was some mighty earnest Business imposed upon *Charnock* to do. *Charnock* made as tho' he went away, it seems, with his Lord, who went away about four a Clock, and the Lady was carried away in the Morning between twelve and one which is the time spoken of. Now to prove that *Charnock* carried her away, you have these Circumstances ; She was brought to the House of *Hilton*, there was a Lady brought in there that Morning about nine a Clock by

Charnock ; *Charnock* was the Afternoon before going to *Up-Park* with his Lord, but it is manifest that he was back that Morning at *London*, and so brought the Lady thither that Morning. If you believe *Hilton* the Witness, it is manifest she had been a Journey, and was very weary, so that she was fain to go to Bed at nine a Clock. This Lady that was there brought by *Charnock* and his Wife, was afterwards carried to *Patten's* House, *Mrs. Hilton* swears it ; and *Mr. Patten* swears they did come in there. There was a great deal of Policy used in the Case, and Care taken ; and *Mrs. Hilton* tells you why, they saw some Men about the Door, which they were afraid might be Men that came to look after the Lady, and so they slid away thro' the Back-door, which proves something in that she was to be conceal'd. Then consider the Circumstances of the Cloaths that do so exactly agree. There was a Gown with red and green Flowers striped, and there was a Petticoat striped with Red, and a White Quilted Petticoat under that the Lady had on that came to *Patten's* ; and the Lady's Woman who lay with her and look'd after her, describes to you her Gown and Petticoat to be the same as those were that the Lady had on, who was hurried away from *Patten's* House at Night to another Lodging. We cannot indeed discover where that was. Now then, after this, my Lord *Grey* he undertakes to my Lady *Berkeley*, that he would go to *Up-Park*, and stay there till he had Leave to come to Town. *Patten*, who saw the Lady, swears this is the very Lady that sits here, and who has been examined, but denies it. If she was the Lady that was brought to *Patten's*, she was the same that was brought to *Hilton's*, whither *Charnock* brought her, and so there is a full Evidence of the Guilt of *Charnock* and his Wife, who was the Solicitor about the Business, took Lodgings for her, help'd her away from *Hilton's*, and help'd her to *Patten's*, and from *Patten's* somewhere else. So that if you believe them, *Charnock* and his Wife are both Guilty. As to my Lord *Grey*, who went to *Up-Park* on the *Wednesday*, soon after he came to Town again, and it is positively sworn that he came to *Jones's* upon the *Tuesday*, and sent for *Jones* out to come to him, who was in a Hack-Coach, where he discoursed with him a pretty while, and afterwards the Room is provided for the Lady up two pair of stairs in *Jones's* House. She is brought thither, my Lord *Grey* came twice to the House, and both times without his Perriwig, as the Maid swears she knew him very well, and there he took Lodgings for a Lady, and that Lady came afterwards. Now if this falls out to be my Lord *Berkeley's* Daughter, then you have it push'd home upon my Lord *Grey*. That this was my Lord *Berkeley's* Daughter, you have this Evidence made up of Circumstances. First, The Policy used in the Case by my Lord, to have all so privately managed. Another Circumstance there is, tho' at first it seems but slight, yet if it be well consider'd will signify very much, and that is what the Maid does testify. She says her Linnen was brought down to be washed, and there was a Shift that was very remarkable, for it had the Body of one sort of Cloth, and the Sleeves of another, and that she took special notice of it, and thence would have concluded that the Lady was not a Person of Quality ; and another of those very

Shifts that belonged to my Lady Harriett was brought to her afterwards, and she swears it was of the same Fashion and Make with that which the Lady had that lodged in their House; and it was, as all do agree, just in the same manner as this was, with the Body of one Cloth and the Sleeves of another. Then, there is Colonel Fitz-Gerrard was in those very Lodgings at that time; and he comes and tells you, that having heard of my Lord Berkeley's Daughter's Departure from her Father, and considering the Circumstances that he had heard the Maid say that it was my Lord Grey's Mistress that was brought in thither, and such other Circumstances concurring, he did conclude this to be the Lady, and he tells Jones his Suspicions concerning it (whose Wife was by the way so very officious to conceal the Lady, that she would not suffer her Maids to come up stairs, but would rather shut up the Shop windows her self, than the Maids should come to see her.) Mr. Jones having Discourse with the Colonel about this, and finding the Lady was smok'd, was angry at the Colonel's Curiosity, which increased the Colonel's Suspicion. He told Jones, *This must needs be the Lady, and I will see her.* Which he very much fearing, intreated him not to disturb his House at that time of Night, and upon Promise to let him see her the next Morning, he desisted; but told him, *He knew not what he was doing, he did a very ill thing to conceal a young Lady from her Friends, her Father and Mother not knowing where she was, might give her over for Dead.* But in the Morning the Lady was convey'd away. This, to me, is a shrewd Circumstance that Jones knew her to be the Lady, and to conceal all the Matter, got so much time to send her away. To what purpose else was she carried away, when the Colonel was to see her, that he might be satisfied about his Suspicion, and so acquaint her Father? But she was conveyed away presently. Gentlemen, it is manifest by all the Witnesses, and by what the Defendants Counsel themselves open'd, that under this Absence of the Lady from her Father, he had an Intercourse of Letters with her, which is a great Circumstance to prove that she was carried away by his Contrivance. He could tell the Lady Lucy, *That she should never be brought back again, without he might have Leave to visit her.* So that it seems he had full Power over her. There is another Gentleman, who has told you he was set as a Spy over him; and if you believe him, my Lord Grey has made a Confession to him as he would to his Ghostly Father, he has told you the Intrigue of all his unlawful Love, from the Beginning to the End; how long he was engaged in it before he had any Comfort from the Lady, when he had the first Demonstration of Kindness from her, and the whole Matter all along. There is another Gentleman that was sent to treat with my Lord (Mr. Smith) concerning this; he tells you, my Lord Grey and he being in a long Discourse, he offered that he would deliver her to one Person, but not to another: She should be first sent to his Brother-in-law, Mr. Nevil's in Berkshire, afterwards to another Place, Mr. Petit's, so as he might have Access to her; but he tells you also, this was the Conclusion of all, *He would never part with her, nor never deliver her, upon any other Terms than that he might have Access to her whenever he would.* Now, put all this together, and see what it a-

mounts to. He that had so great a Passion for her, he that could not be without the Sight of her, but used such ways to come to speak to her, he that had Letters from her all along, he that had such Power over her, that he could deliver her, as he said, or not, and would keep her in spite of her Father, unless he might have Leave to visit her as often as he pleased; and consider then, I say, whether it is not more than probable, that he had a Hand in carrying her away. It is plain beyond all Contradiction, she was carried away by his Man, who was in his Company that Night, he pretended to go to Up-Park, but was in London the next Morning by nine a Clock. My Lord came afterwards to take Lodgings for her, two Days one after another. Whether then he be not as Guilty as Charnock or any of the rest, may indeed, the main Mover of this ill Thing, you are to consider upon the Evidence that has been given. But you must, withal, take into your Consideration, what my Lord Grey says for himself. He has asked several Questions of the Ladies that were examined, but truly never a one worth the remembering, that I know of, or that made to his purpose. He does indeed pretend that the young Lady was hardly used at home, and that she fled to him as to a Sanctuary for Protection; and you hear the several Witnesses examined to that Point; and they all say she was used, notwithstanding the Discovery of this ill Business, with the greatest Kindness and Respect that a Child could be used with by her Mother, and no Hardship put upon her, but only she was forbid to write any Letters to my Lord Grey, and had a Maid put upon her, to keep her from running away, because once before she attempted it, as her Mother did believe. The Lady her self is here, she has been examined; she indeed denies this all along; she says that this Coach-man Charnock did not carry her away; she says she was not at Hilton's, nor at Patten's, nor at Jones's; that she never saw my Lord Grey till a long time after she went from her Father's. But this is all disproved by the other Witnesses, and so whether you will believe her single Testimony, or theirs, I must leave it to you. You must consider under what Circumstances she is, and truly she doth not seem to be any way fit to be believed in this Matter. Jones and his Wife are as guilty as any of the rest, for their Contrivance to keep her secret, especially, after that he had promised Fitz-Gerrard to let him see her. Look you, as to the long Discourse my Lord Grey made, I must tell you, it is not to be believed further than it is proved. Now my Lord Grey did tell us, that he from time to time had given Caution to my Lady, that she should look to her Daughter, and lock her up, for else she would, as he believed, run away. My Lady denies it all, and so it goes all for nothing, and you are to take no notice of it. I must leave it to you, whether you do believe what these Witnesses have sworn, if you do believe the Evidence produced for the King, most certainly they are all five guilty of the Charge in the Information.

Mr. Just. Dolbin. There is no Evidence against Rebecca Jones.

L. C. J. No, there is not.

Mr. Serj. Jefferies. No, we cannot insist upon it that there is, you must find her not Guilty.

Mr. Just. Jones. I must remember you of one Thing,

Thing, Gentlemen, and that is, what drop'd from my Lord Grey's own Mouth, that when my Lord, as he says, gave his Advice that she should be looked after carefully, he would not give his Reason for it, but after he did, as he says, tell it my Lady Lucy, that she complained to him at St. Jones's, that she led the Life of a Dog or a Slave, and she would not endure it any longer, and desired him to assist her or she would do herself a Mischief. Why was not this told before?

L. C. J. Ay, but Brother, my Lady Berkeley denies it all too.

[Then the Jury began to withdraw.

Earl of Berkeley. My Lord Chief Justice, I desire I may have my Daughter delivered to me again.

L. C. J. My Lord Berkeley must have his Daughter again.

Lady Henrietta. I will not go to my Father again.

Mr. Just. Dolbin. My Lord, she being now in Court, and there being a *Homine Replegiando* against my Lord Grey, for her, upon which he was committed, we must now examine her. Are you under any Custody or Restraint, Madam?

Lady Henrietta. No, my Lord, I am not.

L. C. J. Then we cannot deny my Lord Berkeley the Custody of his own Daughter.

Lady Henrietta. My Lord, I am married.

L. C. J. To whom?

Lady Henrietta. To Mr. Turner.

L. C. J. What Turner? Where is he?

Lady Henrietta. He is here in Court.

[He being among the Croud, way was made for him to come in, and he stood by the Lady and the Judges.

L. C. J. Let's see him that has married you. Are you married to this Lady?

Mr. Turner. Yes, I am so, my Lord.

L. C. J. What are you?

Mr. Turner. I am a Gentleman.

L. C. J. Where do you live?

Mr. Turner. Sometimes in Town, sometimes in the Country.

L. C. J. Where do you live when you are in the Country?

Mr. Turner. Sometimes in Somerset-shire.

Mr. Just. Dolbin. He is, I believe, the Son of Sir William Turner that was the Advocate, he is a little like him.

Mr. Serj. Jefferies. Ay, we all know Mr. Turner well enough. And to satisfy you this is all a part of the same Design, and one of the foulest Practices that ever was used, we shall prove he was married to another Person before, that is now alive, and has Children by him.

Mr. Turner. Ay, do Sir George if you can, for there never was any such thing.

Mr. Serj. Jefferies. Pray, Sir, did not you live at Bromley with a Woman as Man and Wife, and had diverse Children, and living so intimately were you not question'd for it, and you and she owned your selves to be Man and Wife?

Mr. Turner. My Lord, there is no such thing, but this is my Wife I do acknowledge.

Mr. At. Gen. We pray, my Lord, that he may have his Oath.

Mr. Turner. My Lord, Here are the Witnesses ready to prove it that were by.

Earl of Berkeley. Truly, as to that, to examine this Matter by Witnesses, I conceive this Court, tho' it be a great Court, yet has not the Cognisance of Marriages: And tho' here be a Pre-

tence of a Marriage, yet I know you will not determine it, how ready soever he be to make it out by Witnesses, but I desire she may be deliver'd up to me her Father, and let him take his Remedy.

L. C. J. I see no Reason but my Lord may take his Daughter.

Earl of Berkeley. I desire the Court will deliver her to me.

Mr. Just. Dolbin. My Lord, we cannot dispose of any other Man's Wife, and they say they are Married. We have nothing to do in it.

L. C. J. My Lord Berkeley, your Daughter is free for you to take her; as for Mr. Turner, if he thinks he has any Right to the Lady, let him take his Course. Are you at Liberty and under no Restraint?

Lady Henrietta. I will go with my Husband.

Earl of Berkeley. Huswife, you shall go with me home.

Lady Henrietta. I will go with my Husband.

Earl of Berkeley. Huswife, you shall go with me, I say.

Lady Henrietta. I will go with my Husband.

Mr. Williams. Now the Lady is here, I suppose my Lord Grey must be discharged of his Imprisonment.

Mr. Serj. Jefferies. No, my Lord, we pray he may be continued in Custody.

L. C. J. How can we do that, Brother, the Commitment upon the *Writ de Homine replegiando* is but till the Body be produced, and here she is, and says, she is under no Restraint.

Mr. Serj. Jefferies. My Lord, if you please to take a little time to consider of it, we hope we may satisfy you that he ought still to be in Custody.

L. C. J. That you can never do, Brother.

Mr. Serj. Jefferies. But your Lordship sees upon the Proofs to Day, this is a Cause of an extraordinary foul Nature, and what Verdict the Jury may give upon it we do not know.

Mr. At. Gen. The Truth of it is, we would have my Lord Grey forth-coming, in case he should be Convicted, to receive the Judgment of the Court.

L. C. J. You cannot have Judgment this Term, Mr. Attorney, that is to be sure; for there are not four Days left. And my Lord Grey is to be found to be sure, there never yet before this was any thing that reflected upon him, tho' this indeed, is too much and too black if he be guilty.

Mr. Just. Dolbin. Brother, you do ill to press us to what cannot be done; we, it may be, went further than ordinary in what we did, in committing him being a Peer, but we did it to get the Young Lady at Liberty; here she now appears, and says she is under no Restraint; What shall we do? She is properly the Plaintiff in the *Homine replegiando*, and must declare, if she please, but we cannot detain him in Custody.

L. C. J. My Lord shall give Security to answer her Suit upon the *Homine replegiando*.

Mr. Williams. We will do it immediately.

L. C. J. We did, when it was moved the other Day by my Brother Maynard, who told us of Ancient Precedents, promise to look into them, and when we did so, we found them to be as much to the purpose, as if he had cast his Cap into the Air, they signified nothing at all to his Point. But we did then (as we did at first

first tell my Lord, so) him if he did produce the Lady we would immediately Bail him. And she being now produced, we are bound by Law to Bail him. Take his Bail.

[And accordingly he was Bail'd at the Suit of the Lady Henrietta Berkeley, by Mr. Forrester, and Mr. Thomas Wharton.]

Earl of Berkeley. My Lord, I desire I may have my Daughter again.

L. C. J. My Lord, We do not hinder you, you may take her.

Lady Henrietta. I will go with my Husband.

Earl of Berkeley. Then all that are my Friends seize her I charge you.

L. C. J. Nay, let us have no breaking of the Peace in the Court. But, my Lord Cavendish, the Court does perceive, you have apprehended your self to be affronted by that Gentleman Mr. Craven's Naming you in his Evidence; and taking notice of it, they think fit to let you know, that they expect you should not think of righting your self, as they have some Thoughts you may intend. And therefore you must lay aside any such Thoughts of any such satisfaction. You would do your self more Wrong by attempting to right your self in any such way.

Lord Cavendish. My Lord, I am satisfy'd that your Lordship does think it was impertinently spoken by him, and shall not concern my self any further, but only desire that the Court would give him some Reproof for it.

Then the Court broke up, and passing through the Hall there was a great Scuffle about the Lady, and Swords drawn on both

sides, but my Lord Chief Justice coming by, ordered the Tipstaff that attended him (who had formerly a Warrant to search for her, and take her into Custody) to take Charge of her, and carry her over to the King's Bench, and Mr. Turner asking if he should be committed too, the Chief Justice told him, he might go with her if he would, which he did, and, as it is reported, they lay together that Night in the Marshal's House, and she was released out of Prison, by Order of the Court, the last Day of the Term.

On the Morning after the Tryal, being Friday the 24th of November, the Jury that try'd the Cause, having (as is usual in all Causes not Capital try'd at the Barr, where the Court do not sit long enough to take the Verdict) given in a private Verdict the Evening before, at a Judge's Chamber, and being now called over, all appear'd, and being asked if they did abide by the Verdict that they gave the Night before, they answer'd, *Yes*; which was read by the Clerk of the Crown to be, *That all the Defendants were Guilty of the Matters charged in the Information, except Rebecca Jones, who was Not Guilty*; which Verdict being Recorded, was commended by the Court and the King's Counsel, and the Jury discharged.

But in the next Vacation, the Matter, as the Report went, was compromised, and so no Judgment was ever pray'd, or entred upon Record, but Mr. Attorney General was pleased before the next Hillary-Term, to enter a *Nolle Prosequi* as to all the Defendants.



The TRYAL of Tho. Pilkington, Esq; Samuel Shute, Esq; Sheriffs. Henry Cornish, Alderman. Ford, Lord Grey of Werk. Sir Tho. Player, Knight, Chamberlain of London, Slingsby Bethel, Esq; Francis Jenks, John Deagle, Richard Freeman, Richard Goodenough, Robert Key, John Wickham, Samuel Swinock, John Jekyll, Sen.

May the 8th. 1683.

The INFORMATION.

London ff.



BE it remember'd that Robert Sawyer Knight, Attorney General of our Lord the King, who for our said Lord the King in this behalf prosecuteth, cometh into Court in his Proper Person on Friday next after Fifteen Days of the Holy Trinity, in this same Term, and for our said Lord the King doth give the Court here to understand and be informed, that the Four and Twentieth Day of June in the Four and Thirtieth Year of his now Majesty's Reign at the Guild-hall of the City of London, a certain Court for Assembling the Citizens and Freemen of the City of London, called a Common-hall, being Summoned and Cal-

led by Sir John Moore Knight, then and yet Mayor of the City of London, was in a lawful manner held before the said Sir John Moore Knight, Mayor of the City aforesaid as well for the due Election of Sheriffs of the City aforesaid, for the Execution of the Office of Sheriff of the said City for one whole Year, next following after the Vigil of the Feast of St. Michael then and yet next coming, as for the Election of divers other Officers of the said City. And that then and there in the said Court it was begun to take the Poll of the Electors then and there present for the making known of the Election of the Persons to serve in the Office of Sheriffs of the said City, for the Year aforesaid. And that the said Sir J. Moore, Knight, Mayor

Mayor of the said City, afterwards the said 24th Day of June, in the 24th Year aforesaid at *Guild-Hall* of the said City of London (to wit) in the Parish of *St. Michael Bassishaw, London*, in a lawful manner did make and cause to be made Proclamation for the adjourning of the said Court so as aforesaid held, and then and there did adjourn the said Court until *Tuesday*, then next following to be held at the *Guild hall* of the said City of London, and then and there after the said Adjournment, so as aforesaid made the said Sir *John Moore* Knight, Mayor of the said City of London, did make and cause to be made publick Proclamation for the Departure of all Persons upon the said occasion there assembled: And further the said Attorney General doth give the Court to understand and be informed, That *Thomas Pilkington*, late of London Esq; and *Samuel Shute*, late of London Esq; then Sheriffs of the said City of London, and *Henry Cornish* late of London, Esq; *Ford Lord Grey of Werk, &c.* the said Premisses sufficiently knowing, but being ill disposed Persons, and devising and intending to disquiet, molest and trouble the Peace of our said Lord the King and the common Tranquillity of this Kingdom of England, they the said *Thomas Pilkington* and *Samuel Shute* under colour of the Office of Sheriffs of the said City of London, and the said *Henry Cornish, Ford Lord Grey*, and others afterwards, and after the Adjournment aforesaid (to wit) the said 24th day of June, in the 24th Year aforesaid, at the Parish of *St. Michael Bassishaw, London* aforesaid in the said *Guild-hall*, there with Force and Arms, Riotously, Routously, Unlawfully, and Seditiously, did assemble, congregate, and unite themselves with very many other ill disposed Persons and Breakers of the Peace of our said Lord the King, to the Number of One Thousand Persons, to the said Attorney General of our said Lord the King, as yet unknown, to disturb the Peace of our said Lord the King, and being so assembled, congregated, and united, then and there with Force and Arms, &c. Riotously, Routously, and Unlawfully, in and upon the said Sir *John Moore* Knight, Mayor of the City aforesaid, in the Peace of God and of our said Lord the King, then and there being, did make an assault and affray, and him the said Sir *John Moore* Knight then and there did beat, wound and evil intreat, so that of his Life it was greatly despaired, and after the Adjournment aforesaid, and Proclamation so as aforesaid, made by the said Sir *John Moore* Knight, Mayor of the said City, they the said *Thomas Pilkington* and *Samuel Shute*, then and there by

colour of their Office of Sheriffs of the said City of London, and the said *Henry Cornish, Ford Lord Grey, &c.* with divers other Persons to the said Attorney General of our said Lord the King as yet unknown, unlawfully and seditiously aiding and assisting the said *Thomas Pilkington* and *Samuel Shute* with Force and Arms, &c. Riotously, Routously, and Unlawfully, did there continue to take the Poll of the Persons so then and there unlawfully Assembled, as if the said Persons had been lawfully Assembled for the Election of Sheriffs of the said City; and that the said *Thomas Pilkington, Samuel Shute, Henry Cornish, &c.* then and there Unlawfully, Tumultuously, and Seditiously, did affirm, and every one of them did affirm, say, and with a loud voice to the said ill disposed Persons affirm that the said Sir *John Moore* Knight, Mayor of the said City of London, did unlawfully and unjustly assume upon himself the Liberty to Adjourn the said Court, which did not belong to him; And that the said *Thomas Pilkington, Samuel Shute, Henry Cornish, &c.* then and there, the said unlawful and ill disposed Persons, so as aforesaid assembled and congregated with Force and Arms, Riotously, Routously, Unlawfully and Seditiously, by the space of three hours, to disturb the Peace of our said Lord the King, and to commit the Riot aforesaid, did stir up, move, perswade, procure, and then and there by the whole time aforesaid in *Guild-hall London* aforesaid, in the Parish aforesaid, great Rumors, Cries, Hollowings, and terrible and unwonted Noises, with Force and Arms, &c. Riotously, Routously, Unlawfully, Tumultuously and Seditiously, did make and cause to be made, and did stir up, in Contempt of our said Lord the King, and the manifest Disturbance and Violation of his Laws and his Peace, to the great Danger of stirring up and moving of a tumult, and the spilling of much Blood there, to the great Terror, Trouble and Fear of all His Majesty's Leige People, Subjects of our said Lord the King, to the ill Example of all others in the like case offending; And against the Peace of our said Lord the King, his Crown and Dignity, &c. Whereupon the said Attorney General of our said Lord the King for our said Lord the King prayeth the Advice of the Court in the Premisses, and due Process of Law against the said *Thomas Pilkington, Samuel Shute, Henry Cornish, Ford Lord Grey, &c.* in this behalf to be made to answer our said Lord the King, of and in the Premisses, &c.

To which the Defendants Pledaded not Guilty.

On Tuesday the Eighth Day of May, at the Sessions of Nisi Prius, at the Guild-Hall of the City of London, held there for the County of the said City, before the Right Honourable Sir Edmond Saunders Knight, Chief Justice of His Majesties Court of King's Bench; an Information was brought at the King's Suit, against Thomas Pilkington Sheriff, Samuel Shute Sheriff, Henry Cornish Alderm. Ford Lord Grey of Werk, Sir Thomas Player Kt. Slingsby Bethel Esq;

Esq; Francis Jenks, John Deagle, Richard Freeman, Richard Goodenough, Robert Key, John Wickham, Samuel Swinock, John Jekyll Senior, &c.

The Court being sate, the *Tryal* proceeded.

CRYER,

YOU Good Men of Nisi Prius summoned to appear here this Day between our Sovereign Lord the King, and Thomas Pilkington, and others, Defendants: Answer to your Names, and save your Issues.

The Jury appeared.

Mr. Sommers. My Lord, I am to Challenge the Array.

Mr. Thompson. My Lord, I desire this Challenge may be read.

The Challenge read in French.

Sir Edmund Saunders. L. C. J. Gentlemen, I am sorry you should have so bad an Opinion of me, as to be so little a Lawyer not to know this is but a Trifle, and nothing in't. Pray, Gentlemen don't put these things upon me.

Mr. Thompson. I desire it may be read, my Lord.

L. C. J. You would not have done this before another Judge: You would not have done it if Sir Matthew Hale had been here.

Mr. Thompson. My Lord, I believe if there had been nothing in it, it would not have been sign'd.

Sir Robert Sawyer. Mr. At. Gen. Very few but Mr. Thompson would urge it.

Mr. Thompson. I don't know whether you think so, or not, Mr. Attorney; but I have a great deal to offer, if you please to Answer it. We offer our Challenge in Point of Law.

L. C. J. There is no Law in it.

Mr. Thompson. We desire it may be read in English.

L. C. J. Why? Do you think I don't understand it? This is only to tickle the People.

The Challenge read by the Clerk accordingly.

Mr. Serj. Jefferies. Here's a Tale of a Tub indeed!

L. C. J. Ay, It is nothing else, and I wonder Lawyers would put such a thing upon me.

Mr. Thompson. My Lord, we desire this Challenge may be allowed.

L. C. J. No, indeed won't I, there is no colour for it; and I am apt to think there are not many Lawyers in England would have put such a thing upon me: Because I am willing to hear any thing, and where there is any colour of Law, I am not willing to do amiss: Therefore you think I am so very weak, without you think I was always so, and therefore may be so at this time. For, pray now consider, if so be the King's Counsel should come and plead this Challenge, what is the Consequence of it? I thought you would have said, that the Sheriffs had been a-kin to the King, but you have made it worse. You do come with a long Tale here

of the whole Merits of the Cause, and more than yet doth appear; and by this you would have the Challenge to be allowed: In such a Case a man may come and tell a Tale of the Merits of the Cause, and then it must be tryed by the Challenge. If the Sheriffs do return an Inquest for the King, and the Sheriffs do hold of the King a Fee-farm, or have a Pension or an Annuity from the King, the Book doth say, that in some Cases it is a Challenge; for though they cannot be challenged as being favourable for the King, yet for those reasons they may be challenged. But what is here? Here you tell a long Process concerning a Difference between the Mayor and the Sheriffs, and all this matter is wrap'd up altogether; and if all this were true, it is no Challenge at all.

Mr. Thompson. We shall speak with all submission to your Judgment, my Lord.— Good Mr. Attorney, give me leave.

Mr. At. Gen. I move for you.

Mr. Thompson. If you please you may move for your self, I don't need you to move for me. My Lord, with submission, the Information is not good: My Lord, it is an Information that doth set forth that my Lord Mayor had right of Adjournment the Poll, when an Election is to be for Sheriffs. My Lord, if he had not that Right, it can be no Riot according to this Information. My Lord, upon his Adjournment Mr. Sheriff North was Chosen: My Lord, if that Adjournment was not according to Law, Mr. Sheriff North never was Sheriff of London; Then, my Lord, here is the Case in this Question of Title, for Mr. North doth come in Question, whether he be a legal Sheriff of London.

L. C. J. Prove to me now that of Sheriff North; Pray what Annuity, Pension, or Fee-farm hath he as Sheriff of London, whereby he is concerned?

Mr. Thompson. My Lord, there are other Reasons which I shall shew to you; and the first Reason, my Lord, in this Case, is this; it will appear the Election of Mr. North is interested in this matter; and if Sir John Moore had not an Authority to Adjourn the Poll, Mr. North was not chosen duly Sheriff; now if there is a Sheriff chosen in Point of Right, it is a good Challenge.

L. C. J. In point of Profit, and not all neither; for he that holds Land in Capite of the King, cannot be challenged for all that.

Mr. Thompson. I think, my Lord, this is a common Case in our Books, That if in case a Sheriff be concerned in point of Title, this is a principal Challenge, because that he is interested in that Title, he is no person by Law to return a Jury. I don't doubt but your Lordship will do that which is right, and according to Law. My Lord, I say, where a Sheriff is interested in point of Title, he is no Person by Law to return a Jury, and this Question will appear plainly upon this Information; for if in case

case this was not a lawful Adjournment by Sir *John Moore*, this is not a lawful Return——

Gentlemen, my Lord, I know, will hear me, if you have but patience; I always speak and stand up for my Clients as I ought to do. If you please to let me have Liberty, I have my Lord's. If a Sheriff be concerned in point of Title, it is a principal Challenge, and the Sheriff ought not to return the Jury, but the *Coroner*: And my Lord, much more in this Case, for that the very Title to the Office of Sheriff is here in Question, and therefore he is no Person fit to return this Jury, my Lord. We desire your Lordship's Opinion.

L. C. J. Mr. *Thompson*, Methinks you have found out an Invention, That the King should never have Power to try it even so long as the World stands. Say you Sheriff *North* is not a right Sheriff, Who should have been? Why say you *Dubois* and *Papillon*, or one, or both of them. Now the King he hath brought his Suit for a Riot.

Mr. Serj. *Jefferies*. And an Assault and Battery upon Sir *John Moore*.

Mr. *Thompson*. That is a Fiction.

L. C. J. The King hath brought his Suit, and brought it to an Issue. Why now if so be this Challenge should have any thing in it, then the King must have challenged *North*, and what must he have done then? Why, for *Papillon* and *Dubois*, they are not Sheriffs *in actu*, then say you the *Coroner*. Pray Mr. *Thompson*, If so be the King had made the *Venire* either to *Papillon* or *Dubois*, or to the *Coroner*: Whether or no had not the Cause been found against the King, before one Word had been said actually for him? You say the Question is, Whether he be a Sheriff or not? If the King had challenged him, and made the *Venire* to the *Coroner*, for God's sake, Had not that made an end of the Question?

Mr. *Thompson*. No, my Lord, not at all.

L. C. J. No? Then I understand nothing.

Mr. *Thompson*. My Lord, If the Sheriff appear to be concern'd, it doth not determine the Cause.

L. C. J. But it does by your own Opening now. You say the Question is, for which you do now challenge the Array, because it is returned by Sir *Dudley North*, supposed to be one of the Sheriffs, and tell the whole Process, how that in truth it is a Question whether he be a Sheriff or not, and therefore say you, or you say nothing, that the *Venire* should not go to *North*.

Mr. *Thompson*. No, my Lord, I pray, good my Lord——

L. C. J. Should it not have gone to *Dudley North*, and then have been challenged for him?

Mr. *Thompson*. No, I beseech your Lordship, we do not say so. My Lord, we say, That whereas they do charge in the Information, that there was an Assembly for the Election of Sheriffs, and that Sir *John Moore* being then Mayor, did lawfully, according to Law adjourn this Assembly; and that afterwards the Defendants, *Pilkington* and *Shute*, did continue this Assembly, and took a Poll, and so they would make this a Riot in the continuance of it. My Lord, we do say this, That the Election of Mr. *North* upon this Point doth come in question; and, my Lord, we do say, That if that

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be not a legal Adjournment, then Mr. *North* is not legally Chosen.

L. C. J. Right, now you have told it in more Words.

Mr. *Thompson*. We say, If the Election be interested, they are all Parties by Law.

Mr. Serj. *Jefferies*. Who would you have the Process go to?

Mr. *Thompson*. To the *Coroner*.

L. C. J. Very well upon my word. If he were Sheriff, it cannot go to the *Coroner* you know, and therefore if he were challenged, to go to the *Coroner*——

Mr. *Thompson*. *Sub judice lis est*, my Lord.

Mr. Serj. *Jefferies*. We desire for the King, that the Challenge may be over-ruled.

L. C. J. Ay, ay.

Mr. Serj. *Jefferies*. I desire the Jury may be sworn.

Mr. *Williams*. Certainly if they be impanelled by Persons that are not Sheriffs, that is a good Challenge, that is admitted by every body; now we have made a Challenge, and that is a good cause of Challenge certainly if that were the Cause. But now, my Lord, I must confess what your Lordship says, it is a difficult matter to challenge any Array, because they are arrayed by a Person that hath an Interest, or some such thing that is a Challenge of the Array, but that is not the Matter in this Case. It cannot be denied, If these Persons were not Sheriffs of *London*, that that is a good Cause. I take the Result of the Challenge to be this: Say we, the principal Question of this Information, the Riot, will depend upon this Question, Whether there were a regular Adjournment or not? There, say we, begins the Question of the Riot. If so be that my Lord Mayor of *London* that was, had Power to adjourn the Court, and it be admitted a regular Adjournment, certainly the Riot would follow; and what follows then? Then comes on a Question, and it is immediately consequent upon it, That these Gentlemen be actual Sheriffs of *London*, they being actually chosen upon this Adjournment, they are actually Sheriffs: But if really my Lord Mayor had no Power to adjourn, and that Power was in the Sheriffs, that they were actually taking the Poll, and the Poll was for Mr. *Dubois* and Mr. *Papillon*: Then the Question is, If so be the Adjournment by my Lord Mayor were not a good Adjournment, then the Poll was a regular Poll taken by the Sheriffs, then consequently those that were elected upon that were truly chosen, and then it is a right Challenge. These Gentlemen, I must confess, they are Sheriffs *de facto*, but we know very well there may be Sheriffs *de facto*, and there may be other Sheriffs *de jure*, these things are very consistent. If so be that Mr. *Papillon* and *Dubois* be duly elected, they are Sheriffs *de jure*, but they want the Formality, for they are not sworn, and cannot return a Jury. On the other side, the Sheriffs are Sheriffs *de facto*, but not legally chosen, and the Riot will depend upon that Question, of the other Persons that are Sheriffs *de facto*, and not *de jure*. This we suggest in this, Whether your Lordship will receive this Challenge, or whether your Lordship will proceed first to the tryal of the Cause, and let this follow. My Lord, might not there have been something in this case upon the Roll at *Westminster*, might there

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not

not have been a surmise to this purpose, because there is such a Question upon the Roll? For it appears that the Common Hall was for the Election of Sheriffs, and that it was adjourn'd by the Mayor: And what follow'd? Might there not be such a surmise, that the *Venire facias* should not go to the Sheriffs, but to the Coroner? Might there not have been such a thing?

L. C. J. My Speech is but bad, let me know what Objection is made, and if I can but retain it in my Memory, I don't question but to give you Satisfaction. If the King had brought an Information against Mr. Sheriff North, and charged him with a Crime, there is no manner of Question that the King should have challenged as he was a Sheriff, and sent the *Venire* to the Coroner, or other Officer; here he is not accused, nor to be acquitted of any Crime. Gentlemen, I put you upon this, if so be that the Sheriff of London should get a great deal of Money (but I never understood that he got by it) if you prove that he hath got any considerable matter by the Office, it would be something in the Case, that he should be greedy of the Office. But look ye, on the other side, if there be nothing in it one way or another, that there is profit accruing to him by the Office, what can the Law say? But here was the Question between, indeed and in truth as you do open it, between the Mayor, Sir John Moore, I think, and the Sheriffs that then were, that was the Question between them. Now what is this in Point of Law, that the Sheriffs must be challenged? They must be challenged, because it is return'd by these Sheriffs: You can't say the Sheriffs do favour—the King.

Mr. Sol. Gen. My Lord, We trouble your Lordship about a Question very unnecessary: The Sheriff is not concerned in this Question, neither can the Consequences affect the Sheriff any way.

Sir Fr. Win. My Lord, If I don't shew that he is concern'd, notwithstanding what Mr. Solicitor says, it is another matter. If this had been upon a common Riot, and not related to the Election of Sheriffs, it would have been harder against us. I only offer a Word or two, and submit to your Lordship. This Information doth take notice of the Election of Sheriffs, and of an irregularity in disturbing the late Lord Mayor about adjourning the Poll; I do believe, my Lord, it will not be deny'd, but that in this Cause a Riot or no Riot will depend upon the Poll, or the Mayor's adjourning. If that be so, that which your Lordship is pleas'd to urge, That the Sheriff gets nothing, yet that he hath assumed the Office *de facto*, appears by the Return, that is very plain, my Lord, he hath assumed it, and did exercise it. If it appear to be legal or illegal upon the Adjournment by the Mayor, then it must have one of these two Consequences, my Lord, I humbly conceive, till the Shrivalty had been agreed, it would have done very well for Mr. Attorney to let this Riot alone, unless he would have made it a common Riot; if he would have been pleas'd to stay till the Law had determin'd who had been the right Sheriffs, then *Process* would have gone for the King. And, my Lord, there is another thing under favour, if Mr. Attorney had been pleas'd to prosecute for the King; then surely, my Lord, there was a way to lay

it so that the *Process* should be return'd by Persons uninterested, and not by the Sheriff whose Election is in Controversy: I don't argue out of the Record, but by the Record it self. If in case it doth appear still to be under Consideration; if that be so, I do humbly conceive, because that Right of Election of Sheriffs is undetermined, that therefore he might have made the *Process* to the Coroner, if he would have made it before, but it should not be heard before the Election of the Sheriffs, because it will be a Riot, or not a Riot upon that.

L. C. J. Good now, Sir Francis, you mistake, it could not be to the Coroner.

Mr. Sol. Gen. My Lord, It is but wearying your Lordship to no purpose.

Mr. Wallop. If he be not Sheriff, that Title of his depending upon my Lord Mayor's Adjournment, which is reasonably set forth, it is concerned in the Consequence of the Cause.

Mr. Attorn. Gen. If you please, my Lord, I will answer what hath been said. Mr. Thompson did first urge according to the Rules of Law, if the Matter that appears upon the Record to be the Thing in question; that if the Sheriff be interested in that Matter, that that is a good Cause of Challenge, that is a good Rule, and the Law is so; but that is nothing to this purpose, my Lord, here upon the Record there is nothing in question but a Fine for the King, nothing to be recovered: Where Lands are in question, as in an *Ejectment*, if the Sheriff be interested in that Land, in that case that is a good Challenge; but here appears nothing by the Record, here is nothing in question but a Fine for the King; so that certainly that Case in Point of Law, is nothing to the purpose. Then they say it appears in the Record by Recital, and in the Information, for that is the Substance of all they say: It doth appear there, as it is said, That the Mayor did adjourn the Court, and so the Question of the Riot will very much stand upon the Validity of that Adjournment. But it doth not wholly stand upon that, for there are many outrageous Actions, Assaults of the Mayor, throwing off his Hat, great Clamours; thrusting and pressing many of the Aldermen; nay, bruising them, so that this Riot, notwithstanding the Adjournment, be that as it will, will appear in the upshot of the Cause, to be a Riot notwithstanding that Question. But in the second Place, the Question of Mr. North's being a Sheriff or not a Sheriff, no ways depends upon this Adjournment, no Pretence of the Title depends upon that, so my Lord, they have suggested a Thing that is foreign to the Record; it depends purely that upon a Custom of the City for my Lord Mayor to elect, not upon the Power of my Lord Mayor's Adjournment; for after that they proceeded on with the former choice of Mr. Papillon and Mr. Dubois; so that whether that Adjournment be a good Adjournment, or no good Adjournment, his Title will depend upon that, whether at the second meeting or no Mr. Papillon and the other Gentleman be well chosen, and Mr. North not well chosen, so that his Title doth not depend upon this Question one way or other. But, my Lord, that which makes this as frivolous a Thing as ever was urged in a Court of Law, my Lord, that it should have been upon Rule before any Direction

to the Sheriff or Coroner, if they would have had *Process*; they have suggested matter of Fact wholly out of the Record, matters have been suggested that it might have been tryed before it came to Direction; now there appears nothing in the Record to bring a Challenge to try the Matter; nay, as they themselves say, it is to try the Merits of the whole Information, that the Information depends upon that Question, Whether the Mayor may Adjourn. It is a great Usurpation upon the Government of this City, as they have done in other things to the King. My Lord Mayor is the Supreme Magistrate here, and the Sheriffs have nothing to do in this Point, and therefore I pray it may be over-ruled, and that the Jury may be sworn.

Mr. Thompson. We would have, my Lord, the Benefit of a Bill of Exceptions.

Mr. Serj. Jefferies. Swear the Jury, swear the Jury.

Mr. Thompson. I have another Challenge.

L. C. J. I tell you plainly, I see nothing in it for a Bill of Exceptions.

Mr. Thompson. We desire we may have the Benefit of a Bill of Exceptions. My Lord, if this be the Case of trying a Riot, we must take what Advantage we can in point of Law.

Mr. Serj. Jefferies. We come to counsel the King, as we ought to do by Law.

Mr. Thompson. My Lord, I challenge; on the behalf of my Lord Grey, this Jury.

[Challenge read.]

Scignior Grey.

Mr. At. Gen. They call that a *Newgate* Challenge.

Mr. Wallop. That was a Challenge taken at the *Old Baily*.

Mr. Thompson. And over-ruled.

Mr. Serj. Jefferies. And I pray it may be so here.

L. C. J. I think your Challenge is, that they are not Sheriffs?

Mr. Thompson. My Lord, is the Fact true or false? I desire of these Gentlemen, if it be insufficient in point of Law, let them demur.

Mr. Serj. Jefferies. Pray tell me *Robinhood* upon *Greendale* stood; and therefore you must not demur to it.

Mr. Thompson. If the Challenge be not good, there must be a defect in it either in point of Law, or in point of Fact. I desire, on the behalf of my Lord Grey, this Challenge may be allowed.

Mr. Serj. Jefferies. And I pray for the King, that it may be over-ruled.

L. C. J. I think you have owned them to be Sheriffs already.

Mr. Serj. Jefferies. My Lord Grey did own it in his Challenge, because there were no Knights.

L. C. J. We try a great many *Nisi prius* here sometimes, two or three days after the Term, every Defendant that thinks it goes hard with him, we must have a Tryal still, whether the Sheriffs be Sheriffs, or no? This that you have done now, may be done in every Cause that we may be trying. Upon your Evidence if you can prove them none, you go a great way.

Mr. Thompson. My Lord, We desire the Challenge may be allowed, or otherwise a Bill of

Exceptions. My Lord, we pray a Bill of Exceptions.

Mr. Serj. Jefferies. This Discourse is only for Discourse sake; I pray the Jury may be sworn.

L. C. J. Ay, ay, swear the Jury.

Sir Benjamin Newland, &c. sworn.

Mr. Thompson. We challenge Mr. Fensil, he hath given Evidence in this Cause at the Council-Table.

L. C. J. What then?

Mr. At. Gen. My Lord, They shall have all fair.

L. C. J. Mr. Attorney says he wont stand upon it.

Mr. Thompson. My Lord, we pray a Bill of Exceptions.

L. C. J. I think many would not have offer'd it besides you. Shall I go and sign a Bill of Exceptions, to let all the World know this is so, and so all the World must try whether they be Sheriffs of London.

Mr. Thompson. My Lord, don't say so, for I think all the Counsel in the Court would.

L. C. J. If it doth fall out that in truth they don't happen to be Sheriffs, surely you shall have all the Advantage that can be for you; but pray don't think that I will put off a Tryal upon every suggestion that the Sheriffs are not Sheriffs. You shall have all that is Law by the Grace of God, and I am not afraid that you or any Man should say, I don't do justice: I am not bound to gratify every Man's Humour, I am to do according to my Conscience, and the best of my Knowledge, and according to my Oath, and I will do that, and gratify no Man.

Sir Benjamin Newland	} Jur.	Henry Wagstaff
Sir John Matthews		Barthol. Feriman
Sir John Buckworth		Thomas Blackmore
Sir Thomas Griffith		Samuel Newton
Sir Edmund Wiseman		William Watton
Percival Gilburne		George Villars.

Cryer.

O yes, O yes, If any Man can inform my Lord the King's Justice, the King's Serjeant, or the King's Attorney, or this Inquest now to be taken, &c.

Mr. Dolbin. May it please your Lordship, and you Gentlemen of the Jury, This is an Information brought by the King against Thomas Pilkington, &c.

Gentlemen, the Information sets forth, That upon the 24th of June last in Guild-hall, there was a Common Hall summon'd by Sir John Moore Knight, and thereupon held for the Election of Sheriffs for the Year then ensuing the Feast of St. Michael: And that on the same 24th of June, Sir John Moore then Mayor adjourn'd the Court till the Tuesday following by Proclamation. That after the said Adjournment, my Lord Mayor made Proclamation for all Persons to depart; and that the Defendants intending to disturb the Peace of the King after the Adjournment aforesaid, did Unlawfully, with many Persons unknown, meet together, and Riotously assault the Lord Mayor. And after the Adjournment by Proclamation, two of the Defendants, Pilkington and Shute, by colour of their Office as Sheriffs of this City, and the rest of the Defendants, did continue the Pell, and Unlawfully affirm

to the People, That Sir John Moore had no Power to adjourn them. And that they continued this great Tumult three hours, to the Terror of the King's Subjects, and the evil Example of others, and against the Peace of our Sovereign Lord the King. To this the Defendants have pleaded Not Guilty, &c.

Mr. At. Gen. This Information, my Lord, is brought for settling the Peace in this City, and to shew before you all who is the Supreme Magistrate under the King in this City; for that, Gentlemen, you see, is grown a great Question, Whether my Lord Mayor is not only in the Hall, but in his Chair, the Supreme Magistrate?

Gentlemen, I must acquaint you, That my Lord Mayor in all times, even before the City had the Election of him, was the King's Lieutenant, and the Supreme Magistrate in the City, and no publick Assemblies could ever meet together without his Summons, he was the great and chief Director, and this I believe in all your Observations that are of the Jury. I can make it evident, that this hath been the constant Frame of this Government in the City: For the Sheriffs, Gentlemen, they are no Corporation Officers, they are County Officers, as in all the Counties of England, and they are the King's Officers for the Execution of the King's Writs, and the Preservation of the King's Peace; but the Government of the Corporation is in the Mayor, and not in the Sheriffs. Gentlemen, The Question now arising here's about the Election of Sheriffs it's true there were very disorderly tumultuous Proceedings, my Lord Mayor he comes and doth appoint another day for them, and discharges them at that time. We will make appear to you, that it was always his Right in all times both to summon a Common Hall, and dissipate it, and appoint them another day, or to dissolve them, as the Mayor did see Cause. The Mayor having according to the ancient manner adjourned this Court, the Sheriffs they proceed, do not only refuse to obey, but they proceed, and make Proclamation, that it is not in the Power of the Mayor, taking upon them that which never any Sheriffs did in any time, they make Proclamation contrary to what the Mayor had done, and continue the Poll, and proceed and proclaim the Mayor had usurped that Power which was theirs, tho' afterwards they transfer'd the Supreme Power to the Livery Men; but I think no Age will suffer that the Supreme Power should be in the Liverymen, that are expressly appointed to act by a Common Council, which is indeed the Representative of the whole City. But this, Gentlemen, being done by the Sheriffs having usurped the Power of the Mayor, they did proceed in a riotous manner, when the Mayor attempted to go out of the Hall they struck him, struck his Hat off, and pressed several of the Aldermen, the Evidence will make out in what an outrageous manner it was carried on. If the others had made opposition, how soon had all been in Confusion upon this Usurpation, that the Sheriffs had set up for themselves, that they are the Delegates of the People, and must appear to be the Supreme Magistrates of the City of London, I think the Citizens themselves will never endure, that those that are but County Officers should ever invade the Government of the Corporation. Gentlemen, We will shew

you the Particulars of this, and you have nothing to inquire after, but whether they are Guilty of the Riot or no.

Mr. Sol. Gen. My Lord, We will call our Witnesses, and prove our Case by these steps. For the Question that whether or no the Defendants in the Information were Guilty of a Riot, in continuing the Assembly after my Lord Mayor had adjourn'd them, we will prove it by these steps, that it is in the Power of the Lord Mayor to call a Common Hall, and adjourn the Common Hall; That, my Lord, when the Common Hall was assembled for the purpose of electing Sheriffs, that he did adjourn the Common Hall, and that contrary to his Adjournment the Sheriffs continued it, declaring my Lord Mayor had no Right so to do. And that afterwards my Lord Mayor commanded them to depart, and they continued their Assembly there in a very riotous manner, and as my Lord Mayor came down they offer'd Insolencies to his Person, and they continued the Assembly there in a riotous manner, and commended the Sheriffs that did assert their Right, following them in a riotous manner into Cheapside, crying out in a factious manner, *God bless the Protestant Sheriffs.*

Mr. Serj. Jefferies. My Lord, We would begin with our Witnesses; but for the Gentlemen of the Jury, which I think are Men that belong to the City, and that the thing may be very intelligible, I beg leave to acquaint your Lordship with the methods that have always been proceeded in, in Choices of this nature. My Lord, We will make it appear, and I think it will not be doubted by any Man that knows the City of London, that Common Halls are always summon'd to appear by the intimation of the Mayor, of the Mayor himself at any time when he finds an occasion, either for the assembling of a Common-Council, or the assembling a Common Hall, &c. Precepts are issued, they are Words that you, Gentlemen, do understand very well, to summon a Common Hall from time to time. It is very true, tho' they do usually make Summons for *Midsummer-day*, yet *Midsummer-day* being a publick and notorious day for the Choice of some particular Persons, they are not so continually exact in Summons, for they do presume that every body takes notice of the day. But I am to give your Lordship an account, whereas in the Record there is only notice taken concerning the Sheriffs on *Midsummer-day*, it is notoriously known to all Gentlemen that are Inhabitants in London, there is a Choice of Chamberlain, and Auditors of the Bridge-House and Chamber-Accounts down to Ale-conners, and that the Sheriffs of London, *quâ* Sheriffs of London, are no more in the Case than any private Man is. I do take notice of this, to give you an account that as soon as these Officers are dispatched, I myself had the Honour to serve the City some time, and know it very well, therefore I take the Liberty to explain it to some of these Gentlemen that are Foreigners. My Lord, as soon as ever this is done, (as it was frequent before People were so ambitious to come into the Office of Sheriffs, as they have been within two or three Years; for it was not known, till of late, that People were fond of the Office, there is a term they use, *To go a Birding*, as they call it, they did not seek for the Office as they have done of late) when there was any person came off

off from serving, that is, paid a Fine of 400 l. for coming off, then the usual method was to call another Common Hall; for they never made application to Mr. Sheriff, *Good Mr. Sheriff let us have a Common Hall*: But the common way was in time of Vacation (for in *August* there are no such things as Courts of Aldermen held, Courts are not then held, except the Sheriff's Court) then to go to my Lord Mayor's house, and he appoints them to come to a Common Hall, a meeting for to chuse such and such: He orders the Sword-bearer, or other Officer that is attendant upon his person in his house, to send forth Summons in order to such a thing as the assembling a Common Hall, and there may be sometimes but one Sheriff there; nay, I have known it sometimes when there hath been never a Sheriff, and yet they have not thought they have wanted a Judge of that Assembly; but, my Lord, when all the matter is over, and persons are declared to be chosen into this or that, or the other Office in the Common Hall, then an Officer of the City; not an Officer of the Sheriffs, but an Officer which is called by the name of the *Common Cryer*; he makes Proclamation upon the Hustings, where my Lord Mayor is Judge, for all Gentlemen to depart for that time, and to give their attendance there at another Summons. And now, my Lord, to make the thing a little more intelligible, there is a difference between the Choice of the County Officers and the Corporation Officers; For at the Election of City Officers, the *Common Serjeant*, the *Common Cryer*, and *Town Clerk*, are the Officers that attend and manage the Common Hall, where my Lord Mayor is looked upon to be the Superintendent; but at the Election of Parliament Men, the Writ is directed to the Sheriffs, and they interpose in all the management, and then the *Common Serjeant* and *Common Cryer* have nothing to do, but at such times the *Secondaries of the Compter*, which are Deputies to the Sheriffs, they come and manage the whole Affair. This I tell you, because I have been pretty well acquainted with the Methods of the City. I do very well remember I had the Honour to serve the City of London at that time Sir Robert Clayton was Lord Mayor, and there was a great occasion to try a Person about the Assassination of Mr. Arnold, and the Question was, whether they should proceed to a Poll or not, because they were to go to the *Sessions-House* in the *Old Bailey*, in order to the trying of that Person. That worthy Gentleman being then in the Chair, I had the Honour to sit by him; ordered the Court to be adjourned for a day or two, because they were to go to the *Sessions*. There was no asking the Sheriff's Opinion when Sir Robert Clayton was Lord Mayor, nor there was no such thing then; but now the Case was altered, for Sir John Moore was Lord Mayor. Now, my Lord, Sir John Moore, like a good Magistrate, endeavouring to preserve the Privileges of the Chair, there happened a Controversie amongst the Members of the Common Hall, whereby the publick Peace of the Kingdom might have been very much injured, as well as the Peace of the City much disturbed. To prevent which, Sir John Moore, with the advice of his worthy Brethren the Aldermen, came upon the Hustings, and found they were all in an uproar,

and not cool enough for any Debate; for they were wound up to that height of Fury or Madness, that they had not a good word to bestow upon their Magistrates, nor upon him whom their chief Magistrate did represent. For we must tell you, when they cried *Pray God bless the King*, as is usual for the Officer upon such Occasions; many cried, No, *God bless the Sheriffs*, the Protestant Sheriffs. Whereupon my Lord Mayor for preservation of the Peace adjourned the Common Hall, and required the Members to depart and come down off the Hustings; the Rabble, for by the way a great many of these persons in this Information, as Mr. Goodenough, and the rest of them, were not Livery-Men, nor concerned in the Election one way or other, but came there on purpose to foment and to raise up the Spirits and Malignant Dispositions of a sort of People that are Enemies to the Government; they came to foment Quarrels, and not maintain Peace. My Lord, when my Lord Mayor came off the Hustings, they came upon him, had him down upon his Knees, and his Hat off, and if some Gentlemen had not come in, they had trod him under feet; such an Indignity was then done to the Lord Mayor of London, who, I think I may say, deserved as well from the Government of this City, as any Gentleman that ever presided in that Office, that before had not been heard. My Lord, We will call our Witnesses, to prove the manner of the Elections to be as I have opened it, and to prove the matter in the Information.—— Call the *Common Serjeant* and Mr. Lightfoot, the *Common Cryer* and the *Sword-bearer*.

Mr. At. Gen. Mr. Lightfoot, Pray give an account to the Jury and the Court of the manner of Election and chusing of a Common Hall, and the manner of it.

Mr. Lightfoot. My Lord, I have been almost 25 Years an Attorney, I always took it that the Serjeant of the Chamber had order to go down to the Clerks or Beadles of the Companies, to summon a Common Hall by such a day.

Mr. At. Gen. By whose Command?

Mr. Lightfoot. By my Lord Mayor's.

Mr. At. Gen. In all your time did the Sheriffs ever summon any?

Mr. Lightfoot. O no.

Mr. Serj. Jefferies. Pray Mr. Lightfoot, thus? When they were met, what was the usual Method?

Mr. Lightfoot. Before the Lord Mayor and Aldermen were set, the People walked up and down the Hall till the Lord Mayor did come, but as soon as my Lord Mayor came, the *Common Cryer* made Proclamation, O yes, you good Men of the Livery summoned such a day for Election, and so draw near, and give your Attendance.

Mr. At. Gen. Whole Officer was the *Common Cryer*?

Mr. Lightfoot. My Lord Mayor's Officer.

Mr. Serj. Jefferies. A Corporation Officer.

Mr. At. Gen. Now for the dissolving them.

Mr. Lightfoot. When they have done the business, Mr. Town Clerk, as I take it, takes his direction from the Lord Mayor, and he bids the Officer make Proclamation, You good Men of the Livery, depart hence for this time, and appear at a new Summons.

Mr. At. Gen. Did the Sheriffs ever dissolve them?

Mr. *Lightfoot*. Never.

Mr. *At. Gen.* Did the *Common Hall* do it?

Mr. *Lightfoot*. No, there was no such thing.

Mr. *Jones*. Mr. *Lightfoot*, After my Lord Mayor had dismiss'd the Hall, did you ever hear the Sheriffs keep them together?

Mr. *Lightfoot*. All the People went away, till within this three or four Years.

Mr. *Jones*. Since when?

Mr. *Lightfoot*. Since Mr. *Bethel*, about that time.

Mr. *Serj. Jefferies*. Ay, in *Bethel* and *Cornish's* time, then began the Buffle.

Mr. *Williams*. You say you have been an Attorney 25 Years, I would ask you, in all that time, Mr. *Lightfoot*, in all that time did you ever know the Lord Mayor adjourn the Common Hall to a certain day?

Mr. *Lightfoot*. There was never any occasion.

Mr. *Thompson*. Answer my Question.

Mr. *Lightfoot*. I never did.

Sir *Fr. Winn*. I would ask you another Question, Mr. *Lightfoot*, Did you ever know before the Election was over, when the Electors were chusing Sheriffs, or polling or debating it, did you ever know in the middle of it, the Mayor against the will of the Sheriffs adjourn it?

Mr. *Lightfoot*. No, no.

Mr. *Sol. Gen.* Did ever the Sheriffs undertake to keep them together before these late times?

Mr. *Lightfoot*. No, never.

Mr. *Thompson*. Pray, Sir, this, Though it is usual, after the Sheriffs have taken the Poll, to acquaint my Lord Mayor; Did you ever know that the Sheriffs have adjourn'd the Common Hall, without acquainting my Lord Mayor?

Mr. *Lightfoot*. No.

Mr. *Thompson*. I ask you one Question more, Do you remember when there was a Poll between Sir *Thomas Stamp* and another?

Mr. *Lightfoot*. No, I do not charge my Memory with it.

Mr. *Thompson*. Do you remember when there was a Poll between Sir *Robert Clayton* and Mr. *Kyffen*?

Mr. *Lightfoot*. I was about the Hall.

Mr. *Serj. Jefferies*. Do you remember when there was a Poll between Sir *Simon Lewis* and Mr. *Jenks*? Who did manage that Poll?

Mr. *Com. Serj.* I did.

Mr. *Williams*. Are you upon your Oath?

Com. Serj. Yes, I am.

Mr. *Lightfoot*. When they were gone to the Poll, I went out of the Hall.

Mr. *At. Gen.* Did you ever look upon it that the Sheriffs had any thing more to do than others?

Mr. *Lightfoot*. No.

Mr. *At. Gen.* Who were induced to take the Poll? Was it by the Sheriffs, or the Lord Mayor?

Mr. *Lightfoot*. I have been appointed by my Lord Mayor. I do know that the Sheriffs have taken upon them to appoint a Poll, and then my Lord appointed his Clerks in the House to be assistant to the Common Serjeant, and the Town-Clerk; I never was but in two Polls, one for Mr. *Box*, and another for my Lord Mayor. One went on with the Poll in one place, and the other in another.

Mr. *At. Gen.* But before that time, Sir.

Mr. *Lightfoot*. I know nothing of that, Sir, I was never concerned before.

Mr. *Holt*. Pray, Sir, Who used to manage the Poll before this time?

Sir *Fr. Winn*. Mr. *Lightfoot*, I would ask you a Question, Who managed the Poll before?

Mr. *Lightfoot*. I have been in a Common Hall when they have been choosing Sheriffs, when several have sined. And it hath been upon the question when the Hall hath divided, and they have Polled in the Hall.

Sir *Fr. Winn*. Who Polled them?

Mr. *Lightfoot*. The Sheriffs and the Officers stood and saw them go out, and this is within these few Years.

Sir *Fr. Winn*. Mr. *Lightfoot*, I ask you thus, now in all your Observations, when there was any Contest, who was Sheriff upon the Election and the Divisions during the time of Election, and before it were at an end, who did manage it, the Sheriffs, or the Lord Mayor?

Mr. *Lightfoot*. When the Court had been proclaimed, and the Recorder had spoken to them, my Lord Mayor and the Aldermen withdrew from the Hustings, and the Sheriffs and other Officers stood there with them; then the Commons proposed who they would have put in nomination, and they were put up; then the Sheriffs have turned back to the Gentlemen upon the Hustings to ask their Opinions, how are your Opinions concerning the Hands? We do think it goes so; then it hath been declared.

Sir *Fr. Winn*. By whom?

Mr. *Lightfoot*. The Common Cryer, or the Common Serjeant.

Sir *Fr. Winn*. You say, as soon as my Lord Mayor withdrew, during the time of Election, the two Sheriffs managed the Hall.

Mr. *Lightfoot*. In that manner with others.

Sir *Fr. Winn*. Mr. *Lightfoot*, Do you remember who Adjourned the Hall, when Mr. *Bethel* and Mr. *Cornish* were Chose?

Mr. *Lightfoot*. I can't tell.

Mr. *Serj. Jefferies*. Mr. *Com. Serj.* Are you sworn?

Mr. *Com. Serj.* Yes.

Mr. *Serj. Jefferies*. Pray will you tell my Lord and the Jury what you have observed in particular, because I mentioned it in the time of Sir *Robert Clayton*; mention how that was.

Mr. *Com. Serj.* My Lord, when the Common Cryer hath made Proclamation, the Lord Mayor and Court of Aldermen being set upon the Hustings, Mr. Recorder makes a Speech; as soon as that is done, my Lord Mayor and the Aldermen retire into this Court, leaving the Sheriffs and me, and the rest of the Officers upon the Hustings, and I there manage the Election, and when the Election is made, I go up to the Court of Aldermen, and make Report of what hath been done in the Hall. I declare the Election, and I manage the Election, and do it as the Duty of my Place.

Mr. *Williams*. Who manages the Election?

Mr. *Com. Serj.* I manage the Election; I declare what is my opinion of the Election in the Hall; and I come and make Report to my Lord Mayor in this Court; then my Lord Mayor and the Aldermen, and the Recorder come down again. I remember particularly when Sir *Robert Clayton* was Lord Mayor, it was about the Choice of Mr. *Bethel* and Alderman *Cornish*, and there was a great disturbance in the Hall; then I came into the Court, and after I had made my Report, I offer'd to give the Paper to the Recorder

corder that then was: Sir George Jefferies, He told me that the People would not hear him, and therefore he wou'd not take the Paper. Upon that Sir Robert Clayton said to me, Prithee, do thou speak to them, they will hear thee if they will hear any body; for the Hall was in a great Uproar, and they call'd to throw me off the Hustings, and then I made Answer to Sir Robert Clayton; Sir, It is not the duty of my Office, and when I do any thing that is not my Office, I shall expect particular Directions. Then, saith he, you must tell them, I must Adjourn them till Monday, because I go to the Old Bailey to try the Assassins of Arnold. Thereupon the Hall was Adjourned, and Proclamation made to depart; and my Lord Mayor attempting to go, was beat back twice or thrice, but at last they let him and the Aldermen go, and kept the Sheriffs and me till Evening. At last Mr. Papillon came up to me, Mr. Papillon, says I, I am glad to see you, you will hear Reason, says he, why do not you go on with the Poll? I told him, my Lord Mayor had Adjourned the Hall: Says he, I did not hear it before; but now you tell me so, I will go out of the Hall: Says I, Sir, you will do very well to tell the Hall so; which he did, and some went away; and further Adjournments were made by the Direction of my Lord Mayor.

Mr. At. Gen. I would ask you a Question or two: Who do you look upon to be the Chief Magistrate of the City?

Mr. Com. Serj. My Lord Mayor, Sir.

Mr. At. Gen. Pray, in all your time till this, was there no Uproar? Did ever any Sheriff undertake to controul the Mayor in the business of putting Questions, or taking Votes?

Mr. Com. Serj. Sir, there was never any Dispute till Mr. Sheriff Bethel was upon the Hustings, and then there was.

Mr. At. Gen. As whose Officer did you do it?

Mr. Com. Serj. My Lord Mayor's, and the City of London's; I have nothing to do with the Sheriffs, for when there is a Writ comes for the Choice of Parliament-men, directed to the Sheriffs, I never do it, but Mr. Secondary.

Mr. At. Gen. I speak of later Disturbances.

Mr. Com. Serj. The first Dispute about Sheriffs, since I was Common Serjeant, was about Mr. Jenks, and that Poll was taken by the direction of the Lord Mayor, by the Town Clerk and my self; and our Books say, If there be a Dispute in the Common Hall, it must be decided as in the Common Council. It is in *Liber albus*.

Mr. At. Gen. *Liber niger*.

Mr. Serj. Jefferies. No, *Liber albus*.

Mr. At. Gen. *Liber albus*? It is *Liber niger*, they turn the white Book into a black Book now.

Sir Fr. Winn. At that time, Sir, when my Lord Mayor was willing to go to the Old Bailey, Did the Sheriffs do any thing farther?

Mr. Com. Serj. The Sheriffs did not meddle in the matter.

Mr. Serj. Jefferies. Mr. King, Pray give my Lord and the Jury an account of what you know of this matter.

Mr. Peter King. I have been at a Court of Common Hall 28 Years, my Lord, and have been concerned, I never looked upon the Sheriffs to have any concern there. And I do very well remember, Sir George Jefferies, I do remember and know; they did always in ancient times take

advice of the Officers by, and they never did esteem themselves in those days, to be any more concerned than as the best Officers to be preferred before the rest: When my Lord says, Come up, they come in order, the Masters and Wardens of the Companies.

Mr. At. Gen. Who did do the business upon the Hustings?

Mr. King. All of them, Sir, altogether.

Mr. At. Gen. Was there never any difference about the Votes?

Mr. King. Sometimes they have stood upon it.

Mr. At. Gen. When there was a Question made to know who had the most, who decided it?

Mr. King. They generally asked one another, What do you think, and what do you think? I speak for 20 Years together since the King came in.

Mr. At. Gen. I hope in God there hath been a King in England for 20 Years, tho' perhaps some of the Sheriffs that were then in Debate, would have had none.

Mr. Thompson. Mr. King, I only desire to know this of you, because I know you know Questions; I desire, my Lord, to know whether he speaks it to be a matter of Right, or his Opinion; for we know Mr. King's Opinion will go a great way in this matter. Do you speak it as a thing of Right, or as your Conceptions?

Mr. King. Sir, It would be a thing very confident in me to determine of the Right, but only as I always esteem'd it.

Mr. Serj. Jefferies. Mr. King, I would ask you this Question; Pray do you tell your Belief upon the Observation that you have made from time to time of the Practice there?

Mr. King. An hundred and a hundred Common Halls I believe I have been at.

Mr. Thompson. That's good store.

Mr. Serj. Jefferies. That may be when there are many Fines; when I was Common Serjeant there were 5000 Pounds Fines one Year.

Sir Fr. Winn. I desire you to give your Opinion, you say they are all equal that are there.

Mr. King. Every Officer in his degree; for if 20 Men go together, he that is best speaks first.

Mr. At. Gen. Were the Sheriffs allowed to be there, or no?

Mr. King. The Sheriffs are always bound to attend my Lord Mayor by their Oaths, unless they have lawful Excuse.

Mr. Jones. Mr. King, Did the Sheriffs ever continue the Assembly after it was dissolved?

Mr. King. No, Sir.

Mr. Jones. Or could they do it?

Mr. King. I can't say that.

Mr. Thompson. Did you ever know my Lord Mayor Adjourn the Court till the Hall had done?

Mr. King. I can't tell.

Mr. Thompson. I tell you, Sir, Sir Samuel Starling did.

Mr. Serj. Jefferies. But the Sheriffs could not do it.

Mr. Thompson. Nor he neither, for he paid for it.

Mr. Holt. Mr. King, I ask this Question; Who declares the Poll in the Hall?

Mr. King. The Common Serjeant.

Mr. Holt. Who directs him usually?

Mr. King. His Office directs it self.

Mr. Holt. I ask if the Sheriffs don't agree, who

who is elected before the Common Serjeant make Proclamation?

Mr. King. They always agree, unless it be very clear; I have known the Common Serjeant do it several times without disputing.

Mr. Com. Serj. When Persons are put in Nomination, and the Hands are held up; I generally ask the People about me, Who have most, and particularly the Sheriffs, and so make Declaration.

L. C. J. The Officers ask one another, who they think has most? That doth not give them the Jurisdiction, that they chuse Officers without the Lord Mayor or Sheriffs: But, for ought that I see, these Officers have had more to do about the Choice than the Sheriffs have. These Officers consult one with another commonly, and conclude which Side have most; and then report it to my Lord Mayor.

Mr. Serj. Jefferies. First of all, when they put any Question for any Officer in the Common Hall, the usual way of putting the Question is, *As many of you as would have such a Man to be such an Officer, hold up your Hands*: And if the Election be clear, Proclamation is made presently: If not, the Common Serjeant asks, *Who they think hath the Majority?* Which being declared, they acquiesce. But since Mr. Bethel came in, there have been very hot Disputes in the World; but before his Time there were Attempts made to keep Sheriffs off, but never before to get Sheriffs on. And after the Election is declared below, immediately they go to my Lord Mayor, and report it to him: And then comes down the Mayor and Aldermen to the Hustings, and the Recorder says, *We are informed that such and such Persons have been put in Nomination, and the Election passed upon such and such*. And then the Lord Mayor commands the Assembly to be dissolved.

Mr. Wells. When the common Hall is first met together, are not the Lord Mayor and Aldermen generally present?

Mr. Com. Cryer. At the first meeting.

Mr. Serj. Jefferies. When they are there set, give an Account what Proclamation is there made.

Mr. At. Gen. How long have you known it?

Mr. Com. Cryer. I have been in this Place almost seventeen Years; I always come with my Lord Mayor; I do make Proclamation by Order of my Lord Mayor, dictated by the Town-Clerk; and I take the Words from the Town-Clerk, and his Words I say; *You good Men of the Livery, summoned to appear here this Day, for the Confirmation of such a one chosen by my Lord Mayor, and another fit and able Person to be Sheriffs of the City of London, and County of Middlesex for the Year ensuing, draw near, and give your Attendance*. I never adjourned the Court in my Life, but by Order from my Lord Mayor; nor never dissolved the Court, but by Order from my Lord Mayor.

Mr. Serj. Jefferies. Mr. Common Cryer, I would fain know this; When my Lord Mayor is gone, and the Aldermen, during the Election, do you ever dismiss the Court before my Lord comes down again; and do not you take the very Words of Dissolution from the Town-Clerk?

Mr. Com. Cryer. I do so.

Mr. Serj. Jefferies. And what is usual in your Time when Sheriffs have fined off, who gives Directions for a Common Hall?

Mr. Com. Cryer. My Lord Mayor, Sir.

Mr. At. Gen. Who is it puts the Question, the Common Serjeant or the Cryer?

Mr. Com. Cryer. The Common Serjeant dictates the Words to me, and I never take them from any other; I have taken the Paper into my own Hands, but never but one Year neither, when they were in a Confusion; the Time when Mr. Bethel was chosen there was some Difference, I did read the Names that Time, and never but that one Time. I always take the Words from the Common Serjeant; I never put any Vote, but what I have from the Common Serjeant.

Mr. At. Gen. Do the Sheriffs put any Vote?

Mr. Com. Cryer. Never, Sir.

L. C. J. I do not understand him; I think he did mean, when Bethel was chosen he put the Question by some body else.

Mr. Serj. Jefferies. No, no, he took the Paper in his Hand. Before he used to take Dictates from the Common Serjeant; but there was a Confusion when Bethel was chosen, and then he took the Paper from the Common Serjeant, and read it.

Mr. Com. Cryer. He gave the Paper into my Hand.

Mr. Com. Serj. My Lord, they made such a noise that he could not hear me.

Mr. Williams. Mr. Wells, how long have you been Common Cryer?

Mr. Com. Cryer. About seventeen Years.

Mr. Williams. In all that time did you ever hear the Lord Mayor adjourn the Court to a certain Day?

Mr. Com. Cryer. Yes.

Mr. Williams. To a certain Day?

Mr. Com. Cryer. My Lord Mayor adjourn'd this Common Hall to a certain Day.

Mr. Williams. I ask you upon your Oath again. Did you ever know the Lord Mayor adjourn a Common Hall to a Day certain?

Mr. Serj. Jefferies. Do you remember that of Sir Robert Clayton's?

L. C. J. If so be they be adjourned, to meet upon a new Summons, if there be occasion, no question, but he may to a certain Day.

Mr. Williams. Now we are upon matter of Fact.

Sir Fr. Winnington. Did you ever know my Lord Mayor adjourn them before the Election of Sheriffs was over? Here is my Question, observe it. When after once my Lord Mayor is gone out of the Hall, when the Election begins, did you ever know my Lord come and disturb the Election, or adjourn it before it was done?

Mr. Com. Cryer. I never knew any thing of it before now.

Mr. At. Gen. Mr. Wells, do you remember that Instance in Sir Robert Clayton's time?

Mr. Com. Cryer. No, Sir.

Mr. At. Gen. Have not you known my Lord Mayor dissolve the Court before the Business hath been done; take up his Sword and be gone?

Mr. Com. Cryer. When he hath a mind to adjourn the Court, and declare it, I adjourn it by his Order.

Mr. At. Gen. But have you not known him take up his Sword, and be gone before the Election is over?

Mr. Com. Cryer. Sir Robert Clayton did do that before the Business was done.

Mr. Thompson. Mr. Wells, Do not you remember,

in Sir Samuel Starling's Case, that he did adjourn the Hall?

Mr. Com. Cryer. He dissolved the Hall.

Mr. Thompson. Very well.

Mr. Serj. Jefferies. He did dissolve the Hall, and so hath every Lord Mayor since. My Lord, if your Lordship please, I perceive this Gentleman makes a Question, Whether ever there was an Adjournment of a Common Hall before such a time as the Election of Sheriffs was over. I will give you an Answer to that Question, and a very fair one, and a plain one: I say, till the time of Bethel, in Sir Robert Clayton's Mayoralty, there was never such a thing as a Poll for Sheriffs.

L. C. J. Silence, that we may hear.

Mr. Williams. My Lord, we only ask a Question; we ask a Question, and take our Answer.

Mr. Serj. Jefferies. Will you give us leave to go on, Sir?

Mr. At. Gen. Sir William Hooker, Pray how long is it since you were Sheriff of London?

Sir William Hooker. About 16 or 17 Years ago.

Mr. At. Gen. You have been Sheriff and Lord Mayor of London, I would only know, whether you looked upon it as your Right when you were Sheriff?

Sir William Hooker. No, nor ever durst presume to think it: In those days it was not thought upon.

Mr. At. Gen. When you were Lord Mayor, did you order Summons for Common Halls?

Sir William Hooker. Always.

Mr. At. Gen. Did you ever use to consult with your Sheriffs when to call a Common Hall?

Sir William Hooker. Never, and I think no such thing was ever heard of under the Sun, till of late.

Mr. Thompson. Sir William Hooker, did you ever adjourn the Court before the Business was done?

Sir William Hooker. I never saw any such Occasion, Rebellion was not ripe then.

Mr. At. Gen. Sir William, Pray thus; Have you ever in a common Council, or Common Hall, known my Lord Mayor rise before the Business was done, and take his Sword?

Sir William Hooker. I confess I must own it, That when Things grew to a greater height, I was forced once in this Place to cause the Sword to be taken up and go out, and the Court was dissolved, and durst not go on after I was gone.

Mr. Serj. Jefferies. Now, my Lord, if your Lordship please, I desire to call the Sword-bearer.

Mr. Williams. Sir William Hooker, If I may, without Offence ask you, How old are you?

Sir William Hooker. Seventy Years of age, Sir.

Mr. Williams. You say, you never knew Rebellion ripe?

Sir William Hooker. Good Sir, I perceive you are very apt to mistake, I lived in 41 and 42.

Mr. At. Gen. Sir William, Can you remember the Meeting in 48?

Sir William Hooker. Ay, very well.

Mr. At. Gen. Then they usurped the very same Power, and an Act of Parliament to confirm it.

Mr. Serj. Jefferies. My Lord, I desire Mr. Sword-Bearer may be Sworn.

Sir Fr. Winnington. Pray, Sir, in all the time that you have been acquainted with the Customs of London, did you ever know when there was an Election for Sheriffs, that the Lord

Mayor did interpose or meddle till the Election was over?

Sir William Hooker. Sir, of late Years I have not appeared, because of an Infirmary, I cannot be long in London; but in all that time I used to appear, I never did observe any such thing.

Sir Fr. Winnington. That the Mayor ever meddled?

Sir William Hooker. Nay, Sir, that the Sheriffs ever meddled: When I was Sheriff of London, I durst not presume to meddle, but left the whole to my Lord Mayor.

Sir Fr. Winnington. Did you ever know, when the Election of Sheriffs was in a Common Hall, that the Lord Mayor offered to disturb them till the Election was over?

Sir William Hooker. Truly I do not remember any such thing. Sir Fr. Winnington, I would give you a full Answer, I do tell you, as it hath been declared; My Lord Mayor and the Aldermen come into the Court, and a Report is made; when this is done, they leave the management of the Affair to others, we come and sit down till it is done.

Sir Fr. Winnington. To whom do you leave the Concernment?

Sir W. Hooker. To the Officers that it belongs to.

Sir Fr. Winnington. Who are those Officers?

Sir W. Hooker. I never heard it disputed till just now.

Mr. Jones. Sir W. Hooker, You have been an ancient Citizen, Do you remember that ever the Sheriffs presumed to hold this Court?

Sir W. Hooker. No, never in my life. — You may confound any Man at this rate.

Mr. Williams. Pray, Sir, in your time was there a Poll for Sheriffs in London?

Sir W. Hooker. Truly not as I remember.

Mr. Williams. Do you remember any Poll in your time? If you don't remember a Poll, you can't remember who took it.

Mr. Sol. Gen. Pray, Sir William Hooker, do you ever remember the Sheriffs appointed the Common Serjeant to take the Poll?

Sir W. Hooker. Never in my life.

Mr. Serj. Jefferies. Mr. Sword-Bearer, I won't ask you how old you are; I desire to know how long you have been an Officer in this City?

Mr. Sword-Bearer. Three and twenty Years.

Mr. Serj. Jefferies. I desire to know in all your time, who ordered Common Halls? Who gave Direction for the summoning Common Halls?

Mr. Sword-Bearer. My Lord Mayor always.

Mr. Serj. Jefferies. Did my Lord Mayor use to send for the Sheriffs, to know of them when they would be pleased to have a Common Hall?

Mr. Sword-Bearer. I never knew that the Sheriffs did interpose in calling a Common Hall in my Life.

Mr. Serj. Jefferies. Mr. Sword-Bearer, at such time as the Business was done, when the Common Cryer had Directions for dissolving the Common Hall, pray who used to give these Directions all along?

Mr. Sword-Bearer. It was done by the Town-Clerk and my Lord Mayor's Officers.

Mr. Serj. Jefferies. Did ever the Sheriffs continue the Hall after my Lord Mayor had adjourned it?

Mr. Sword-Bearer. Truly I know no such thing.

Mr. *Thompson*. Mr. *Sword-Bearer*, I would ask you one Question; If in case the Common Serjeant, or the Common Cryer, or any other Officers do put a Question that the Commons would not have put, who orders them to put the right Question?

Mr. *Sword-Bearer*. I can't say any thing to that.

Mr. *At. Gen.* After the Common Serjeant comes up and reports what is done, then what doth my Lord Mayor do?

Mr. *Sword-Bearer*. My Lord Mayor and the Aldermen go down to the Hustings, and it is declared by the Recorder, or the Common Serjeant, by the order of my Lord Mayor.—I think my Lord Mayor went once down to give them some satisfaction upon a dispute.

Sir *Fr. Winn*. Mr. *Man*, during the Election did you ever hear them adjourn'd before it was over?

Mr. *Sword-Bearer*. No, Sir, nor never heard any occasion for it.

Mr. *Williams*. The Common Serjeant affirms himself to be a Servant to the Commons, and not to the Lord Mayor and Aldermen; have you known a Common Serjeant say, he was a Servant to the Commons, and not to the Lord Mayor and Aldermen?

Mr. *Sword-Bearer*. I never was in a Common Hall upon any such dispute, I am with my Lord Mayor.

Mr. *Serj. Jefferies*. I have known a Recorder reprehended by a very learned Lawyer, for saying, *My Masters the Aldermen*.

Sir *Fr. Winn*. I ask you who hath the management of the Common Hall in the absence of the Mayor?

Mr. *Sword-Bearer*. I am always here waiting upon my Lord Mayor.

Mr. *Serj. Jefferies*. My Lord, if your Lordship please, we will rest here as to point of Right: Now, my Lord, in the next place we will come to that which is a more immediate Question before you, and we will prove the manner of it, and the persons that are guilty; for that is the next step we are to go,——Mr. *Bancroft*.

Mr. *Williams*. My Lord, they have laid in the Information, That the Sheriffs are duly Elected for one year next following, from the Eve of St. Michael; now prove your Election to be for that year you have laid in your Information.

Mr. *Thompson*. My Lord, they have certainly in Fact mistaken their Information. My Lord, They do declare that the Common Hall was held, according to Custom, for the Election of Sheriffs, to hold that Office from the Eve of St. Michael, for the year next ensuing; Now, my Lord, that is not so in Fact, nor never was, for the Election is for a year to commence on Michaelmas Day. They take on the Eve the Office upon them, but they do absolutely exercise the Office for a Year from that time, from the Eve. Now, my Lord, we say, that Day is excluded; we are sure it is a Common Case, it is known very well; as in a Lease, the *Habendum* from any Date, the Day of the Date is no part of that Lease, it is exclusive and no part of the Term, and therefore, my Lord, if they do not prove it as they have laid it, we hope they will be non-suited.

Mr. *Sol. Gen.* That is another piece of Law.

Mr. *Holt*. The Eve of Michaelmas Day, we

make this Objection, and put you to prove it.

Mr. *Serj. Jefferies*. Give us leave to go on: Gentlemen, let us prove what we think fit, and if we have not made it out, then make your Exceptions.

Mr. *Holt*. Mr. Serjeant, I think it is proper to put it now, for if there be no such Election, there can be no such Riot; for they have made it a Riot in a special manner.

Mr. *Serj. Jefferies*. Mr. *Holt*, under your favour, it is not a time now.

Mr. *At. Gen.* This is the oddest way these Gentlemen take upon them so: I will not prove it; and pray be quiet till I come to my time.

Sir *Fr. Winn*. Pray, Mr. Attorney, if we have an Objection to make, if the Court please we may be heard.

Mr. *Serj. Jefferies*. Certainly it was never known, that when Mr. Attorney exhibited an Information, to tell us how to prove it. Surely, Gentlemen, you will give us leave to go on with our Proof, won't ye?

Mr. *Molloy*. Mr. *Bancroft*, How long have you been a Servant of the City? By whose Order was the Hall summoned?

Mr. *Bancroft*. By my Lord Mayor's.

Mr. Who hath dissolved them?

Mr. *Bancroft*. My Lord Mayor.

Mr. Did you ever know the Sheriffs give any Order for the dissolving of it?

Mr. *Bancroft*. No.

Mr. *Thompson*. Did you ever know it dissolved before the business was done for which they were call'd? Did my Lord Mayor in your time either dissolve them, or send them going, till the Election was over?

Mr. *Bancroft*. I can say nothing to that.

Mr. *At. Gen.* Mr. *Bancroft*, I would ask you this, Sir, Did the Sheriffs ever continue the Hall after my Lord Mayor had dissolved it?

Mr. *Bancroft*. No, I never knew that in my life.

Sir *Fr. Winn*. Mr. *Bancroft*, I would ask you a Question, I don't ask you who calls them, or bids them go home, during the time of the Election did my Lord Mayor ever meddle?

Mr. *Bancroft*. My Lord Mayor withdraws.

Sir *Fr. Winn*. Who are those among the Commons that manage the business when my Lord Mayor withdraws?

Mr. *Bancroft*. The Sheriffs, and the Common Serjeant, and the Common Cryer.

Sir *Fr. Winn*. Who manages the Election? Who declares the Election? Who declares who is chosen?

Mr. *Bancroft*. When the Election is made below, then the Sheriffs come up, and the Common Serjeant, and the Common Cryer along with them, and acquaint my Lord Mayor, and he goes down, and there doth confirm the Election, and withal, when the work is done he dissolves the Court.

Mr. *Williams*. Did you ever know a Poll for Sheriffs?

Mr. *Thompson*. Do you take the Common Serjeant to be an Officer of the Commons of London, or an Officer of my Lord Mayor's?

Mr. *Bancroft*. I cannot be certain what he is.

Mr. *Thompson*. If in case the Common Serjeant differ from them in declaring the Poll, is it not usual for the Common Hall to order him to put it up again?

Mr. Serj. *Jefferies*. Who does make a Judgment of the Election, the Common Serjeant, or the Sheriffs?

Mr. *Bancroft*. The Sheriffs.

Mr. Serj. *Jefferies*. Does not the Common Serjeant make Observation as well as the Sheriffs?

Mr. *Bancroft*. The Sheriffs give their Opinions in it.

Mr. Serj. *Jefferies*. Now, my Lord, if your Lordship please, if they had done, we would desire to go on to our Fact, for otherwise for ought I perceive, we shall be in here till this time to morrow, and they say, we must not adjourn till the Cause is over.——Mr. Common Cryer; heark you, Mr. Common Cryer, were you present at *Midsummer* Day when this business happened? Give my Lord and the Jury an account of the carriage then.

Mr. Com. Cryer. I was there at the beginning of the Election, I did make Proclamation, and afterwards there was a Poll demanded, and the Poll was begun, and I went home with my Lord Mayor, afterwards my Lord Mayor came back again, and there was a Hubbub; but about 5 or 6 a Clock, my Lord Mayor came down upon the *Hustings*, and I adjourn'd the Court till another day; I did adjourn it by his order, according as I used to do, and then I went away with my Lord Mayor.

Mr. At. Gen. But what usage had you in going out?

Mr. Com. Cryer. I went before my Lord Mayor, I was not with him.

Mr. *Williams*. Where was the Adjournment?

Mr. Com. Cryer. Upon the *Hustings*.

Mr. *Williams*. Were the Sheriffs Polling the People then?

Mr. Com. Cryer. I don't know that, Sir.

Mr. *Williams*. Were the Sheriffs near the *Hustings*?

Mr. Com. Cryer. I don't know, I saw them not.

Sir Fr. *Winn*. Upon the Election of them, when my Lord Mayor came to adjourn the Court, were the Sheriffs acquainted with it? Where were the Sheriffs?

Mr. Com. Cryer. My Lord Mayor sent to them.

Mr. Serj. *Jefferies*. Mr. *Weston*, Pray will you tell my Lord and the Jury, what Directions you had from my Lord Mayor, and how he was used when he came out of the Hall?

Mr. *Weston*. My Lord Mayor sent me, my Lord, to the Sheriffs under the *Lumbard-House* twice to come up to the Council-Chamber, and they told me: One told me he was upon the King's Business; and the other said he could not come; and about half an hour after, my Lord, Sheriff *Pilkington* came up to my Lord Mayor into the Council-Chamber, and then immediately came down to the Court of *Hustings*, and Mr. Common Cryer by my Lord Mayor's Order, did adjourn the Court from *Saturday* till *Tuesday* following, and as we were coming out of the Hall, when Mr. Common Cryer had adjourn'd the Court, and said, *God save the King*, a great part of the Hall hiss'd; and, but that there were so many honest Gentlemen about my Lord, I was afraid my Lord would have come to some mischief; but coming to go into the Porch-yard, I saw his Hat off, and I went to catch his Hat, and caught one of his Officers by the Head, that was knocked down, or fell down, that held up his Train. My Lord, the Sword was at

that distance, farther than it is between your Honour, and where I stand, and crouded far away; and when my Lord came out into the Yard; Gentlemen, says he, I desire you would go home to your Lodgings, and commanded them in the King's Name to depart: and says he to me, Pray go you back, and let the Sheriffs know, and tell them I have adjourn'd the Court to *Tuesday*. Upon my Lord's Command, I went back to let the Sheriffs know, that my Lord had adjourned the Court till *Tuesday*.

Mr. Serj. *Jefferies*. Both of them, both *Shute* and *Pilkington*?

Mr. *Weston*. No, *Shute*, t'other was by.

Mr. Serj. *Jefferies*. It was in his hearing, was it not?

Mr. *Weston*. It was in his hearing.

Mr. Serj. *Jefferies*. Did you see my Lord Mayor down, and his Hat off?

Mr. *Weston*. I saw his Hat off, Sir *George*, but I can't tell how it came off.

Mr. *Williams*. You say, you saw my Lord's Hat off, can you tell whether my Lord was so courteous to take his Hat off or no?

Mr. *Weston*. I dare say, my Lord did not.

Mr. *Williams*. Did he, or no? I ask you upon your Oath?

Mr. *Weston*. I can't tell that, Sir.

L. C. J. I can't think that those Gentlemen were so extraordinary civil to my Lord Mayor, that when the Common Cryer made Proclamation, *God save the King*, that there should be hissing; those that hissed were not extraordinary civil to my Lord Mayor, and I believe you don't think so neither.

Mr. *Williams*. I ask you a Question, my Lord Mayor's Hat was off——

L. C. J. Ay, and it must be supposed it was to Complement those fine men that hiss'd at *God save the King*.

Mr. Serj. *Jefferies*. My Lord, if your Lordship please, I would desire to know what account any of them can give of the opinion they had of the King, to be sure they had a great opinion of his Representative: But my Lord Mayor I find was so extraordinary civil, that to this Rabble he must not only pull off his Hat, but sling his Hat on the ground to them.

Mr. *Thompson*. I ask you whether you know that any of the Defendants in this Information did throw my Lord Mayor's Hat off, or no?

Mr. *Weston*. I can't say that.

Mr. Serj. *Jefferies*. It is not a farthing matter.

Sir Fr. *Winn*. Here is a mighty Riot upon the Hat.

Mr. *Weston*. Now I desired them to keep back; my Lord Mayor's Friends did press back as much as they could, to preserve my Lord Mayor; they press more forward, as the other kept back, and I desired them to forbear; nay, commanded them in the King's Name, and upon their Peril, and took my Cane to strike at some of them.

Mr. *Williams*. Did you?

Mr. Serj. *Jefferies*. He served them well enough.

L. C. J. He did so. Do you think a Magistrate is to be crouded and prest upon?

Mr. *Weston*. I struck at them, and said, Gentlemen, keep back, and entreated them and commanded them, and all would not do.

Mr. Serj. *Jefferies*. I would only say this, Mr. *Com. Serjeant*; What did you hear when Proclamation was made to depart?

Mr. *Com. Serj.* My Lord, I was not in the Hall when Proclamation was made, but I heard them cry out, *No God bless the King*; and I heard them cry out, *Down with the Sword*; *No Lord Mayor, no King*.

Mr. *Williams*. Can you name any Person that said this?

Mr. *Com. Serj.* My Lord, I laid hold on one Man that cryed, *No God save the King*; *No Lord Mayor*, and the Rabble got him from me, one that I heard say so.

Mr. *Williams*. Mr. Common Serjeant, you say, you heard this; can you name any Person?

Mr. *Com. Serj.* I tell you I caught hold of him, and the Rabble got him from me.

Mr. *Williams*. Can you name any one?

Mr. *Com. Serj.* I tell you I cannot.

Mr. Serj. *Jefferies*. My Lord, I hope that will not much prevail in this Place, but I hope it doth justify my Lord Mayor, for endeavouring to disperse the Rabble that came together to that height when the King was *prayed for*, to cry out, *No King, No Lord Mayor*. And we don't give this in Evidence against any one Person, for it was done in a tumultuous manner; but they were so fond of this Man, as that they rescued him from him; and to fix it upon them, we will prove they were every one of them concerned in the Riot. — Mr. *Craddock*, What account can you give of this matter?

Mr. *Craddock*. I was standing at the Place where they Poll'd, and my Lord Mayor was coming towards it to protest against their manner of proceeding; and Sheriff *Bethel* came to me, and said, *Resist him*, (I think) *he hath nothing to do here*.

Mr. Serj. *Jefferies*. That was *Bethel*, *Slingsby Bethel*.

Mr. *Craddock*. It was either *oppose*, or *resist him*.

Mr. *Sol. Gen.* He says, he thinks he said, *Resist him*; but he is sure it was either *Oppose*, or *Resist him*.

Mr. Serj. *Jefferies*. Did you see Mr. *Jenks* there?

Mr. *Craddock*. I can't say I did: I saw Mr. *Jenks* just as my Lord Mayor came down, not after.

Mr. Serj. *Jefferies*. Did you see Mr. *John Deagle* there?

Mr. *Craddock*. I did not see Mr. *Deagle*.

Mr. *At. Gen.* How did they use my Lord Mayor?

Mr. *Craddock*. I was not very near my Lord; my Lord, I stood at the Place where the Poll was taking.

Mr. *Thompson*. Mr. *Craddock*, We desire to ask you this Question, that you speak particularly to Mr. *Bethel*, Was it before my Lord Mayor had adjourn'd the Poll, or after?

Mr. *Craddock*. It was just as my Lord Mayor came to protest against the manner of Polling.

Mr. *Thompson*. Was the Poll adjourn'd before or after?

Mr. *Craddock*. It was after.

Mr. *Williams*. Mr. *Bethel*, you say, he said, *Oppose*, or *Resist*; did he say it before the Poll was adjourn'd?

Mr. *Craddock*. Yes, Sir, it was before.

Mr. *Williams*. Can you say what the Words were?

Mr. *Craddock*. It was either *Oppose*, or *Resist*, *he hath no Authority here*.

Mr. Serj. *Jefferies*. Which is *George Reeves*? Mr. *Reeves*, Pray will you tell us what you did observe done at this time by Mr. *Pilkington*, or Mr. *Shute*, or any Person else?

Mr. *Reeves*. I came about 4 or 5 a Clock to the Polling-place where the Coaches use to stand, and I saw the Sword up, I suppose my Lord Mayor was there, and came to stop their Proceedings in Polling; and there was a great Contest among them; some saying, *He had nothing to do there: He hath no more to do than I*, says one; another cryed, *Stop the Sword, stop the Sword*, and I laid hold of him, and got him a little way, and made account to have carried him to the Sheriffs, and the Lord Mayor, but some body got him away.

Mr. Serj. *Jefferies*. What did you observe *Shute* and *Pilkington* do?

Mr. *Reeves*. They encouraged the People to Poll.

Mr. *Jones*. After my Lord Mayor was gone?

Mr. *Reeves*. Yes.

Mr. *Jones*. Pray you, Sir, did you observe either Mr. *Shute*, or Mr. *Pilkington* encourage the People to Hollow or Shout, or those things?

Mr. *Reeves*. No, Sir.

L. C. J. Hark you Friend *Reeves*, heark you; How do you know that *Pilkington* or *Shute* were Polling? Are you sure they were Polling after my Lord was gone?

Mr. *Reeves*. They were at the Polling-places, and they did not go away a great while after that.

L. C. J. From the People that were about them?

Mr. *Reeves*. No.

Sir *Fr. Winn*. We agree it, in Fact it was so.

Mr. *At. Gen.* *Richard Fletcher*, Pray will you give the Court an account of what they did.

Mr. Serj. *Jefferies*. *John Hill*, What did you observe there?

Mr. *Hill*. About 5 a Clock, my Lord Mayor came to the Hall, there was with him then Sir *James Edwards*, and Sir *William Prichard*, now Lord Mayor, to the best of my memory; and he told them he disliked their Polling any more; and there came a tall black Man; says he, Mr. Sheriff, *Go on, it is your Business, we will stand by you*; about a quarter of an Hour after my Lord came out of the Hall to the great Croud, some of the People Hissing, and some making a noise; and one came to the Sheriffs, and, says he, *Gentlemen, Why do not you make Proclamation with O Yes?* And they continued there till towards 8 a Clock.

Mr. Serj. *Jefferies*. Did you hear no Officer adjourn the Court?

Mr. *Hill*. My Lord Mayor went home, I saw him within Doors, and I came back again.

Mr. *At. Gen.* Was there no Proclamation made afterwards?

Mr. *Hill*. By some of the Officers, but I did not take particular notice.

Mr. *At. Gen.* Who did you see here after you went home with my Lord Mayor, and came back again?

Mr. *Hill*. I saw here Mr. *Robert Key* for one, and I saw Mr. *Goodenough* come in between 8 and 9 here in the Hall, and my Lord *Grey* came in, and several other Gentlemen.

L. C. J. What did they do when they came?

Mr. Serj. *Jefferies*. Hark you, *Hill*, Was my Lord

Lord Grey and Mr. Goodenough, and Mr. Key, were they among the People?

Mr. Hill. After the Sheriffs came up, they went into the Orphan's Court, Mr. Goodenough came in and out, and my Lord Grey went in to them.

Mr. Serj. Jefferies. Did they appear among the People up and down in the Hall?

Mr. Hill. They went thro' the Hall to and fro.

Sir Fr. Winn. What was the Christian Name of that Goodenough?

Mr. Hill. I know him, he that was Under-Sheriff last Year: I know him well enough, and he knows me, yes, that is Mr. Goodenough.

Lord Grey. I desire to ask this Witness a Question, my Lord.

L. C. J. Let your Counsel ask, my Lord.

Mr. Serj. Jefferies. I desire to know another Question; Did you see Mr. Cornish?

Mr. Hill. I saw Mr. Alderman Cornish walk in the Hall, but I can't tell whether he went into the Room, or no. After my Lord was gone, he did come up into the Mayor's Court, and came thorough among the People.

Mr. Thompson. Hill, you speak of my Lord Grey; upon your Oath did you see my Lord Grey walk to and fro in the Hall, or only came thorough?

Mr. Hill. My Lord Grey came in at that Gate, and went thorough the Hall, and went in to the Sheriffs.

Mr. Williams. I would ask you this upon your Oath, Did you see him do any Thing more?

Mr. Hill. No, I was there to discharge my Office.

Lord Grey. My Lord, I own my being there; but only desire to ask a Question that will clear this matter.

Mr. Hill. I saw my Lord Grey come up those Stairs, and he went into the Orphan's Court.

Mr. Serj. Jefferies. How long might that be after the Poll?

Mr. Hill. After the Sheriffs came up, I believe it might be half an Hour, or a quarter of an Hour, near an Hour.

Mr. Williams. Did you see my Lord Grey do any thing more than walk?

Mr. Hill. I saw him come to the Orphan's Court, and they would not open the Door at first; but they said, it is my Lord Grey, and then they let him in.

L. C. J. Your own Counsel is asking, my Lord; I am willing you should ask a Question if your own Counsel will let you. Gentlemen, my Lord would ask a Question himself, and you won't let him.

Lord Grey. My Lord, Though I do not know this Gentleman at all, yet I will venture to ask him a Question: Pray Sir, did you see me speak to any one Man?

Mr. Hill. I have answered that already, I say not.

Lord Grey. Were the Books brought from the Polling-place by the Sheriffs before I came, before that I went in there? — My Lord, I was there, and shall give you an account of it.

L. C. J. It had been better, my Lord, if you had kept away.

Mr. Serj. Jefferies. Fletcher, Pray will you tell my Lord and the Jury what you observed that

Day here after my Lord Mayor was gone and had adjourned the Court?

Mr. Fletcher. On the 24th of June I was here by order of Sheriff Shute, after my Lord Mayor had adjourned the Court, and it was to call all Men that were to Poll to come forward, for the Books were to be shut up, and I went away immediately, I was very hot and went away to the Three-Tun Tavern.

Mr. Serj. Jefferies. Did you see Mr. Shute there?

Mr. Fletcher. Mr. Pilkington was there and Mr. Shute too.

Mr. Serj. Jefferies. Can you name any body else?

Mr. Fletcher. No, I can name no body else.

Mr. Serj. Jefferies. What did Mr. Shute say?

Mr. Fletcher. He ordered me to make Proclamation for all Men, them that had a Right to Poll, to come and Poll, for the Books were to be shut up.

Mr. Serj. Jefferies. Captain Clark, Pray will you give an account of what you observed?

Capt. Clark. I came down into the Hall, and I did hear a whispering, whereupon I went to guard my Lord Mayor, my Lord Mayor came down upon the Hustings, and Proclamation was made for the Adjournment of the Court; whereupon when Proclamation, *God save the King*, was made, an hundred, &c. I believe more, hift at that, I laid hold of one of them, *No King's-man, no Sword's-man*, cry'd they; *Sirrah, you are a Rascal and a Traitor in your Heart*, said I, and laid fast hold on him; but there was a very great crowd, and says one or two, *For God's sake Captain Clark, do you guard my Lord*; There was Mr. Weston and Major Kelsey; *My Lord*, said they, *is in danger*; said I, *Gentlemen, keep by him, or go before, I will be in your Rear-guard*. My Lord Mayor was down upon his Knee, I can't tell how he came down, *Press on, Press on*, this was the Cry, and *God save the Sheriffs*. After coming down the Steps, I pressed as near as I could to my Lord Mayor, to keep them off; *Now*, said I, *this is the time to keep the Rabble off, now face about*; I had my Sword in my hand, and with the pommel of my Sword kept them off; *Before God*, said I, *I will keep you off*; and so I waited on my Lord home, and went and drank a glass of Sack. About an hour or two hours afterwards I came down to the Hall and found the People shouting, *God save the Sheriffs, God save the Sheriffs*: *What nothing*, said I, *of my Lord Mayor*? But, said I, *this is not a place to quarrel in, let us not quarrel together*. I saw the Sheriffs Pilkington and Shute were concerned in carrying on the Poll, and this they continued to do for some time, at last, *I am weary of the Hall*, said I, *I will go home*; and this was between 8 and 9 a Clock.

Mr. Serj. Jefferies. Can you remember any body else besides the Sheriffs?

Capt. Clark. No, Sir, I cannot.

Mr. Serj. Jefferies. Can you remember Sir Thomas Player?

Capt. Clark. No, I can't.

Mr. Serj. Jefferies. Captain Clark, Did you know never a one of them that cryed out so?

Capt. Clark. No, my Lord, I was before Sir Robert Clayton.

Mr. Serj. Jefferies. Major Kelsey, Pray will you give my Lord and the Jury an Account of what you saw on Midsummer day?

Major Kelsey. My Lord, when my Lord came out of the Court I went after, and some cryed,

Stop

Stop him, stop him; but I got between them, and some of my Lord's Friends kept them off; but when we came just to the going out, they gave a shout, and I saw my Lord Mayor's Hat upon his Back, and I can't tell whether he touched the Ground with his Hand, but I was c'en almost down; said I, *Gentlemen, do you intend to murder my Lord Mayor?*

Mr. Serj. *Jefferies*. Who did you see there?

Major *Kelsey*. Indeed, Sir, I was almost down, and did not see their Faces.

Mr. Serj. *Jefferies*. Mr. *Trice Hammon*, I would only ask you, Who did you see, who did you observe to be there?

Mr. *Hammon*. About 9 a Clock at Night, or something before, I stood at the Door that leads to the * *Common-*

* The same place which before was called the *Orphan's Court*.

Pleas, and there came in Alderman *Cornish* and *Goodenough*, and Old *Key*, an old white-hair'd Man,

and by and by my Master Sheriff *Shute* came out and told me, *I shall give you all Satisfaction by and by*; God bless you, Mr. Sheriff, said I; and he went again, and there I staid till they came out, and then he went upon the *Hustings*, and I went along with him when he came out.

Mr. Serj. *Jefferies*. Who went with him out to go to the *Hustings*?

Mr. *Hammon*. Sir *William Gulston*, and several other Men, there is never a Name in the Indictment more.

Mr. Serj. *Jefferies*. None of them that are in the Indictment? Name them.

Mr. *Hammon*. I have named them.

Mr. Serj. *Jefferies*. Prithee name them.

Mr. *Hammon*. Mr. Alderman *Cornish*, both the Sheriffs, my Lord *Grey*, Mr. *Goodenough*, and old Mr. *Key*.

Mr. *Thompson*. Which *Goodenough*?

Mr. *Hammon*. That Mr. *Goodenough* that stands there.

Mr. Serj. *Jefferies*. There is such a noise that I did not very well hear that Word.

Mr. *Hammon*. *Goodenough*, not that *Goodenough* that looks upon me, but he that stands behind.

Mr. Serj. *Jefferies*. He falls behind now, but he ran up and down then, and Alderman *Cornish* was there too.

Mr. *Jones*. You Witness, you have named all these men; what did *Shute* do, or what did he say?

Mr. *Hammon*. When he came upon the *Hustings*, he made Proclamation himself, because one or two refused it, he did it himself; and after a while he adjourned the Court upon the *Hustings*; this was on *Midsummer* day.

Mr. *Jones*. What did he say?

Mr. *Hammon*. As the Common Cryer usually says at such times.

Mr. *Thompson*. You say you saw Mr. *Goodenough*, and you saw my Lord *Grey*, upon your Oath, can you say they did any thing, or was any thing done in abuse to my Lord Mayor?

Mr. *Hammon*. They did not tell me, my Lord, what they did.

Mr. *Thompson*. I ask you what did they do?

L. C. J. Mighty busie they were.

Mr. *Thompson*. How long was it after my Lord Mayor adjourned the Court?

Mr. *Hammon*. About two Hours.

Mr. Serj. *Jefferies*. So much the worse.

L. C. J. You must understand it was some

time before Mr. Sheriff had made his Adjournment, they were busie till that time.

Mr. Serj. *Jefferies*. My Lord, If your Lordship pleases, I do agree with Mr. *Thompson*, that the Jury should remember that this was two Hours after my Lord Mayor had adjourned the Court.

Lord *Grey*. I desire, my Lord, I may ask him some Questions. You say you saw me go to the Council-Chamber; at what time, and who went with me?

Mr. *Hammon*. A little before Candle-light.

Lord *Grey*. You say all the Company went out with the Sheriffs, and went away.

Mr. *Hammon*. My Lord, I did not say you came out.

Mr. At. Gen. My Lord was of the Upper House.

Mr. *Thompson*. Yes, and may be there again.

Lord *Grey*. I hope I shall be there, Mr. Attorney.

Mr. At. Gen. It had better you had been so then, my Lord.

Lord *Grey*. It will be the worse for you, I shan't lie Perdue for you.

Mr. At. Gen. If you threaten me, my Lord, I shall take notice of it. My Lord, I have done you a Kindness, but if you come under my Hands again, I shall not do it.

L. C. J. They would not have it said, *God save the King*, and my Lord you were with some of those that abused him.

Lord *Grey*. After it was over, my Lord.

Mr. At. Gen. You were not within your Duty here.

Lord *Grey*. My Lord, it was after the Poll was closed.

Mr. Serj. *Jefferies*. My Lord, I desire if you please, what is usual in all Causes, that we might go on without any interruption. Let us go on for the King, and then make all the defence you can. Don't think either to his or threaten us out of our Cause. Mr. *Higgins*, give my Lord and the Jury an account of what you saw or heard.

Mr. *Higgins*. My Lord, I attended with several of our Company by my Lord Mayor's Coach to *Guild-hall*, and was in the Council-Chamber, and he sent for the Sheriff, after that he went away; and when *God save the King* was said, said they, *God save the Protestant Sheriffs*.

Mr. Serj. *Jefferies*. I desire to know, Mr. *Higgins*, this, what they said?

Mr. *Higgins*. They cried, *Down with the Sword*.

Mr. *Thompson*. Mr. Attorney is making a Speech to us, I don't know what he hath said.

Mr. Serj. *Jefferies*. I don't think Mr. Attorney thinks you worth a Speech. Mr. *Higgins*, I desire to ask you a Question, I ask you this Question upon your Oath, after the Adjournment of the Court, and after this very insolent behaviour of some of the Rabble that were there, for I can call them no better, who did you see there?

Mr. *Higgins*. After I went home, I went to see my Lord safe home, and came back again, I saw one *Freeman* that they call the *Protestant Cheesemonger*, calling, *To poll, to poll*.

Mr. Serj. *Jefferies*. Pray who else did you see?

Mr. *Higgins*. I saw Mr. Alderman *Cornish* come up towards the Sheriffs, *Gentlemen*, said he, *You are doing right*.

Mr. Serj. *Jefferies*. Did you hear Mr. Alderman *Cornish* say so? What this Gentleman? Do you know him?

Mr. Hig-

Mr. Higgins. Says he to Sheriff Shute, You shall have all right done to you.

Mr. Serj. Jefferies. Who else did you see there?

Mr. Higgins. I saw Mr. Swincock.

Mr. Serj. Jefferies. Did you see Mr. Key, did you see Mr. Pilkington?

Mr. Higgins. I did not see Mr. Pilkington, I saw Shute.

Mr. Serj. Jefferies. Did you see Mr. Jekyl?

Mr. Higgins. Yes.

Mr. Serj. Jefferies. Which of them do you mean?

Mr. Higgins. The Elder man

Mr. Serj. Jefferies. There is John Jekyl the Elder, Gentlemen, and John Jekyl the Younger.

Mr. Higgins. I was disputing with a Fellow that his Toes came out of his Shooes, and had a green Apron, said I, *Are you a Livery man?* Yes, I am, said he. Surely, said I, *they don't use to make such as you are Livery Men.* Says Mr. Jekyl, *He may be as good a man as you for ought I know.* That was about half an hour after my Lord Mayor went home.

Mr. Serj. Jefferies. What time was the Adjournment?

Mr. Higgins. About 5 or 6. I was speaking something, *You are all in a Riot. This is no Riot,* says Mr. Swincock to me; I can never meet you but you are railing against the King's Evidence.

L. C. J. The King's Evidence, what was that?

Mr. Williams. What was done by Mr. Jekyl?

Mr. Higgins. He was talking among the People.

Mr. Serj. Jefferies. He did encourage among the rest.

Mr. Williams. You are in a Passion now.

Mr. Serj. Jefferies. No Sir, I am not.

Mr. Higgins. He seconded Mr. Cornish when he said, *Insist upon your Rights.*

Mr. Serj. Jefferies. Who did so?

Mr. Higgins. Freeman, my Lord, that they call the Protestant Cheesemonger.

Mr. Williams. A very pretty word indeed.

Mr. Serj. Jefferies. Ay, so it is, he is so called, you will give us leave to hear what the Witnesses speak.

Mr. Williams. Another Epithet would do a great deal better.

Mr. Serj. Jefferies. William Bell, what was done upon the Spot? Was there any hurt?

Mr. Williams. Do you say upon your Oath, that Gentleman was there?

Mr. Higgins. I have seen him in the Balcony.

Mr. Serj. Jefferies. He says, he uses to be there upon publick days in the Coffee-house.—Bell, I would desire to know of you, whether you are able to give an account after my Lord Mayor's Adjournment, who was there; name as many persons as you can?

Mr. Bell. Mr. Bethel, and I saw Mr. Cornish go through the little Gate into the Yard.

Mr. Serj. Jefferies. Who else?

Mr. Bell. That is all, Sir Sheriff Pilkington delivered two Poll-Books into my hand.

Mr. At. Gen. Mr. Vavasor, will you tell my Lord and the Jury what you saw?

Mr. Vavasor. It happen'd thus, Mr. Hammon had taken a man upon execution, who was Bail for a Client of mine who had paid the

moneys long before; upon that I came to know who imployed him, and coming here, I found Mr. Hammon in that place, and the crowd was so great, *Don't go back again,* said he, *for you will go near to be abused.* Whilst I staid there, I asked him what was the meaning; Says he, *In this Room are the Sheriffs and some others casting up the Poll;* and whilst I staid, there came in Mr. Good-enough to and fro from them; and before they would admit any, they would know their names; there was Mr. Key, my Lord Grey, and Sir William Gulston.

Mr. At. Gen. What afterwards?

Mr. Vavasor. Yes, Mr. Cornish was there, he and Sheriff Shute came out together, and they went upon those Stairs under the Clock.

Mr. At. Gen. Who came out with Sheriff Shute?

Mr. Vavasor. Cornish.

Mr. Williams. What Cornish?

Mr. Vavasor. Alderman Cornish.

Mr. Williams. Very mannerly.

Mr. Serj. Jefferies. His name was Cornish before he was an Alderman.

Mr. Vavasor. And Sheriff Shute told the People, *If they would stay a little time, he would give them Satisfaction.* Upon that, Mr. Cornish went through the Company, and when they came to the Hustings, Mr. Shute ordered Proclamation to be made, and told them, *Whereas my Lord Mayor had taken upon him to adjourn at 9 a Clock, We the Sheriffs of London and Middlesex, being the proper Officers, do adjourn it to Tuesday at 9 of the Clock.* Upon that an Ancient Gentleman desired they might proclaim the Election. Then says Shute, *that I can't do it now, for we have taken very good Counsel for what we do.* Had it not been for Mr. Hammon, I had been, I believe, trod under foot sufficiently.

Mr. Serj. Jefferies. Mr. Denham, who did you see?

Mr. Denham. I saw Sir Thomas Player, and Mr. Jenks.

Mr. Serj. Jefferies. Where did you see them pray?

Mr. Denham. In the Yard. I went home with my Lord Mayor, and then I saw them. I had a kind of a glance, but I can't swear positively to Mr. Jekyl.

Mr. Serj. Jefferies. Sir Thomas Player and Mr. Jenks, what did you see them do?

Sir Fr. Winn. Heark you, Friend, where was it you saw them?

Mr. Denham. In the Yard.

Sir Fr. Winn. What did you see them do?

Mr. Denham. Nothing at all.

Mr. Serj. Jefferies. How many People might be there then? Two or three hundred?

Mr. Denham. Above a Thousand.

Mr. Williams. What did you hear Sir Thomas Player say?

Mr. Denham. Nothing.

Mr. Williams. How far was he from his own Door?

Mr. Denham. On t'other side the Hall.

Mr. Williams. A mighty way indeed, a mighty thing. What said Mr. Jenks?

Mr. Denham. I can't say, Sir, that I heard him speak a word, only in the Tumult.

Sir Fr. Winn. Friend, I ask you this, I think I heard you say, you saw Sir Thomas Player and Mr. Jenks in the Yard; but you did not see them do any thing at all?

Mr.

Mr. Denham. No.

Mr. Serj. Jefferies. Pray, Mr. Farrington, will you tell my Lord and the Jury what you saw after my Lord Mayor had adjourned the Court?

Mr. Farrington. I saw there Sheriff Pilkington, Shute, Sir Thomas Player, Mr. Wickham the Scrivener in Loathbury, Mr. Jenks, Babington, one Jennings an Upholsterer.

L. C. J. Sir Thomas Player you say in the first place?

Mr. Farrington. Yes, and Wickham, my Lord, a Scrivener in Loathbury.

L. C. J. Who then?

Mr. Farrington. Sheriff Pilkington and Shute, and Mr. Cornish, Alderman Cornish.

Mr. Serj. Jefferies. Did you see one Deagle there?

Mr. Farrington. No, Sir.

Mr. Serj. Jefferies. Wickham you saw there?

Mr. Farrington. Ay, Sir, I know him very well.

Mr. Thompson. What is Wickham's Christian Name?

Mr. Serj. Jefferies. John Wickham, he goes by that Name, it may be he was not Christen'd. Was Jenks there, do you know him?

Mr. Farrington. The Linnen-draper?

Mr. Serj. Jefferies. Ay, very well, he goes by the Name of Francis Jenks. Did you see Jekyl there?

Mr. Farrington. I don't know the Name, I saw a great many I knew by sight, but not their Names.

Mr. Holt. What did these Gentlemen do?

Mr. Farrington. I'll tell you, Sir, there was Sheriff Pilkington and Sheriff Shute, I went in where they were taking the Poll; said I, Gentlemen, my Lord Mayor hath adjourned the Court, what do you do here? I suppose it lies in my Lord Mayor's Power; if it lies in him to call, certainly he must dissolve.

Mr. Williams. You argued thus?

Mr. Serj. Jefferies. Pray give us leave to go on.

Mr. Farrington. There was Mr. Wickham, and says he, My Lord Mayor hath nothing to do here, neither will we be ruled by any of your Tory Lord Mayors. This is not the first Aspersiō, said I, that you have cast upon a Gentleman that loves the Church and the Government established by Law; and they fell about me, and had it not been for Mr. Fletcher and Mr. Hill, I believe they had done me a mischief; for they trod upon my Toes; who did it I can't tell.

Mr. Serj. Jefferies. But you say Sir Thomas Player and Pilkington and Alderman Cornish were amongst them?

Mr. Farrington. Yes, Sir.

Mr. Serj. Jefferies. That's enough — Pray Mr. Cartwright, will you tell my Lord and the Jury what you observed there, and who was there.

Mr. Cartwright. I know the Names of no Persons that were there, all that I can say was this. As soon as my Lord Mayor adjourned the Court upon the Hustings, he came down, and going out of the Hall, he had like to have been thrown down, had it not been for Mr. Shaw; and going to save my Lord Mayor, I wrenched my Back, and I spit Blood for seven Days after.

Mr. Serj. Jefferies. Tell that, Mr. Cartwright, over again.

Mr. Cartwright. My Back was wrenched in saving my Lord Mayor, and I spit Blood seven Days after.

Mr. Serj. Jefferies. Endeavouring to save my Lord Mayor his Back was so wrenched that he spit Blood six or seven Days after. Hark you; Mr. Cartwright, ever since that time have you found any Indisposition?

Mr. Cartwright. I have not been my own man since.

Mr. Williams. He took a Surfeit.

Mr. Serj. Jefferies. He took a Surfeit of ill Company I am sure.

Mr. Sol. Gen. Mr. Shaw, give my Lord and the Jury an account of what you know.

Mr. Shaw. My Lord, my Lord Mayor sent to the Sheriffs, and ordered them to forbear Polling and come up to the Chamber, and sent two or three times; but they denied coming to him, and went on and ordered the Common Cryer to make Proclamation for them to depart; and if they staid, that he would look upon them as Rioters; and there was hissing and a great deal of crowd, and there was Sir James Edwards in the Court, they hunched him with their Elbows, and as his Lordship came down, going down the Steps there was such a crowd, that if I had not caught his Lordship in my Arms he had fallen upon his Forehead, and his Hat was off.

L. C. J. Who did you see so misbehave themselves?

Mr. Shaw. My Lord, I can't tell.

Mr. Serj. Jefferies. I think we have now proved it against every body we design, save only against Mr. Deagle, for we do not now proceed against Dorman Newman and Benjamin Alsop. Now, my Lord, we will only prove against John Deagle, and then we shall have done. Mr. Kemp, will you tell my Lord and the Jury who you saw here. Did you observe any Particulars after the Court was adjourned?

Mr. Kemp. I don't remember I observed any one Man.

Mr. Serj. Jefferies. You don't? Had you any Discourse with Mr. Deagle at any time?

Mr. Kemp. Yes, I had.

Mr. Serj. Jefferies. What did he tell you?

Mr. Kemp. He did confess he was there about 7 a Clock at Night.

Mr. Serj. Jefferies. He did own he was amongst them?

Mr. Kemp. Yes, with Alderman Cornish.

Mr. Serj. Jefferies. What say you, Mr. Rigby?

Mr. Rigby. I saw him about 7 a Clock.

Mr. Serj. Jefferies. Was he in the Crowd?

Mr. Rigby. Yes, amongst the People.

Mr. Serj. Jefferies. Here is all now, Gentlemen, but Dorman Newman, and Benjamin Alsop, and we don't go against them now. After they had done this, and his'd at the King, and cried, No King, no Lord Mayor, what Acclamations went these People off with?

Mr. Hammon. When the Court was broke up by the Sheriffs, they cryed, God save our true Protestant Sheriffs, and in that manner they followed us.

Mr. Serj. Jefferies. What say you?

Mr. Hammon. They hollowed us home, Sir, as far as Fishmongers-Hall.

Mr. Serj. Jefferies. They began with a Hiss, and ended with a Hollow.

Mr. Williams. Gentlemen, I am Counsel for the Defendants, and, my Lord, the question is under favour, Whether these Persons taken for Defendants, whether they be guilty of this Riot, as it is laid in the Information, We are now upon a special Case, and the question is, Whether Guilty, or not Guilty. My Lord, In the first place for the Cries, what the Cry was, hath been too often mentioned; for those Cries, there is nothing at all fix'd upon any Person that is Defendant; all that is charged upon us, is, That we were in the Hall it seems, and because there was this Noise heard, therefore we must be guilty. In this Crowd where we are, I hear hissing, especially at t'other end of the Hall, which of us are concerned in it, is a hard matter to judge; it is a hard matter, and it were very well, and it had been very happy, if some of those Persons had been apprehended for their hissing. I won't say, Gentlemen, that either one Party or t'other in the Contest made the Noise of hissing, but there is nothing of it fix'd upon any of us. Our Case is this, my Lord, with favour, When we have stated our Case and proved it, we are very innocent, and not guilty of the Riot. In some measure it hath been stated on the other side. They say in the Information, that the Lord Mayor called a Common Hall; we don't dispute that matter, we agree it, that the Lord Mayor of London is the King's Lieutenant; but to make such an Inference. That because the Lord Mayor is the King's Lieutenant in the City London, that he must execute all the Offices in the City, is of no credit in the World; so that they are mistaken in that. Men are bounded in their Offices. The Lord Mayor does not execute all the Offices in the City tho' he be Lord Mayor. The question between us is this, Whether the Sheriffs, in this Case, did more than their Office as Sheriffs of the City of London. There is a Superiority due to the Lord Mayor. Another thing we agree with them, we agree it is in the Lord Mayor only to call these Common Halls, and as Mr. Serjeant Jefferies, that hath been in a good Office in the City, he agrees it himself, and it is apparent, there are some fix'd Days for Election; but yet tho' there be fix'd Days for Election, yet there must be that Formality of a Summons from the Lord Mayor to the City to meet in order to the Election of Sheriffs for the City of London and other Officers, that we do agree that my Lord Mayor hath the Power of calling Common Halls, and he is the proper Officer. We agree also, Gentlemen, that when the Business is done, for there is nothing in vain in Nature, and there is nothing in Government that should be in vain, when the Business is done, my Lord Mayor is to bid the Company *Fare them well*, which you may call discharging the Common Hall; we agree that to be commonly and usually done by my Lord Mayor. But herein we differ, which we are to try, the Right of the Office of Sheriffs being the Question, it is a Question of Right, and I don't see the Government is concerned one way or other.

L. C. J. Upon my word I do see it, and surely you must be blind, or else you would see it too, when a Company is got together, *No God save the King, no Lord Mayor.*

Mr. Williams. My Lord, I thought I had opened it plainly, I speak before a great many Peo-

ple, I desire, my Lord, this may be very well heard. I thought I had said very well, from all these Noises and Cries we are all innocent, we justify nothing of it, only we would have been glad if they had apprehended any Man that made that Noise; it had been a very happy thing if one of them, or all of them had been Defendants to be tryed. My Clients are Defendants, they are innocent and unconcern'd, it is a Crime committed by some where these Gentlemen were by, but they are innocent; we hear hissing at t'other end of the Room, it was an ill thing, and of a Treasonable Complexion; but for these Gentlemen they are unconcern'd. The Question between the Lord Mayor and the Sheriffs of the City, is a Question of Right between the Mayor and Sheriffs, Whether it be the Prerogative of the Mayor, or the Right of the Sheriffs? And I say, under correction again, this Question, Whether the Lord Mayor of London may adjourn the Common Hall to a certain Day, is a Question of Right, Whether he can do it or the Sheriffs; And I don't see what Consequence it can have upon the Government. The Lord Mayor is the King's Deputy, the Sheriffs they are the King's Officers, and the Question is, Whether it be in the Lord Mayor or the Sheriffs of London to adjourn it? They are very good Subjects, I am sure this very Year they are so; therefore I wonder at these Gentlemen of the King's Counsel, that will meddle with the Government, and say the Government is concerned in this; I appeal to any Man if there be any more Concern in this; I say this, here was a Common Hall call'd, grounded upon Custom in the City of London, and here is a single Question, Whether these Sheriffs did any more than their Duty, whether they were guilty of a Riot in continuing this Poll: Gentlemen, this is the method we shall take. First of all, it is not proved, that ever the Lord Mayor before this time did ever attempt to adjourn a Common Hall to any certain time; all the Witnesses that were call'd, that pretend to be knowing in the Customs of London, the Common Serjeant himself, he does not pretend that it was adjourn'd to a Day.

Mr. Serj. Jefferies. You mistake. Sir Robert Clayton did from Saturday to Monday.

L. C. J. What need if there had been no President; if so be an Assembly of People are met about Business, and they can't make an end of it in a reasonable time, must they be kept all Night till they have? What Argument will you make of it? If a Man may call and dissolve, do you think if there be occasion, but, by the Law it self, that he may adjourn to a convenient Hour?

Mr. Williams. That will be a Question between us. My Lord, what I say certainly of Fact carries something in it.

L. C. J. Not at all.

Mr. Williams. Then, my Lord, I have done.

L. C. J. Give us leave to understand something, Sir.

Sir Fr. Winn. My Lord, by your Lordship's favour—

L. C. J. I spake to Mr. Williams, and he takes it so heinously at my hand that Facts signify nothing; I do again say it, The Fact signifies nothing. For I tell you again as Law, it is not denied the Lord Mayor may call, he may dissolve;

dissolve; then I say by Law without Fact, by Custom, he that can both call and dissolve, may adjourn to a convenient time. Do not Judges of Assize in all the Counties of England do it, when a Cause is appointed to be tryed in such a County such a Day, and it may be it is tryed three Days after; and yet I pray find me the Statute or Commission, or find me one thing or another besides the very Law it self, that doth give them leave to adjourn from time to time.

Mr. Williams. My Lord, there is a mighty difference, but I am only upon Fact, these Gentlemen will agree it was never practised before Sir Robert Clayton's time, what the Consequence in Law will be, that is in your Lordship's Breast, I am now speaking upon the Evidence that this hath not been practised. What the Law is, for that we are to have your Judgment, which I humbly crave, I will be judged by Gentlemen that are my Seniors and better read in this matter; but, my Lord, a Man may have a Power of calling and dissolving, and not of adjourning, it may be so. But, my Lord, admitting it to be so for this time, yet, my Lord, whether we are guilty of a Riot, take the Circumstances of our Case. Whether the Right of adjourning be in the Sheriffs, yea, or nay, it is a Question of Right, and I had rather apply my self to your Lordship, than to the Jury. If there were a Question of Right between the Lord Mayor and the Sheriffs, it may be admitted by our Counsel that it was his Right to adjourn the Court, and probably the Sheriffs might be in the wrong, and the Lord Mayor in the right. The Lord Mayor adjourns the Court, and they continue it, they go on with the Poll, and go on with the Execution of their Office as they apprehended, if they were still for their Right, I hope your Lordship will not make this a Riot. My Lord, for the Circumstances that followed, the Noise that was made, which I don't love to mention, if, I say, they were guilty of this, I am silent; but if they did no more, as I hear no more proved upon them, than continuing the Poll, then, I say, it will be very hard to make them guilty of the Riot. And another thing is this, my Lord, we all know, if there were a thousand Electors, any Man knows, that when there is a Question upon an Election, it is impossible such a thing shall be carried on but there will be reviling, ill Language, and the like; and to turn all these things to a Riot, a thing so common from the beginning of Elections to this time, if there be Division and Polling, there will be something you may turn to a Riot. But I say this, they have not instanced in any one Defendant, that he was guilty of any one particular Act that amounted to a Riot in it self, they have not instanced in one. They say of Alderman Cornish, That he was of the same Opinion with the Sheriffs, that they did insist upon the Rights of the City, he took it to be the Right of the Sheriffs; And, says one of them, *I will stand upon it*, Bethel that had been Sheriff. Now we will call our Witnesses, we will prove what hath been the constant Practice in the City, we will prove the Methods of Adjournment; and, my Lord, this is to be said which your Lordship will observe, That the Sheriffs adjourned the Court to the very same time with my Lord Mayor; so that it was no

more than to bring the matter to an Issue in this Case.

Sir Fr. Winn. Spare me a word in this Case, my Lord. There is no Evidence produced against Trenchard, nor against Jekyl the Younger, nor against Bifield, nor. Of these there is no question but they are as if they were out of the Information, I must beg leave for a word or two as to those Defendants, that they have offered some Evidence against. The question is now before your Lordship, Whether they are guilty of a Riot or no? My Lord, for ought I see, it will stand upon a nicety of Judgment; yet if there be not matter enough, Gentlemen, to make the Defendants guilty of a Riot, then it will clear the Defendants. My Lord, as to those Words, that really were Words that ought to be inquired into, who they were that spoke them in relation to His Majesty; I think it was a very ill thing of those Men that saw them, that they would not neglect all manner of Business to seize them, I think it was a Duty to fix upon them; but, my Lord, there is no Evidence to put it upon any of the Defendants. My Lord, that being pared off, now the Question is, That the meeting together was lawful, that is agreed; then when they came together, my Lord, I do think that if we do rely upon the Evidence, it will be a mighty hard thing to make this a Riot, setting aside those villainous Words that were spoken, which cannot relate to the Defendants. Suppose, my Lord, that among the Electors, the whole Common Hall of the City, there doth a Dispute arise before the Election is over concerning the Adjournment of the Sheriffs or the Lord Mayor, some Men are of one Opinion, some are of another; and their Evidence, Mr. Peter King and another, Attorneys, I asked the Question several times, *Did the Lord Mayor of London, ever interpose or concern himself in adjourning the Hall, till the Election was quite finished?* and they said No: Then, my Lord, I must say it as to these particular Defendants, in such a concourse of People as was met there, it is as slender a Proof of a Riot as ever was, and intimates that the Citizens of London, they that happen not to be the greater number, they that lose the Election, may be found guilty of a Riot in choosing other Officers as well as in the Business of Sheriffs; which being so tender a Point, I think it will be a very severe Exposition, my Lord, to make this a Riot. But now for the Matter, we will call to your Lordship several Witnesses, Men that have been Magistrates in the City, that it was always looked upon, that my Lord Mayor, as he is the Principal Magistrate, he gives notice for Common Halls; and when the several Electors are met, and the Business is over, he directs them to go home, and dissolves them; but my Lord Mayor meddles not in every little Administration of the Election of Officers, but leaves them to inferior Officers, the Sheriffs and others, that is their Duty, my Lord, with submission, they Poll them and send them home during the Election, therefore by Law they do this; for, my Lord, the Custom of a City, and the Custom of a Place, is the Law of the Place; and if the Custom of the Place hath been, that the Sheriffs have been the Persons that have managed it, it is their Right; but the Common Serjeant he says he hath the sole Management of it; Then

Then if it be as Mr. Common Serjeant says, if that must go, upon my Word, Gentlemen, your Privileges are reduced to a little compass.—

L. C. J. They did confer one with another who they took to have the most Voices, and so reported it, not that he did claim any thing in his own right, but as an Officer of the City. Now it is plain, and I think there is no inconveniency falls upon it, if an Officer acquaints my Lord Mayor, according to the best of our Judgment, we think such a man hath the most Voices, that does not give him a Right for him to make an Officer, not at all.

Sir Fr. Winnington. I say what he said in his Evidence, but one of the Attorneys swears that they have all equal Power, I wonder then who should make an end of the Business. My Lord, we will call to your Lordship Ancient Citizens, that have been frequent at Elections, to give you an Account that the Sheriffs always had the management, that my Lord Mayor never concerned himself, till he had notice it was determined; and if that be so, and the Practice hath been so, then I don't see, under favour, my Lord, how they will make this a Riot; that is the Case.

Mr. Thompson. *Sir Robert Clayton,* will you please to tell my Lord and the Jury in what manner the Election of Sheriffs hath been, and how the Mayors have usually left it to the Sheriffs in that case.

Sir Robert Clayton. My Lord, I have never heard this Matter hath been in question till of late, so I cannot declare much upon my own Knowledge, how the Truth of Fact is or should be, I can only say this, what the Practice hath been. When I came to the Chair I did endeavour to know my Duty and to do it. The first time I had occasion to take notice of this matter was in the Year of my Mayoralty, I did then, according to Custom, summon a Common-Hall, when I had summon'd it, there was a Person presented to the Hall I had drank to; the Hall did refuse him, and there was a great noise and hubbub upon it, and we found a way to accommodate that matter, and left them to chuse two Sheriffs for themselves: I retired into this Court together with my Brethren and Mr. Recorder that was then: We sent for the Sheriffs up to examine the matter, they told us that they could not agree the thing, there were 4 Persons in Nomination, but they had granted a Poll. After this we went down into the Hall, of that Mr. Common Serjeant hath given some Account, and Mr. Serjeant *Jefferies*, I shall to the best of my Memory give the best Account I can of it, I shall only tell you what I did understand to be my Duty, I do not determine what the Practice was, but what I understood to be my Duty. When we came down into the Common-Hall to declare how the Matter stood, and that a Poll was agreed upon and granted, we would have adjourned the Court to a longer time, but the People cryed out to go to the Poll presently. I was, as you have been told by Mr. Common Serjeant, to go to the Tryal of one *Giles* upon the Assassination of *Arnold*, to the *Old Baily*. I did twice or thrice attempt to get down out of the Hall through the crowd, and was repuls'd, the crowd was so great I could not get through, but was fain to retire back again to the *Hustings* as I remember two or three

times. There might be some such Discourse as Mr. Common Serjeant hath said, but thus far I can remember, that I did both my self and the Common Serjeant signify to them the Business I was about, and so many Aldermen as made up a Bench together with Mr. Recorder, to manage that Business, must go, and that I would leave the Sheriffs to manage the Poll, which I thought was their Duty.

Mr. Thompson. Did you take it to be their Right?

Sir Robert Clayton. I did not apprehend it to be my Right then.

Mr. Thompson. And therefore you left it to the Sheriffs as their Right?

Sir Robert Clayton. I left it to the Sheriffs to manage the same.

Mr. Williams. *Sir Robert Clayton,* I suppose when you were Lord Mayor you were as much for the honour of the Chair as any man, you would not have quitted the right of the Chair?

Sir R. Clayton. I did not, there was a Tryal of me in that case.

Mr. Williams. Now Sir, for adjourning the Poll, did you know any such Question whether a Poll was to be adjourn'd upon the Election of any Sheriffs?

Sir R. Clayton. There hath been a great noise about Adjournments of late. That Poll was the most litigious of any that I know we have had before or since, that was adjourn'd for several days.

Mr. Williams. Who adjourn'd that Poll?

Sir R. Clayton. The Sheriffs did adjourn it, I think, Gentlemen, I do think the Sheriffs did adjourn it, I was not present.

Mr. At. Gen. *Sir Robert,* Don't serve the Court thus.

Mr. Williams. Don't brow-beat our Witnesses, Gentlemen. I know, Mr. Attorney, you are an Example of fair practice: We are examining our Witnesses.

Sir R. Clayton. Pray, my Lord, let me explain my self, I shall let Mr. Attorney General understand me. I did never appear at *Guild hall*, unless upon the account of a Court of Aldermen, I did never appear at *Guild-hall*, but the first day we had Consultations here in this Court about the Adjournment, and upon the *Hustings* about going about the Business we intended, and the Hall was very intent upon the Poll; I twice attempted to go out, and could not get out, whereupon we were fain to acquaint the Hall as well as we could for the noise, of the Business we were to go about, and they let me go. I left behind the Sheriffs and the Common Serjeant; how long they stayed I can't tell, I can upon my own Knowledge give no account of them. I was not consulted to the best of my Knowledge afterwards, nor did give any particular Directions for Adjournment. I did not do it, for this Reason, I did not look upon it to be in my Power: If I had such a Power, I did not understand it.

Mr. Williams. *Sir Robert,* how many days do you think that Poll continued?

Sir R. Clayton. About six days.

Mr. Williams. Of those six how many days were you present?

Sir R. Clayton. I did not understand it to be my Duty, and so did not look after it.

Mr. Thompson. *Sir Robert Clayton,* I desire to ask you a Question, as to this matter you have given

given in evidence; do you give it to the best of your remembrance, or positively?

Sir R. Clayton. I tell you I speak to the best of my remembrance every thing that I say.

Mr. At. Gen. Sir Robert Clayton, I beg your favour, to the best of your remembrance is no evidence, it is so lately, if you please, Sir Robert, you are to give evidence of a thing about three Years ago. I ask you upon your Oath who were your Sheriffs?

Sir R. Clayton. Sir Jonathan Raymond, and Sir Simon Lewis.

Mr. At. Gen. I would ask you then a plain Question, Sir Robert, because you come in with your remembrance; did you give express direction to the Common Serjeant or the Sheriffs to adjourn, upon your Oath?

Sir R. Clayton. I must, Mr. Attorney General, by your favour, take in my remembrance.

Mr. At. Gen. Then you are no Evidence. Sir Robert, did you give Directions or not, upon your Oath?

Sir R. Clayton. I can't say it was given.

Mr. At. Gen. Did you, or did you not?

Sir R. Clayton. My Lord, I hope I have spoke English in the case, we did discourse of the Adjournment in this Court, I believe it was discours'd below; but as I said, I was engaged to go to the Old Bailey, and I would leave that matter to the Sheriffs, whose proper Business I understood it to be.

Mr. At. Gen. I asked you, Sir Robert, one of the plainest questions that ever was asked; I ask you whether you gave the Sheriffs or the Common Serjeant express Order to adjourn?

Sir R. Clayton. I believe I did not.

Mr. At. Gen. Did the Sheriffs tell you they had a Right then?

Sir R. Clayton. There was no dispute who had the Right.

Mr. Serj. Jefferies. Sir R. Clayton, if you please, I would ask you a Question or two. Do you remember that the Court was adjourn'd while you were there or not? Do you understand the Question, Sir Robert? Do you remember the Common Hall was adjourned while you were there?

Sir R. Clayton. Yes, Sir, if you give me leave to explain my self, I think the Common Hall was adjourn'd; it was declared, but there was such a noise in the Hall that the People could not hear it.

Mr. Serj. Jefferies. But there was a sort of Declaration made by your self, you did make an Adjournment; but the noise was such that the People did not hear: And if you remember, there was a Person affronted one of the Sheriffs, and I committed him to Custody upon it.

Sir R. Clayton. We desired to adjourn for an hour or two, that we might go and refresh our selves.

Mr. Serj. Jefferies. Then you remember there was an Adjournment: I ask you whether it was appointed to be made by you or the Sheriffs?

Sir R. Clayton. Truly I believe it was appointed by me.

Mr. Serj. Jefferies. Sir Robert, by asking a Question or two, Sir Robert, I know I shall bring some things to your remembrance.

Sir R. Clayton. My Lord, I don't know I have given any great occasion of Laughter to my Brethren; these Adjournments have been very common with us, and I might agree to it or

order it, or direct it, but one of them I believe I did, on two of them.

Mr. Serj. Jefferies. Sir Robert, I would only have a Question or two asked, and I know by asking a question or two I shall bring things to your Memory, which I am sure you cannot easily forget: Were there Directions given for Proclamation to be made for all Parties to depart in the King's Name?

Sir R. Clayton. I believe there might.

Mr. Serj. Jefferies. The next question is, Whether the Sheriffs ordered that Proclamation to be made for all Parties to depart?

Sir R. Clayton. If it were done while I was present, I make no doubt in the Case, but I did direct it, I make no question of that.

Mr. Serj. Jefferies. Very well now, Sir Robert Clayton, we are got to an Adjournment to a time by your direction, and Proclamation by your direction. Now I will ask another question upon your Oath; Was not you in the Common-Hall, and gave Order for an Adjournment till Monday following, for I remember that day to be Saturday?

Sir R. Clayton. Truly I do not remember that.

Mr. Serj. Jefferies. You do not? Sir Robert, you know very well, that the Sheriffs of London, when the Lord Mayor and Aldermen come back to the Hustings, the Sheriffs sit remote, one on the right hand, and the other on the left, furthest from Lord the Mayor, so that all the Aldermen sit nearer to the Lord Mayor than the Sheriffs do; did you mind that the Sheriffs came to you to speak to you any thing of an Adjournment?

Sir R. Clayton. I never saw it.

Mr. Jones. I would ask you a Question or two, You know this Gentleman, don't you? [Pointing to the Common Serjeant.]

Sir R. Clayton. Yes.

Mr. Jones. Did he attend the Court at that time?

Sir R. Clayton. Yes.

Mr. Jones. Sir Robert, I ask you a fair Question, did you lay any command on him to adjourn the Hall at that time from Saturday till Monday.

Sir R. Clayton. Pray, my Lord, give me leave to answer Mr. Jones in my own way.

Mr. Jones. My Lord, I'm in your Judgment, it is a fair question within his own Recognizance lately done, he ought to answer positively, Yes or No.

Sir R. Clayton. Am not I upon my Oath, can you tell me what I can say?

Mr. Jones. Ay or No. Any honest man would do it.

Sir Fr. Winnington. All Witnesses answer their own way, don't they?

Mr. Jones. Let him answer then his own way.

Mr. At. Gen. My Lord, you know there is a Rule in Chancery, if it be a matter within seven years, if it be not answered positively, it is no answer; if one asks a Witness a question that lies within a little while, if he will not answer either affirmatively or negatively, he is no Witness.

L. C. J. I can't tell, Mr. Attorney.

Mr. Jones. Will you answer or no, Sir Robert Clayton, whether you commanded the Common-Serjeant to go and adjourn the Hall or no?

Sir R. Clayton. I don't remember that I did.

Mr. Jones. Then I only ask you this further question, Whether Mr. Common Serjeant did not tell you

you that it was not his proper business to do it, and that unless you would lay express Commands upon him, and put the very Words in his Mouth, he did desire to be excused, and did he not stand there?

[Pointing to the Bar.

Sir R. Clayton. I have heard, Sir, what Mr. Common Serjeant did say, and I cannot charge my memory with it, but I have that charity for Mr. Common Serjeant to believe there might be discourse to that purpose.

Sir Fr. Winnington. Mr. Love, in all your Experience what do you remember?

Mr. Williams. How long have you known Guild Hall and Elections?

Mr. Love. I suppose, my Lord, these Gentlemen don't expect I should say any thing that was done that day; but, my Lord, all that I suppose you expect from me is what I did observe to be the Practice of the City; to the best of my remembrance I shall give you an account. My Lord, about 22 years ago, I did observe the Practice to be this, when I was call'd into this Office of Sheriff, I took it as a thing for granted, that it was the Sheriff's Office to manage the Common Hall, that I did, as my Lord Mayor's was to have a Sword born before him; I have received it by tradition from all before me, and my own experience. My Lord, I remember when we came to chuse Sheriffs upon Midsummer day, after the Lord Mayor and Aldermen had been there, my Lord Mayor said to me and my Brother Sheriff: Gentlemen, look to your Office, we accordingly went to it and chose two Sheriffs, one Gentleman that had been drank to by my Lord Mayor, I think it was Alderman but notwithstanding that drinking to him, we took no notice of that as a Ceremony, he was put in nomination among others, and being a senior sitting Alderman, we returned him; otherwise, my Lord, I assure you I would not have returned him notwithstanding the drinking. After once that the Lord Mayor and Aldermen withdrew to go to the Council-Chamber, they said to us, Now Gentlemen, look to your Office.

Mr. Thompson. What was your Office?

Mr. Love. To chuse Sheriffs.

Mr. Thompson. Did my Lord Mayor meddle with the election, or left it to the Sheriffs?

Mr. Love. Left it to the Sheriffs.

Mr. Williams. What was your opinion, Sir, was it in the Lord Mayor to take the Poll, or the Sheriffs?

Mr. Love. Truly Sir, I am not a competent Judge of whose right it was, but if my Lord Mayor had gone about to meddle in it, I should have prayed my Lord Mayor to meddle in his own Office, and let me alone with mine.

Mr. Attorney. Yes, Mr. Love, you were then the Tribunes of the People.

Sir Fr. Winn. Here are some say the Common Serjeant and the Common Cryer have a power, nay, the whole power of ordering the Hall during the Election. What is the Office of the Common Serjeant there?

Mr. Love. Truly, Sir, I look upon the Common Serjeant and the Common Cryer as Persons left to assist us, because they could not put us to the trouble of crying O Yes our selves; and if any Common Serjeant or Common Cryer had durst to put a question without my direction, I would have known whether he could or no.

Sir Fr. Winn. Mr. Love, Was it ever discours'd to you when you were Sheriff, or before or since, that ever my Lord Mayor did interpose before the Election was over?

Mr. Love. Since I was discharged of being a Magistrate, I never was at a Common Hall since. I have spent my Money for the City's service, but never got a penny by them; I never heard that ever the Lord Mayor till these late times interposed, but that the Sheriffs managed the whole business of chusing Sheriffs.

Mr. At. Gen. Mr. Love, I desire to have a word with you, you speak of the time of your reign, I would ask you a plain question, was it before the King came in?

Mr. Love. It was that year the King came in.

Mr. At. Gen. Was you chosen before?

Mr. Love. Yes, I was.

Mr. At. Gen. Do you remember an Act of Parliament in 48, then in force, of shutting out my Lord Mayor?

Mr. Serj. Jefferies. I would ask him a question or two. Hark you, Mr. Love, Let me ask you a question or two.

Mr. Love. Sir George, I would give Mr. Attorney an answer.

L. C. J. What would you make of it? If you ask him of an Act of Parliament it is something.

Mr. At. Gen. You speak of a time when my Lord Mayor had no more to do with it than I had. There was an Ordinance of Parliament, did you never see that?

Mr. Love. To the best of my remembrance I never saw it in my life.

Mr. At. Gen. Nor heard of such a thing?

Mr. Serj. Jefferies. Hark you, Mr. Love, I perceive you would have disputed with my Lord Mayor, who was the Lord Mayor that you talk of?

Mr. Love. Sir Thomas Allen.

Mr. Serj. Jefferies. Now I would desire to know whether you remember the City before the King came in?

Mr. Love. For a little while.

Mr. Serj. Jefferies. Do you remember any thing of that custom of the Lord Mayor's drinking to Sheriffs, was not that used before the King came in?

Mr. Love. A long time.

Mr. Serj. Jefferies. It is well enough; a long time.

Mr. Williams. My Lord, we have seven or eight more to the same purpose, but we are satisfied with these Gentlemen: We will prove if there was any thing like a Riot, we will prove my Lord Mayor and those that were with him were the Authors of it.

L. C. J. When multitudes of People are gather'd together upon a lawful occasion, supposing that they had a Right to be there, I do say that in that case it would be much a mitigation of the fine, so for this same Riot; but on the other side you must know, that these men that do it, it doth not excuse them, for *ignorantia juris* is not an excuse. It is true, if they had had a lawful occasion to continue to do it, but in truth they had not, that will excuse them *à tanto*, but *non à toto*.

Mr. Holt. My Lord, I beg to put in this case, there is a great deal of difference where a Person does claim a right to himself, and does an extravagant action. Now my Lord these Persons did

did claim a Right to themselves to continue the Common Hall, and that it was not in my Lord Mayor's Power to adjourn it without them: Now, my Lord, they claimed this Right, if they used no Violence, that is excusable. If I should claim a Right to another Man's Estate, tho' I have no Title, and say I have a Right, and give it out in Speeches, no Action lies against me; but if I do an extravagant Action, and say another Man hath a Title, there lies an Action against me.

L. C. J. Now go to your Fact.

Sir Fr. Winn. My Lord put a Point to us, and we need not call more Witnesses.

L. C. J. I don't speak to hinder you from calling your Witnesses.

Sir Fr. Winn. I put this case, we undertake to prove that it was always looked upon, that it was the Right of the Sheriffs: Suppose, my Lord, upon the Dispute it should be found that the Opinion of the Jury should be otherwise, will this turn to an illegal Act?

L. C. J. Call your Witnesses.

Mr. Wallop. I beseech your Lordship I may put one case in this Point, in a Point of Right if they have a probable Cause to insist upon it. Suppose I send 40 Men to a Wood, and take a Carr or a Team, if they be a competent number to cut down Wood, if we are mistaken in the Title, that is no Riot. *Lambert* puts the Case.

L. C. J. But what if I had sent a great many Men to cut down the whole Wood?

Mr. Williams. We will call some Witnesses that will take us off from the Riot thus, if so be we can excuse our selves of the Disorder, and put it upon my Lord Mayor, then we are innocent.

L. C. J. Very well if you do that.

Mr. Sibley. Are you acquainted with the manner of the Election of Sheriffs, how long have you known it?

Mr. Sibley. I have been of the Livery ever since 39, in all my time, I speak, Gentlemen, to the best of my remembrance, it hath been the Custom in all my time, except here of late, that the Sheriffs of London have had the management of the Election.

Mr. Did my Lord Mayor ever interpose till the Election was over?

Mr. Sibley. I never knew my Lord Mayor interpose till lately.

Sir Fr. Winn. Did you ever hear my Lord Mayor pretend to it till of late?

Mr. Sibley. No, my Lord.

Sir Fr. Winn. Did the Mayor use to be present at any Election during the Election?

Mr. Sibley. I have been most commonly there.

Sir Fr. Winn. But the Mayor, would the Mayor be there?

Mr. Sibley. The Mayor and Aldermen went off the Bench.

Sir Fr. Winn. Who managed the Elections?

Mr. Sibley. The Sheriffs.

Sir Fr. Winn. Were the Common Serjeant and the Common Cryer there?

Mr. Sibley. The Common Serjeant and the Common Cryer are always there.

L. C. J. I pray thus, you have known the City it seems a great while, I would ask you this, pray who did call the Assembly that was to chuse the Sheriffs, did the Sheriffs or the Lord Mayor?

Mr. Sibley. We commonly received the Tickets by the Officers of the Companies.

L. C. J. Did the Officers of the Companies summon the Assembly? Hark you, pray Sir, recollect your self, Do you take it that the Officers, the Beadles it may be of the several Companies, did they summon the Livery-men, and so a Common Hall was call'd together, was it so in your time?

Mr. Sibley. It hath been commonly so, we have received Tickets from the Beadle of the Company.

L. C. J. And my Lord Mayor had nothing to do with it then?

Mr. Sibley. What Order the Masters and Wardens had from my Lord Mayor, I never inquired into that.

L. C. J. When the Hall was dissolved, who ordered Proclamation to be made, the Sheriffs or the Lord Mayor?

Mr. Sibley. My Lord Mayor hath not used to be there.

Mr. Thompson. When they had done, they went away. He won't trouble your Lordship.

L. C. J. Pray, had my Lord any hand in summoning, did he direct the summoning of them?

Mr. Sibley. It is more than I know.

L. C. J. You bring a Witness that knows nothing of the matter.

Mr. Serj. Jefferies. *Mr. Deputy Sibley.* Give me leave to ask *Mr. Sibley* a Question or two, I shall set him to rights presently. *Mr. Sibley,* If I be not mistaken you are one of the Company of Tallow-Chandlers, and you have been Master of the Company, and you have been Warden of the Company. You very well know what Directions are given to the Beadle are generally by the Master or Wardens: Pray, upon your Oath, when you were Master or Warden, was there ever any Precept sent to you to summon a Common Hall?

Mr. Sibley. Indeed I don't remember that, Sir.

Mr. Thompson. If your Lordship please, we have done with our Evidence, I would beg your Lordship's Opinion in it.

Sir Fr. Winn. We do admit, my Lord Mayor summons the Court.

L. C. J. But you bring a Witness that knows nothing in the world of it, but yet you would have it taken for Gospel, that the Sheriffs had all the Management before that time forty Years together, till now very lately. But when he comes to be asked how is this Assembly or Common Hall call'd together, alas! he knows no more of that than one in *Utopia*.

Mr. Thompson. My Lord, we have several other Witnesses, but we will call no more.

Mr. At. Gen. If you have no more, we will call two or three more.

Mr. Thompson. We have some to prove that my Lord Grey came to speak with *Sir William Gulston*, and went away again, and we desire to call *Sir Thomas Armstrong*.

Sir Fr. Winn. My Lord, if your Lordship please, thus, there will be it seems some particular Defences made. Your Lordship hath heard their Evidence, and what we have said; we desire to call two or three Witnesses to another Head. Your Lordship hath heard there was some Rudeness by some of the People, but who they were it doth not appear. We will call two or three Witnesses of the Behaviour of those Men and

and Company that came with my Lord Mayor, that whatsoever disturbance was made, they were the chief men that made the disturbance, and my Lord Mayor could not help it, nor we neither.

L. C. J. Sir Francis, I believe those men that would not have *God save the King*, my Lord Mayor could not hinder them, but will you undertake to prove that those that came with my Lord Mayor, that they were the men.

Sir Fr. Winn. They were with them, my Lord.

Mr. Serj. Jefferies. They were with them that cryed *God bless the Protestant Sheriffs*.

Mr. Sibley. My Lord, I desire to explain my self to what I said; It is several years ago since I was Master of the Company, I do not remember, but I believe the Summons was directed from my Lord Mayor.

Mr. Freak. Mr. Winstanley, what account can you give to my Lord and the Jury?

Mr. Winstanley. I have lived near the Hall, and I often came in, but I was not a Livery-man upon that Poll, that was between Mr. Kiffen and Sir Robert Clayton; the Sheriffs managed it.

Mr. Freak. Who managed it?

Mr. Winstanley. The Sheriffs.

Mr. Freak. Who declared?

Mr. Winstanley. The Sheriffs.

Mr. Freak. Did the Mayor come down to declare the Election?

Mr. Winstanley. The Mayor came down after the Poll, but the Sheriffs took the Poll.

Mr. Freak. Who was then Mayor?

Mr. Winstanley. Sir James Edwards was Sheriff, and Sir John Smith.

Mr. Freak. Who was Mayor?

Mr. Serj. Jefferies. It was Sir Samuel Starling.

Mr. Freak. Who put the Question upon the Hustings?

Mr. Winstanley. I can't tell.

Mr. Freak. What did you hear the Sheriffs say, or see them do?

Mr. Winstanley. The Sheriffs presently granted a Poll, and parted one to one door, and the other to t'other.

Mr. Freak. And who took the Poll?

Mr. Winstanley. The Sheriffs took it.

Mr. Freak. Who declared the Election?

Mr. Winstanley. The Sheriffs.

Mr. Freak. Who were Sheriffs then?

Mr. Winstanley. Sir James Edwards and Sir John Smith.

Mr. Serj. Jefferies. Mr. Winstanley, I would ask you this question, do you take it upon your Oath that the Sheriffs declared the Election?

Mr. Winstanley. I declare upon my Oath that the Sheriffs took the Poll.

Mr. Serj. Jefferies. Mr. Winstanley, You may guess pretty well what I mean by this. First of all, I ask you, Did the Sheriffs put the Question?

Mr. Winstanley. The Sheriffs took the Poll, Sir.

Mr. Serj. Jefferies. Nay answer my Question, did the Sheriffs put the Question, or did any body else?

Mr. Winstanley. Truly, Sir, I have forgot, you were there.

Mr. Serj. Jefferies. I know I was, Sir: I know very well; I ask you upon your Oath, who was it that declared the Election afterwards? Upon your Oath.

Mr. Winstanley. Truly, Sir George, I don't remember.

Mr. Serj. Jefferies. Mr. Winstanley, one went out at one door you say, and t'other went out at t'other, you say; now I say who took notice, and told the names of those that went out at one door and t'other?

Mr. Winstanley. The two Sheriffs.

Mr. Serj. Jefferies. Who else?

Mr. Winstanley. I can't tell.

Mr. Serj. Jefferies. Do you remember me there at the great Door, when they poll'd and went out, do you remember who told them?

Mr. Winstanley. No truly.

Mr. Serj. Jefferies. Pray, do you remember when one Mr. Broom a Wax-chandler was chosen Ale-conner?

Mr. Winstanley. I was in the Hall, but I do not charge my Memory with it.

Mr. Sol. Gen. Hark you, Mr. Winstanley, who is it grants the Poll when it is demanded?

Mr. Winstanley. I do remember very well Sir George Jefferies was in the Hall, they demanded a Poll, and so went out.

Mr. Sol. Gen. Who granted it?

Mr. Winstanley. The two Sheriffs.

Mr. Serj. Jefferies. I will put you a Case nearer home, Mr. Winstanley: You remember when Sir Thomas Player was chosen Chamberlain, when the Question was put, Who should be Chamberlain, between him and a Gentleman I see not far from me, who do you remember managed the Poll then?

Mr. Winstanley. There was no need Sir George.

L. C. J. What do you mean to do with these little Witnesses? You call Witnesses that know nothing of the matter, or nothing to the purpose.

Mr. Serj. Jefferies. My Lord, Let me ask him but one Question more, I know he hath been a very great Evidence in this Case, I remember when that Gentleman was in for *Bridge-Master*, Who was the Poll demanded of at that time?

Mr. Winstanley. Truly, Sir, I think it was demanded of the Court.

Mr. Serj. Jefferies. Of the Court?

Mr. Winstanley. Usually upon other Days my Lord Mayor and the Court come down, but upon *Midsummer-day* they go up.

Mr. Serj. Jefferies. But I ask you of whom the Poll was demanded at that time?

Mr. Winstanley. I don't remember it I'll assure you.

L. C. J. You told us that point would be granted, and you would not stand upon it.

Mr. Williams. My Lord, Where there are so many men, there may be many Minds, I would have your Lordship and the Jury hear them.

Mr. Jones. The Government is concerned, Mr. Williams.

Mr. Serj. Jefferies. This is not a matter of Mirth I'll assure you, it reaches the Government.

Mr. Williams. My Lord Mayor hath the power of adjourning the Hall, but not till the Business is done.

Mr. Thompson. My Lord, I would put you a Case *———Sure; Mr. Jones I ought to be heard. If my Lord Mayor hath power to call a Common Hall, he hath not to adjourn it before the Business is done.

* Here Mr. Jones offered to interrupt him.

L. C. J. If a Writ come to the Sheriffs to choose

chuse Parliament-men, then the Sheriffs have it, but this is my Lord Mayor's Office, he hath Power to dissolve and adjourn.

Mr. *Thompson*. I speak to this Case, my Lord, I will shew your Lordship an Instance where it cannot be done. My Lord Mayor hath Power to call here, and he hath Power to dissolve, say they: My Lord, it cannot be, with submission, in all Cases. He hath Power to call an Assembly when there is a Mayor to be chosen, and the Citizens have a Privilege to move their Mayor or continue him, now if it were in the Power of the Mayor, and there should happen a question who they were? For, in a great number of Electors, if it were in his power to adjourn from time to time, he must continue Mayor.

L. C. J. It is plain he may do it for all your Objection. You know it was agreed by all sides that Sir *Samuel Starling* the Lord Mayor, had well dissolved the Assembly, that is, in point of Law, and they could not say the Assembly was in being, yet afterwards there was an Action brought against him, and there they laid how that maliciously, and to the intent that he who was chosen into the Place of *Bridge-Master* to which he was duly Elected, should be set aside, he goes and dissolves the Assembly, and denied to grant him a Poll, which they ought to have had, yet for all that the Assembly was well dissolved.

Mr. Serj. *Jefferies*. Conclude, Gentlemen, conclude.

Mr. *Thompson*. That which I have to say is a Point of Law.

Mr. Serj. *Jefferies*. Sir *Fr. Winnington*, If you design to conclude, I tell you beforehand, I would not interrupt you, we will call a Witness or two.

Sir *Fr. Winnington*. My Lord, because we would make an end, I will call two of those men that came with my Lord Mayor, to shew that if there was any rudeness, those very People that came with my Lord Mayor, were the Cause of it.

Mr. *Sol. Gen.* That they that came with my Lord Mayor, caused them to stay after my Lord was gone.

Mr. *Thompson*. Mr. *Jackson*, Pray can you remember whether any of the Defendants here were concerned in any Affront to my Lord Mayor, or who it was that my Lord Mayor received an Affront from?

Mr. *Jackson*. I did observe my Lord as he went out of the Hall, I took my Back and set it against the Crowd, and had my Face towards my Lord Mayor, and I was crowded so that I could scarce see my self one way or other, but got off the steps at last, and went home with my Lord Mayor.

Mr. *Thompson*. Can you say who struck off the Hat?

Mr. *Sol. Gen.* Where do you live, pray?

Mr. *Jackson*. I live at *Charing-cross*.

Mr. *Sol. Gen.* With whom?

Mr. *Jackson*. With my self, Sir.

Sir *Fr. Winnington*. What is your Name?

Mr. Serj. *Jefferies*. Don't you know the Sword-bearer of *Bristol*, Sir *Francis*?

Mr. *Thompson*. Mr. *Roe*, were you here when my Lord Mayor was crowded? Who offered any affront?

Mr. *Williams*. Pray will you give my Lord

and the Jury an account of what you heard, and where the disorder began.

Mr. *Roe*. My Lord, I was in *Cheapside*, and I heard a great noise of huzzaing, and a terrible noise indeed, and I met with a Fellow running, my Lord, and I stopt the Fellow, What is the matter? Nothing said he, but an old Fellow riding *Skimmington* and *Skeleton*, and in the Street I saw a matter of an Hundred with their Hats upon Sticks, crying, Damn the *Whigs*; said I, Gentlemen, What's the matter? said they, The Work is done to stop the Poll, and that is all.

L. C. J. Hark you, were you in *Guild-Hall*?

Mr. *Roe*. I followed them a little way down the Street.

L. C. J. Hark you, did you see my Lord Mayor's Hat down upon the ground, and was he like to be thrown down, did you see that?

Mr. *Roe*. No, I saw nothing of that, I heard such a noise I was glad I had got rid of them.

Mr. *Williams*. My Lord, we have no more to say in the general, all that I have to say now is for my Lord *Grey*. The Evidence against my Lord *Grey* was that he was here, now, my Lord, we have Witnesses more particularly to defend my Lord *Grey*.

Mr. *At. Gen.* We shall call a Witness or two to clear what that Gentleman said when Sir *Robert Clayton* was Mayor.

Mr. Serj. *Jefferies*. Pray, Gentlemen, let us have a little Patience. Pray, my Lord, if your Lordship please—Here is such a horrid noise—Upon all the matter I don't perceive but Sir *Robert Clayton* does himself believe Proclamation was made by him, he does believe the Adjournment was made by him, but as to the Adjournment to *Monday*, he is not certain of that. But if your Lordship pleases, we have here both the Sheriffs, Sir *Jonathan Raymond* and Sir *Simon Lewis*, that will shew the Court whether there was any such thing.

Mr. *At. Gen.* Before *Bethel* came out of the North, no Sheriff ever pretended to it.

Mr. Serj. *Jefferies*. Pray, Sir *Simon Lewis*, I desire you would satisfy my Lord and the Jury concerning the Adjournment when you went to the Sessions-House in the *Old Baily*: Did you order the Adjournment of the Poll, or my Lord Mayor?

Sir *Simon Lewis*. We came and waited upon my Lord Mayor here, and told him they demanded a Poll without, we took his Directions, and my Lord Mayor did adjourn the Court, by reason that the Assassins of *Arnold* were to be Try'd, and by reason of that it was adjourn'd till *Monday*, and my Lord Mayor and the Aldermen went thither, but indeed we were left as Prisoners, and I received a blow on my Breast.

Mr. *At. Gen.* Sir *Jonathan Raymond*, Did you pretend to have the Power then of adjourning the Court?

Sir *Jon. Raymond*. My Lord did adjourn the Court because of that Tryal, and then afterwards we went upon our Poll, we were several days upon it, we only appointed from Day to Day till we had made an end, and when we had made an end we declared it to my Lord Mayor and the Court of Aldermen, and my Lord Mayor and the Court of Aldermen came upon the Hustings, and declared who it fell upon.

Mr. *At.*

Mr. At. Gen. Sir James Smith, When you were Sheriff did you pretend to have any such power?

Mr. Serj. Jefferies. Upon your Oath, Did you pretend to have a power of adjourning Common Halls?

Sir J. Smith. No, Sir, we were Sheriffs immediately after Sir Robert Clayton, I never heard it questioned but my Lord Mayor had the right of it.

Sir F. Winn. Sir Jonathan Raymond, I think you say the Sheriffs did adjourn from day to day at that time?

Sir J. Raymond. We could not make an end of Polling, and we did appoint from day to day till we had made an end of Polling.

Mr. Com. Serj. My Lord, I will give your Lordship an account of that whole Day's proceedings; we came to the Hall, and after Mr. Recorder, Sir George Jefferies had attempted to speak to the Hall, for they were in such a tumult they would not suffer him to speak, my Lord Mayor withdrew, there was a very great clamour and noise, but at last the Question was put, and I came up with the Sheriffs hither and acquainted my Lord, that Mr. Bethel and Alderman Cornish had the most hands, and that there was a Poll demanded between Mr. Box and Mr. Nicholson, and Mr. Bethel, and Mr. Cornish, then the dispute lay as between Box and Nicholson and Alderman Cornish and Mr. Bethel, I acquainted my Lord Mayor that was, Sir Robert Clayton, that Mr. Recorder said he would not go down to make Declaration, they would not hear him; upon that Sir Robert Clayton took a Paper and gave it me, with these very words, (it is the greatest tumult I was ever in, in all my life, and I have some reason to remember it) Pri-
thee, says he, do you make Declaration to them, for if they will hear any body they will hear thee: Sir, says I, because it is not the Duty of my Office I desire your particular direction; then, says he, tell them I must adjourn it till Monday, because I must go to the Old Baily, to try the Assassins of Arnold, whereupon the Hall was adjourn'd, and in a great tumult, and my Lord Mayor attempting to go out, he was beat back twice or three times, he spake something to them, and they went away, leaving me and the Sheriffs upon the Hustings, and there they kept us Prisoners till six or seven a Clock at night. On Monday when we came to Poll again by his direction, I went to his House, and he gave me direction to go with the Sheriffs to adjourn it, afterwards there was a Court of Aldermen purposely call'd, and upon their direction I took the Poll and kept it, and every Adjournment was made by his particular direction to me.

Sir Robert Clayton. Gentlemen, I do desire I may explain my self, because I was imperfectly heard, some part of the story that Mr. Common Serjeant does say, I do remember, and will tell you what I do remember of it. I remember the coming up, and I remember that Mr. Recorder was not willing to go down there was such a hubbub, I remember that very well. The particular words I said to him I cannot charge my memory with; we had discours'd. I remember the Adjournment, and we discours'd of the Adjournment below, we made Proclamation, but the Noise was so great they could not hear, and upon my attempting to go out, I was beaten

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back twice or thrice, and then we were faint to let them know the business we went about as well as we could, and then they let me go, and I left the Sheriffs with them to agree of the manner and methods of Polling. There were several Adjournments made afterwards, I can't charge myself with it, I might be particularly consulted, but for the particular times of Adjournment, I did not think my self concerned in point of reputation, if I thought I had been blameable I should have concerned my self to have given more particular directions.

Mr. Thompson. If your Lordship please, I have but this, admitting the Right to be in the Lord-Mayor—

L. C. J. Do you make a doubt of it now?

Mr. Thompson. Admitting it, those Gentlemen that came to continue the Poll, it is a Question whether they can be guilty of the Riot or not.

Mr. W. — There are some three or four of the Defendants that have a particular case, that stands by themselves, and it rests upon this point, whether my Lord Mayor hath this power or not. For so much of the evidence as concerns any noise or hissing, or any thing of that, that relates to the time of Adjournment, for it was done at the time of the Adjournment. As for Mr. Cornish, Mr. Goodenough, my Lord Grey and one or two more, they did not come till within some three hours after that, so that they cannot be engaged in the noise or that.

L. C. J. It is no matter, they came time enough.

Mr. Williams. We have done my Lord, with the general evidence, we have something to say in defence of my Lord Grey, all the evidence against my Lord Grey is this, that he was here about seven a Clock at night. For that, Gentlemen, we say this, that my Lord Grey had some business here, and my Lord's business was this, my Lord Grey was here about the sale of a Mannor in Essex with Sir William Gulston, my Lord, they had appointed this very Day for that business, it was my Lord's interest mightily to pursue it, and Sir William happened to be at Sir Thomas Player's, and knowing this to be an Election Day, my Lord dined that Day at an eating House in the Hay-Market, and afterwards came to Peter's Coffee-House in Covent Garden, and staid there till between four and five a Clock in the Afternoon, when he thought the heat would be over, and then he came to make enquiry after Sir William, and took up in Bruen's Coffee-House about five or six a Clock, there he continued quiet in the House till all the noise was over, then he sent to enquire for Sir Will. Gulston, and hearing he was at Sir Thomas Player's, he and Sir William went to a Tavern, and there they treated and finished the affair. My Lord we will prove it; Call Mr. Ireton.

Mr. Ireton. My Lord, I know that at this very time my Lord Grey was treating with Sir Will. Gulston about the Mannor of Corsfield in Essex, and my Lord Grey and Sir Will. Gulston had appointed to meet that night at t'other end of the Town, if the Poll were ended. In the evening I met my Lord Grey who told me he had been with Sir Will. Gulston in London, and had dispatched the business.

L. C. J. Did my Lord tell you so?

Lord Grey. He treated for me, my Lord, with him.

P

L. C. J.

L. C. J. Pray for God's sake, you must lay your Matter a little closer together, if he was to treat about the Purchase of a Mannor, Was there no convenient place for Company to treat about it but while they were casting up the Poll-Books with the Sheriffs and *Goodenough*? Was that place fit?

Mr. Holt. My Lord had appointed to speak with Sir *William Gulston* that day in *Covent-garden* if the Poll had been over, but not finding him there, came into the City.

Lord Grey. That Gentleman went between Sir *William Gulston* and I.

L. C. J. Where were you to meet?

Lord Grey. At the *Rose Tavern* in *Covent-garden*.

L. C. J. What made you here then?

Lord Grey. Not finding him there I came hither, and spake with Sir *William Gulston* in that very Room. The Poll was over and the Company gone.

Mr. Williams. Mr. Ireton, Do you know there was any Treaty between my Lord Grey and Sir *William Gulston* about the Sale of any Land?

Mr. Ireton. Yes, Sir, I do.

Mr. Williams. When was that Treaty?

Mr. Ireton. About a Twelve-month since.

Mr. Williams. Do you know they had any Discourse about it?

Mr. Ireton. Sir, they had, I think it was *Midsummer-day*, the Day the Election of Sheriffs was.

Mr. Williams. Were they about that Treaty that Day?

Mr. Ireton. That Day, my Lord.

Mr. Williams. Where was the Treaty?

Mr. Ireton. In Sir *Thomas Player's* House.

Mr. Williams. What time of the Day?

Mr. Ireton. About Twelve a Clock.

Mr. Williams. Where went my Lord afterwards?

Mr. Ireton. My Lord went to Dinner, as he told me in the *Hay-market*.

Mr. Williams. Did you know of any Appointment to meet again?

Mr. Ireton. I was informed so, but cannot positively tell.

Mr. Williams. Sir *Thomas Armstrong*, Pray, Sir, will you give an account where my Lord was that Day?

Sir Tho. Armstrong. I came up this way about fix a Clock, and was in a Coffee-house by *Guild-hall*.

Mr. Williams. Do you know any thing about that Treaty?

Sir Tho. Armstrong. I saw them together that Night. I saw them together at Sir *Thomas Player's* about Twelve a Clock, and again at Eight.

Mr. Williams. Do you know any thing of treating about this Land in *Essex*?

Sir Tho. Armstrong. No, I do not.

Mr. At. Gen. You did not see them in the Chamber?

Sir Tho. Armstrong. Does any body say I did.

Lord Grey. My Lord, I will give you an account of it.

Mr. Williams. My Lord, Mr. Ireton tells you this, my Lord Grey and Sir *William Gulston* were in Treaty about buying these Lands that very Morning together, says Sir *Thomas Armstrong* about Noon, afterwards my Lord went to the *Hay-market* and staid there till Evening, and

my Lord and Sir *William* were together again at Night. My Lord, this Case will depend upon your Lordship's Directions. It is very plain that my Lord Mayor of *London* hath the summoning the Common Hall, and when the Business is done he hath the discharging them. My Lord, if it be true what Mr. *Love* and others say, they tell you that in all their time, their Opinion is so, that it belonged to the Sheriffs and not to the Lord Mayor, what may be the Consequence, lies in your Lordship's Opinion. Now for the Consequence of it, if it were no more than a Matter of Opinion and Right, and the Sheriffs insist upon it: Are these Defendants and the Sheriffs guilty of these Outrages? For there is nothing proved upon them. This don't make them guilty of anything more than a bare continuing the Poll. Therefore, my Lord, I must submit to your Direction how far the Jury will find us or any of us guilty of a Riot in this Case.

Sir Fr. Winn. My Lord, we agree they did continue the Poll, and the Defendants did apprehend it was lawful for them so to do, if the Jury should think they did misapprehend what was the ancient Usage of the City, if your Lordship should be of Opinion that by Law the Lord Mayor ought to do it; yet I do say, it being so probable a Case, their insisting upon it will not make it a Riot: Your Lordship will be pleased, I hope, to take notice of it, if they find the Mayor hath Power to adjourn it.

Mr. Wallop. I humbly conceive, that the Information does in truth destroy it self, for it is agreed on all hands as the Information sets forth, that they came together upon very lawful Occasions, and the Information sets forth, that by colour of their Office they did as if they were lawfully assembled. Now, my Lord, they have overthrown the Definition of a Riot, for a Riot is when three or more are come together to do an unlawful Act, and they do it. So that it is a very hard matter to make this a Riot.

L. C. J. Does not this Matter appear upon Record?

Mr. Holt. No, no, my Lord, it don't.

Mr. Wallop. If Men do lawfully meet together, if by chance they fall together by the Ears, and commit many Misdemeanors, this can never be a Riot. But, say they, here was an Adjournment, a Command by my Lord Mayor to adjourn the Court, and they continue after Adjournment: Now, my Lord, the Question is, Whether he had Power to adjourn it or no, the Citizens did insist upon it that he had no Power. Now, Gentlemen of the Jury, if you find in your Conscience that the Citizens had a probable Cause, and they insist upon it, this can never be a Riot.

Mr. Holt. It doth appear that they were lawfully assembled together. And for the throwing off my Lord Mayor's Hat, suppose that my Lord Mayor hath a Power for to adjourn the Court, yet, my Lord, it must be agreed, that those that come thither must have a convenient time to depart, for my Lord Mayor, as soon as ever he had adjourn'd the Court, he went away, and all the Hall could not go of a sudden, but must have a convenient time to go, some followed him immediately, and the other Gentlemen that staid behind, not at all consenting

sending to that rude Action about my Lord Mayor, cannot be guilty, for there is no Proof of any Mischance committed by any of these Defendants, it may be there was some Discourse concerning the Power of my Lord Mayor. I only mind your Lordship of Sir Robert Atkins Case, a late Case in the *King's Bench*, there can be no Assembly to choose an *Alderman*, as in that Case, unless the Mayor was there, the Assembly was held, and yet, Gentlemen, because it was not done in a tumultuous manner, but with a good Intent, it was held that Sir Robert Atkins was not guilty of a Riot. There must be an evil Intention to do some mischief.

Mr. — *Turner* brought his Action against Sir Samuel Starling for dissolving the Hall: And, my Lord, that being in the Case of the Election of a *Bridgmaster*, surely there is a parallel Reason for the Sheriffs.

L. C. J. That Case is against them.

Mr. — No, my Lord.

L. C. J. There the Lord Mayor had a Power by Law to dissolve the Assembly, tho' in truth he should not have done it.

Mr. Sol. Gen. The Action was brought for denying a Poll, my Lord.

Mr. Thompson. It is laid in that Declaration, that it is the Custom of the City, that my Lord Mayor cannot dissolve.

Mr. At. Gen. May it please your Lordship and you Gentlemen of the Jury, you have now heard all the Evidence* —

L. C. J. Gentlemen, you shall not over-rule me so, because I am willing to hear every body, therefore you impose upon me. You shall have Law by the Grace of God as far as I am able.

Mr. At. Gen. We have now done with the Evidence on both sides and you do now see the Right of the Lord Mayor, notwithstanding all the vulgar and popular Discourses, is asserted; it appears now upon full Evidence, they themselves do not contradict it, that my Lord Mayor is the Supreme Magistrate of this City, both for calling all your Assemblies and for dissolving them, they wont pretend against this, but indeed they make a Question whether my Lord Mayor can adjourn or no. Necessity of Affairs requires it sometimes, if there be such a Tumult, such an Interruption, that they cannot proceed orderly, or if the Matter be so long that they can't determine it in one Day, there is a Necessity that there must be an Adjournment to another time, and they give you no Instances, Gentlemen, that ever the Sheriffs in any Age did attempt it, never any Sheriff made an Adjournment of his own accord. Mr. Love he gives no Instance of an Adjournment, he only tells you of his Supremacy at that time when my Lord Mayor had nothing to do with it, and, Gentlemen, at that time you must remember when he was Elected, the Law was otherwise when Mr. Love was Elected, then the Sheriffs were the Tribunes of the People, and they had shut my Lord Mayor quite out of their Common Hall, and declared that he had no Power to dissolve or adjourn them. The next Instance is that of Sir Robert Clayton's, and how do they make that out? Sir Robert Clayton swears only upon his Memory, and what is that? He remembers just nothing. He does think the Common Serjeant does speak Truth in some things, but he can't remember other things.

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But we prove not only an Adjournment from *Saturday to Monday*, but other Adjournments by special Direction from Sir Robert Clayton. So that whatever Mr. Love did fancy of the Authority of Sheriffs, to tell my Lord Mayor he had nothing to do therewith, yet that my Lord Mayor is certainly the Chief Magistrate, we have proved all along to this present time, till within these two or three Years, and when ever there was an Adjournment we have proved it to you that it was by my Lord Mayor. So that it is nothing like the Case, put by the Gentlemen on the other side, there was never any shadow of pretence for Right. Whoever knows *London*, must know the Sheriffs of *London* are not Officers of this Corporation as Sheriffs, but they are the King's Officers of the County granted to be chosen by the Citizens: They are in their particular Cases Judges, for choosing Parliament-men, but in no Corporation-Act whatsoever: So that, Gentlemen, you see there is no Pretence for that: But admit there were, what is it like the Case when a Man lays Claim to a Wood, and he sends three or four Persons, or half a dozen Persons to cut it down? Yet, Mr. Wallop, notwithstanding your Authority, tho' that be not a Riot, it is a Rout, where you will send such a number to raise Terror in the King's People, and they will continue together after they are commanded to depart by a Magistrate. But it is a different thing where Men will concern themselves in a Matter of publick Government, as if any Man should pretend he hath the King's Commission to take your Lordship off the Bench.

So that here is quite a different thing, this relates immediately to the Government, here the publick Peace of the City is in danger, and if my Lord Mayor had been a Person of great Spirit, and had presently raised others to have suppress'd this Riot, then the City had been in a fine Condition, by these People that would have *No God bless the King*, but *God bless the Sheriffs*. There is no Pretence of Right can justify such a thing. Now, my Lord, for a Riot, this must be acknowledged to be, for many to meet together to do an unlawful thing, is a Riot.

Mr. Wallop. And do it.

Mr. At. Gen. And do it, I put in that too, Sir. The Meeting here is lawful, and it is as certain that my Lord Mayor hath Power to adjourn, that is a Consequence of Law, if the Adjournment be necessary, and he is the only Judge of Adjournment, and when he hath adjourn'd, I do say the continuing Persons together to do that, which if they had summon'd them to do, had been unlawful, is as much an unlawful thing and a Riot as that. I would fain know if the Sheriffs had summon'd all the Citizens together to meet to choose Sheriffs, or any others, would any Man question but this is an unlawful Act, a Subversion of the Ancient Government of the City, the Usurping an Authority in the City contrary to the King's Grant and the Charter. And after they are adjourn'd, if they will make Proclamation and order the People to stay and go on with the Poll, is not that the same thing in Point of Law? Surely no Man almost of common Sense but will say it is the same thing. In the Case that Mr. Wallop puts, if there be any Disorders committed precedent to the Magistrate's dissolving the Society; that will not

amount to a Riot, but if the Magistrate comes and makes Proclamation for them to depart, and they stay after, it makes a Riot, if they continue still together, it is a Rout and an unlawful Assembly. But they say there is no Proof that these Gentlemen that are in the Information, are guilty of the Riot; they are all Parties to the Riot, the very being there and giving countenance to it, is an unlawful thing. Pray Gentlemen, If Ten men should go to rob a House, and one stands off at a distance, is not the Tenth man guilty of the Burglary? If there be a many persons together, and Three only do an unlawful Act, and the others give protection, for number is always a protection, are not all these Gentlemen guilty? And therefore, Gentlemen, it is hoped you will settle the City by destroying this pretence, which hath been fluttering in the Air, but hath no ground for it.

L. C. J. Gentlemen of the Jury, this is an Information against several for a Riot, and it sets forth that there was a Common Hall that was call'd by the Lord Mayor for choosing several Officers, and that afterwards the Lord Mayor did dissolve that Assembly, and yet notwithstanding the Defendants, (so many as by and by I shall name to you that they have given evidence against,) they kept together and committed a Riot, it is said so particularly in the Information. For the matter in fact that hath been altercated between them, the Question is, whether the Lord Mayor for the time being hath power in himself to call an Assembly and to dissolve it, and truly as to this point, even the Counsel for the Defendants did one while grant it, but another while did bring Witness that did know nothing of the matter, I must needs say. But for ought I see, even until this very time, the Lord Mayor did call the Assembly, and he did dissolve it, and that they did seem to grant even at the beginning of the Cause: But then they make a distinction, but he could not adjourn it to a certain time. That was a very weak thing, to say, that if the Lord Mayor may call and dissolve the Hall, that he cannot adjourn it to a convenient hour. Suppose now the business to be done was not dispatched sooner than this time a Night, so that upon the matter they must be either adjourn'd till to Morrow, or kept in the Hall all Night; does any man think that that Magistrate that hath power to call and dissolve, hath not power to adjourn? There is no Man doubts of it in Fact or Law, and that it was so, Sir Robert Clayton did that very thing; if there had been no Precedent, it had been all one. But they make a great deal of business of it, how that the Sheriffs were the men, and that the Lord Mayor was no body, and that shews it was somewhat of the Common-wealth's Seed that was like to grow up among the good Corn.—

Here, the People hum'd and interrupted my Lord.

Pray Gentlemen, that is a very undecent thing, you put an Indignity upon the King, for you ought not to do it if you knew your Duty: Pray Gentlemen, forbear it, it does not become a Court of Justice.

I will tell you, when things were topsie-turvie I can't tell what was done, and I would be loth to have it raked up now. They might as well (as I perceive they have at another time said) have said, that the power of dissolving and adjourning might have been in the Livery-men, all

People, every body, and so then if they had been together by the Ears, I don't know who must have parted them, that is the truth of it. But I think their own Counsel are very well satisfied both in Fact and Law, that the Lord Mayor for the time being, hath this power of calling dissolving and adjourning the Assembly. Then there is another thing that is to be considered, and that is this, the Defendants they say, We did mistake the Law, it was only a mistake of the Law and nothing else, and we did do all to a good intent, and therefore it must not be a Riot. To give you some satisfaction in that: First, I must tell you that a man must not excuse himself of a Crime, by saying he was Ignorant of the Law, for if so be that turn to an Excuse, it is impossible to convict any man, if so be he must be excused because he did not know the Law, then no man will be found guilty. But if it appear that the Defendants did verily believe that the Law was for them, that may be considered in another place, if so be that they were really Ignorant, the Fine, it may be, may be the less, but it won't excuse them from all. But truly, in the next place, you must consider, whether or no these Gentlemen were Ignorant, or whether or no they did not in a tumultuary way make a Riot to set up a Magistracy by the Power of the People. For I must tell you, I have not heard by the Defendants, and I will appeal to your memory, I have not heard before this time that ever the Sheriffs did quarrel with the Mayor, or continue a Common Hall after the Mayor had adjourn'd it. As for these Gentlemen they could not be Ignorant of it, because the daily Practice before their Eyes was for the Mayor to do it. But this was a new notion got into their heads, tho' it was otherwise before, it must be so now, and one said they would have no Tory Mayor to be Mayor, thus the King should have something to do to support the Mayor by his power for ought I know. Now Gentlemen, for the Parties that are accused to be in it, there is T. Pilkington, Samuel Shute, Henry Cornish, Lord Grey, Sir Thomas Player, Slingsby Bethel, Francis Jenks, John Deagle, Richard Freeman, Richard Goodenough, Robert Key, John Wickham, Samuel Swinock, and John Jekyl the Elder, some Witnesses are to some, and others to others, but some of them have seven or eight Witnesses. There is Pilkington and Shute and Cornish, these had a great many Witnesses against them, others have two. First, for the Sheriffs, and Mr. Cornish that had been Sheriff but two years before, they kept them together after my Lord Mayor was gone, and to see what People they were, No, not God bless the King, no, no, but the Protestant Sheriffs; so that in truth the King must be put out of his Throne, to put these two Sheriffs in it. It is not proved that either of these did say so, nor the others neither, but they were those that clung to them, and they would help them, and they would set them to rights, and I know not what; and there is no other way to know in this case what they were, but by these they kept Company with, and it may be, I would be loth to say ill, it may be it was in order to dethrone the King as far as they could; for my Lord Mayor, when truly he had adjourn'd the Hall and was going home, he had like to be trod under foot himself, his Hat was down, and that was the great respect they gave to his Majesties Lieu-

Lieutenant in the City. It is true it cannot be said who it was, but those were the People that would have *No God save the King*, and those the Mayor had nothing to do with. The Sheriffs they would go on to Poll, and cast up their Books, and would make a Disquisition who had most Hands and the like, 3 Hours after my Lord Mayor was gone, there were so many that did countenance and foment this sort of Proceedings. There is a shrewd Act that was made since His Majesty came in, that the Villany of some Men might be stop't, thirteenth, fourteenth of the King, that for Words in some Cafes makes High Treasons, it is well His Majesty does not take any severe Prosecution, but I can tell you, I would not have Men presume upon it. It can't be said you or you said so, yet they kept them together, they were they that kept all this Rabble three Hours together; the Lord Mayor does adjourn the Court, and they must have some time to be gone, and thereupon would perswade us they could not get away in three Hours, they ask for a Poll, and cast up the Scrutiny, and I know not what. There are some, and that is my Lord Grey and Mr. Goodenough, how these two should come there I know not, they had nothing to do here, and therefore I doubt it will be worse upon them than upon the rest, for they had nothing to do here, they must come to set the Citizens together by the ears. My Lord Grey, he says, and hath called some Witnesses, that he had business with Sir William Gulston, about the Sale of Corsfield in Essex, but I do not see any of his Witnesses that do say he came to speak with Sir William Gulston here, he came here to see how the Poll went. But, look you, Gentlemen, he hath given some sort of Evidence, and the Counsel did open it very fairly, but the Evidence did not come fully. If you think he did only come upon real Occasions to Sir William Gulston, only to speak to him about that business, and concern'd himself no otherwise, then you will do well to find him Not Guilty, if you do not, you must find him likewise as well as the rest, for Goodenough he was here to promote the Matter. There is one, and truly he said, that for his part, as the rest would have *No God bless the King*, so truly he would have *No Tory Mayor*. And all this Flame, I must tell you, took Fire from this Spark, that the Sheriffs might do what they thought fit about choosing Officers. Gentlemen, it hath been a long Tryal, and it may be I have not taken it well, my Memory is bad and I am but weak, I don't question but your Memories are better than mine, consider your Verdict, and find so many as you shall think fit.

The Jury withdrew, and in some time returned.

Are you all agreed of your Verdict?

Jury. Yes.

Who shall speak for you?

Jury. The Foreman.

Do you find the Defendants guilty of the Trespas and Riot? &c.

Foreman. We find them All guilty in that Paper.

This is your Verdict?

Jury. Yes.

T. Pilkington, S. Shute, H. Cornish, Lord Grey,

Sir Thomas Player, S. Bethel, F. Jenks, J. Deagle, R. Freeman, R. Goodenough, R. Key, J. Wickham, S. Swinock, and John Jekyl the Elder are guilty.

You say they are all guilty? &c.

Jury. Yes.

The Proceedings and Judgments against the RIOTERS; viz.

<i>Thomas Pilkington, Esq;</i>	<i>John Deagle,</i>
<i>Samuel Shute, Esq;</i>	<i>Richard Goodenough,</i>
<i>Henry Cornish, Alderman,</i>	<i>Richard Freeman,</i>
<i>Ford Lord Grey of Werk,</i>	<i>John Wickham,</i>
<i>Slingsby Bethel, Esq;</i>	<i>Robert Key,</i>
<i>Sir Thomas Player, Knight.</i>	<i>Samuel Swinock, and</i>
<i>Francis Jenks.</i>	<i>John Jekyl Senior.</i>

Who were Fined at the King's-Bench Court at Westminster on the 26th of this Instant June, 1683. for a Riot and Battery committed by them upon the Person of the late Lord Mayor, &c. in Guild-hall, at the Election of Sheriffs, containing what remarkably occurred in the Debates admitted upon passing Judgment of Fine. As also the Fining of one Mr. Turne, for making a Riot upon the Mayor of Rye in the County of Suffex.

ON the 8th Day of May last, the Parties above mention'd were Tryed at the Guild-Hall of the City of London, upon an Information in the Crown for riotously, routously and unlawfully opposing the Proceedings in Guild-ball on Midsummer-day last, upon the Election of Sheriffs to serve for the City of London and County of Middlesex, and assaulting Sir John Moore, then Lord Mayor, &c. which being by divers Witnesses made apparent, and they by the Jury after some short Consideration found Guilty, Mr. Attorney General, on the 15th of June, Anno 1683. moved in the Court of King's-Bench at Westminster, that Judgment might be awarded against them upon their former Conviction, in order to their being Fined for the Riot, &c. But the Lord Chief Justice Saunders, and Mr. Justice Raymond, by reason of their Indispositions, being neither of them on the Bench, Mr. Justice Jones, with the Consent of Mr. Attorney General, referred it to the 19th Instant, when Mr. Attorney again moved for Judgment, alledging the Heinousness of the Crime, viz. That it was an open Affront to Justice and Magistracy, and might prove an evil Precedent if it should escape unpunish'd, which he prayed it might not do, but that since they had been fairly Convicted, the Court, in pursuance thereof, would award such Fines as might deter others from the like Attempts, &c. Upon this Motion Mr. Williams, of Counsel for the Defendants, moved, That seeing there had first a *Venire* been directed to Mr. Pilkington and Mr. Shute, late Sheriffs of London, and afterward an *Alias Venire* to the present Sheriffs, and yet that in the Information all the Defendants were joined, tho', as he suggested, that at the time of the first *Venire* some of them were not made known, and that since Mr. Pilkington, Mr. Shute, &c. had appeared upon the first, and many of the

the others, not till the second; he humbly prayed that an Error might be thereon assigned.

To which the King's Counsel reply'd, That if any Prejudice was sustained in the methods and manner of Proceeding to the Tryal of the Persons convicted of the Riot and Battery, it was sustained on the Part of the King; and seeing he was willing to dispense with it, that not in the least affected the Defendants, unless in redounding to their Advantage, for that they had a Legal Tryal, all of them pleading Not Guilty, and putting themselves upon their Country, to try the Issue between the King and them, which Country had found them guilty of the Offences before mentioned, and that now nothing remained but the Judgment of the Court in awarding their Fines, &c.

To this it was alledged, That seeing they were assembled in *Guild-hall* upon a Lawful Occasion, they could not be guilty of a Riot, or the like Misdemeanor, the Legality of their first Assembling not admitting thereof: But this Allegation was over-ruled by many Demonstrations, plainly making it appear, that altho' an Assembly be never so Legally Convened, yet if they tumult or break the Peace, the Legality of the Assembly cannot bear them out: And moreover, that when the Lord Mayor had adjourned the Poll, the Assembly was no longer a Lawful Assembly, but ought immediately to have departed to their respective Habitations, which the Defendants not only delayed to do, but in Contempt of Authority, continued the Poll, and in a riotous manner Assaulted the Person of the Mayor. And that for Inference, If a Congregation be assembled at a Church to hear Divine Service, which in it self is lawful; yet if Blows happen, or a riotous or disorderly Tumult is made, the Legality of the Meeting shall in no wise excuse the Authors of such Disorders from the Penalties of the Law, &c. of which Opinion were not only the Counsel for the King, but the Judges likewise.

These, and such like, being the Arguments of this Day, Mr. Justice *Jones* being indisposed, and Mr. Justice *Raymond* not coming upon the Bench, the passing Sentence was deferred till *Friday* the 22d Instant, and from thence till *Monday* the 25th Instant, at what time Mr. Justice *Jones* being indisposed, it was put off till this present *Tuesday*, being the 26th of *June*; when as Mr. Attorney moved for Judgment, requiring that the Parties found Guilty upon the Information, might be Fined, and was seconded by Mr. Serj. *Jefferies*, both of them praying that they might have good Fines set on them, as an Example to deter others from the like Attempts; as also did Mr. *Jones*, of Counsel for the King, when on the other side Sir *Francis Winnington*, Mr. *Williams*, Mr. *Wallop*, Mr. *Pollexfen*, Mr. *Thompson*, and Mr. *Holt*, of Counsel for the Defendants, urged many Arguments for the Extenuation of the Fines, seeing they were at the Mercy of the Court, alledging, that the Defendants did that of which they were convicted rather out of Ignorance than Malice, or any Design they had to injure or affront the Government, as not being then capable to determine, whether the Right to adjourn the Common Hall lay in the Lord Mayor or Sheriffs. But after the Arguments on both sides had been heard, Mr. Justice *Jones* proceeded to

declare the Heinousness of the Fact, and what an evil Precedent it might prove if it should pass unpunished; and after some Conference with Mr. Justice *Withens*, he proceeded to award their Fines as followeth.

On *Thomas Pilkington*, Esq; by reason of his being a Prisoner, only 500 *l.* *S. Shute*, Esq; 1000 Marks, *Ford Lord Grey of Werk* 1000 Marks, *Sir Tho. Player*, Kt. 500 Marks, *Slingsby Bethel*, Esq; 1000 Marks, *H. Cornish* 1000 Marks, *Francis Jenks* 300 Marks, *R. Freeman* 300 Marks, *R. Goodenough* 500 Marks, *John Deagle* 400 Marks, *Robert Key* 100 Marks, *John Wickham* 100 Marks, *S. Swinock* 500 Marks, and on *John Jekyl* Senior 200 Marks; all of them appearing in Court except the Lord Grey, Mr. Key, and Mr. Goodenough, and according as they appeared to be of Ability, so were their Fines regulated.

In the Court of *King's-Bench* this Day likewise one Mr. *Turne* of *Rye*, in the County of *Suffex*, was Fined 200 Marks, for making a Riot upon the Mayor of the said Town, and two of the Town Officers Fined 20 Marks apiece, for assisting him therein, and strictly commanded to deliver the Insigns of the Mayoralty, which he had seized into his Hands, under pretence that himself had been Elected Mayor of the said Corporation.

To the KING's most Excellent MAJESTY.

The humble Petition of Sir Thomas Pilkington, Kt. Lord Mayor of London, Slingsby Bethel, Esq; Samuel Swinock, John Deagle, Richard Freeman, John Jekyl, John Key, and John Wickham, in behalf of themselves, and of the respective Executors and Administrators of Sir Thomas Player, Kt. deceased, Henry Cornish, Esq; deceased, Samuel Shute, Esq; deceased, and of Francis Jenks deceased,

SHEWETH,

THAT your Petitioners and the said deceased Persons were in the Year 1682, and 1683, by the Contrivance and Confederacy of Sir *John Moore*, Kt. Sir *Dudley North*, Kt. Sir *Peter Rich*, Kt. Sir *Edmond Saunders*, Kt. late Chief Justice of the *King's-Bench*; and some others, prosecuted and convicted for a Riot; the Fact objected against them being no other in truth, than the peaceable doing their Duties as Citizens of *London* and *Englishmen*, in Election of Sheriffs for the said City and County of *Middlesex*.

That in the Proceedings upon the said pretended Riot, many notorious Violations of the Law were committed, and your Petitioners denied Common Justice by the Combination and Confederacy of the Persons last above-named, and others; insomuch that your Petitioners, and the said deceased Defendants were, by Judgment of the Court of *King's-Bench* in *Trinity Term* 1683, Unreasonably Fined 4100 *l.* and were, by Imprisonment and otherwise, forced to pay the same; which Sum of 4100 *l.* was long since paid into the *Exchequer*.

That at your Petitioners Prosecution, the said Judgment was Reversed the last Parliament

ment as Erroneous, whereby your Majesty stands by Law liable to make Restitution of the said Sum of 4100 *l.* as your Petitioners are advised.

Now forasmuch as your Majesty's Generous Undertaking in coming into this Kingdom, tended only for the Vindicating and Establishing our Religion, Laws and Liberties, and for Relieving the Oppressed; and for that it is agreeable to Equity, that such as did the Wrong should make the Restitution; And your Petitioners hoping the Parliament now Assembled will take the whole Matter into their Conside-

ration, and pass a Bill for Relief of your Petitioners out of the Confederates Estates, and not leave them to be satisfied by your Majesty.

Your Petitioners therefore humbly beseech your Majesty, That the said Confederates, the Prosecutors of your Petitioners, and the Judges, and Others concerned therein, may be Excepted in the Act of Grace, intended by your Majesty, as to All they did in relation to the Prosecution and Judgment upon the pretended Riot above specified.

And your Petitioners shall always pray, &c.



The TRYAL of Captain Thomas Walcot.



Thursday July 12. 1683. at the Sessions-House in the Old Bailey, London: The Court being met, and Proclamation made for Attendance, the Proceedings were as follows.

Thomas Walcot being set to the Bar, and after having held up his Hand, the Indictment was read as follows.

London. The Jurors for our Sovereign Lord the King, upon their Oaths Present, That Thomas Walcot, late of London Gentleman, as a false Traitor against the most Illustrious and Excellent Prince, our Sovereign Lord Charles II, by the Grace of God, of England, Scotland, France and Ireland King, his natural Lord, not having the Fear of God in his Heart; nor weighing the Duty of his Allegiance, but being moved and seduced by the Instigation of the Devil, and the true Duty, and natural Obedience, which True and Faithful Subjects of our Sovereign Lord the King, towards him our said Lord the King, do bear, and of right ought to bear, wholly withdrawing, and with his whole Strength intending the Peace and common Tranquillity of this Kingdom of England to disturb, and War and Rebellion against our said Lord the King to move and stir up, and the Government of our said Lord the King within this Kingdom of England to subvert, and our said Lord the King from his Title, Honour and Kingly Name of the Imperial Crown of this his Kingdom of England to put down and deprive, and our said Lord the King to Death and final Destruction to bring and put, the second Day of March, in the Year of the Reign of our Sovereign Lord Charles II, King of England, &c. the Five and Thirtieth, and divers other Days and Times, as well before as after, at the Parish of St. Michael Bassishaw, in the Ward of Bassishaw, London, aforesaid, Maliciously and Traiterously with divers other Traitors, to the Jurors aforesaid unknown, did Conspire, Compass, Imagine and Intend our said Lord the King, his Supreme Lord, not only of his Kingly State, Title, Power and Government of this his Kingdom of England to deprive and throw down, but also our said Lord the King to kill and to Death to bring and put, and the ancient Government of this his Kingdom of England to change, alter and wholly to subvert, and a miserable Slaughter amongst the Sub-

jects of our said Lord the King through his whole Kingdom of England to cause and procure, and Insurrection and Rebellion against our said Lord the King to move, and stir up within this Kingdom of England; And to fulfil and perfect the said most horrible Treasons, and traitorous Compassings, Imaginations and Purposes aforesaid, the said Thomas Walcot as a false Traitor, then and there, and divers other Days and Times, as well before as after, Maliciously, Traiterously and Advisedly did assemble, meet together and consult with the aforesaid other Traitors, to the Jurors aforesaid unknown, and with them did treat of and for the executing and perfecting their Treasons, Compassings, Imaginations and Purposes aforesaid; and that the said Thomas Walcot as a false Traitor, Maliciously, Traiterously and Advisedly, then and there, and divers other Days and Times, as well before as after, did take upon himself, and to the aforesaid other Traitors did promise to be aiding and assisting in the execution of the Treasons and traitorous Compassings, Imaginations and Purposes aforesaid; and in providing Armour and Armed Men to fulfil and perfect the said Treasons and traitorous Compassings, Imaginations and Purposes aforesaid. And the said most wicked Treasons, and traitorous Compassings, Imaginations and Purposes aforesaid to fulfil and bring to pass, be the said Thomas Walcot as a false Traitor, Maliciously, Traiterously and Advisedly, then and there did procure and prepare Arms, to wit, Blunderbusses, Carbines and Pistols, against the Duty of his Allegiance, against the Peace of our Sovereign Lord the King, his Crown and Dignity, and against the Form of the Statutes in that Case made and provided, &c.

Cl. of Cr. What say'st thou, Thomas Walcot, Art thou Guilty of this High Treason, whereof thou standest Indicted, or Not Guilty?

Capt. Walcot. Not Guilty.

Cl. of Cr. Culprit. How wilt thou be tryed?

Capt. Walcot. By God and my Country.

Cl. of Cr. God send thee a good Deliverance.

Then were William Hone, John Rouse and William Blague arraign'd, who pleaded Not Guilty to their Indictments, and the Court adjourn'd till the Afternoon. When Thomas Walcot

Walcot being again brought to the Bar, after some exceptions, the following Jury was impannel'd.

Nicholas Charlton,	} Jur,	William Rutland,
Christopher Pitts,		Thomas Short,
Robert Beddingfield,		Theophilus Man,
John Pelling,		John Genew,
William Windbury,		John Short,
Thomas Seaton,		Thomas Nicholas.

Crier. O yes, If any one can inform my Lords the King's Justices, &c.

Sir Edmond
Saunders.

L. C. J. Mr. Sheriffs, This is an extraordinary Case, it is reasonable the Evidence should be well heard: I require you both to keep the Court quiet.—Mr. Tanner, swear the King's Evidence one at a time.

Clerk. Thomas Walcot, Hold up thy hand. You of the Jury look upon the Prisoner, and hearken to his Charge: He stands Indicted by the name of Thomas Walcot, Gent. *prout* in the Indictment before *mutatis mutandis*. Upon this Indictment he hath been arraigned, and thereunto pleaded Not Guilty, and for his Tryal put himself upon his Country; which Country you are. Your Charge is to enquire, &c.

Mr. North. May it please your Lordship, and you that are sworn, the Prisoner stands charged, That he being a false Traytor to the King, and intending to raise War and Rebellion against the King, and to bring his Majesty to an untimely death, did on the second of March in the five and thirtieth year of the King, at the Parish of St. Michael Bassishaw, meet with other Traytors like himself, and there conspired to bring these Treasons to effect; and accordingly promised to be aiding and assisting to provide Arms for it; and did actually provide several Arms, as Carbines, Blunderbuffes and Pistols for the perpetrating this Treason. This is the Charge, to which he says he is Not Guilty. We will call our Witnesses and prove it, and then you are to find it.

Sir Robert
Sawyer.

Mr. At. Gen. Gentlemen of the Jury, the Prisoner at the Bar is accused of the highest of Crimes, High Treason against his Sovereign Lord, in compassing the Murder of the King, in raising Rebellion within this Kingdom, to the overthrowing of the best constituted, and the most excellent Government in the World. Gentlemen, he does not stand alone; and therefore he is charged in the Indictment with a Conspiracy with many others; I am heartily sorry to say there are many; indeed there is hardly any Kingdom or Nation, wherein there are not discontented persons, whose narrow Fortunes or malevolent Spirits render them uneasy in that condition God Almighty hath put them; but to find Men that pretend to be Christians, or to have any thing of Virtue, and under the best of Governments, that indeed is a matter of wonder; and indeed it casts so great a Stain and Reproach upon the Protestant Name, that it is not to be wiped off, but by the severest Justice of the Kingdom. Gentlemen, this design was for a general Rising, and at the same time to assassinate the King and the Duke of York: This is the design which the whole course of our Evidence will open to you, and lies so naked, that I hope no Englishman that lives, but will see

through these men, that have made such a Noise and Tumult in these latter days. This design to assassinate the King, and the Rising, was designed to be in October last, upon the King's Return from New-Market; and at that time there was a Noble Lord, that is gone now to his own place, as will appear by the Evidence, that furnished them with considerable sums of Money, for the providing Men and Arms for the assassinating the King at that time, but the Assassins were not then ready, as God appointed they should not be ready; and so at that time they were disappointed. Then the general Rising was put off till Queen Elizabeth's day, which will open your eyes, to see upon what grounds the Tumultuous Meetings were encouraged in the City, to the terror of all honest Men: But that Rising was also disappointed, because some of the Conspirators were not ready with their Men in the Countrey: And then, Gentlemen, though it was press'd on by the Person I mentioned, he then thought it high time to leave these Confederates to themselves. Gentlemen, after this we shall trace them in their several Meetings and Consultations; for there was a time, that they struggled with themselves, which should be effected first, whether they should first kill the King and the Duke; or whether they should first rise, and prosecute him in an open Rebellion, and destroy him that way. And the course of our evidence will shew, how ingenious these Men were, for it appears, there were men of great Ingenuity and Courage, as appears by the Prisoner at the Bar; and they would discourse of these Matters in Phrases, that Common Persons should not understand them.—

Capt. Walcot. I do not understand you.

Mr. At. Gen. I speak as loud as I can. At their meetings, for cutting off the King, that was the executing of a Bargain and Sale; and a short Conveyance, to come to their End. The raising of a War, that was under the Notion, and so to be discours'd of, of executing a Lease and Release, to work both upon the Possession and upon the Reversion: And under these mystical terms they discours'd of all these Subjects, when they were in publick Places.

Capt. Walcot. I do not hear.

Mr. At. Gen. You will hear the Witnesses, and that will concern you more. Then Gentlemen, in these several meetings they contrived to allot every man his part, some were to provide Arms, others were to provide Men to do the Execution, which was last resolved upon to be at the Rye, upon the King's last return from New-Market. Gentlemen, in all these Parts, which I hope to prove, the Prisoner will appear to have a principal Part in them all: In all the Consultations and Advising for the raising Men, wherein he was to be a Principal Commander, according to the Skill he hath; but for the Assassination at the Rye, Rumbold was to conduct the Men hired for that Purpose. Gentlemen, accordingly the time was appointed for his Majesty to come, and the Assassins to meet him there: But it pleased God, that that was disappointed by a miraculous Fire, for so all Englishmen may call it; and whereas they were to go down on Fryday to Rumbold's House, and the King to come up on Saturday, the Fire brought him to Town on Tuesday: But notwithstanding this great Providence to divert them, Rumbold and others of the Confederates, resolved to go on

on with it still ; and several places were appointed, and several Officers appointed to view those places, either between *Hampton Court* and *Windſor*, or else to do it at the *Play-houſe*, or upon the King's Paſſage from the *Play-houſe* by *Bedford-wall* at *Covent-garden* ; but if theſe ſhould fail, they were reſolved to do it at the *Bull-feaſt*. Gentlemen, they went further ; they provided Arms ; which very Arms opportunely fell into our Hands : We ſeiſed thoſe very Arms that were bought for that purpoſe to kill the King and the Duke. We ſhall go through with it ; I will name you the material Places of their Meetings, that ſo you may underſtand the Witneſſes ; the *Green-Dragon Tavern* on *Snow hill*, the *Salutation Tavern* in *Lombard-ſtreet*, the *Angel Tavern* near the *Exchange*, and *Mr. Weſt's Chamber* in the *Middle-Temple* ; theſe were ſome of the principal Places, tho' they had ſeveral other Places, wherein all theſe Matters were conſulted and tranſacted. They had prepared a new Model of Government, and they were for overturning all, as all theſe Politicians do ; tho' they had a moſt excellent Government, yet they had a better in their own Brains ; or, at leaſt, their Share would be greater in it, as all Rebels have a Proſpect of. Gentlemen, for the other Parts, we ſhall have leſs occaſion to give Evidence of now, for every one had their particular Part ; ſome for the great Deſign of the Riſing, ſome for the killing of the King, whereof that Gentleman, the Priſoner, was one ; and there were other Parts aſſign'd to others, for taking and ſurprizing the *Tower*. We will call our Witneſſes, and prove all that we have opened, and make it as clear to you as the Sun ſhines : Such a prodigious Villany nothing but a Firebrand from Hell could kindle in Men's Minds, to kill the beſt of Kings, and to deſtroy the beſt Frame of Government. Gentlemen, I do not queſtion your Juſtice, but that this Man ſhall pay what is due to the Juſtice of the Kingdom.

Mr. Serj. *Jefferies*. My Lord, I only deſire to give an account of the Method of our Evidence.

Capt. *Walcot*. My Lord, I deſire I may have the favour of Pen and Ink.

L. C. J. That you ſhall have.

Mr. Serj. *Jefferies*. My Lord, and you Gentlemen of the Jury, Mr. Attorney hath already given you an account of the Deſign that was to be put in execution by a parcel of evil Men, whereof the Priſoner at the Bar we charge to be one. We ſhall not detain you longer with opening the Matter, but beg the favour of the Court, that we may acquaint you a little with the Method we intend to follow in calling our Evidence for the King againſt the Priſoner at the Bar. In the firſt place, my Lord, we will call our Witneſſes, to give your Lordſhip and the Jury Satisfaction, That there was a Deſign in general, and that that Deſign was firſt intended to be a general Riſing over all the Kingdom ; in which Deſign the Priſoner at the Bar had a very conſiderable Share ; and was looked upon to be a very proper and fit Perſon for the Managery of that Part of the Deſign : For other Meetings, and at what Places, Mr. Attorney hath already opened to you. We will then come to more particular Agreements that were between them, in order to the carrying on this admirable good Work, as it hath been

truly ſtated, for the Deſtruction of the beſt and moſt merciful of Kings, and for the Deſtruction of the beſt of Religions, the Religion of the Church of *England*. I take notice of it, becauſe all Men may know, The moſt of theſe Perſons, nay, All of them, concerned in this helliſh Conſpiracy, were Diſſenters from the Church of *England*.

And the better to effect this horrid Villany (I am ſure I want Words, and ſo does any Man elſe, to expreſs the Baſeneſs of theſe Crimes) the better to effect this thing, the way it was to be done, was by taking off the King, and by taking off his Brother too. At length, after ſeveral Debates and ſome Propoſals made between theſe Perſons, they came to a Determination and an aſſual Reſolution to take off the King and his Royal Brother. My Lord, we will prove generally, that this was the Intent of the Deſign or the Plot in general. My Lord, we will then give you an account, That they enter'd into ſeveral Conſultations for a new Model and Frame of Government ; for they intended to ſet up the People, and they had even fix'd a certain Superiority, and reſolved as all People of their Principles have a mind, according to their ſeveral Inclinations to fix the Power in the People ; Gentlemen, an old Tenet that brought the King's Father to that untimely and horrid End, by fixing the Power in the People. Theſe Gentlemen had a mind to inſinuate and engage the People, by fixing the Power in them, and ſaying, that publick Proclamations were to be made. And after this horrid and barbarous Murder, intended upon the King and the Duke, there were Declarations to be made in the Names of ſuch and ſuch Lords, and the Aſſociating Members of the laſt Houſe of Commons, theſe were the Perſons thought fit in whole Hands the Power of the whole Kingdom ſhould be lodged. Gentlemen, after we have given you an account of the ſeveral Meetings, then we will come to the Priſoner at the Bar, and prove againſt him, That he had not only an Hand in the firſt Part of the Plot, about the Riſing, but he was alſo to be one of thoſe Villains that were to murder the King : I cannot expreſs my ſelf in more moderate Terms, and I am ſure no Man can blame me that hears the Proof. Gentlemen, when we have thus given you this Evidence, I hope we ſhall ſatisfy the Court, and all Mankind, That Perſons that have been thus guilty, under pretence of Religion, or under any other pretence whatſoever, are fit Objects of the Severity of human Laws. If we prove againſt the Priſoner at the Bar, That he had an Hand in this horrid Conſpiracy, I make no doubt but you will ſhew your ſelves to be Engliſhmen, loyal Men, and overtake all Men that thirſt after the King's Blood.

Mr. *Sol. Gen.* Gentlemen, we will call our Witneſſes, and as no Man can doubt, but the Murder of the King, that vile Deſign, would have been ſeconded by a Power to back that horrid Villany ; ſo we ſhall ſhew you, That this Gentleman was concerned in both Parts, in the immediate Aſſaſſination of the King, and the Raiſing of Arms. We need not go about to give you an Hiſtory of the thing any other way than in applying it to this Perſon, for there is no Part of this Conſpiracy he can clear himſelf from, and all the Evidence that ſpeak

of this Design, speak of this Man as a chief Actor in it.

Mr. At. Gen. Call Col. Rumsey.

[Who was sworn.

Mr. Sol. Gen. Col. Rumsey, Pray give my Lord and the Jury an account what you know of the Prisoner at the Bar, whether he were concerned, either in relation to the Murder of the King, or the raising Arms?

L. C. J. Mr. Rumsey, raise your Voice so audibly that you may be heard.

Col. Rumsey. The first Meeting I had with this Gentleman, was at Mr. West's Chamber.

Mr. At. Gen. Before you begin to tell of your Meeting, give an account of any Rising that you heard of.

Col. Rumsey. Sir, about the latter End of October, or the Beginning of November, I was with my Lord Shaftsbury late at Night, and he told me, That the Duke of Monmouth, my Lord Russell, my Lord Grey and Sir Thomas Armstrong, were at one Mr. Shepherd's House near Lombard-street. He desired me to go to know what they had done about the raising Arms at Taunton. I did go, and Mr. Shepherd carried me up to them, and they told me, That Mr. Trenchard had failed them about the Men, and they could proceed no further at that time.

L. C. J. What Shepherd was this?

Col. Rumsey. Mr. Shepherd the Merchant near Lombard-street, one Mr. Thomas Shepherd. And so I came to my Lord the next Day and told him of it; and then he made his Preparation to be gone for Holland.

L. C. J. What Discourse had you with my Lord Shaftsbury thereupon? What did he say? What made you believe he made Preparation to be gone?

Col. Rumsey. My Lord, he said there was no Dependance upon those Gentlemen that met, and he would leave England. After that, a Fortnight or three Weeks, there was a Meeting one Day at Mr. West's Chamber, and there was Mr. West, and Mr. Goodenough, and Mr. Wade, and some body else there was, but I cannot remember his Name, Captain Walcot was in Holland then. There it was proposed, nothing was to be done by a general Rising; but there was no surer way than to take off the King and the Duke; and that to that intent and purpose, they could not carry it on without Mr. Ferguson; and so he was writ for into Holland; and he came out of Holland upon that Letter, and Captain Walcot with him. After Mr. Ferguson's coming back from Holland, there was very suddenly a Meeting again, and then it was concluded, that nothing was to be effected without taking off the King and the Duke, or to that purpose. Mr. Ferguson was not at that Meeting. There were two or three Meetings before Captain Walcot was there, to find out Men, and they could not find out a number of Men, without which Mr. Rumbold would not undertake it. So about three or four Meetings after Captain Walcot came, and he was resolved at last to join in the matter; but he would not have an hand in attacking the Coach, but he would command a Party that should charge the Guards.

L. C. J. What did he say?

Col. Rumsey. He would not meddle with the King in the Coach, but he would command a

Party that should charge the Guards that came along with him.

Mr. At. Gen. After what manner was it settled that it should be done?

Col. Rumsey. There were several Parties; one small Party was to have killed the Postillion, another to kill the Horses, and Mr. Rumbold with a certain Number to seize the Coach, and Capt. Walcot the Guards.

Mr. At. Gen. Where was it to be done?

Col. Rumsey. At Mr. Rumbold's House.

L. C. J. Where is that?

Col. Rumsey. Near Hodsdon.

L. C. J. For what purpose was Mr. Rumbold and those other Men to attack the Coach?

Col. Rumsey. To murder the King and the Duke.

L. C. J. How was it design'd to be done, by Pistol, or how?

Col. Rumsey. By Blunderbuffes, and if they miss'd, then Swords.

Mr. At. Gen. Did they give any Directions about preparing Arms?

Col. Rumsey. When that time fail'd, after the Fire fell out at New-Market.

L. C. J. When was this to be done?

Col. Rumsey. When the King returned from New-Market.

L. C. J. About what time?

Col. Rumsey. The Saturday before Easter.

L. C. J. I don't ask you the Day; but was it when the King was last at New-Market, or before?

Col. Rumsey. Last at New-Market.

L. C. J. When he was last at New-Market, in his Return from thence?

Col. Rumsey. In his Return from thence.

L. C. J. Whereabouts?

Col. Rumsey. At Rumbold's House which is near Hodsdon.

L. C. J. In Hertfordshire?

Col. Rumsey. In Hertfordshire.

L. C. J. And you say, those Methods were chalked out by them, that Rumbold and some others were to attack the Coach, others to kill the Postillion, others to kill the Horses; and this Gentleman with a commanded Party was to fall upon the Guards? You say this?

Col. Rumsey. Yes, my Lord.

Capt. Walcot. I would beg leave, my Lord—

L. C. J. Stay, Captain Walcot, You shall have leave to ask him any thing by and by; but you must first let the King's Counsel have done with him.

Mr. At. Gen. I would ask you what you know of a Design at any other time?

Col. Rumsey. I do know nothing, I heard by Mr. West, but I knew nothing before.

L. C. J. Mr. Rumsey, About what time was this Resolution taken up, as near as you can? I ask neither the Day nor the Week, but about what Month?

Col. Rumsey. The beginning of it was in February.

L. C. J. Last February?

Col. Rumsey. Last February. Mr. Ferguson and Capt. Walcot came to this Town upon Ash-Wednesday.

Mr. Serj. Jefferies. What other Meetings were you at, Sir?

Col. Rumsey. This was the first, when the Prisoner at the Bar came in. The first time was

at Mr. West's Chamber, where he came : There it was considered and debated.

Mr. Serj. Jefferies. Very well, you say that was the first time Capt. Walcot came in.

Col. Rumsey. It was at Mr. West's Chamber : This was before the King came from New-Market, that they were to do this, and the Number of Men could not be got ready ; so there were several Meetings afterward at Mr. West's Chamber, to consult whether they could raise the Number they resolved upon ; and there were Notes brought by Mr. Goodenough and Mr. Rumbold of many Names, I cannot say who else brought Notes of the Mens Names, to see that they might not be deceived in the Number ; and at that time Capt. Walcot was there, and did undertake to go to Mr. Rumbold's House, and I think did go down to the very place :

L. C. J. Look you, Sir, Was there any Number of Men insisted upon for doing this Villany ?

Col. Rumsey. Capt. Rumbold did insist upon 50 Men.

L. C. J. But Capt. Walcot, How many was he to have ?

Col. Rumsey. It was not divided to a perfect Number.

Mr. Serj. Jefferies. What other Meetings were you at with Captain Walcot ?

Col. Rumsey. I was at the Salutation with him, and the Green-Dragon with him.

Mr. Serj. Jefferies. Where is that ?

Col. Rumsey. The Green-Dragon is upon Snow-Hill.

Mr. Serj. Jefferies. Where is the Salutation ?

Col. Rumsey. In Lombard-street.

Mr. Serj. Jefferies. Now tell what Discourses you had there.

Col. Rumsey. That was about dividing the City into 20 Parts, to see how many Men could be raised out of every Parr, and they were to be divided into Fifteenths, and every Man to lead a Fifteenth, that they might not be at a Loss.

Mr. At. Gen. Who was intrusted with this to do it ?

Col. Rumsey. Mr. Goodenough, Mr. West, and Mr. Wade.

Mr. At. Gen. What account did they give of what they had done ?

Col. Rumsey. Mr. Goodenough gave an account of 7 Parts of the 20, and said out of them would be raised 2900 Men. and made an Estimate that the other 13 would not raise above as many more, for those were the most considerable Parts, as Wapping and Southwark.

Mr. Serj. Jefferies. Mr. Rumsey, Pray what Consultation had you afterward, and what was done after ?

L. C. J. Pray let us go on a little gradatim, What was the reason that this was not effected when the King returned from New-Market ?

Col. Rumsey. The Fire happened, and brought the King sooner from New-Market than the Men could be got ready.

L. C. J. Was there a Day appointed for the doing this ? Had you a Prospect when the King would return ?

Col. Rumsey. Yes, it was commonly talked that it would be the Saturday before Easter, but he came on the Tuesday before.

L. C. J. Then give us an account how that Design was disappointed at that time.

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Col. Rumsey. The Fire happened in New-Market, and they were all in Confusion, and could not get their Men ready by Tuesday ; the News came upon Friday to Town.

L. C. J. Of the Fire ?

Col. Rumsey. Of the Fire, and there was a Meeting. Mr. Ferguson lodged then in Covent-Garden, and sent to several to come to him, to see if Men could be got together against Tuesday, when the King was to come in, and it could not be done, and it was laid aside for that time.

Mr. At. Gen. Upon that, what Resolution was taken ?

Col. Rumsey. Then they had a Meeting, and Ferguson was not there, there was Capt. Walcot, Mr. West, and Mr. Goodenough ; this was immediately after this Disappointment : I am not certain whether it was in Mr. West's Chamber ; and that there might no Accident happen afterwards to hinder it, it was resolv'd that Money should be rais'd for the buying of Arms, and Mr. Ferguson undertook to raise Money to buy Arms, and Mr. West did undertake to provide them.

Mr. At. Gen. Who undertook to provide Men ?

Col. Rumsey. Mr. Goodenough, and Mr. Rumbold.

L. C. J. Look you, Colonel Rumsey, after this Disappointment, when this next Meeting was, had you any further Design upon the King then ?

Col. Rumsey. Yes, my Lord.

L. C. J. Give us some account of that.

Col. Rumsey. It was to be done a coming from Windsor to London, or from Windsor to Hampton-Court, or the Play-house, and therefore that Arms should be ready against any Opportunity that should happen, let it be what it would ; and Mr. West did undertake to provide Arms, and he told me he bought them, and did not get his Money in six or seven Weeks after ; a Day or two after going to Ferguson, he told him now he might have his Money, if he would send a Note to Major Wildman ; but after he was told, that Major Wildman would not pay it by Note, but he must send Mr. Rumbold to him for it, for he would trust no body else but him. And so Mr. West did send Mr. Rumbold, and he was there at his House by six a Clock in the Morning, but he was gone out of Town an Hour before, so Mr. West went to Mr. Ferguson, and he then told him that he should have Money in two or three Days, if he would come to him, and Mr. West did go to him, and he paid him an hundred Pound.

Mr. At. Gen. Was there any Provision made for a Rising now again ?

Col. Rumsey. Yes, this general Rising, by this Division of the City, was intended to be ready against the first opportunity that happened.

Mr. At. Gen. Before this Discovery, did you keep up these Meetings ?

Mr. Sol. Gen. When was your last time ?

Col. Rumsey. My Lord, I think it was the very Thursday before the Discovery ; but then on Friday or Saturday we had inklings that this was discovered, and did meet at the George upon Ludgate Hill.

L. C. J. Who met then ?

Col. Rumsey. I think it was the very Thursday before ; I am not very certain, we met at the Salutation in Lombard-street, and there was Cap-

tain *Walcot*, Mr. *West*, Mr. *Wade*, the two *Goodenoughs*, and Mr. *Nelbrop*, and my self.

Mr. *At. Gen.* What did it come to, pray what was your Discourse then and Resolution?

Col. *Rumsey*. The Resolution was still to carry it on. We went thither to know of Mr. *Goodenough*, what was done about the other thirteen parts, he told us he had no account, but he said, he thought he should have a meeting on *Saturday* in the Afternoon at *Ludgate-Hill*, at the *George*, to have his Answer, but the Discovery coming, there did only meet Mr. *Norton*, Mr. *Bourn*; there was another, I don't know who the other was, there was a fourth.

Mr. *At. Gen.* Mr. *Rumsey*, Pray after the Discovery, What did you resolve upon? What meetings had you upon your flight?

Col. *Rumsey*. We met at Capt. *Tracy's*.

Mr. *At. Gen.* What day was that?

Col. *Rumsey*. That was upon the *Monday* after the Discovery.

Mr. *Serj. Jefferies*. Who was there?

Col. *Rumsey*. There was Capt. *Walcot*, Mr. *West*, Mr. *Wade*, Mr. *Nelbrop*, the two *Goodenoughs*, and Mr. *Ferguson*.

Mr. *At. Gen.* What did you discourse of there?

Col. *Rumsey*. There was exclaiming against Mr. *Keeling*, and taking resolutions to be gone.

L. C. J. Mr. *Keeling*! What was *Keeling*?

Col. *Rumsey*. Mr. *Keeling* was he that made the Discovery.

Mr. *Serj. Jefferies*. Have you ever been in *Keeling's* Company?

Col. *Rumsey*. I was that time we met at the *Salutation*, he came in there for a quarter of an hour.

L. C. J. Look you, Sir, Do you know Capt. *Walcot*? Are you sure it is that Gentleman at the Bar?

Col. *Rumsey*. Yes, my Lord.

L. C. J. Hath he owned always the Name of *Walcot*?

Col. *Rumsey*. Yes, my Lord.

L. C. J. What did he say to Mr. *Keeling*, when he came to the *Salutation*?

Col. *Rumsey*. There was in that very day's *Gazette*, a Report of a Rising at *Cologne*, and one *Gulick* that headed them, and said Mr. *West* to *Keeling*, he should be our *Gulick*.

Mr. *At. Gen.* Pray how did he interpret it at that time?

Col. *Rumsey*. Mr. *West* said that *Gulick* was *Keeling*, *Gu* was *Keel*, and *lick* was *ing*.

Mr. *Serj. Jefferies*. A Quirk upon his Name.

Mr. *At. Gen.* When you resolved to flee, had you any discourse of making a Stand, and fighting the Government then?

Col. *Rumsey*. Not that I know of, I was not all the time with them.

L. C. J. Look you, Colonel *Rumsey*, let me ask you this, What was *Keeling* to do? Was there any Post assigned to *Keeling* in this?

Col. *Rumsey*. I never saw him before.

L. C. J. How long was it before the Discovery that you did see him?

Col. *Rumsey*. The *Thursday* before.

L. C. J. At the *Salutation-Tavern*?

Col. *Rumsey*. Yes, He was there call'd *Gulick*.

Mr. *Serj. Jefferies*. If Capt. *Walcot* will ask him any Questions, he may.

L. C. J. Look you, Mr. *Walcot*, Now you may ask Col. *Rumsey*; tell me what Questions you would have asked, and I will ask him.

Capt. *Walcot*. I desire Colonel *Rumsey* may be

asked, Whether I ever met at Mr. *West's* Chamber, till after his Majesty's return from *New-Market*?

L. C. J. Look you, Sir, you hear the Question; it is, Whether ever Mr. *Walcot* met with Mr. *West*, till after the King's Return from *New-Market*?

Col. *Rumsey*. Till after?

L. C. J. Till after the King's Return.

Col. *Rumsey*. Yes, Sir.

Capt. *Walcot*. My Lord, I have sufficient Evidence against that.

Mr. *Serj. Jefferies*. I think that he was to undertake the Guards, that was before the King came from *New-Market*.

L. C. J. He hath given this Evidence, He was there, and he would not attack the Coach; he would not meddle with the King, but he would fall upon the Guards.

Capt. *Walcot*. Shall I speak a word, my Lord?

L. C. J. Look you, I will tell you, you shall have your Answers to these things, you have Pen, Ink, and Paper.

Capt. *Walcot*. But I have a bad memory, and I am afraid I shall forget this very thing.

Mr. *Serj. Jefferies*. I hope the Jury will not forget it.

L. C. J. Look you, Mr. *Walcot*, we must not admit you to break in upon the King's Evidence, when that is heard, you shall have your liberty to make your Answer to any thing, and call any Witnesses.

Col. *Rumsey*. My Lord, I will give one Instance more: There was one meeting at the *Five Bells* in the *Strand*, where there was only *Ferguson*, Captain *Rumbold*, Mr. *West*, *Goodenough*, and my self: And Mr. *Ferguson* told us that Night, that Captain *Walcot* would come the next meeting we had at Mr. *West's* Chamber.

L. C. J. Then Captain *Walcot* was not with you at the *Five Bells*?

Col. *Rumsey*. Mr. *Ferguson* told us he would come in the next time at Mr. *West's* Chamber, and there he did come.

L. C. J. And that was before the King went to *New-Market*. Pray, Sir, answer this, Was this before the King went to *New-Market*, or not?

Col. *Rumsey*. No, my Lord, this was when he was at *New-Market*; for the King was at *New-Market* when he and Mr. *Ferguson* came from *Holland*, the King was then at *New-Market*.

Mr. *Serj. Jefferies*. Now we will call Mr. *Keeling*. [Who was sworn.

Mr. *At. Gen.* Pray will you acquaint my Lord, and the Jury, what you know of these Conspiracies, and touching this Man.

Mr. *Keeling*. Some time, my Lord, before the King went to *New-Market*, I was at the *Sun-Tavern*, and in company with *Richard Rumbold*, *Richard Goodenough*, and some others; *Goodenough* calls me forth of the Room, and asked me what Men I could procure? I asked him, For what purpose? He said, To go down towards *New-Market*. I asked, For what end? He said, To kill the King, and the Duke of *York*. I told him, I thought none. Before the King came from *New-Market*, he renewed his Question to me again several times: I had in the interim some discourse with *Burton* and *Thompson*; *Burton* told me, That *Barber* would be concern'd; and he also told me, *Thompson* would. The *Saturday* after the Fire happened at *New-Market*, *Rumbold* came down to my House, or the *Friday*, the day that the

the News was of the Fire, the day that he commonly came to Town, he came to my House; it was on the *Friday*, to see those Men I could procure, and he desired to see them on the morrow, which was the *Saturday* before the King returned; the *Saturday* after the Fire, I went into *London*, and met Mr. *Rumbold* that day at the *Exchange*, and he then put me in mind of the matter again. I did go to *Burton*, and *Thompson*, and *Barber*, the place appointed on *Saturday* was the *Mitre-Tavern* at the corner of *Duke's-place* within *Aldgate*. He did meet there, where there was some Discourse happened tending to that Matter by *Rumbold*; the Substance of which was, Whether they were willing to go down? I think he call'd the Place by the Name of, *The Rye*, that is his House; there being, says he, no greater Conveniency than in that, I believe scarce in *England*, for the executing such a Design, being an House very intire to it self, and very remote from Neighbours, besides the Advantage that belongs to it of a Court or Wall. And, among other Discourse, this was an Argument to prevail with those persons: For saith he, it will be a keeping one of the Commandments, to kill the King, and the Duke of *Tork*, for, says he, if that be not done, there will be otherwise a great deal of Bloodshed committed. He also told us the way that he design'd to effect this at his House; That he had a conveniency for our Horses; and that there would be so many appointed to shoot at the Postilion and the Horses; and that there would be so many appointed at the Coach, and so many Men to attack the Guards: And if there was a Failure in shooting the Coach-Horses, that then there should be Men in the habit of Country-men, with a Cart in the Lane, and they should run this Cart athwart the Lane, and so stop the Coach. I believe there might be some other Particulars, which, at present, I do not remember. From thence we went to the *Exchange*, and there we met in the Afternoon at the *Dolphin-Tavern* in *Bartolomew-Lane*, there was *Rumbold*, *West*, *Goodenough*, and *Hone* the Joyner. And after we had been there a little, *West* asked *Rumbold*, Whether he heard the King would come home that Night? He said, Yes, he heard so; but said *West*, I believe he won't come till *Monday*, and I hope he won't come till *Saturday*, for that was the day appointed to go down to the *Rye*, to meet the King, and the Duke of *Tork*. Said, *Rumbold*, I hope they will not come till then: But, said *West*, if they do come, How many *Swan-quills* must you have? How many *Goose-quills*? And how many *Crow-quills* with *Sand* and *Ink*, must you have? Said they, *Six Swan quills*, *Twenty Goose-quills*, and *Twenty or thirty Crow-quills*.

L. C. J. Explain that.

Mr. *Keeling*. I am coming to it. I asked *West* or *Rumbold*, or both of them, what they intended by it? They told me *Swan-quills* were *Blunderbusses*, *Goose quills*, *Musquets*, and *Crow-quills* were *Pistols*, *Sand* and *Ink*, *Powder* and *Bullet*. This is all my Lord as I remember in general as to the Design.

L. C. J. What can you say concerning the Prisoner at the Bar?

Mr. *Keeling*. I was at the *Salutation-Tavern* and Captain *Walcot* was there, and when I came in, there was some person called me *Culing*, and I a little stranged at it, not knowing the meaning; says I, Gentlemen, What do you design

by it? Says one, here's a good health to our English *Culing*; says *West*, *Culing* in Dutch is *Keeling* in English, and says Mr. *West*, I hope to see Mr. *Keeling* at the head of as good an Army in *Wapping*, as *Culing* is at *Collen*. I suppose Captain *Walcot* remembers it very well. I can say no more, Sir, to the Prisoner at the Bar; I remember not to have seen him any other time upon this Design.

Mr. Serj. *Jefferies*. Would the Prisoner at the Bar ask him any questions?

Capt. *Walcot*. My Lord, I don't remember any such thing. If you please my Lord, to ask him, whether I call'd him *Culing*, or said any thing more or less to him.

Mr. *Keeling*. I don't say you did, but you were by, that I say.

Mr. Serj. *Jefferies*. I think, Mr. *Keeling*, you were the Person that made the discovery; give an account of it for the Satisfaction of the World.

L. C. J. Upon what occasion did you reveal this?

Mr. *Keeling*. If your Lordship please I will give you an account. There was something happened before that time. Some time before this thing was discovered, *Goodenough* came down to my house, and I went with him to drink a dish of Coffee, and there was in company with him *Richard Rumbold*, and his Brother *William*, that I believe Mr. *Walcot* knows; and when we were by our selves, he pulls out some Papers out of his Pocket, and gave me one; I asked him what he meant, he told me he had divided the City and Suburbs into twenty parts, and there were three divisions; and says he, you know the persons better than I, and who you can trust with it; one is for your self, and I would have you take to your assistance nine or ten men, more or less, that you may communicate it safely to, and they were to go to several Persons, and ask them, supposing that the Papists should rise, or that there should be a general Insurrection, or a *French* Invasion, Are you in a posture of defence? This was all we were to communicate of the matter to them, and this was to feel them, and see how many men they could raise. And he told me there was a design to kill the King and the Duke, which was designed to be done at the Bull-feast, for Mr. *West* had told me it was to be done between *Windsor* and *Hampton-Court*. I asked him if that Design went on, and he said, no; for the Duke of *Tork* seldom came with the King from *Windsor* to *Hampton-Court*, but it was to be at the Bull-Feast. And says he, these men are to be in a readiness, and it's designed that the thing should be laid upon the Papists, as a Branch of the Popish Plot. He also told me, there was one drawing a Declaration, which would relieve poor people of that which seemed most burthenfome to them, which was the Chimney-money, and then the Common People would fall in with them more readily.

Mr. At. Gen. How came you to discover it?

Mr. *Keeling*. I will tell you, Sir, I was troubled in my mind about it, and do declare that was the only Reason; I thought I did very ill in not discovering it, and I had no peace nor satisfaction, nor content, nor did I mind my business, nor could I take that rest that at other times I did, and that was the moving Cause, and no other: I thought if it were a sin in *David* to cut off the hem of *Saul's* Garment, it was a sin in me much more to kill my King.

L. C. J. Was there any Post in this Case assign'd to you? Was it requir'd of you to do any thing your self, more than to raise those Men, and know whether they were in a readiness? Were you design'd to go down to *Rumbold's* House? Tell what part you were to act.

Mr. Keeling. In the first place, I was to raise some men, but I thought they looked upon me for one to go down my self with those men I raised; but I remember not that I was asked the Question.

L. C. J. Were any of those Men to go down?

Mr. Keeling. Those three I named were to go down, *Burton*, *Thompson*, and *Barber*.

Mr. At. Gen. Call Mr. Bourn.

L. C. J. Tell us the manner of your revealing and discovering this, who you discovered it to?

Mr. Keeling. I revealed it to one Mr. *Peckham*.

L. C. J. Who did he bring you to?

Mr. Keeling. To my Lord *Dartmouth*.

L. C. J. And so you did discover the whole business to him?

Mr. Keeling. I had offered to discover it to another Man before, but I thought he was careless, so I did not tell him positively what I thought to tell him, because I saw he slighted the matter; He was a Minister of the Church of England. Then I went to Mr. *Peckham*, knowing he was intimate at Court, and from thence to my Lord *Dartmouth*, and then I was carried to Mr. Secretary *Jenkins*.

Mr. At. Gen. Was there no design to take off the Mayor or the Sheriffs in particular?

Mr. Keeling. I will tell you, *Goodenough* did tell me, That the Design was to secure the Lord Mayor, and the Sheriffs, and he told me, they had a design to secure the Tower.

Mr. At. Gen. Were you employed to arrest my Lord Mayor?

Mr. Keeling. I did arrest my Lord Mayor.

L. C. J. What are you? How came you to arrest my Lord Mayor? What are you by Profession?

Mr. Keeling. A White Salter, or Oyl-man.

L. C. J. How came you to arrest my Lord Mayor?

Mr. Keeling. I was put upon it by *Goodenough*, and those men.

L. C. J. As a special Bailiff?

Mr. At. Gen. He was as a special Bailiff.

Mr. Keeling. Under the Coroner.

Mr. Serj. *Jefferies*. A special Bailiff under a special Coroner.

Mr. Bar. Street. Was this Coroner at any time at any of your meetings?

Mr. Keeling. No, my Lord.

Mr. Bar. Street. I am glad he was not.

L. C. J. What say you, Capt. Walcot?

Capt. Walcot. My Lord, I have nothing to say.

Mr. Sol. Gen. Call *Zachary Bourn*.

[Who was sworn.

Mr. At. Gen. Pray will you recollect your self, and tell what knowledge you have of the Prisoner, what meetings you had, and what was agreed.

L. C. J. Raise your voice a little.

Mr. Bourn. The occasion of my knowing Capt. Walcot was Mr. *Ferguson's* lodging at my house; Capt. Walcot used to come thither, but it was some time before I changed any words with him.

Mr. At. Gen. Speak aloud, Mr. Bourn.

Mr. Bourn. Mr. *Wade* came presently after I came to Town from the Wells, and said, I must needs meet in such a place, it was at the Dragon upon *Snow-Hill*, where we met several others besides Capt. Walcot; the business was a design to raise men, and divide the City into twenty Divisions, in order to the securing of his Majesty and the Duke of York, and setting up the Duke of *Monmouth*.

L. C. J. Was it securing, or killing?

Mr. Bourn. It was not killing, I think, we never expressed it killing at those meetings. I think every time I met them Captain Walcot was there. Once I was at the *Salutation* in *Lombard-street*.

L. C. J. What was the result of your meetings?

Mr. Bourn. To make all expedition imaginable.

L. C. J. Was it discours'd how, or in what manner those Persons were to be raised? Don't refer your self to the Evidence that went before, but tell it your self.

Mr. Bourn. The City was to be divided into twenty Divisions, and to raise as many men as they could out of them, but they were not to tell the direct business, but if there should be occasion, or the Papists should rise, they might know their strength, and what they were able to do.

Mr. At. Gen. This was their Pretence, because it should not be told those Men.

L. C. J. Did Mr. *Goodenough* bring any account of it?

Mr. Bourn. Mr. *Goodenough* brought an account of about four thousand; three I think it was, or very near, out of those Divisions he had an account of.

L. C. J. Was Captain Walcot there at that time?

Mr. Bourn. Yes.

Mr. Serj. *Jefferies*. When the Discourse was about securing the King and the Duke, was Captain Walcot there?

Mr. Bourn. Yes.

L. C. J. Did you hear what Parties were design'd to be in this Act?

Mr. Bourn. They were not come to that.

L. C. J. Did you break off from them before that?

Mr. Bourn. No, the Discovery prevented it?

L. C. J. When was your first meeting? About what time?

Mr. Bourn. About ten days before the Discovery was made.

L. C. J. Was Mr. *West* at any of your Consults?

Mr. Bourn. Yes, at some of them, and Captain Walcot was as three of them, if not at all, I think.

L. C. J. What was to be done?

Mr. Bourn. They were to have seized my Lord Mayor and the two Sheriffs, and some of the Aldermen, and the chief Ministers of State about Town.

Mr. Bar. Street. Was there any body designed for that particular business?

Mr. Bourn. No, not then, it was not come to that.

Mr. At. Gen. Was there any thing about my Lord Keeper?

Mr. Bourn. Yes, Mr. *West* did say to me, it should be my business to secure my Lord Keeper; I told him, I did not care to meddle with any

any of my Neighbours. He said he would call him to account with all his heart, he would put him in mind of *Colledge*.

Mr. At. Gen. Pray were you employed to speak with any of the Nonconformist Ministers about it?

Mr. Bourn. I would have spoke to two of them, and Mr. West was unwilling, for he said, the Ministers had destroyed all designs ever since *Constantine's* time, and he would have nothing to do with them now.

Mr. At. Gen. When was your last meeting, before the Discovery, that you were at?

Mr. Bourn. The Saturday before the Discovery, we met at Captain Tracy's, and that evening we had some intimation that there was a Discovery made. And I went again on Monday morning.

Mr. At. Gen. Who was there?

Mr. Bourn. Captain Walcot, Mr. Ferguson, Mr. Goodenough, Mr. West, Mr. Norton, and my self, one Captain Pottle came in, but he did not stay.

Mr. At. Gen. Colonel Rumsfey was there too, was not he?

Mr. Bourn. Yes, Sir.

L. C. J. And what did you resolve upon then?

Mr. Bourn. Truly they resolved upon nothing, I left them upon the debate of killing Mr. Keeling.

Mr. At. Gen. Why would they kill him? Was that debated among them?

Mr. Bourn. Yes, because he made the Discovery.

Mr. At. Gen. Did you hear them talk of standing to it with Swords in their hands?

Mr. Bourn. Yes, rather than be hang'd, they thought that was the better way, and to have Keeling dispatched out of the World.

L. C. J. Look you, Sir, did any of them talk of securing themselves?

Mr. Bourn. The next morning I went again, and they were all gone but Mr. West, they had all secured themselves.

L. C. J. Was the Prisoner at the Bar there at that time, when they consulted about killing Mr. Keeling? Was he there at that meeting on Monday morning?

Mr. Bourn. He was there at Captain Tracy's, he was there I think all the while, while I was there, for I was not there all the time.

L. C. J. (To Walcot.) Now, Sir, what Question would you have?

Capt. Walcot. My Lord, if you please, I would ask whether he ever heard me say any thing, more or less, of assassinating the King?

L. C. J. In the first place, did you hear any thing in general of assassinating the King?

Mr. Bourn. I did hear of it, my Lord, when the thing was over. And as to his question, I did never hear him discourse of that matter. I understood the design was prevented.

L. C. J. Who did you understand that from?

Mr. Bourn. From one Mr. Row, and Mr. Ferguson.

Mr. At. Gen. Pray in all your meetings, was there no discourse of killing the King and the Duke?

Mr. Bourn. Very little.

Mr. Serj. Jefferies. The discourse was about securing the King while Walcot was there?

Mr. Bourn. There was such discourse in several meetings. It was said it would be well if they were off, and the discourse was about Lopping.

Mr. At. Gen. Pray tell my Lord, what dis-

course you had of Lopping and the general Point.

Mr. Bourn. They said, there was no way like Lopping them.

Mr. At. Gen. What was understood by that?

Mr. Bourn. The taking off the King and the Duke of York.

L. C. J. Was that the usual phrase among you to signify that?

Mr. Bourn. Yes, my Lord.

L. C. J. Was he there?

Mr. Bourn. I have heard it several times, and I suppose he was at the hearing of it.

L. C. J. (To Walcot.) Look you Sir, he speaks of the time of discourse, of securing the King; and says you were there then.

Capt. Walcot. I had no hand in it.

Mr. At. Gen. We will nail it home upon you, we will call Mr. West. [Who was sworn.]

Mr. Serj. Jefferies. Come, Mr. West, do you tell my Lord and the Jury the whole Story.

Mr. West. My Lord, I came acquainted with the Prisoner at the Bar last Summer-Vacation, by the knowledge of one Wilcocks, who, I suppose, return'd his Money out of Ireland, I heard a very fair Character of him, and he, I suppose, met with such an one of me, which did incline us both to an Intimacy, and to talk freely with one another. About the middle of October, I observ'd a general Discontent in the City, and was afraid there was some Design in hand, and was very inquisitive to know it: I was unwilling to be involved and surprized into a sudden Ruin, and so thought fit to inquire of them that were most likely to be concerned. I took Capt. Walcot for one, being inform'd that my Lord Shaftsbury had sent for him out of Ireland; and Capt. Walcot told me, that my Lord was also sending for some Scottish Gentlemen, on occasion of Carolina; but that he was very cool in Carolina business, and that that was but a Pretence. My Lord, one morning Capt. Walcot came to my Chamber, and we discours'd concerning the Election of Sheriffs carried on in the City, contrary, as we thought, to the Justice of it: Says he, Will the People do nothing to secure themselves? With that he told me a Secret, and said there was a Design of an Insurrection to be made within three Weeks or a Month, that would make us free, or worse. I told him, I thought it was a certain way to bring us in a worse condition, and that it was very full of hazards. He told me then, he did not know whether he should be concerned: But a little while after he told me, my Lord Shaftsbury was engag'd in such a Design, and he had engag'd him in it, and he told me, he had an expectation of being a Colonel of Horse, and ask'd me, If I would have any Command under him? I told him, I knew some Gentlemen of the Temple that I might engage in it, but told him, I had not a Constitution to bear the Toils of War. My Lord, he told me then, That my Lord Shaftsbury, to the best of my remembrance, had another Design upon the King and the Duke, as they came from New-Market in October last, but he told me he abhor'd any such thing, it was ungenerous, and he would not be concern'd in it, but only in a general Insurrection. But this he did tell me, I think, before the thing was to be executed; I imparted it to no Body, till after the time of both was past: But in the discourse of the Insurrection, he

he told me, I should lend him a Suit of Silk Armour, which I bought about four or five Years ago, when the Popish Plot broke out, and he would have had me kept that, and used it myself, which I did decline. Then he told me, he had very good Swords in *Ireland*, but he wanted them here. Says he, I am a Man that am observed, because I have a Correspondence with my Lord *Shaftsbury*, and asked me, if I would provide him a good stiff Tuck? I told him I would, and I did bespeak one; but before it was done, the Design was laid aside, and the Tuck was left upon my Hands. I came to understand that the Design was put off, by means of Mr. *Trenchard*, who had discours'd about a Fortnight before of great Forces he could raise in the *West*, and the Duke of *Monmouth* sent for him, but his Heart fail'd him, and he could not raise any Men; upon which, my Lord *Grey* called him *Coxcomb*. This was about the 19th of *November*.

Mr. *At. Gen.* What time of *November*?

Mr. *West.* The 19th.

Mr. *At. Gen.* But upon what Day?

Mr. *West.* Queen *Elizabeth's* Day.

Mr. *At. Gen.* No, Sir, that is the 17th.

Mr. *West.* Now after this I understood by Capt. *Walcot*, that Mr. *Ferguson* had the Management and Conduct of the Assassination in *October*, and that he likewise was acquainted with the Insurrection, and was a great Man in it. I met with Mr. *Ferguson*, and fell into discourse with him, and he treated me, as he always did, with a long Story of the Miseries of *Scotland*, and that the People were all in Slavery and Bondage, and would be so here if they did not free themselves; and, says he, there are two ways thought upon for it, one is by a general Insurrection, and that is gone off; the other is a much more compendious way, by killing the King and the Duke of *York*. My Lord, I told him, I thought the first way was a very dangerous way, that the People were in no sort of Capacity to carry it on, that the Government had the Navy and the Militia, and this would at the best entail a long War. He told me he thought the other was the best way, and we went to a Tavern, where Col. *Rumsey*, and one *Row*, and he and I went divers times. They propos'd to meet at my Chamber as a Place of Privacy and little Observation. My Lord, when they came to my Chamber, Mr. *Ferguson* propos'd several ways of doing it. One way was as the King and Duke had their private Visits in *St. James's*, where it was an easy thing for Sword-men to kill them. There is one thing I have omitted, and that was after the Design of *October* had miscarried, I think, to the best of my Remembrance, Capt. *Walcot* told me, there was another Design of attacking the King and the Duke at my Lord Mayor's Feast in the Hall, or in their Return home, in *Paul's Church-yard*, or at *Ludgate*; and Mr. *Ferguson* did likewise tell me the same thing, but the King not dining there, the thing was wholly disappointed. Another way that he propos'd was, that they should do it as the King and the Duke went down the River, they should lie behind some small Ships within a Hoy, or some such thing, and so over-run their Barge; and if that fail'd, they should break a Plank with their Blunderbuffes, and so sink them. Another way was at the *Play-house*, and that was to

be done in this manner; there should be 40 or 50 Men got into the Pit with Pocket-Blunderbuffes, or Hand-Blunderbuffes, and Pistols and Swords; and when the Musick struck up between the Acts, they should fire upon the Box; but this they thought was hazardous, and therefore they thought it better to do it as he came back, and pitched upon *Covent-Garden* under *Bedford-Garden* Wall, because there was a Conve-niency for a great many Men to walk in the *Piazza*, and there might be another parcel of Men planted at *Covent-Garden* Church-Porch, and within the Rails where Horses could not come; and while the Men within the Rails fired, the Men in the *Piazza* might engage the Guards, and they in the Church-Porch to come down and secure them from escaping.

Mr. *Sol. Gen.* When was this time?

Mr. *West.* I think it was before Mr. *Ferguson* went for *Holland*. And, my Lord, there was another thing propos'd: I think it was Colonel *Rumsey* did say, He wonder'd that the Lords and great Men that were so fond of the thing, did not raise a Purse, and buy some body an Office, who should rail against the Duke of *Monmouth*, and the *Whigs*, and by that means get himself an opportunity of Access to the King's Person. My Lord, after these Discourses, when my Lord *Shaftsbury* retir'd to *Holland*, Mr. *Ferguson* thought fit to do so too: He was afraid of a Book that he had printed, and away he went, and Captain *Walcot* with him. In the mean time I met Col. *Rumsey* several times, and several things were offer'd, but nothing resolv'd upon. A little after *Christmas* we met at the *Salutation* Tavern in *Lumbard-street*, and there it was agreed we should send for Mr. *Ferguson*, and there I writ a canting Letter, that he would come over for his Health, for he was the only Man that could manage the Affair. When he came over, there was one Meeting at the *Five-Bells*, but I came in just as they were coming away, and cannot say what pass'd there. After that they came several times to my Chamber, and there Mr. *Ferguson*, Mr. *Goodenough*, and Mr. *Rumbold*, undertook to provide the Men.

L. C. J. The Men, for what?

Mr. *West.* The Men for the Assassination: That I was not concern'd in, either in Person or Purse, or to procure any body for it. And they did agree to do it in the going to or from *New-Market*, and thereupon were several Debates, Whether it should be done at their Going, or Coming-back. Against doing it Going-down, it was objected; That the Guards were left here and there, and they went together, but very often they return apart, and therefore it was not the safest way Going-down; and nothing also being prepar'd, so it was resolv'd to be done Coming-back. Then it was consider'd what Arms should be provided: Mr. *Rumbold* was the Man to manage that Matter, and was to procure some Blunderbuffes; some Car-bines, and some Pistols; but there was nothing to be prepar'd as I know of by other Persons, but every Man was to provide himself. Several Meetings there were, they brought their Notes, and confer'd together about the Men, but I remember no Names, but *Keeling* and *Burton*: And Mr. *Goodenough* said, he had spoke to one *Hone* a Joyner; and, I think, he spake of one *Manning*, and these are all the Names I can remember. After they had confer'd their

Notes,

Notes, I ask'd Mr. *Ferguson*, What Provisions of Money he had made? Says he, I shall have Money when the Men are provided, but not till then: For, said he, the last time there was some Money rais'd, and put into a Man's Hand, who never return'd it, but since I understand it was paid to Mr. *Goodenough*. And Mr. *Ferguson* said, Mr. *Goodenough* call'd him Fool, for returning some Money he had, and not keeping it for his own Use; and my Lord *Shaftsbury* had often complain'd of that Injustice done him: The Colonel said, Mr. *Charlton* should pay the Money. There was a further Debate, How these Arms would be got down to Mr. *Rumbold's*: It was propos'd, to send them down by *Smithfield* Carts in Chests. Others, to send them down by trusty Watermen, who were to cover them with Oysters. Others, that the Men should carry them; but no Resolution taken: Then it was consider'd, how they should get off. The next thing was, how they should execute this; and it was propos'd, That one Party was to fall upon the Coach-Horses, a second upon the Coach, a third upon the Guards: Captain *Walcot* would not undertake any thing but the Guards.

Capt. *Walcot*. What do you say, Sir?

Mr. *West*. Sir, I do say, you were at my Chamber, and did say, you were to command that Party of Horse that were to attack the Guards. It was to be done at *Rumbold's* House; they were to lie there *Perdue*, till the King just came down upon them.

Mr. Serj. *Jefferies*. At the time of the Assassination?

Mr. *West*. Yes, Sir.

Mr. At. Gen. Where were these Arms to be carried?

Mr. *West*. To *Rumbold's* House; I did not see it: But he said he could keep them all private, where no body could see them till the time of the Execution. And that there was a Gate they were to pass through, that he could shut upon the Horse-Guards, that they should not be able to come in for their Relief. Mr. *Rumbold* said, he would bring them off; and said, he thought it dangerous for them to go the Road-way, but he would bring them over the Meadows, and come in by *Hackney-Marsh*: But the way which the Prisoner did most approve of, was, That they should retire within his Wall, there keep till Night, being a Place they could defend against any Force for a Day's time.

Mr. At. Gen. Where was this Resolution taken?

Mr. *West*. This Resolution was taken at my Chamber. My Lord, As to the Attempt, when they design'd to make it upon the King's coming from the *Play-house*, one Mr. *Row* said, he had discours'd with one *Gibbons*, that was the Duke of *Monmouth's* Servant, about it, and ask'd him, if any of their Family knew of it? Yes, says he, they all know of it, but they will not be seen in't; and said, that he shew'd him the place. My Lord, in one of the Discourses I had before Mr. *Ferguson* went for *Holland*, I had a mind to be rid of the thing, but I did not know how; so I created Difficulties, and said, I suppose the Duke of *Monmouth* is to get most by it, what Security will you have you shall not be hang'd when the thing is done? He is bound, said I, in Honour to hang us all, and

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make Inquisition for this Blood, otherwise they will say he is a Parry. Says he, what if I get it under his Hand? But, said I, engage his Servants, and that will stick upon him. There is one thing I have omitted, which was in the first Discourse with Captain *Walcot* about the Insurrection of *November*; he told me that my Lord *Shaftsbury* was preparing a Declaration to be published, in case of an Assassination or Insurrection, and he ask'd me if I would undertake to do one too? For, says he, I would have several People draw it to pick one good one out of all. And he told me he had made some Collections towards it, and shew'd me a Paper which was a Collection of all the Passages in the Three Kings Reigns, King *James*, *Charles I.* and this King's, that he call'd Attempts to introduce Arbitrary Government and Popery; and concluded, taxing them with some personal Vices, and that the Government was dissolved, and they were free to settle another Government: These, I perceiv'd, were the Topics my Lord *Shaftsbury* laid weight upon. I told him that this did require an exact Knowledge of the History of those Times, and I would not undertake a thing to which I was not competent, and so he desir'd me to burn the Paper, which I did: But for any other Declaration, my Lord *Shaftsbury* kept his Paper to himself, and I never did see it, tho' I desir'd it.

Mr. Serj. *Jefferies*. Can you remember in whose Name the Declaration was to run?

Mr. *West*. No, I do not remember that.

Mr. At. Gen. After the Disappointment, what Meetings had you?

Mr. *West*. Sir, I will tell you, when the News of the Fire came, they adjourn'd to my Chamber, and there consider'd what they should do; they were in no readiness, nor had any Horses; nay, I believe the thing could not have been effected if the Fire had not happened, and I was very glad it could not; but for that, I am in the Charity of the Court. They did endeavour to put things in a posture, to see if it could be done another Day; I think they met on *Thursday* Night, and *Friday* Night; but they said, the King would be at home the next Day, and the thing was laid aside. My Lord, a Day, I think, or two after, I went into the City, and went to the *Dolphin* Tavern, where I met with Colonel *Rumsey*, and this Mr. *Keeling* came in; he was there talking of *Blunderbusses* and *Pistols* in downright English: I told him, it was a foolish thing to talk so before Drawers, and that was the occasion of calling them by the Names of *Swan quills*, *Goose-quills*, and *Crow-quills*. After this thing we met the next Week, not at my Chamber, Colonel *Rumsey* was mistaken in that, but at the *George* and *Vulture*: There was Capt. *Walcot*, Mr. *Goodenough*, Mr. *Ferguson*, one *Norton*, and one *Ayliff*: They discours'd of the late Disappointment; and that one reason was, they had not Arms in readiness. Then they agreed, That Arms should be bought, and the Number was ten *Blunderbusses*, that should be twenty or two and twenty Inches in the Barrel. Thirty *Carbines*, eighteen Inches. And thirty Cases of *Pistols* to be fourteen Inches. My Lord, It was put upon me to provide them, for this reason, because I was serviceable to them no other way, and could have a pretence for buying them

them because I had a Plantation in *America*; but Mr. *Ferguson* was to pay the Money. My Lord, I did bespeak the Arms, and paid for them with my own Money, and was not paid again a great while; Mr. *Ferguson* disappointed me; but at last told me, if I would send to Major *Wildman*, he would pay me. But he told me before that, one Mr. *Charlton* when he came to Town would pay me, but I had none of him. So I told him, I bought those Arms upon a pretence I intended to use them, and had spoke to a Sea-Captain to carry them off to a Plantation where I had a Concern my self. After that, Mr. *Ferguson* sent to me to take my Money, so I came to him; and found with him Mr. *Charlton* and another Gentleman, whom I could not distinguish because it was duskish; Mr. *Charlton* went down, and then says Mr. *Ferguson*, I have your Money for you; and he paid me in fourscore and thirteen Guineas, which was something more than the Arms cost; and said, He had not the Money above half an hour in his hands; by which I did guess, it was Mr. *Charlton's* Money. Another thing was, at last meeting with Mr. *Ferguson*, he did say, There was a Man employ'd to see what conveniency there would be for an Assassination between *Windsor* and *Hampton-Court*; but that was never reported, and so laid aside. That is all I can say concerning the Assassination; but I believe they did intend to carry it on; for Col. *Rumsey* did tell me, He saw the Hearts of all the Great Men were upon it; and it would be convenient to have an Army to back it. But in case this Assassination had gone on, these things were to be done. It was design'd, the Lord Mayor and the Sheriffs should be kill'd, and as many of the Lieutenantcy as they could get; and the Principal Ministers of State, my Lord *Hallifax*, and my Lord *Rocheſter* that now is, and my Lord Keeper, for which they gave this Reason, because he had the Great Seal; and my Lord *Rocheſter*, as like to stand by the Duke's Interest; and my Lord *Hallifax*, as being one that had profess'd himself of the Party before, and turn'd from the Right Side, and had put the Court upon that which otherwise they would never have acted, nor had the Courage to have done. As for my Lord Keeper, They said, they would hang him for the Murder of *Colledge*, and upon the same Post *Colledge* had hung. Sir *John Moore* was to be kill'd, and to be hung up in *Guild-Hall*, as a Betrayer of the Rights and Liberties of the City: And your Lordships to be flea'd, and stuff'd, and hung up in *Westminster-Hall*, and a great many of the Pensional Parliament hang'd up, as Betrayers of the Rights of the People.

L. C. J. How was this to be done? To flea them, and stuff them?

Mr. *West*. Yes, I understood it so.

Mr. *At. Gen.* At these Discourses was this Gentleman present?

Mr. *West*. He was not at my Chamber so often as the rest; he came not there till towards the latter end; but he was there sometimes when these things was discours'd of.

L. C. J. But you say, he did at last undertake to fight the Guards?

Mr. *West*. Yes, Upon the News of the Fire, says he, I believe God shews his Disapprobation of the thing. Says Mr. *Ferguson*, I believe he reserves them for worse Punishment. Mr.

Walcot said, He desired to have his Name conceal'd. Why, says *Ferguson*, why should you be ashamed, it is a glorious Action, and such an Action as I hope to see publickly gratified by the Parliament; and question not, but you will be fam'd for it, and Statues erected for you, with the Title of *Liberatores Patriæ*.

Mr. Serj. *Jefferies*. What is this *Ferguson*?

Mr. *West*. He is an Independent Parson.

Mr. Serj. *Jefferies*. He preached excellent Gospel.

Mr. *West*. Says he, I have told some Non-Conformists, and they desired me to forbear; but, says he, they are silly People, that do not know how to distinguish between killing a Prince for Difference in Opinion about Religion, and destroying a Tyrant, for Preservation of the Rights and Liberties of the People. He said, it was an Action that would make all the Princes in the World tremble, and teach them to use their Subjects kindly. My Lord, they did design, at the same time when the Mayor and Sheriffs were to be kill'd, that Mr. *Papillon*, and Mr. *Dubois*, should be forced to take the Office of Sheriffs upon them; and if they would not take it, they would use them as they did the other; And that Sir *Thomas Gold*, or Sir *John Shorter*, or Alderman *Cornish*, should be set up for Lord Mayor; but rather Alderman *Cornish*, as the fitter Person. I asked them further, what they would do with the King's Natural Sons? Says he, They are good lusty Lads, I think we had as good keep them for Porters and Watermen; and for my Lady *Ann*, they had as good marry her to some Country Gentleman for a Breed to keep out Foreign Pretences.

Mr. Serj. *Jefferies*. I perceive they left nothing unconsidered.

Mr. *At. Gen.* Mr. *West*, To repeat all their Passages would fill a Volume; but as to the Continuation of the Rising, and whether it was continued?

Mr. *West*. I have a great many Particulars, but have them not in method.

Mr. *Sol. Gen.* Answer Questions then.

Mr. *West*. When Mr. *Rumbold* came to Town, he said, he saw the King come by but with six Guards, and believed he could have done it with six Men, if he had been provided with Arms. This is all I can say, except some little Discourse which I have not time to reduce into method. About *Christmas*, Colonel *Rumsey* told me, there was a Design carrying on among the Lords, and great Men, by whom I always understood, the Duke of *Monmouth*, my Lord *Russel*, my Lord *Grey*, Lord *Howard*, Colonel *Sidney*, Major *Wildman*, Mr. *Hambden*, for an Insurrection; and that this was designed to be done about *March*. Colonel *Rumsey* and I were discoursing of it; and Colonel *Rumsey* thought it fit to draw up some things, that we should require of them to do for the People; and a Paper was drawn up, but my Lord *Russel* said, they were rejected, and all should be left to the Parliament. And Colonel *Rumsey* said, The Duke was inclin'd to gratify the Parliament, but the Lords about him were for Great Places, and they would suffer him to do nothing.

Mr. Serj. *Jefferies*. Now tell us about *Culing*.

Mr. *West*. I dined at a Tavern with Colonel *Rumsey*, Mr. *Wade*, Mr. *Nelbrop*, Mr. *Goodenough*, Capt. *Walcot*, and Mr. *Norton*.

Mr. Serj.

Mr. Serj. *Jefferies*. What was your Discourse there about?

Mr. *West*. There was no Discourse that had any particular Point.

Mr. *Sollicitor*. Was there nothing of Division of the City?

Mr. *West*. Sir, *Goodenough* gave some general Account, but nothing was done upon it; while we were there in came Mr. *Keeling* to speak with Mr. *Goodenough*, and Mr. *Nelthrop*; and in the *Gazette* that day was an Account of the Insurrection at *Colen*, and Mr. *Nelthrop* when he came in, called this Man, *Culing*. What is that, what do you mean? says he. I was then writing a Letter, and told him, *Culing* in *Dutch*, was the same as *Keeling* in *English*. Mr. *Nelthrop* took me aside, says he, What will you say, if I, and some Friends of mine, deliver the City, and save the Charter, and no body shall know of it till it be done? But says he, shall not I be Hang'd for it? Said I, Take heed what you do, no body will be Hang'd for any good thing, as to the Delivering of the City. There was a Treaty between the *Scots*, and our Persons of Quality here, and Col. *Sidney* and Major *Wildman*, had the management of it, as I understood. At last, they came down to some Terms: They would have had 10000*l.* to buy Arms, and came down at last to 5000*l.* and the Earl of *Argyle* was to Head them: But when Mr. *Ferguson* paid me for the Arms, he told me, The *Scots* business was quite off, and *Wildman* and *Sidney* had done ill with the *Scots*; for after they had kept them, and treated with them two or three months, they broke off because the *Scots* would not declare for a Common-wealth the first hour, and Extirpating of Monarchy, and the Family of the *Stuarts*; and that the *Scots* Answer was, That would be to destroy all their Interest among the Lords, and Providence might order it so, as to bring it to a Common-wealth; but that was a business of time. When this broke off, Mr. *Ferguson* told me, That the Duke of *Monmouth* was willing to speak with me, and *Goodenough*, and some others. I told him, I never had, nor was willing to speak with him. Then he said, Sir *Thomas Armstrong* would; I told him, I was not willing to speak with him neither: Mr. *Goodenough* I believe did speak with Sir *Thomas Armstrong*. We met at *Richard's* Coffee-house, and adjourn'd to the young *Devil-Tavern*, there was Capt. *Walcot*, Col. *Rumsey*, Mr. *Wade*, Mr. *Goodenough* and my self, and one *Holloway* a Merchant at *Bristol*. Mr. *Holloway* did propose, since the *Scotch* business was broke off, that they should try what Forces they could raise here. And Mr. *Ferguson* did say, if three thousand men could be had, he believed the Duke of *Monmouth* and my Lord *Russel* would appear in the head of them. They were to divide the City into 20 parts, each 20th part into 14ths and 15ths, and to divide it into Streets and Lanes; one Principal man was to have a 20th part, and to have men under him, and that they should not interfere with one another, they bought a great Map of the City of *London*. My Lord, I did not read one line in it, but Mr. *Goodenough* being a man of publick acquaintance by reason of his Office, did undertake it. I think he did propose Mr. *Bourn* for one, and one Mr. *Grains* for another, and said, he would speak with Mr. *Keeling*. We had several meetings after this, and Mr. *Goodenough* did report that there were 1300 men out of two

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of the *Hamlets*. My Lord, I stood here while Mr. *Bourn* gave his Evidence; but I suppose he hath a little forgot himself, for he told me he had spoken to one Parson *Lobb*, and he said to him he would try what his Congregation could do; that he had two in *New-prison*, and he would set them out to see what they could do; that they were poor men, but zealous in their way. I think Mr. *Bourn* hath forgot himself, for he did mention that he had spoken to Parson *Lobb*.

Mr. Serj. *Jefferies*. Then Parson *Lobb* was in; there was another Parson in.

Mr. *West*. Yes, and he mentioned *Lobb's* Pound.

Mr. At. Gen. The Prisoner was at those several meetings, was he not?

Mr. *West*. Yes, and did shew himself ready to act his part. About a fortnight before the Discovery brake out, Mr. *Rumbold* told me they had a great jealousy Mr. *Keeling* would discover all the business; that Mr. *Keeling's* Wife and Mother cryed mightily, and charged him for neglecting his business, and said they were afraid he would do a great deal of mischief to honest people, for he had replied to them, he would not want money, and he would be hanged for no body; upon which *Rumbold* told me, if I were sure of this, says he, I would dispatch him, I would get him into the Countrey and kill him; but says he, I will not kill an innocent man; if I thought the thing was not so, I would not kill him for all the World. Mr. *Keeling* told him he had an Overture from one *Shoot*, of fourscore Pounds a year.

Mr. At. Gen. After you had notice of the Discovery, did you meet?

Mr. *West*. The Saturday before the Discovery, I dined with Mr. *Rumbold*, and he took Mr. *Keeling* along with him; says he, We won't discourage him too much, it may be 'tis not so; Mr. *Keeling* told him he never wanted money so much in his life; Mr. *Rumbold* and one *Gale* that was to be one of the Assassins, contriv'd to help *Keeling* to money, and lent him 100*l.* Upon the Sunday, I had notice the thing was discovered, and that *Keeling* had accused me, and Mr. *Goodenough*, and Mr. *Nelthrop*. On the Monday morning early I thought fit to retire; but we did agree to meet at Captain *Walcot's* lodging. My Lord, I came thither pretty early, and all the people came afterwards that had agreed to come thither, but they design'd to go beyond Sea. I had no mind to go; they had hired a Boat, and gave 5*l.* in earnest, but the next morning it was said the Messengers were abroad, and that it was believed the River was beset, and there was no getting away; then every man shifted for himself, and I shifted by the means of Mr. *Bourn*, who, I thank him, helped me to a conveniency for two or three days. When we were all retired, they got Mr. *Keeling* in the City, and *Rumbold* discoursed him in the presence of several people, where he wished a great many imprecations upon himself if he had discovered. I told them I did not understand him; for if he had made a Discovery, it was a fine way to catch People in. Then there was a discourse of killing him; they propos'd to him to go out of Town; he refused them, but said, he would go in a few days: That night they followed him, and upon tracing of him, they found he had called out his Brother, and that he and his Brother were gone to the Secretary's, and then it was taken for granted, that Discovery was made,

and every man must shift for himself. Had not *Keeling* deceived them at that meeting at the Tavern, by the Protestations he made, some body had killed him there. Then *Mr. Wade* said, if the Duke of *Monmouth* would go into the *West*, we might try a push for it, and the Prisoner at the Bar said, I am satisfied God will deliver the Nation, though he does not approve of the present Instruments.

L. C. J. Have you done as to this Gentleman at the Bar?

Capt. Walcot. When was it that I should say these words? Then I desire your Lordship would ask him, how many months ago it was he says I gave him the Paper?

Mr. West. It was in *October*.

Capt. Walcot. Then whether I did not then lye ill of the *Gout*?

Mr. West. Not at that time, my Lord. This that I say of the Paper was given me at my Chamber, and then I think he was pretty well.

Capt. Walcot. My Lord, I am not so natural a Fool to think, for me to charge the Guards, when another man kills the King, but I am as Guilty as he that kills him.

L. C. J. No doubt of it.

Mr. West. *Capt. Walcot*, I would not take away your life to save my own; but I do take it upon me, that you did agree to Command, or be one of those that were to fight the Guards.

L. C. J. What was the Reason he would not kill the King?

Mr. West. He says it was a base thing that way, being a naked person, and he would not do it.

L. C. J. So the point is the same, but only you distinguished in the point of your mistaken honour, and thought to kill the King was not so honourable a point, as to fight his Guards.

Capt. Walcot. There is no difference between the one and the other, to do one and the other is the same thing.

L. C. J. Your Judgment is now rectified; but what say you to the Matter? For now you hear what is fastened upon you, that is, several Consults about the securing or killing the King; and your advice was to kill him, and you did go down to *Rumbold's* house, to view the place where it might be done the most securely; and you did undertake, as several Witnesses say, not only *Mr. West*, but *Col. Rumsey* and another of them (*Bourn*, I think it was) That you would fight the Guards, if you might have a considerable number of men.

Capt. Walcot. My Lord, If ever I was at *Mr. Rumbold's* house, unless it was when I travelled from *York* by *Norwich* and came to *London*; if ever I was there since, then I am Guilty of all the Roguery imaginable.

Mr. West. I never heard, my Lord, *Mr. Rumbold* say he was there, but *Col. Rumsey* told me so.

Col. Rumsey. My Lord, he bought an Horse, and he said, he did intend to go down; and indeed to the best of my remembrance, he did say he was down; but I am not certain: But he did buy an Horse that cost him, I think, twenty pounds.

L. C. J. For that purpose?

Col. Rumsey. Yes.

L. C. J. Now you hear, this is a little more particular than the other; *Col. Rumsey* did say

before, that you did agree to go down, and as he believes, you did go down.

Col. Rumsey. I believe *Mr. West* may remember he bought an Horse for that purpose.

Mr. West. I remember he bought an Horse for service; but I can't say it was to go down thither.

L. C. J. It does import you tell us upon what account you met so often, and what was your meaning in hearing these things, and consulting of them, and what your railing of men was for, and the Declaration written for the People, to please the People when this Assassination was over.

Capt. Walcot. The Declaration, *Mr. West* says, was in *October* last.

Mr. West. I take it to be so, My Lord, to the best of my remembrance, there was this passage; says he, I believe in a month or three weeks you will be better or worse, so that I measure it by that.

Capt. Walcot. My Lord, *Mr. West* does tell your Lordship a very long story, and sometimes he names one Gentleman, and sometimes another. I am very fearful the *Jury* will be very apt to apply all to me, who was the man least concerned; for I had the *Gout* for several weeks together, and *Mr. West* came several times to my own Lodging to see me: And for that of Assassinating the King it never entered into my thoughts more or less; but here are four Gentlemen, who by their own Confession are sufficiently culpable; they, to wipe off their own stains, are resolved to Swear me out of Life.

L. C. J. What made you among them?

Mr. West. I do take it upon me, he was there three or four times.

Capt. Walcot. I did not stir for three weeks or a month. I came to Town on *Ash-wednesday*, and then fell ill of the *Gout*, and that continued for divers weeks; for a month's time that the King was at *New-Market*, I am confident, I was not out of my Chamber, unless I made a shift to scramble to *Stepney*, and dipp'd my foot in every Well of water I came by.

Mr. West. My Lord, I do remember this passage, That he was afraid he should not be able to draw on his Boor, because he had the *Gout*.

Capt. Walcot. I desire to know, my Lord, when is the time *Mr. West* speaks of, that I gave an account of killing the King at my Lord Mayor's Feast?

Mr. West. I do not charge you positively with it; but I had it from you or *Mr. Ferguson*, but I must do the Prisoner justice, he said, he would be no way concerned in it.

Mr. At. Gen. Pray swear *Mr. Blaithwait*.

[Which was done.]

Mr. Blaithwait, pray tell my Lord and the *Jury*, whether *Capt. Walcot* owned that to be his hand:

A Letter being then produced from *Captain Walcot* to *Mr. Secretary Jenkins*.

Mr. Blaithwait. My Lord, I remember when *Captain Walcot* was Examined before the King, he did own this to be his Hand.

Mr. Serj. Jefferies. Give it in.

Cl. of Cr. Honoured Sir, *July 5th. 83.*

L. C. J. Who is it directed to?

Cl. of Cr. There is no Direction.

Mr. Blaithwait. It was directed to *Mr. Secretary Jenkins*, as I find by the Minutes I then took of it.

L. C. J. Here is the Cover it seems.
Cl. of Cr. To the Right Honourable Sir Leoline
Jenkins, &c.

Honoured Sir,

I Being in the Countrey, and to my great trouble seeing my self in his Majesties Proclamation, I came last Night to Town, resolving to lay my self at his Majesties Feet, let him do with me what he pleaseth; This is the first Crime I have been Guilty of, since His Majesties Restauration, and too soon by much now: If His Majesty thinks my Death will do him more good than my Life, God's Will, and His be done. Until I sent your Honour this Letter, my Life was in my own power, but now it is in the King's; to whom I do most humbly propose, That if his Majesty desires it, I will discover to him all that I know relating to England, Scotland, or Ireland; which I suppose may be something more than the Original Discoverer was able to acquaint his Majesty with; especially as to Ireland: There is not any thing his Majesty shall think fit to ask me, but I will answer Him the Truth, as pertinently and as fully as I can. My Intimacy with a Scotch Minister, through whose Hands much of the Business went, I judge occasioned my knowing very much: And I do further humbly propose, That if his Majesty thinks it advisable, I will follow those Lords and Gentlemen that are fled into Holland, as if I fled thither, and had made my Escape also, and will acquaint the King, if I can find it out, what Measures they resolve of taking next: I do assure his Majesty, the Business is laid very broad, or I am misinformed. And I am sure as to that particular, if my being with his Majesty, and your Honour, be not discovered, I shall be ten times abler to serve him, than either Mr. Freeman, or Mr. Carr; for they will trust neither of them. There's scarce any thing done at Court, but is immediately talk'd all the Town over; therefore if his Majesty thinks what I have presumed to propose, advisable, I do then further most humbly propose, That my waiting upon his Majesty may be some time within Night, that your Honour will acquaint me the Time and Place where I may wait upon you, in order to it; that it may be within Night also, and that no body may be by, but his Majesty, and your Honour; And if his Majesty pleaseth to pardon my Offences for the time past, he shall find I will approve my self very Loyal for the future; if not, I resolve to give his Majesty no further trouble, but to lye at his Mercy, let him do with me what he pleaseth. I purpose to spend much of this Day in Westminster-Hall, at least from two of the Clock to four. I beg your Pardon I send your Honour this by a Porter: I assure your Honour, it was for no other reason, but because I would not have a Third Person privy to it; and that I might have the better Opportunity to make good my Word to his Majesty, and to approve my self.

Your Honour's most humble Servant,

THO. WALCOT.

Mr. At. Gen. Swear Capt. Richardson.

[Which was done.

Capt. Richardson. My Lord, On Sunday at Night, Mr. Walcot desired to speak with me, and he seemed very desirable to wait upon his Majesty, and unbosom himself to the King; Mr. Attorney said, I should give him Notice, to prepare for his Tryal, which I did, and told him, he should want nothing to prepare himself for

his Tryal. Yesterday morning his Son came, and I sent my Clerk to stand between them, and he had prepared this little Paper tyed close with a Thread, which my Man told me he did intend to give his Son; and he desired me, since I had discovered it, I would make no use of it. The Letter was to Capt. Tracy, that was his Landlord, to speak to Col. Rumsey, that he would be tender of him, and tell him he had ground enough to serve the King upon other men: And also to speak to Mrs. West, to desire the same thing of her Husband. The last Words of the Note were, If you cannot be private, leave the Issue to God.

L. C. J. Mr. Walcot, Have you any thing to say for your self, against this plain Evidence?

Capt. Walcot. My Lord, They have taken a great deal of pains, and made long Speeches, though very little of them relating to me, tho' too much. Col. Rumsey tells your Lordship of a Design they had to Assassinate the King, and carrying on a War, or something like it, when I was out of the Kingdom: That at Mr. Shepherd's House they drew up a Declaration; and that upon Mr. Trenchard's saying, Things were not ready. This was before I came into England, and he says, this was agreed at Mr. West's Chamber before I came out of Holland, that Rumbold undertook it. Then he says, that after I came over, I undertook to Charge the Guards while the King was Killing. My Lord, that was a very improbable thing, for I look upon it, there is no difference between killing the King, and securing his Guards: These Gentlemen, by what they have said, do sufficiently convince the Court, and all that hear them, that they are sufficiently dipp'd themselves. Here they combine to take away my Life, to save their own. Then they tell you, that Mr. Goodenough, and Mr. Rumbold brought Notes about men that were to Assassinate the King; but they do not tell your Lordship I was privy to any of these Notes; nor that I knew any of them. It's in it self very improbable, that I would engage in so desperate an undertaking, with men I never saw, nor heard of in my Life. Then he tells you, that Mr. Ferguson had been at a place where I was, and there they inquired what Mr. Goodenough had done; and withal, they told you, they met at my Lodging; now that their meeting at my Lodging, was by Col. Rumsey's appointment, I knew nothing of it. Most of these meetings were by Col. Rumsey's appointment, or Mr. West's: I accidentally came amongst them sometimes, but all my business was only to hear News; nothing was agitated concerning killing the King, or Levying of War, more or less, as I know of. I must confess, I did hear that there was a Design by a great many Lords and Gentlemen, and others, for asserting of their Liberties and Properties; but I was never in any Consultation with them, or any Message to them, nor I never saw one of these Lords, that I know of, that are said to be concerned. Therefore I say, 'tis very improbable I should be so far concerned, as they seem to represent it; they met at the Five-Bells, they allow themselves I was not at that meeting. For Mr. Keeling, he does not at all Charge me. What I said to Mr. West, relating to the business he talks of in October last, that, my Lord, is out of doors in point of time; I pray God forgive him for what he has said, I can't say more than I have.

L. C. J.

L. C. J. Pray where do you live? Where is your Habitation?

Capt. Walcot. My Habitation is in Ireland, my Lord.

L. C. J. Pray, what do you here?

Capt. Walcot. I was invited by my Lord Shaftsbury to go Governor to Carolina.

L. C. J. That Design was a great while ago frustrated.

Capt. Walcot. My Lord, it was some while before I came over, and so my Lord gave his Commission to another. But being in England, my Lord Shaftsbury invited me to go to Holland with him, which I did; and when he died, I came to London; I had not been here a Fortnight, but I fell ill of the Gout, and that continued three Months: Another thing was, my Son was here, and I design'd to marry him, and make Provision for my younger Children; my Lord, I have a competent Estate, I hope it is no great Crime for a Man of an Estate to be here.

L. C. J. You confess, you heard some Discourse of these things; what made you to frequent their Company, when you heard these things?

Capt. Walcot. It was my Folly to do it.

L. C. J. Ay, but you are to understand, that Folly in these Cases is Treason.

Capt. Walcot. I conceive, my Lord, 'tis only Misprision of Treason. I did hear of a great deal that these Gentlemen have said, and that there would be an Insurrection; but I had no Hand, directly or indirectly in it; nor did it enter into my Thoughts, either directly or indirectly, the Death of the King. When some Gentlemen have talked to me of it, I abominated it, and told them, it was a scandalous thing, a Reproach to the Protestant Religion: For my part, I had Children would bear the Reproach of it, and I would have no Hand in it.

L. C. J. Look you, Captain Walcot, That you did deny to do the Fact, to Assassinate the King, that is very true, they say so, that you did always deny it, for you stood upon this point of Gallantry, a naked Man you would not Assassinate. And then you talk of Misprision of Treason: For a Man to hear of Treason accidentally, or occasionally, and conceal it, is but Misprision; but if a Man will be at a Consult where Treason is hatched, and will then conceal it, he is guilty of Treason therein; therefore do not mistake your Case. So that your Point of Law fails you, and every thing fails you in this Case. It appears plainly by them, That you were not only privy to the Consult as an Auditor, but as an Actor; you chose your Post, and upon this point of Gallantry you would venture your self, not upon a naked Man, but upon Persons that would oppose you.

Capt. Walcot. Certainly no Man that knows me, would take me for such a very Fool, that I would kill the King's Guards; as if I were not sensible, that was equal Treason with the other.

Mr. At. Gen. Ill Men are always Fools.

Capt. Walcot. 'Tis clear they have laid their Heads together, they have contrived to take away my Life to save their own; 'tis plain enough.

L. C. J. There is nothing more reasonable, nothing more just in the World, than to make use of some Traitors to discover and convict

the others, else would Treason be hatched securely. There's no body capable (where Treason does not take effect) of making an Evidence in such a Case, but some of you that are Conspirators. You do not publish it at the Market-Cross. And if you could gain but this Point, That none that are concern'd with you in the Conspiracy should be Witnesses, it would be the securest thing in the World to hatch Treason. For you would be upon this Point, Either it shall take effect, and then 'tis too late; or if it do not, and the Conspirators are not to be believed, then I am secure, no body in the World can convict me.

Juror. We desire he may be asked what he says to the Letter.

L. C. J. Well, what say you to it? You have made Proposals you will discover others, and you will give intimation to the King of the Measures the rest of the Conspirators were taking in Ireland and other places; upon what Design did you write that? And what induced you to it?

Capt. Walcot. My Lord, I have told your Lordship, that I have heard a great many Discourses relating to that thing, and heard it mostly by Mr. Ferguson, with whom I had a very great Intimacy, and I did according to my Promise give that account of it; but if His Majesty would not believe me, I can't help it; but the King was not pleas'd with me, because I could not descend to Particulars. And I could not, because I never had been in their Company, nor knew nothing but what I had once by a private Hand; I dealt ingenuously and truly with the King, and told him what I knew.

L. C. J. Pray observe the Contents of your Letter. You made this Proposal, That you being in the Proclamation, you were one of the fittest Men to understand and spell out the Measures of the other Persons. By this it is plain, you took your self to have an Intimacy, and some Intrigue with the other Persons that you thought were Impeached. Your Letter does import that you had such an Interest with those Persons, that they would have communicated their Counsels to you.

Capt. Walcot. My Lord, I never spake but with Mr. Ferguson, who was a Man they did much confide in; and I knew very well that by my Interest in Mr. Ferguson, I should have an Interest in the rest. But truly, whether the Duke of Monmouth be there, or not, I know not. I do not know him if I meet him, I was never at any Consult, never at any of these Debates.

L. C. J. What did you mean by this? That this was your first Crime? You knew what you was charged with, it was for High-Treason.

Capt. Walcot. My Lord, 'Tis my first Crime. My Lord, I have heard there was an Insurrection intended, I have heard of the Persons that were to carry it on; I did look upon this as a Misprision of Treason; but that I ever acted in it, or intended it, I utterly deny.

L. C. J. The last Question is, Whether you have any Witnesses?

Capt. Walcot. I have only a young Man or two, if he be here, to prove the time that I was ill of the Gout, and therefore it is improbable I should be so far concerned.

L. C. J.

L. C. J. I must tell you before-hand, that an Argument from the Topick of Probability, will do you but little Service when there is positive Evidence against you. This it will import you to make a little Answer to, if you can, What you meant by your application to Colonel *Rumsey*, desiring Captain *Tracy* to speak to him and Mr. *West*: What do you mean by that?

Capt. *Walcot*. My Lord, Would not any Man in my Circumstances desire a Man to deal tenderly with him?

L. C. J. Well, is this young Man come in? Come, Sir, what have you to say on the behalf of the Prisoner at the Bar? Or will you ask him any Questions?

Capt. *Walcot*. Only about what time I fell ill of the Gout, and how long I continued so?

L. C. J. Do you know about what time he fell ill of the Gout, and how long it continued?

Wit. My Lord, I can't remember certainly the time, but I believe it was about three Months; I can't tell certainly when it began.

Capt. *Walcot*. My Lord, It is very improbable, that when I was not able to put a Shoe on, nor wear a Boot, I should engage in so hazardous and desperate an Undertaking.

L. C. J. Have you done, Sir?

Capt. *Walcot*. Yes, my Lord.

Mr. Sol. Gen. May it please your Lordship —

Capt. *Walcot*. The Jury will take notice, here are four Men to save their own Lives swear me out of mine.

Mr. Sol. Gen. May it please your Lordship, and you Gentlemen of the Jury, The Evidence you have heard has been very long, and I observe that Captain *Walcot* has complained of it; it has been delivered mostly in general terms, and is afraid you should not apprehend it aright, to see those parts wherein he is concerned, but mistake what is said in general to be spoken against him; I will therefore do him the justice as to recapitulate that part of the Evidence that does immediately concern himself. It has been very full, and given by every one of the four Witnesses that have been produced against him, besides the Letter under his own Hand, which is twice as many more.

The first Witness I shall remind you of, is Mr. *West*, tho' not produced first, yet because his Evidence goes further backward; his Acquaintance began with him in last Summer-Vacation, he became soon intimate with him, and Captain *Walcot* did unbosom himself, and tell him that there was a Design to make an Insurrection; that it was my Lord *Shaftsbury's* Design that he was to be an Officer, I think he said a Colonel of Horse; he invited Mr. *West* to partake with him in that Design, and did propose to him the Advantage of a Command in the Army; but he not being qualified, declin'd it. He tells you further, that he did acquaint him there was a Design to assassinate the King; and 'tis easy enough to be believed; if there was one designed, the other was too. And you see all along the only Dispute was, whether the Assassination should be first, or follow; for to raise Arms against the King is directly to assassinate the King; for it cannot end any other way with Security to those that raised it. He told Mr. *West* he would not be concerned directly in the Assassination, but in the Insurrection he would; he was perswaded to come in; this

was last *October* discoursed with Mr. *West*, they were to rise in *November*. Then Col. *Rumsey* comes in, and he tells you that there was a Design to rise in *November*. The Lord *Shaftsbury* sent him to Persons concern'd in the Conspiracy to know in what Readiness it was; but they being disappointed of Men, whom they expected to rise in the Country they did defer it at that time; at which my Lord *Shaftsbury* being concerned, went into *Holland*, and I think the Prisoner himself hath told you he went with him. The Design was not then laid aside, but still carried on, the most material Man, Mr. *Ferguson*, being in *Holland*, there was some little stop put to it, that is, to the swift Progress of it; and therefore he was sent for over to manage it, as being the only Man, in whom all Persons had confidence. When he comes over, he brings Captain *Walcot* along with him, Mr. *Ferguson* meets at Mr. *West's* Chamber, this Mr. *West* and Col. *Rumsey* give an account of, they both swear it. Several Meetings there were, in which Capt. *Walcot* was not, and possibly at those times he might be sick of the Gout, and that might occasion his not being there. But afterwards both tell you that Capt. *Walcot* did meet at Mr. *West's* Chamber, and there was debated particularly the Assassination of the King; and it was agreed to be at *Rumbold's* House called the *Rye*, looking upon it as a very convenient place; as those that know it say; there being a narrow Passage that it was easy to assault, and hard for Persons to escape, and with 40 or 50 Men, thereabouts; it was a Design very likely to have succeeded. Capt. *Walcot's* share in this, was not directly the Assassination of the King, that he would not be concerned in, being a Soldier, it was beneath him to do that; but his Part was to fight the Guards, he looked upon that as the more honourable Employment; Men that were armed to engage them. This is proved both by Mr. *West* and Col. *Rumsey*.

In the next place, Gentlemen, when this did not succeed, but was prevented by the great Providence of God Almighty, as you have heard, they carry on the Design still, and take it into their Councils, and resolved to carry it on, either at *Windsor*, or in his Passage from *Windsor* to *Hampton-Court*; but no place was certainly fixed upon; and I think the latter Resolution was, that it should be done at the *Bull-Feast*, an Entertainment that was designed here in the Fields. Now, Gentlemen, while this was carrying on, it was necessary to carry on the other Part too, that is, the Insurrection; and that Captain *Walcot* is all along concerned in. He is present at the Meetings in the Taverns, where they discoursed concerning Men to secure the King. This is Mr. *Bourn's* Evidence, That at the *Dragon* Tavern on *Snow-hill*, there they met to consult to secure the King and the Duke. That he was present at the Meeting in *London*, this is sworn by all, by Col. *Rumsey*, Mr. *West*, and Mr. *Bourn*, where *Goodenough* was to give an account what Success he had in the List made of dividing the City in several Parts, and raising Men out of every Division, and Capt. *Walcot* met for to know what Progress they had made in it. Gentlemen, every one of these are Overt-acts, to declare his Intention to kill the King, and are all High-Treason.

The Gentleman at the Bar cannot attempt to mitigate his Offence, by saying he would not directly assassinate the King, but would be the man to assist in raising Arms; this makes him equally Guilty. To conspire to raise Arms against the King, certainly that is as great a Declaration of his Imagination of his heart to kill the King, as any thing in the World. And this being proved upon him, there is no room for any Objections for him to make; some he hath made, not worth the mention; but because they are those he thinks to put his Life upon, I will take notice of them to you.

He says the Witnesses are not to be credited, because they have been concerned in the same Conspiracy.

Gentlemen, Because they have been concerned, therefore they are to be believed; for who should know this, but those that were so concerned? I think, Gentlemen, There is no good man, no honest man would desire a better Evidence, for better Evidence could not have been had, unless the thing had taken success, and I am sure that is far from the heart of any man that has the heart of a Christian, to wish. Does he pretend to intrap these Witnesses in any Contradictions? Does he pretend to say these Witnesses have consulted together to make up this story to accuse him for his Life? There is nothing pretended of it, but on the contrary he owns he met these men; but the end of his going there, was only to hear News. I thought that had not been the proper place to hear News in; certainly no man that comes there, would have been admitted merely for Curiosity; certainly he must bring a mind to accompany them in all their Villany; but his own Confession you have for that. I think he hath hardly confidence to deny, but he was at several Consults for raising Arms at Mr. *West's* Chamber. You were when *Goodenough* gave an account, at the *Green-Dragon* Tavern. You were where Discourses were of raising Arms to secure the King, and nothing he has said, Gentlemen, to clear himself.

Gentlemen, Here is that above all Evidence; here is almost the Confession of the Prisoner, the Letter of his own Hand. That Letter (when he sees his Name in the Proclamation) acknowledges it is his first Crime, he says; What was that Crime? He was proclaim'd as a Traytor: He says in his Letter, that his Life was at the King's Mercy, that if his Death would do the King more Service than his Life, God's Will be done. That if his Majesty would admit him to come in, and use Mercy, he would tell all he knew concerning *England*, *Scotland*, and *Ireland*, which he thought would be more material than any thing that another Discoverer could tell. This shews he hath a deeper hand than any of these Men that have given this Evidence. You see they accuse themselves, they confess this, and 'tis a great Mercy they have so done, for all your Lives and Liberties in the Person of the King are preserved; and God be thanked, that you are here this day to sit in Judgment upon that would have deprived you of them.

L. C. J. Look you, Gentlemen of the Jury; Here is the Prisoner at the Bar indicted of High-Treason, and 'tis for conspiring the Death of the King, and for endeavouring to raise Arms within his Kingdom against him. You hear he

denies himself to be Guilty; you have heard the Evidence; and this does plainly appear upon what you have heard, that there was a dangerous and desperate Plot upon the King, to have destroyed him, that is most certainly plain, the Prisoner himself confessed it, that there were several Consults and Meetings concerning it; and that this had a great Progress from time to time, for near half a year, is very plain; that he was at many Consults is very certain; that there was a Design to raise an Insurrection and War within this Nation, is as plain by them all; it was designed the last Winter to have done it. The Witnesses (who are certainly the Persons most capable of giving Evidence) tell you there were several times appointed, and still they were by one Providence or another disappointed. All of them tell you, there was a Design to kill the King and Duke at the *Rye* in *Hertfordshire*, as they came from *New-Market*: This is very plain too, that this Gentleman at the Bar knew of this; this he himself confesses, that he was at several of the Consults; and this he excuses it by, that that was Misprision of Treason, if he did not undertake to do any thing. As to that, Gentlemen, we do tell you, the Law is, that those that are at a Consult for the killing the King, or doing of a Traiterous Act, that is in them High-Treason, his being at the consulting of it. 'Tis true, it would excuse and mitigate the Fact, if they should come afterwards and discover it, it might intitle them to the King's Mercy; but to be at a Consult upon a treasonable Design, to meet for that purpose to hear the Plot laid, and a Design to take away the King's Life, or to raise Arms against him, and to say nothing of this, this is downright Treason, and 'tis not Misprision of Treason; his Law that he relies upon, fails him there. 'Tis very plain by his own Words, he heard of this Conspiracy, and he kept it secret, and says nothing of it; and this he says is his Crime that he mentioned to the King; so he would mitigate it by saying, 'tis but Misprision of Treason. But without doubt, the Meeting at several times upon this Design, if he had promised and undertaken nothing in it, his keeping of it private, as he has done, makes him guilty of High-Treason; so that out of his own Words 'tis plain that he is Guilty.

But then, consider what two Witnesses positively prove upon him: They prove, that he did there deny to be any of them that should assassinate the King, thus says Col. *Rumsey*, and thus says Mr. *West*; but he would be one of them that should fight the Guards, and he did undertake to fight the Guards, as both of them positively swear. This is done with Circumstances of Overt-acts too, as the providing of Horses, and a Tuck was to be prepared in order to it, and a Tuck he did prepare; whether he did go down, that is a little dark, but he did agree to go down.

Gentlemen, 'Tis plain by what Mr. *West* said of him, that he had a Design formerly in my Lord *Shaftsbury's* time to have raised War; he had undertaken to be a Colonel of Horse under my Lord *Shaftsbury*, and he offered Mr. *West* to be one of his Officers under him. This is a Design to raise War against the King, and declares it sufficiently. That which makes the Evidence further plainly and greatly clear, is a Letter whereby he does submit to the King's Mercy,

Mercy, but proposes that himself is abler to instruct the King in these matters, than any of those that had made former Discoveries; and therefore if his Majesty should think fit, he would make him a full Discovery, not only of things in this Kingdom, but of the Transactions with other Kingdoms, that is, *Scotland and Ireland*, in which he takes himself to be more capable of discovering to the King than any body else, because he was concerned with the Agents there; which shews this Plot hath gone a great way; this Design hath gone into other of the King's Dominions, and it is to be feared, 'tis larger than the King knows. 'Tis time to nip these Treasons when they are gone so far; certainly a more barbarous Design was never thought of by Mankind. We have had certainly as many Ingagements to the King, as any Subjects ever had to any Prince whatsoever; he has done as many Acts of Grace, we have lived as peaceably, as any People under a Prince can ever expect to do; he hath shewed himself with

as much Kindness, with as much Lenity, even to his very Enemies, as any Prince that ever we read of; the Preservation of our Religion, and the Laws of the Kingdom, our Laws and Liberties, and all our Happiness depend as much upon his Life, as they ever did upon the Life of any Prince, or ever can do; so that we ought all to be concerned, even to the last drop of our Blood, to preserve him: But how this mischievous Design should enter into the Hearts of Men, to undertake to kill him in such villanous and barbarous a manner as this, may justly make us astonished.

Gentlemen, You hear your Evidence, you have a very strong Evidence in this Case, and stronger, I think, than could be expected in the Case of Treason.

The Jury went out for about half a quarter of an Hour, and returned, and brought the Prisoner in, Guilty.



The TRYAL of William Hone.

On Thursday, July 12. William Hone being set to the Bar, and after having held up his Hand, the following Indictment was read.

London.



HE Jurors for our Sovereign Lord the King, upon their Oaths present, That William Hone late of London, Labourer, with other false Traitors, as a false Traitor against the most Illustrious and Excellent Prince, our Sovereign Lord Charles II, by the Grace of God, of England, Scotland, France and Ireland King, his natural Lord, not having the Fear of God in his Heart; nor weighing the Duty of his Allegiance, but being moved and seduced by the Instigation of the Devil, and the true Duty, and natural Obedience, which True and Faithful Subjects of our Sovereign Lord the King, towards him our said Lord the King do bear, and of right ought to bear, wholly withdrawing; and with his whole Strength intending the Peace and common Tranquillity of this Kingdom of England to disturb, and War and Rebellion against our said Lord the King to move and stir up; and the Government of our said Lord the King within this Kingdom of England to subvert, and our said Lord the King from his Title, Honour and Kingly Name of the Imperial Crown of this his Kingdom of England to put down and deprive; and our said Lord the King to Death and final Destruction to bring and put, the second Day of March, in the Year of the Reign of our Sovereign Lord Charles II, King of England, &c. the Five and Thirtieth, and divers other Days and Times, as well before as after, at the Parish of St. Michael Bassishaw, in the Ward of Bassishaw, London, aforesaid, Maliciously and Traiterously with divers other Traitors, to the Jurors aforesaid unknown, he did

Conspire, Compass, Imagine and Intend our said Lord the King, his Supreme Lord; not only of his Kingly State, Title, Power and Government of this his Kingdom of England to deprive and throw down; but also our said Lord the King to kill, and to Death to bring and put; and the ancient Government of this his Kingdom of England to change, alter and wholly to subvert, and a miserable Slaughter amongst the Subjects of our said Lord the King through the whole Kingdom of England to cause and procure, and Insurrection and Rebellion against our said Lord the King to move, and stir up within this Kingdom of England; And to fulfil and perfect the said most horrible Treasons, and traiterous Compassings, Imaginations and Purposes aforesaid, He the said William Hone, and many other Traitors, as a false Traitor, then and there, and divers other Days and Times, as well before as after, Maliciously, Traiterously and Advisedly, he did assemble, meet together, and consult with divers other Evil-disposed and Discontented Subjects of our said Lord the King, to the Jurors as yet unknown, and bad discourse, and did treat of, and for the executing and fulfilling their Treasons, and traiterous Compassings, Imaginations and Purposes aforesaid; and that the said William Hone, (together with many other Traitors) as a false Traitor, Maliciously, Traiterously and Advisedly, then and there, and divers other Days and Times, as well before as after, did take upon himself, and promise to be aiding and assisting in the execution of the Treasons and traiterous Compassings, Imaginations and Purposes aforesaid; and in providing of Arms and Men Armed to fulfil and perfect the said Treasons, traiterous Compassings, Im-

Imaginations, and Purposes aforesaid. And to fulfil and bring to pass the said most horrid Treasons, and traitorous Compassings, Imaginations and Purposes aforesaid, He the said William Hone (with many other false Traitors) as a false Traitor, Maliciously, Traiterously and Advisedly, then and there, did procure and prepare Arms, to wit, Blunderbusses, Carbines and Pistols, against the Duty of his Allegiance, against the Peace of our Sovereign Lord the King, &c. And against the Form of the Statutes, &c.

Cl. of Cr. How sayest thou, William Hone, Art thou Guilty of this High-Treason whereof thou standest Indicted, or not Guilty?

Hone. In some measure I am Guilty.

Capt. Richardson. You must say, Guilty, or Not Guilty.

Sir Edmond
Saunders. L. C. J. You must plead to this, and the way is to confess all, or deny all.

Hone. I know nothing of the Arms.

L. C. J. Are you Guilty of the Treason, in conspiring the Death of the King, and providing of Arms for that purpose?

Hone. I never provided Arms, I am Guilty of the Conspiracy.

L. C. J. We can take notice of none of these odd kind of Words you talk of, but either plainly, Guilty, or not Guilty.

Hone. My Lord, I can truly say I am not Guilty, for I know nothing of it.

L. C. J. If you say so, you say as much as is required of you at present.

Hone. In that understanding of it, I am not Guilty.

L. C. J. Well, He says he is not Guilty.

Cl. of Cr. Culprit. How wilt thou be tried?

Hone. By God and my Country.

Cl. of Cr. God send thee a good Deliverance.

Friday, July the 13th. in the Morning, the Court being set, and Proclamation made.

Sir Robert
Sawyer. Mr. At. Gen. Set William Hone to the Bar.

Cl. of Cr. You the Prisoner at the Bar, hold up your Hand.

Hone. I desire I may retract my Plea, I would plead Guilty.

L. C. J. Do you confess the Indictment?

Hone. Yes, my Lord.

L. C. J. That is, That you did conspire the Death of the King, and in order to that, that you did provide your self with Arms to do this wicked Act.

Hone. I never did that, my Lord, I never provided any Arms.

L. C. J. What were you to have done?

Hone. That Deposition I gave before Sir William Turner is true.

L. C. J. Tell us what you were to have done in this bloody Matter.

Hone. I was asked by one Mr. Richard Goodenough to go along with him, and I asked him whither, and he would not tell me, but I understood it was to kill the King and Duke of York, but he did not tell me the Place.

Mr. Serj. Jefferies. He does not confess fully, we desire to try him.

L. C. J. Look you, you have pleaded not Guilty to this Indictment, the King is willing, that if you be not Guilty you shall not be condemned; and therefore he does desire and com-

mand the Evidence against you should be publickly given, that all Persons may see, that you are not without Cause brought to Tryal, therefore swear the Jury.

The Prisoner challenged none, but the Jury that were sworn were,

Nicholas Charlton,	Jur.	William Rutland,
Christopher Pitts,		Thomas Short,
Robert Beddingfield,		Theophilus Man,
John Pelling,		John Genew,
William Windbury,		John Short,
Thomas Seaton,		Thomas Nicholas.

Then Proclamation for Information, and for those that were bound by Recognizance to appear, was made.

Cl. of Cr. William Hone, Hold up thy Hand (which he did.) You Gentlemen of the Jury that are sworn, look upon the Prisoner, and hearken to his Cause, he stands indicted by the name of William Hone, &c. *prout antea*, in the Indictment, *mutatis mutandis*; upon this Indictment he hath been arraigned, and hath thereunto pleaded, not Guilty, and for his Tryal, &c.

Mr. Jones. May it please your Lordship, and you Gentlemen of the Jury, the Prisoner stands indicted for the most horrid Treason that ever was endeavoured to be committed in this Kingdom, for Traiterously conspiring to kill the King, and consulting how and in what manner it should be done, and for preparing Arms for the doing of it; we shall prove this to you, and then I hope you will find him Guilty.

Mr. At. Gen. May it please your Lordship, and you Gentlemen of the Jury; the Part the Prisoner at the Bar was to act in this Treason, was the killing of the King; he was one of the Persons that were to be assisting in assassinating the King's Person. We will not trouble you with the large Evidence of the Rising, as we did Yesterday; but we will prove these things upon him, that he undertook to do it, that he was concerned with the rest of the Confederates: We shall shew you this is not a new thing, but he hath been an old Rebel; for this hath not been a new Project, but hath been acting several Years. Five Years ago, when the King attended my Lord Mayor's Show, he undertook to kill him off of Bow-Church: We shall call our Witnesses, and prove it fully upon him: Mr. Keeling, and Mr. West.

Mr. Josias Keeling sworn.

Mr. At. Gen. Do you tell my Lord and the Jury, what you know of this Prisoner at the Bar.

Mr. Keeling. The first time I saw him was at the Dolphin Tavern, when the Arms were agreed upon, he was there then.

Mr. At. Gen. Who was there then?

Mr. Keeling. Mr. West, Mr. Goodenough, and him I remember particularly, and some others, whom I do not at present remember, and since that he hath taken notice of me.

Mr. At. Gen. Was Mr. Rumbold there at that time?

Mr. Keeling. Yes.

Mr. At. Gen. Pray at that Meeting tell the Jury what Discourse you had, for many of these Gen-

Gentlemen are not the same that were on the Jury yesterday.

Mr. Keeling. It was discoursed then of the King's coming home from *New-Market* the *Saturday* after the Fire. Mr. West told Mr. Rumbold, he heard the King would come home that Day, but, says he, I don't believe it; says Rumbold, I hear he will come home on Monday. Mr. West, I hear so too. They said, they hoped they would not come home on Monday. Says Mr. West to Mr. Rumbold then, How many *Swan-quills*, *Goose-quills* and *Crow-quills*, and how much Sand and Ink must we have? I think the Prisoner at the Bar must needs remember it as well as I. It was agreed by Mr. Rumbold, I think I am exact in the Number, and he was by and heard all the Discourse.

Mr. At. Gen. What did they mean by this?

Mr. Keeling. By *Swan-quills*, they meant Blunderbusses; by *Goose-quills*, Muskets; and by *Crow-quills*, Pistols; and by Sand and Ink, Powder and Buller. He took Acquaintance with me after that Meeting; (for I never saw him, as I know of, before) and after some time he told me, he was one of them that was to go down to the *Rye* to assassinate the King. And since that, at a Coffee house in *Swiabin's Alley*, he told me, It would never be well, till the Blackbird and the Goldfinch were knocked on the Head; they being Terms I did not understand, I asked him what he meant, he said the King and Duke of York.

Mr. Serj. Jefferies. You are sure that is the Man?

Mr. Keeling. I am sure that is the Man; *William Hone*.

Mr. Serj. Jefferies. What, is that the Man, that talked of the Blackbird and Goldfinch?

Mr. Keeling. I am sure that is the Man.

Mr. At. Gen. Now swear Mr. West.

Mr. Serj. Jefferies. If Mr. Hone has a mind to ask him any Questions, he may.

Hone. My Lord, This I deny: As to the Blackbird, I own it; as to the Goldfinch, I never heard a word of it till this time.

Mr. Serj. Jefferies. You had only a Design upon the Blackbird then.

Mr. West sworn.

Mr. At. Gen. Tell the Court what you know of the Meeting at the *Dolphin Tavern*.

Mr. West. I was there, and Mr. Keeling came in. There were several things said of *Swan-quills*, *Goose-quills*, and *Crow-quills*, but this Man did not come in till this Discourse was over, and I am sure I did not speak of any thing of this nature before this Man in my Life. But Mr. Goodenough did undertake to provide the Men, and Mr. Goodenough said, he would try him, if he would make an Attempt upon the Duke without the King. And I asked him, whether he had seen Mr. Goodenough? He told me he had; Says he, he spoke to me about a little Job for the Duke. Mr. Goodenough said, he had spoke to him fully about the thing. And I saw him often in the Company of *Mannius*, that was designed to be another of the Assassins. He was at my Chamber once; says he, Master, shall we do nothing? I think he used these Words, That if the Duke of *Monmouth* would be true, and appear, he could bring fifty or sixty

honest Men of t'other side the Water, to do the business: I asked him what business? Says he, either a brisk Push (that I took for an Insurrection for the two Brothers: Says I, what Brothers do you mean? Says he, the Captain and Lieutenant; those were the two Terms they used since the *Van berring* was Printed. I think he was a pretty honest Fellow before this time; he was deluded by *Goodenough*, I think, in the thing.

L. C. J. (To Mr. West.) Do you come to justify these things?

Mr. West. My Lord, He hath been deluded basely, and I am sorry for the poor Fellow.

L. C. J. It is a very unusual thing, for one in your Condition to use such Expressions in such a Case.

Mr. Serj. Jefferies. Mr. West, You have been deluded.

Mr. At. Gen. Captain *Richardson*, and Sir *Nicholas Butler*.

Mr. Serj. Jefferies. I find he is not worthy of the Mercy the King hath shewed him.

Mr. West. It was a Word I put from me unawares.

Mr. Serj. Jefferies. My Lord, We will give you an account of a Design this Man had long ago to kill the King.

Sir Nicholas Butler sworn.

Sir Nicholas Butler. My Lord, I know the Prisoner at the Bar very well. I have known him many Years, I have always known him guilty of Plotting and Contriving, and ready upon all occasions to embrace any thing for these Purposes laid to his Charge. Particularly, when Sir *Francis Chaplain* was Lord Mayor, his Majesty and the Duke stood at Mr. *Waldoe's* House, by reason of the *Angel* House being shaken. And he came to my House; and told me, he would discourse me upon some private Matter; I called him into a Closter, and he told me, they had a fair opportunity to take off the King and the Duke at once; I told him, that would do very well, but how will you do it? Says he, we will do it with Cross bows, we are to be half a dozen, and we will go into the Steeple, where there is a Window just opposite to the Balcony, and a great deal of Discourse we had to this purpose. My Intent was to divert them from this Design, and told him how impossible it was they should escape the Foot-Guards, and Horse-Guards, and multitude of People: And if he did not do the Business effectually, he would be undone, and all the Party. I rested satisfied he would have desisted upon this. But I knew the Principles of these Fifth Monarchy-Men, and their Associates, and thought it not safe to trust to his bare Say-so, that he would desist, but I went to the King and the Duke of York, into my Lord Chamberlain's Chamber, where they came to me, and I gave them this account, and desired them to set some to watch the place; and to search if any were got into the Steeple before they came; and there was one *Horsal* appointed, that did accordingly watch them, but none came: Upon which some Good-willers to it, have reported that it was a Sham-business, but I think that was not well done. But the thing was real, and when he was examined before the King in the Secretary's Office,

Office, he did confess all these things that I charged him with.

Mr. At. Gen. Sir Nicholas Butler, Had you any Discourse of killing the King at this time?

Sir Nicholas Butler. No; at last they did understand I kept a Correspondence at Court, and then they would tell me no more.

Mr. At. Gen. Since he was taken, what did he say about this matter?

Sir Nicholas Butler. About this matter he did acquaint divers, he was one that was to kill the King and the Duke.

Captain Richardson sworn.

Capt. Richardson. Sir Nicholas Butler asked him in my Presence (I went along with Sir Nicholas when he examined him) as to this thing, how he was concerned? He said Mr. Goodenough came to him, and told him he wanted Labourers; he asked him, for what? At last he did confess that Mr. Goodenough did tell him, it was to kill the King and the Duke of York; he did confess that he did agree to it, and that he would be one of them. He did likewise say, That after, at another Meeting, he was for killing the King, and saving the Duke; but Goodenough was for both.

Sir Nicholas Butler. He said he was to have 20 l.

Capt. Richardson. He said, he did not desire to stir, and Goodenough told him he should have 20 l. to buy him Horse and Armour: And told us the Business of the Rye, the Place he did not know, but said, it was the Place where the King was to be murdered. This is the Substance of the Examination taken.

Mr. Serj. Jefferies. Tho' the Prisoner at the Bar did partly make a Confession, yet for the Satisfaction of the World, my Lord gave us leave to call our Witnesses.

Capt. Richardson. That which Sir Nicholas says about the Cross-bows, he did own, but—

L. C. J. What say you to this treasonable Design of yours, in undertaking to kill the King, in hiring your self out to be one of the Persons that should have executed this traiterous Design, this horrid Murder, to have killed the King at the Rye?

Hone. I say, I did not know the Place where,

nor when, at the time it was proposed about the Rye.

L. C. J. But what do you say as to the undertaking to kill the King? The other is but a Circumstance, this is the material Point.

Hone. My Lord, I was drawn into it by Mr. Richard Goodenough.

L. C. J. You hear what Sir Nicholas Butler says of the Cross-bows you designed to kill the King with, what say you to that?

Hone. I say, there was a Person told me of such a thing; and I told Sir Nicholas immediately of it. The Person that told me was a Shop-keeper, and I don't know him.

Sir Nicholas Butler. You named three Persons to the King, that were Confederates with you, but you came to me of your self.

L. C. J. Look you, your self was one of the wicked Undertakers in that traiterous Design.

Hone. No, I did never design it, but I was told it.

L. C. J. Ay, That your self and some other good Fellows were engaged in the Design.

Hone. I was not engaged, only as I was told by a Fellow, that there was a Shop-keeper lived hard by that would do such a thing, and I immediately told Sir Nicholas Butler.

L. C. J. Come, 'tis in vain for you to mince the matter, for here is a full Evidence against you: The best you can do for your Advantage now, is to consider well with your self, and repent of this wicked Design. What Religion do you profess?

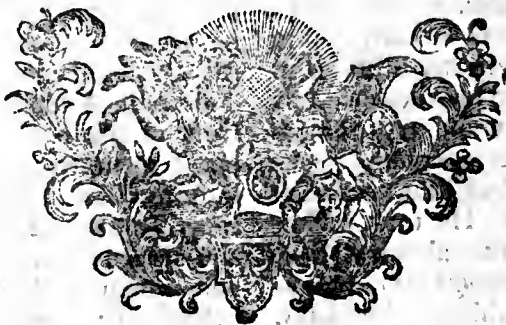
Hone. Religion, my Lord?

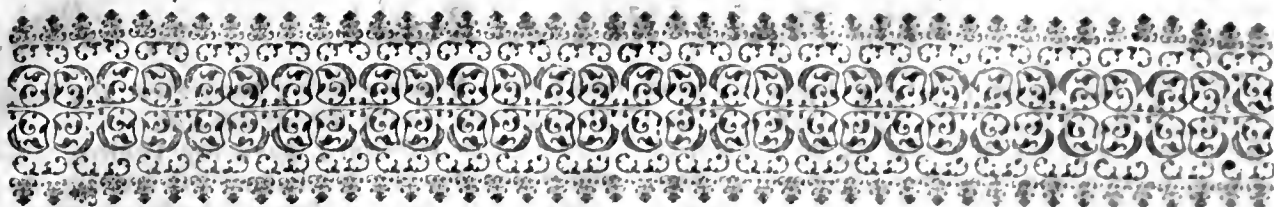
L. C. J. Ay, Any or none?

Hone. My Lord, I hear several sorts of Men, sometimes Baptists, sometimes Independants, and sometimes the Presbyterians.

L. C. J. But regard none. Look you, Gentlemen of the Jury, you hear a plain Case of a barbarous Murder designed upon the King, one of the horridest Treasons that hath been heard of in the World, to have shot the King and the Duke of York in their Coaches, as they were coming upon the Road. You have had full Evidence of this Man's being One of them; and therefore I am of opinion that you must find him Guilty.

So the Jury brought the Prisoner in, Guilty, without going out of Court.





THE T R Y A L O F

The LORD RUSSEL.

July 13. 1683. *My Lord Russel was set to the Bar,
within the Bar.*

Cl. of Cr.



William Russel, hold up thy Hand (which he did) Then this Indictment was read, which is as followeth.

London. The Jurors of our Sovereign Lord the King, upon their Oaths present, That William Russel late of London, Esq; together with other false Traitors, as a false Traitor against the most Illustrious and Excellent Prince, our Sovereign Lord Charles II, by the Grace of God, of England, Scotland, France and Ireland King, his natural Lord, not having the Fear of God in his Heart; nor weighing the Duty of his Allegiance, but being moved and seduced by the Instigation of the Devil, and the true Duty, and natural Obedience, which True and Faithful Subjects of our Sovereign Lord the King, towards him our said Lord the King do bear, and of right ought to bear, wholly withdrawing; and with his whole Strength intending the Peace and common Tranquillity of this Kingdom of England to disturb, and War and Rebellion against our said Lord the King to move and stir up; and the Government of our said Lord the King within this Kingdom of England to subvert, and our said Lord the King from his Title, Honour and Kingly Name of the Imperial Crown of this his Kingdom of England to put down and deprive; and our said Lord the King to Death and final Destruction to bring and put, the second Day of November, in the Year of the Reign of our Sovereign Lord Charles II, King of England, &c. the Four and Thirtieth, and divers other Days and Times, as well before as after, at the Parish of St. Michael Bassishaw, in the Ward of Bassishaw, London, aforesaid, Maliciously and Traiterously with divers other Traitors, to the Jurors aforesaid unknown, he did Conspire, Compass, Imagine and Intend our said Lord the King, his Supreme Lord, not only of his Kingly State, Title, Power and Government of this his Kingdom of England to deprive and throw down; but also our said Lord the King to kill, and to Death to bring and put; and the ancient Government of this his Kingdom of England to change, alter and wholly to subvert, and a miserable Slaughter amongst the Subjects of our said Lord the King through his whole Kingdom of England to cause and procure, and Insurrection and Rebellion against our said Lord the King to move, procure, and stir up within this Kingdom of En-

gland; And to fulfil and perfect the said most horrible Treasons, and traiterous Compassings, Imaginations and Purposes aforesaid, He the said William Russel, together with other false Traitors, as a false Traitor, then and there, and divers other Days and Times, as well before as after, Maliciously, Traiterously and Advisedly, between themselves, and with divers other Traitors, to the Jurors aforesaid unknown, they did meet together, consult, agree, and conclude, and every of them, then and there, did consult, agree and conclude, Insurrection and Rebellion against our Sovereign Lord the King, within this Kingdom of England, to move and stir up; and the Guards for the Preservation of the Person of our said Lord the King, to seize and destroy, against the Duty of his Allegiance, against the Peace, &c. And also against the Form of the Statutes, &c.

Cl. of Cr. How say'st thou, Art thou Guilty, or not Guilty?

Lord Russel. My Lord, May I not have a Copy of the Matter of Fact laid against me, that I may know what to answer to it?

L. C. J. My Lord, We can grant you nothing till you have pleaded. Therefore that which is put to you now is, Whether you say you are Guilty, or not Guilty?

Sir Edmond
Saunders.

L. Russel. My Lord, I am not Guilty.

Cl. of Cr. Culprit. How wilt thou be tried?

L. Russel. By God and my Country.

Cl. of Cr. God send thee a good Deliverance.

L. Russel. My Lord, I thought a Prisoner had never been arraigned and tried at the same time, I have been a close Prisoner.

L. C. J. For Crimes of this nature, my Lord, we do it continually.

L. Russel. It is hard, my Lord.

Mr. At. Gen. My Lord hath no reason to complain for want of notice, for since Monday seven-night he had notice of his Tryal, and the matters alledged against him he had notice of, for Questions were put to him about this matter, he hath been very fairly dealt with, he hath had the liberty of Counsel to advise him; there hath been no sort of Liberty denied him, which becomes any Subject to have in this Condition.

L. C. J.

L. C. J. My Lord, I do not know whether you hear Mr. *Attorney*. He says, your Lordship hath had a great deal of Favour shewn you already, in that you have been acquainted with the Crimes for which you are now indicted, that you have had a great deal of warning given you, that you have had the Liberty of Counsel, which hath not been known granted to any under your Lordship's Circumstances. He says, he doubts not but your Lordship is prepared for your Defence, because you have had so much knowledge, and warning of the Time and Matter for which you were to be called in question.

L. Ruffel. My Lord, I am much to seek, I only heard some general Questions, and I have Witnesses, that I believe are not yet in Town, nor will be, I believe till Night; I think it very hard I can't have one day more.

Mr. At. Gen. Monday seven night your Lordship had notice.

L. Ruffel. I did not know the matter I was charged with.

Mr. At. Gen. Yes certainly, for I was with you my self, my Lord; and those Questions you were examined upon, were a Favour to you, that you might know what the matter was you were accused of.

L. C. J. My Lord, without the King's Consent we can't put off the Tryal; if the King's Counsel think not fit to put it off, we can't grant your Lordship's Request in this Case.

L. Ruffel. I would desire a Copy of the Pannel of the Jury, that I might consider of it; for how else can I make any just Challenge? I thought the Law had been very favourable to Men upon their Lives; and therefore it had allowed People to have some little notice.

L. C. J. Hath not your Lordship had a Copy of the Pannel? I think your Lordship was allowed one. We gave order your Lordship should have a Copy of the Pannel.

Mr. At. Gen. We did indulge him so far, that he might have a Note of all the Men returned.

L. Ruffel. I never had a Copy of the Pannel.

L. C. J. It was the fault of your Lordship's Servants then; for I gave order for it my self. 'Tis such a Favour, that in regard a Man's Life lies at stake, we never did deny it, to my Knowledge. And therefore in this Case I gave order to the Secondary to deliver a Copy. I know the King did not design to be hard upon my Lord in his Tryal, but that he should have as fair a Tryal as ever any Noble Person had.

L. Ruffel. I Pray I may have a Copy then.

Mr. Serj. Jefferies. If my Lord had sent his Agents, and it had been refused, there had been something in it.

Mr. At. Gen. Secondary *Normansel* was with me, and I gave him my Allowance, though it was not his Right.

L. C. J. That my Lord may not be surpris'd, what think you of giving my Lord time till the Afternoon, and try some of the rest in the mean time?

Mr. At. Gen. Truly, my Lord, if I could imagine it were possible for my Lord to have any Witnesses, I should not be against it.

L. Ruffel. 'Tis very hard.

Mr. At. Gen. Do not say so, the King does not deal hardly with you, but I am afraid it will appear you would have dealt more hardly with

the King: You would not have given the King an hour's notice for saving his Life.

Secondary Trotman. I gave my Brother *Normansel* a Copy of the Pannel on my side, and hear that my Brother *Normansel* hath said that he delivered a Copy. Then Secondary *Normansel* was sent for, and the Court staid for him some time.

Mr. Atwood. My Lord, a Gentleman told me, he did not know whether it was fit till he had consulted the *Attorney General*; afterwards I had a Copy as it stood then, not as it is now.

Mr. At. Gen. I desire my Lord may be asked who he sent for it?

L. Ruffel. I did not send for it; I inquired, and they said it would be refused.

Mr. Atwood. No, the Gentleman had it with the fair Perriwig.

L. C. J. It was delivered to your Servant, or Agent, what did you do with it?

L. Ruffel's Gent. Sir, The Gentleman gave me out of a Book some Names.

Mr. Serj. Jefferies. What did you do with them?

L. Ruffel's Gent. I writ them down, they were not perfect, I did not know what they were.

L. C. J. Sir, You were to blame, not to deliver it to my Lord.

L. Ruffel's Gent. I was not bound to deliver an imperfect thing to my Lord.

L. C. J. Sir, You should have consulted your Lord's advantage, so as to have delivered any thing for his good.

L. Ruffel's Gent. My Lord was in the Tower, I was not admitted to my Lord.

Mr. At. Gen. Did you give it to my Lady?

L. Ruffel's Gent. Yes, those Names I had, my Lady had.

Mr. Serj. Jefferies. How long ago was it?

Mr. Atwood. Tuesday or Wednesday last.

L. C. J. (To Lord Ruffel's Servant.) Look you, Sir, when had you this?

L. Ruffel. I had no Pannel, I will assure you, delivered me; I had some Names of People that they said were usually on Juries.

L. C. J. They were the Names of the Jury.

L. Ruffel. They were only the Names of them that were like to be of the Jury, no other Pannel came to me.

L. C. J. My Lord, There can be no other Copy given, but the same that was delivered; for your Lordship does know in this case, any Person accused, as your Lordship is, may challenge 35; and therefore there is a Return generally of 3 score, or 4 score, and these are returned in case of your Lordship's Challenge. When you have challenged so many as you please, then the 12 Men that stand after your Challenge are to be of the Jury: And therefore this is not like a Pannel made up by the Sheriff, in ordinary Causes, between Man and Man; there they make a formal Pannel, from which they cannot depart, when that is once returned; but here in Criminal Cases, because of the Challenge, they return either 60 or 80; And I presume your Lordship was attended with the Names delivered.

Mr. Serj. Jefferies. How many Names were delivered?

Mr. Atwood. Above 100.

L. Ruffel. I had nothing of a Pannel delivered to me, but some Names.

L. C. J. There was never any formal Pannel delivered to any Person Accused : The Copy of it is in Paper always.

L. Ruffel. How can I know who to challenge?

L. C. J. My Lord, the Copy of it is in your hands ; your Lordship hath been deceived in this, by not understanding the true nature of these things : If we were to give you a new one, we could give you but such an one.

L. Ruffel. I had no Paper from the true Officer.

L. C. J. No, but from your Servant.

Mr. At. Gen. My Lord, you will have cause to complain, if they are not the same men we now shall call.

L. C. J. My Lord, that Paper will guide your Lordship in your Challenges.

L. Ruffel. My Lord, I did not mind it, I put it away. My Lord, with your Favour, I must needs insist upon having a Pannel, and that you will put it off till the Afternoon ; I have a Witness that is not in Town. My Counsel told me it was never done, or very seldom, Arraigning and Trying at the same time, except in case of Common Malefactors.

L. C. J. Mr. Attorney, Why may not this Tryal be respited till the Afternoon ?

Mr. At. Gen. Pray call the Jury.

L. C. J. My Lord, the King's Counsel think it not reasonable to put off the Tryal longer, and we can't put it off without their consent in this Case.

L. Ruffel. My Lord, 'Tis hard, I thought the Law had allowed a pretty deal of favour to a Man when he came upon his Life. How can I know to except against Men, that I never heard or saw one of them ?

Cl. of Cr. You the Prisoner at the Bar ; those good Men that have been now called, and here appear, are to pass between you and our Sovereign Lord the King, upon your Life or Death, if you challenge any of them, you must speak as they come to the Book to be Sworn, before they are Sworn.

L. Ruffel. My Lord, May not I have the use of Pen, Ink, and Paper ?

Court. Yes, my Lord,

L. Ruffel. My Lord, May I not make use of any Papers I have ?

L. C. J. Yes, by all means.

L. Ruffel. May I have some body write to help my memory ?

Mr. At. Gen. Yes, a Servant.

L. C. J. Any of your Servants shall assist you in writing any thing you please for you.

L. Ruffel. My Wife is here, my Lord, to do it.

L. C. J. If my Lady please to give her self the trouble.

Mr. At. Gen. My Lord, you may have two persons to write for you if you please.

L. Ruffel. My Lord, here hath been a name read, that I never saw in the List of the Jury I had, I heard Sir Andrew Foster called.

L. C. J. He is not called to be of the Jury.

Cl. of Cr. Call John Martin. [He appears.]

L. Ruffel. Are you a Freeholder of 40 s. a year ? I hope none are allowed in the Pannel, but those that have Freeholds.

L. C. J. There is no Pannel made in London by Freeholders, we have very few Freeholders capable of being impanel'd, because the Estates of the City belong much to the Nobility and Gentlemen that live abroad, and to

Corporations : Therefore in the City of London the Challenge of Freeholders is excepted.

L. Ruffel. My Lord, I thought it had been always so, and the Law had been clear in that Case throughout England, that no Man ought to be Tryed for his life, but by those that have Freeholds. My Lord, I remember I read the Statute of 2 H. 5. where 'tis positive that no Persons shall be Judged in Case of Life and Death but by those that have 40 s. a year.

L. C. J. My Lord, that Statute extends not to this Case. Read the Statute.

Cl. of Cr. Whereas Perjury is much used in the City of London upon Persons, &c.

L. C. J. Is this the Statute your Lordship has read ?

L. Ruffel. This is not in the case of Life and Death.

L. C. J. It is not, my Lord.

L. Ruffel. That that I read is positive. And if your Lordship will not allow of it, I desire my Counsel may come and argue it, for 'tis a matter of Law, and I can't argue it, whether the Jury are not to be Freeholders.

Mr. Serj. Jefferies. There is nothing mentioned in that Statute with relation to the City of London indeed, but the necessity of the thing requires it.

Mr. At. Gen. It will not be material, 'tis a collateral point, for most of the Jury have Freeholds.

L. C. J. Do you allow the Exception ?

Mr. At. Gen. No, my Lord.

L. C. J. Therefore we must, if my Lord stand upon it, hear his Counsel. My Lord, we will hear your Counsel ; what Counsel do you desire, my Lord ?

L. Ruffel. The Counsel that were allotted me.

L. C. J. No, you must have Counsel assign'd by us. The Counsel that was assign'd elsewhere signifies nothing.

L. Ruffel. Mr. Pollexfen, Mr. Holt, and Mr. Ward.

The said Persons were called, and came into Court.

L. C. J. (To the Counsel.) Gentlemen, my Lord here desires Counsel, You are here assigned as Counsel for my Lord Ruffel that is at the Bar, 'tis concerning a thing wherein he doubts the Law, he would except to the Jury upon this account, to the Poll, because they have not Freehold within the City of London, and he desires you may be assign'd his Counsel to make it out that this is a Cause of Challenge.

Mr. At. Gen. 'Tis a Case of Treason, Mr. Pollexfen.

Mr. Ward. We take it so.

Mr. Pollex. My Lord, Perhaps if we had more Consideration of it we should speak more, but if your Lordship pleases to hear us what we can say ; first we take it with submission, at Common Law, a Freehold was necessary to make a Man a Jurymen. But that which falls out in this case, is the Statute of 2 H. 5. c. 3. which Statute I suppose is here in Court. That Statute says this (if you please I will quote the substance of it) That none shall be admitted to pass upon any Inquest upon the Tryal of the Death of a Man, except he have Lands and Tenements of the yearly value of 40 s. Now we are here I think within the words of the Statute, and I take it to be no Question at all, were we not in a City and Coun-

County. I think this would be no Question upon any Tryal in any County at large. The Statute does not make any Exception or Distinction between Cities and Counties at large, but the Words are general, as I have opened them. My Lord, the Statute does also provide in Cases of Freehold or 40 Marks. Now, my Lord, to prove this Statute extends to *London*, tho' a City and County, there are other Statutes that have been made subsequent, make it plain that it does so extend. But before I speak to them, there is 1 *Inst. Fo. 157.* that takes notice of this Statute, and speaks it generally, that the Freehold ought to be in the same County, nor do I remember to have seen any Book that distinguishes between Counties at large and Cities and Counties. But Statutes that have been made concerning Cities and Counties are a plain Declaration that this is meant of Juries both in Cities and Counties. I will mention the Statute 7 *H. 7. c. 5.* The Substance of the Statute is this, It takes notice that there were Challenges in *London* for that they had not 40 *s. per Ann.* and that this Challenge was to be made in the Wards, which are the same with Hundreds in the Counties, so this Statute is made to take away the Challenge of 40 *s.* Freehold. This Statute of 7 *H. 7.* that takes away the Challenge in *London* for not having 40 *s.* is, with submission, a strong Evidence and Authority that it was before that time a good Challenge, for otherwise to what end should they make a Statute to take away the Challenge, unless it were before a good Cause of Challenge? In the next place, 4 *H. 8. c. 3.* that extends to Civil Causes in *London*, and says, that the *London* Jurors shall (but provides only for *London* in Civil Causes) be admitted in Civil Causes, that have Goods to the Value of 100 Marks. My Lord, if that first Statute or the Common Law had not extended to require Freeholds in *London*, then there would have been no need of this Statute that was made to enable Men to be Jurors that had Goods to the Value of 100 Marks. So that we take it to be good Authority, that by the Common Law Freehold was required in all Civil Causes. Then there is another Statute 23 *H. 8. c. 13.* and that will be a strong Evidence to shew what the Law is: For the Statute says, in Cities and Burroughs, in Tryals of Murder and Felony, if a Freeman of the City of *London* is to be tryed, the Freeman shall be upon the Jury, tho' they have not Freehold, and then there is a *Proviso*, that for Knights and Esquires that are out of the Burrough, tho' they are arraigned in the Burrough, that extends not to them, tho' in Cases of Murder and Felony. As for this Statute we take this Sense of it, first, That it does not extend to Treasons, for when it only names Murders and Felonies, that makes no Alteration as to Treason, therefore that stands as before: But if there be any Alteration that extends only to Freeman and Burgeses that are to be Tryed, but not to Knights and Esquires, so that if we were in a Case of Felony and Murder, I think we are not concerned in this Statute, for we are no Freeman nor Burgeses, but we are an Esquire, and therefore ought to be tryed by Freeholders: So that for the Law we rely upon these Statutes, that we have looked upon as strong Evidence, that there ought to be

in the Tryal of the Life of Man, especially for Treason, Freeholders. First, If it were in Civil Causes, if this Qualification be not in Jurymen, then an Attaint would lye; the Penalty in an Attaint is, that their Houses should be pulled down, &c. This is provided by the Law, to the intent the Jury may be careful to go according to their Evidence. 'Tis true, no Attaint does lie in Criminal Causes, but if so be in Civil Causes there be required Freeholders, and an Attaint lies if there be not, 'tis not reasonable to think but there should be as great regard to the Life of a Man as to his Estate. Next, my Lord, I do not know any Law that sets any kind of Qualification but this of Freehold, so that be the Persons of what condition or nature soever (supposing they be not outlawed) yet these Persons, if this Law be not in effect, may then serve, and be put upon the Life of a Man. These are the Reasons, my Lord, for which we apprehend they ought to be Freeholders.

Mr. Holt. My Lord, I would desire one Word of the same side: We insist in this Case upon these two things; First, we conceive by the Common Law, every Jury-man ought to have a Freehold, we have good Authority for it, *Coke's First Institutes*, but if that were not so, I think the Statute Mr. Pollexfen hath first mentioned, 2 *Hen. 5. c. 3.* to be express in this point. My Lord, the Statute in the Preamble does recite all the mischiefs, it says great mischiefs ensued by Juries that were made up of Persons that had not Estates sufficient; In what? As well in the Case of the Death of a Man, as in the Case of Freehold between Party and Party: The Statute reciting this mischief, does in express Words provide two Remedies for the same in these Cases: First on the Life and Death of a Man, the Jury or Inquest to be taken, shall have 40 *s. per Ann.* and so between Party and Party 40 Marks, so that this being the Tryal of the Death of a Man, it is interpreted by *Stamford 162 a.* That is, In all Cases where a Man is arraigned for his Life, that is within the express Words of the Statute. Besides this Exposition that hath been put upon the Statute, my Lord, it does seem that the Judgment of several Parliaments hath been accordingly in several Times and Ages. My Lord, to instance in one Statute that hath not been mentioned, and that is the 33 of *H. 8. c. 23.* That does give the King Power to award Commissions of Oyer and Terminer, for Tryals in any County of *England*: And that (says the Statute) in such Cases no Challenge to the Shire or Hundred shall be allowed; that is, you shall not challenge the Jury in such a Case, because they have not Freehold; are not of the County where the Treason was committed; but that upon the Tryal Challenge, for lack of Freehold of 40 *s.* a Year, shall be allowed, tho' it alters the manner of trying Treason by the Common Law; so that, my Lord, here is the Opinion of that very Parliament; that tho' it took away the usual method of Tryals; yet it saves the Prisoner's Challenge for want of Freehold. Now indeed that Statute is repealed; but I mention it as to the *Proviso*, that it shews the Judgment of that Parliament at that time: My Lord, those other Statutes that have been made to regulate Cities and Towns Corporate, why were they made? 33 *H. 8.* That no Freehold should

should be allowed, that shews that 2 H. 5. did extend to these Cases. But, my Lord, these Statutes that shew the Judgment of the Parliament sufficient to our purpose, do not extend to this Case; the Statute goes only to Murders and Felonies, but not to Treasons: And we are in the Case of a Penal Statute, and concerning the Life and Death of a Man, which ought to be taken strictly, it ousts the Prisoner of a Benefit; and by parity of Reason, if Treason be not mentioned, your Lordship can't by Equity extend it to it, when it only mentions inferiour Offences, and takes away the Benefit in lower Cases: Like the Case of the Bishop of *Winchester*, where the Statute set down Dean and Chapters, and other Ecclesiastical Persons, it shall not extend to Bishops, because it begins with Persons of an inferior Nature: No more shall Murder and Felony extend to Treason. But further the Statute only concerns Freemen, for there is an expresse *Proviso* in the Case: For in case any Knight or Esquire come to be tryed in the Place, he has his Benefit as before. My Lord, we are in this Case, as in the Case not mentioned in the Statute, we are not a Freeman of *London*. My Lord, there is another thing 7 H. 7. c. 5. Why there was not only requisite at the Common Law, that the Jurors had sufficient Freehold, but it was required it should be in the Hundred; and Freehold in the Wards in the City is the same with Freehold in the Hundreds in the Country: So that the want of Freehold in the Hundred, was a good Cause of Challenge. So that I think it will hardly be denied, but that a Jury that passes upon the Life of a Man, ought by the Law, by the Statute, and by the Judgment of the Parliament, to have Freehold. Where is there then any Statute whatsoever that makes a difference in this Case, between *London* and other Counties? We are in the Case of Treason, we have taken our Exceptions, and on behalf of the Prisoner at the Bar we pray the Challenge may be allowed.

Mr. Ward. My Lord, I shall be short, because Mr. Pollexfen has observed these things so particularly already. I observe the Statute of H. 5. is a general Statute, and extends throughout the Realm: Now when the thing is thus general, there is no room to except Particulars. And in this Case 'tis within the very Words of the Law, if the Words be so generally penned in the Negative, then we conceive there is no Construction to be made upon them, unless some subsequent Parliament alter it. *Coke's Institutes* 157. where 'tis said in Treason as well as any thing else, upon H. 5. there shall be Freeholds. If they have provided in Civil and other Criminal Causes, it were strange that this should be *Casus omittus*, but there is no Construction against a Negative Law: For the Parliament taking care of the City of *London* (as the subsequent Statutes say) that he that hath 100 Marks shall pass in Civil Causes, and then it says in Murders and Felonies, and that only confined to the Freemen of the Place, does sufficiently explain the Law, where 'tis not altered by any subsequent Act, therefore I desire the Challenge may be admitted.

Mr. At. Gen. My Lord, These Gentlemen's Foundation is not good, for they prove it not by any Books, that at Common Law it was requisite for a Jury-man to have Freehold. My

Lord, I deny their Foundation, there is no such Law, and at this day in all Criminal Cases where the Statute does not direct it, as for Riots and other Informations for Misdemeanor, there is no Law restrains them, and they may be tryed by any Men they have no Exception against. Then 2 H. 5. says, None shall be admitted to pass upon the Death of a Man, (I take it to extend to all Capital Matters, tho' it is pretty oddly expressed; for when a Man is accused of other Felonies and High-Treasons, 'tis of the Death of a Man) unless he have Lands or Tenements, of the yearly Value of 40 s. But I will take it as these Gentlemen do at this time, it not being so at Common Law, nor in other Criminal Cases, but what are provided for by the Statute: As to other Matters of Felony and Murder, no doubt there these Challenges are to be taken upon the Statute, but not for Treason, because the Statute of Queen Mary does expressly repeal that Statute; and no Statute since takes away the Force of that of Queen Mary; that all Tryals for Treason shall be as at the Common Law; and according to this the constant Practice in all Cities (not only *London*) where Persons have been indicted for High-Treason, hath been. There was never any such thing pretended: Most of these Gentlemen have Freeholds, but we would not have this Point lost to the City of *London*; so that the Statute they speak of, and the Interpretations of the several other Statutes too, are to no purpose; for we say by Common Law, all Causes might be tryed by any Persons, against whom there was not sufficient Cause of Challenge; and the Common Law is by that Statute restored in this Point.

Mr. Sol. Gen. My Lord, I have little to say, Mr. Attorney hath given a true Answer to it, the Foundation does fail them. It was not necessary at Common Law, for a Jury-man to have Freehold: But then they must shew you, my Lord, it is altered and made necessary. The Statute of H. 5. does not seem to extend to Treason, but if it did, 'tis now out of doors, by that of Queen Mary, whereby all Tryals of Treason are reduced to the Common Law. This is that we answer, they fail in their Foundation, they do not make it out, that it was necessary for a Jury-man at Common Law to have Freehold.

Mr. Serj. Jefferies. My Lord, I confess they have cited several Acts of Parliament, and upon them lay their Foundation, and draw Inferences from them: But they will find, that in several Acts of Parliament which they have quoted, there is a particular regard had for the Preservation of the constant Usage and Customs for Tryals within the City of *London*. That notwithstanding several Acts of Parliament have in other places ascertained the Value of Jurors; yet they had still an Eye that the City of *London* should continue in its Usages. I think it will be necessary to put you in mind of the Case of the City of *Worcester*. It would be very hard, say they, because an Attaint does not lie in Criminal Matters; if you intend by that to have People of Ability, 'tis well known, that the ablest People in the City of *London*, have scarce any Freehold in it; for that most of the Inheritances of the City of *London* remain in the Nobility and in Corporations. Now in the Case of my Lord Russel, he hath a pe-

remptory Challenge to 35, and I think I may adventure to say, there can scarce be 35 more that can call themselves Freeholders in London; consider the Consequence then, Treason should be committed in the City of London, and there would not be enow in the City of London to try it. In the Case of the *Quo Warranto* brought against the City of Worcester, to know by what Warrant several took upon them the Offices of Aldermen; the Gentlemen at the Bar objected that it was reasonable that no Freehold should be determined, but by Freeholders. But the Judges of the *King's-Bench*, (the Court being full) for the necessity of the thing, lest there might not be sufficient Freeholders in the City, having sent one of the Judges of that Court to your Lordships of the *Common-Pleas*, for that Reason did agree the Challenge was not good. I know these Gentlemen will please to remember the Case; so that I say, as in one Case we ought to be tender of the Life of the Prisoner, so we ought surely to be tender of the Life of the King, otherwise it may so happen that the King's Life may be encompassed, and Treason committed in the City, and there would be no way in the World to try it: Therefore we pray for the King the Challenge may be over-ruled.

Mr. North. My Lord, It is the Practice to make the *Venire facias*, without mentioning Freehold, for it does not command that they return so many Men that have Freehold, but *probos & legales homines de visneto*; therefore at the Common Law, those were good Inquests to try any Man that were not excommunicated nor under any Out-law. 'Tis true, there are Statutes that say, all Jury-men shall have Freehold; but we say these Statutes do not extend to the City of London, but that it is governed by its own Customs; and we say it is the Custom that Citizens of Ability have been returned, that have no Freehold. But granting what we do not, by way of supposal, my Lord, it does not extend to this Case, because Tryals are to be according to the Use at Common Law, by the Statute of Queen Mary, which does set them at large again; and that is the Reason the Prisoner, in this Case, hath his Challenge for 35, and is in other Cases restrained to 20; so that we say, these Men of Ability are good, and there is no Statute affects them.

L. C. J. Mr. Pollexfen, Do you find any Judgment, that in Cases of Treason by Common Law, they might except for want of Freehold? Have you any Resolution in the Case?

Mr. Pollexf. I think there are Books that say, at Common Law there must be Freehold.

L. C. J. What, in Treason?

Mr. Pollexf. No, my Lord.

L. C. J. Unless you speak of Treason, you do not speak *ad Idem*. For I do take it that in Cases of Treason, or in Cases of Felony, at the Common Law, they had no liberty to except to Jurors, that they had not any Freehold, but that at the Common Law any good and lawful Men might pass. Then take as introductory of a new Law the Statute of H. 5. I am of the mind that this Statute of H. 5. peradventure may extend to Treasons and Felonies; but when the Statute of Queen Mary comes

and says, all Tryals shall be by such Evidence, and in such manner, as by Common Law they ought to have been, I do not see how it is possible to make an Objection afterwards of this nature. For, admitting this Act of Parliament of H. 5. had altered the Common Law, and given a Challenge, why then when the Statute of Queen Mary comes and sets all Tryals at large in the Case of Treasons, then certainly the Challenge is gone again, and I doubt you will not find one Exception in this Case, ever since that Statute concerning the Jury's Freehold in Cases of Treason, but it hath generally passed otherwise, and there hath not been any ever excepted; I doubt it will be a very hard thing to maintain such a Challenge now. Here are my Lords and Brothers will be pleased to deliver their Opinions. It is a Business of great Consequence, not only for this Noble Person at the Bar, but for all other Persons.

L. C. Bar. I agree with your Lordship perfectly, but if the Counsel had laid a right Foundation that it had been so at Common Law, there had been much said; But I take it at Common Law there was no Challenge for want of Freehold, and I am induced to think so; for otherwise what needed the Statute of H. 5. been made? But whether it extend to Treason or no, I am not so clear. And if it did, it's wiped off again by that of Queen Mary, which reduces all to the Common Law Tryal.

Mr. J. Windham. I am of the same Opinion: I conceive at Common Law, lack of Freehold no good Cause of Challenge. 'Tis true, that Challenge is given in some Cases by Act of Parliament, yet I doubt whether it extend to a thing of so high nature as Treason, for other Statutes have not mentioned any thing of Treason. But suppose 2 H. 5. did extend to it, yet it is very plain, the Statute of 1 and 2 Queen Mary hath set all at large again, they are to be good and lawful Men, and I do not find that any thing of the Lawfulness must be the Freehold. And therefore, I conceive this is no just Exception in this Case.

Mr. J. Jones. My Lord, I am of the same Opinion: I am of Opinion that the Common Law did not require Freehold to be a good Cause of Challenge, in the Case of Treason, and the rather, Because at the Common Law, a Man that was indicted of High-Treason had liberty to challenge, peremptorily, to the Number of 35 Persons. My Lord, if the Common Law be altered by the Statute of H. 5. yet I take it, that the Statute of 1 and 2 Ph. and M. does restore the Common Law in this particular Point. For whereas there was a Statute of H. 8. to restrain the Prisoner to the Number of 20 for his Challenge, now the Statute restoring it to Common Law, the Prisoner hath his Challenge to 35, as he had before that Statute of H. 8. So I take it, the King shall have his Privilege also to try a Prisoner for Treason, by Persons that have not Freehold.

Mr. J. Charlton. I am of the same Opinion. And truly the rather, because no President hath been offered of any such Challenge before, and many Men have suffered, and sure if it could have been, many would have made use of it.

Mr. J. Lewins. I am of Opinion 'tis not to be allowed. I do not think my self driven to the necessity to determine now, whether Freehold

hold was a good Challenge at Common Law in point of Treason. I think the Statute of *Ph.* and *M.* hath restored the Tryals to the Common Law. What was the Common Law? The Common Law is the Custom of *England*, which is other in Cities than in Counties, and the Custom of *London* is part of that Common Law. So, tho' it be a Cause of Challenge in a County at large, yet it is not a Cause of Challenge in Cities, where Freeholders are not to be found. Now that which satisfies me is, That this Custom is restored by the Statute of *Ph.* and *Mary* because never such a Challenge hath been. And it is known when 20 were tryed for Treason together in this very place, and one of them a notable cunning Lawyer, and if such a Challenge were to have been allowed, no doubt he would have made use of it, but the Challenge was not taken, and if he had made such a Challenge, and it had been allowed, perhaps he could not have been tryed: That was *Cook*. I have heard several Persons tryed for Treason my self, and never heard it taken. Therefore I am of Opinion, that before any Statute was made in this Case, it was the Custom in *London* to try without Freeholds, and since by the Statute of Queen *Mary* 'tis restored.

Mr. *Bar. Street*. I think there was no such Challenge at Common Law. The Jury were only to be *probos & legales homines*, and no more, till the Statute made it so, but there is a particular Reservation for Corporations. And certainly, if this should be admitted to be a good Challenge, tho' it were between Party and Party, there would be in some Corporations a perfect Failure of Justice. So that without doubt at Common Law there was no such Challenge. As for the Statute of *H. 5.* 'tis gone by that of Queen *Mary*. If this were admitted within *London*, nothing would be more mischievous to this Corporation. Methinks we have been very nice in this matter, when the Life of the King is at stake, and all the Customs and Privileges of the City of *London* seem to be levelled at in this point. I am of the Opinion with the rest of the Judges, that this Challenge ought to be over-ruled.

J. Withins. I am of the same Opinion.

L. C. J. My Lord, the Court is of Opinion, upon hearing your Counsel, and the King's, that it is no good Challenge to a Jury in a Case of Treason, that he has not Freehold within the City. But I must tell your Lordship withal, That your Lordship has nothing of Hardship in this Case, for notwithstanding that, I must tell you, you will have as good a Jury, and better than you should have had in a County of 4 *l.* or 40 *s.* a year Freeholders. The Reason of the Law for Freeholds is, That no slight Persons should be put upon a Jury, where the Life of a Man or his Estate comes in question, but in the City the Persons that are impannelled are Men of Quality and Substance, Men that have a great deal to lose. And therefore your Lordship hath the same in Substance, as if a Challenge was allowed of Freehold. It will be no kind of Prejudice to your Lordship in this Case. Therefore, if you please, apply your self as the Jury is called, and make your Exceptions, if you shall make any.

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L. C. J. Mr. *Pollexfen*, You shall have liberty to stay any where here, if you please.

Counsel. Here is such a great Crowd, my Lord, we have no room.

Then the Jury-men were called, and after the Lord Ruffel had challenged One and Thirty of them, the Jury sworn were as follows.

<i>John Martin</i>	} Jur,	<i>William Butler</i>
<i>William Rouse</i>		<i>James Pickering</i>
<i>Jervas Seaton</i>		<i>Thomas Jee</i>
<i>William Fashion</i>		<i>Hugh Noden</i>
<i>Thomas Short</i>		<i>Robert Brough</i>
<i>George Torriano</i>		<i>Thomas Omeby</i>

Then was made Proclamation for Information.

Cl. of Cr. *William Ruffel* Esq; hold up thy Hand, (which he did.) You of the Jury look upon the Prisoner, and hearken to his Cause. He stands Indicted, by the Name of ———— *prout* before in the Indictment. Upon this Indictment he hath been arraigned, and thereunto pleaded Not Guilty, and for his Tryal hath put himself upon his Country, which Country you are: Your Charge is to inquire whether he be Guilty of this High Treason whereof he stands Indicted, or Not Guilty: If you find him Guilty, you shall inquire, &c.

Mr. *North*. May it please your Lordship, and you that are sworn, The Prisoner at the Bar stands charged in this Indictment with no less than the conspiring the Death of the King's Majesty, and that in order to the same, he did, with other Traitors named in the Indictment, and others not known, *November 2.* in the 34th Year of this King, in the Parish of *Bassishaw*, within the City of *London*, meet and conspire together to bring our Sovereign Lord the King to Death, to raise War and Rebellion against him, and to massacre his Subjects. And in order to compass these wicked Designs, there being assembled, did conclude to seize the King's Guards, and His Majesty's Person. This is the Charge, the Defendant says he is not Guilty, if we prove it upon him, it will be your Duty to find it.

Mr. *At. Gen.* My Lord, and you Gentlemen of the Jury, most of our Evidence against this Honourable Person at the Bar is to this purpose, This Person, the Duke of *Monmouth*, my Lord *Grey*, Sir *Thomas Armstrong*, and Mr. *Ferguson*, they were the Council of State, as I may call them, to give forth Directions for the general Rising that hath appeared was to have been within this Kingdom. The Rising was of great Concern and Expence, and must be managed by Persons of Interest, Prudence, and great Secrecy. These Gentlemen had frequent Meetings in *October* and *November* last, (for then, you may refresh your Memories again, was the general Rising to be) and there they did consult how to manage the Rising, they consulted how to seize the King's Guards; And this Noble Person being mixed with these others, especially with *Ferguson*, who with others of an inferior Rank was also engaged in a Cabal for managing worse things (tho' this is bad enough;) at several Meetings they receive Messages from my Lord *Shaftsbury* touching the Rising. They being looked upon as the Persons that were to

conclude and settle the time and all circumstances about it.

We shall make it appear to you in the course of our Evidence, that those Underlings (for this was the great Consult, and moved all the other Wheels) who managed the Assassination, did take notice that these Lords and Gentlemen of Quality were to manage and steer the whole business of the Rising. It seems these Gentlemen could not give the Earl of *Shaftsbury* satisfaction to his mind, for he pressed them to keep their day, which was the 17th of November last; but the honourable person at the Bar, and the rest, made him this answer, That Mr. *Trenchard* had failed them, for that he had promised to have 1000 Foot and 2 or 300 Horse at four hour's warning, but now it was come to pass, he could not perform it, that some Persons in the *West* would not joyn with them, and therefore at this time they could not proceed, and therefore they must defer the day. And as a Counsel, they sent my Lord *Shaftsbury* word, he must be contented; they had otherwise resolved, and thereupon my Lord *Shaftsbury* went away, and Mr. *Ferguson* with him.

To carry on this practice, they took others into their Council, Sir *Thomas Armstrong* was left out, and there falling that scandalous Report upon my Lord *Grey*, he was to be left out, and then there was to be a new Council of Six, whereas the inferior Council to manage the Assassination was Seven. At this Council there was this honourable Person at the Bar, the Duke of *Monmouth*, my Lord *Howard*, and another honourable Person, who I am sorry to name upon this account, who hath this morning prevented the hand of Justice upon himself, my Lord of *Effex*, and Colonel *Sidney*, and Mr. *Hambden*: These six had their frequent Consults at this honourable Person's House; for they had excluded Sir *Thomas Armstrong*, and my Lord *Grey*, for these Gentlemen would have the Face of Religion, and my Lord *Grey* was in their esteem so scandalous, that they thought that would not prevail with the people, if he was of the Council. There they debated how they should make this Rising, after several Consultations they came to this Resolution: That before they did fall upon this Rising, they should have an exact account both of the Time and Method of the *Scotch* Rising; and thereupon a Messenger was sent on purpose by Colonel *Sidney*, viz. *Aaron Smith*, to invite *Scotch* Commissioners to treat with these Noble Lords. Pursuant to this, just before the Plot brake out, several from *Scotland* came to treat with them how to manage the work; 30000 *l.* was demanded by the *Scots*, in order that they should be ready in *Scotland*; then they fell to 10000, and at last (for the *Scots* love Money) they fell to 5000, which they would take and run all hazards, but they not coming to their Terms, that broke off that Week the Plot was discovered.

Gentlemen, if we prove all these Instances, besides we shall call some to shew you that all the inferior Party still looked upon these to be the Heads; and tho' they kept it secret, God hath suffered it to come to light, with as plain an Evidence as ever was heard.

Mr. Serj. *Jefferies*. I will not take up any of your Lordship's time; we will call our Witneses to prove the Fact Mr. *Attorney* hath opened. Swear

Colonel *Rumsey*. (Which was done.) Pray Colonel *Rumsey* will you give my Lord and the Jury an Account, from the beginning to the end, of the several Meetings that were, and what were the Debates of those Meetings.

Col. *Rumsey* My Lord, I was at my Lord *Shaftsbury's* Lodging, where he lay, down by *Wapping* about the latter end of *October*, or the beginning of *November*, and he told me there was met at one Mr. *Sheppard's* house the Duke of *Monmouth*, my Lord *Russel*, my Lord *Grey*, Sir *Thomas Armstrong*, and Mr. *Ferguson*, and he desired me to speak to them to know what resolution they were come to about the Rising of *Taunton*: I did go there accordingly, and call for Mr. *Sheppard*, and he carried me up where they were, and the Answer that was there made me was, That Mr. *Trenchard* had failed them, and there would be no more done in the matter at that time.

Mr. *At. Gen.* Tell the whole passage.

Col. *Rumsey*. I did say my Lord *Shaftsbury* had sent me to know what resolution they had taken about the Rising of *Taunton*. They made me this answer, That Mr. *Trenchard* had failed them, that he had promised 1000 Foot and 300 Horse, but when he came to perform it, he could not. He thought the people would not meddle, unless they had some time to make provision for their Families.

L. C. J. Who had you this Message from?

Col. *Rumsey*. Mr. *Ferguson* did speak most of it.

L. C. J. Who sent this Message back?

Col. *Rumsey*. Mr. *Ferguson* made the Answer, my Lord *Russel* and the Duke of *Monmouth* were present, and I think my Lord *Grey* did say something to the same purpose.

Mr. *At. Gen.* Pray how often were you with them at that house?

Col. *Rumsey*. I do not know, I was there more than once, I was there either another time, or else I heard Mr. *Ferguson* make a Report of another Meeting to my Lord *Shaftsbury*.

Mr. Serj. *Jefferies*. Was my Lord *Russel* in the Room when this Debate was?

Col. *Rumsey*. Yes, my Lord.

Mr. *At. Gen.* What did they say further?

Col. *Rumsey*. That was all at that time, that I remember.

Mr. *At. Gen.* Was there nothing of my Lord *Shaftsbury* to be contented?

Col. *Rumsey*. Yes, That my Lord *Shaftsbury* must be contented; and upon that he took his Resolution to be gone.

L. C. J. Did you hear any such Resolution from him?

Col. *Rumsey*. Yes, my Lord.

Mr. *At. Gen.* Did you know of their meeting there, or was it by my Lord *Shaftsbury's* direction?

Col. *Rumsey*. No, but my Lord told me, I should find such Persons, and accordingly I found them; and this Answer was given.

Mr. *At. Gen.* What time did you stay?

Col. *Rumsey*. I think I was not there above a quarter of an Hour.

Mr. *At. Gen.* Was there any Discourse happened while you were there about a Declaration?

Col. *Rumsey*. I am not certain whether I did hear something about a Declaration there, or that

that Mr. *Ferguson* did report it to my Lord *Shaftsbury*, that they had debated it.

Mr. Serj. *Jefferies*. To what purpose was the Declaration?

L. C. J. We must do the Prisoner that Right; He says he can't tell whether he had it from him or Mr. *Ferguson*.

Mr. At. Gen. Did you hear no Discourse to what it tended?

Col. *Rumsey*. My Lord, There was some Discourse about seeing what Posture the Guards were in.

One of the Jury. By whom, Sir?

Col. *Rumsey*. By all the Company that was there.

L. C. J. What was that Discourse?

Col. *Rumsey*. To see what Posture they were in, that they might know how to surprize them.

L. C. J. The Guards?

Col. *Rumsey*. Yes, That were at the *Savoy*, and the *Mews*.

L. C. J. Whose were the words? Tell the words as near as you can.

Col. *Rumsey*. My Lord, The Discourse was, that some should——

L. C. J. Who made that Discourse?

Col. *Rumsey*. My Lord, I think Sir *Tho. Armstrong* began it, and Mr. *Ferguson*.

Mr. At. Gen. Was it discoursed among all the Company?

Col. *Rumsey*. All the Company did debate it. Afterwards they thought it necessary to see with what care and vigilance they did guard themselves at the *Savoy* and the *Mews*, whether they might be surprized or not.

Mr. At. Gen. Were there any undertook to go and see there?

Col. *Rumsey*. There were some Persons.

Mr. Serj. *Jefferies*. Name them.

Col. *Rumsey*. I think the Duke of *Monmouth*, my Lord *Grey*, and Sir *Tho. Armstrong*.

Mr. Serj. *Jefferies*. Was my Lord *Ruffel*, the Prisoner, there, when they undertook to take the view?

Col. *Rumsey*. Yes, Sir.

Mr. At. Gen. To what purpose was the view?

Col. *Rumsey*. To surprize them if the Rising had gone on.

Mr. Serj. *Jefferies*. Did you observe by the Debates that happened, that they did take Notice there was a Rising intended?

Col. *Rumsey*. Yes.

Mr. Serj. *Jefferies*. And that Direction was given to take a view of the Guards, if the Rising had gone on?

Col. *Rumsey*. Yes.

L. C. J. Pray, Sir, declare justly the discourse.

Col. *Rumsey*. I went to them from my Lord *Shaftsbury*: And I did tell them, That my Lord did pray they would come to some Resolution; and they told me, Mr. *Trenchard* they depended upon; for *Taunton* had failed them, who when he came up to Town first at the Term, had assured them, that in three or four Hours time, he could have One Thousand Foot, and Three Hundred Horse: But now it came to be tryed, he answered it was not possible for him to undertake it, for People would not rush into it of a sudden, but have some time to prepare for their Families.

Mr. At. Gen. Was it pretended there should be a Rising at that time?

Col. *Rumsey*. Yes, the 19th of November was appointed for the Rising.

L. C. J. Was it before that time, you went to press them from my Lord *Shaftsbury*?

Col. *Rumsey*. Yes, I think it was a matter of a Fortnight before, or something more. For I think it was concluded Sunday fortnight after my Lord *Grey* met.

Mr. At. Gen. But you say, besides what you heard there, you understood there was to be a Rising at that time; Was you to be engaged in this?

Col. *Rumsey*. Yes, I was.

L. C. J. You must speak so, that what you deliver may be sensible; for if you speak, I understand so and so, that will be doubtful.

Col. *Rumsey*. No, my Lord, the Rising was determined, and I was to have gone to *Bristol*.

Mr. At. Gen. In what capacity, as Colonel or Captain?

Col. *Rumsey*. There was no Determination of that, no Quality.

L. C. J. By whose Appointment was that?

Col. *Rumsey*. My Lord *Shaftsbury* spake that to me.

Mr. Serj. *Jefferies*. But pray, Col. *Rumsey*, this you are very able to know, what the Debates were, and need not be pumped with so many Questions; Pray, was there any Debate, when you came with the Message from my Lord *Shaftsbury's*, was there a Debate about the Rising?

Col. *Rumsey*. There was no Debate of it, because they made answer, Mr. *Trenchard* had failed them.

Mr. Serj. *Jefferies*. But did not they take notice of the Rising? Give an account of it.

Col. *Rumsey*. I have done it twice.

Jury. We desire to know the Message from the Lord *Shaftsbury*.

L. C. J. Direct your self to the Court: Some of the Gentlemen have not heard it, they desire you would with a little more loud Voice repeat the Message you were sent of from my Lord *Shaftsbury*.

Col. *Rumsey*. I was sent by my Lord, to know the Resolution of the Rising in *Taunton*; they answered, Mr. *Trenchard*, whom they depended upon for the Men, had failed them, and that it must fall at that time, and my Lord must be contented.

Mr. At. Gen. Was the Prisoner at the Bar present at that Debate?

Col. *Rumsey*. Yes.

Mr. Serj. *Jefferies*. Did you find him averse to it, or agreeing to it.

Col. *Rumsey*. Agreeing to it.

Baron Street. What said my Lord *Shaftsbury*?

Col. *Rumsey*. Upon my return he said, He would be gone; and accordingly did go.

Mr. Serj. *Jefferies*. If my Lord *Ruffel* pleases to ask him any Questions, he may.

L. *Ruffel*. Must I ask him now?

L. C. J. Yes, my Lord, propose your Questions to me.

L. *Ruffel*. I have very few Questions to ask him, for I know little of the matter, for it was the greatest accident in the World I was there, and when I saw that Company was there, I would have been gone again. I came there accidentally to speak with Mr. *Sheppard*; I was just come to Town, but there was no Discourse of

of surprizing the Guards, nor no undertaking of raising an Army.

L. C. J. We will hear you to any thing by and by, but that which we now desire of your Lordship is, as the Witnesses come, to know if you would have any particular Questions asked of them.

L. Ruffel. I desire to know, if I gave any Answer to any Message about the Rising: I was up and down; I do not know what they might say when I was in the Room; I was tasting of Wine.

L. C. J. Did you observe that my Lord Ruffel said any thing there, and what?

Col. Rumsey. Yes, my Lord Ruffel did speak.

L. C. J. About what?

Col. Rumsey. About the Rising of Taunton.

L. Ruffel. It was Sir Tho. Armstrong that conversed with Mr. Trenchard.

L. C. J. What did you observe my Lord Ruffel to say?

Col. Rumsey. My Lord Ruffel did discourse of the Rising.

L. Ruffel. How should I discourse of the Rising at Taunton, that knew not the Place, nor had knowledge of Trenchard?

Mr. At. Gen. Now, my Lord, we will give you an account, that my Lord Ruffel appointed this place, and came in the dark without his Coach.

L. Ruffel. My Lord, I think the Witness was asked, if I gave my Consent.

L. C. J. What say you, Did my Lord give any Consent to the Rising?

Col. Rumsey. Yes, my Lord, he did.

Mr. At. Gen. Pray Swear Mr. Sheppard.

[Which was done.

Pray will you speak aloud, and give an account to my Lord, and the Jury, of the Meetings at your House, and what was done.

Mr. Sheppard. In the month of October last, as I remember, Mr. Ferguson came to me in the Duke of Monmouth's Name, and desired the conveniency of my House, for him and some other Persons of Quality to meet there. And as soon as I had granted it, in the Evening the Duke of Monmouth, my Lord Grey, my Lord Ruffel, Sir Thomas Armstrong, Col. Rumsey, and Mr. Ferguson came. Sir Thomas Armstrong desired me, that none of my Servants might come up, but they might be private; so what they wanted I went down for, a Bottle of wine or so. The substance of their Discourse was, how to surprize the King's Guards: And in order to that, the Duke of Monmouth, my Lord Grey, and Sir Thomas Armstrong, as I remember, went one night to the Mews, or thereabout, to see the King's Guards. And the next time they came to my House, I heard Sir Thomas Armstrong say, the Guards were very remiss in their places, and not like Soldiers, and the thing was feasible, if they had strength to do it.

Mr. At. Gen. How many Meetings had you there?

Mr. Sheppard. I remember but twice, Sir.

Mr. At. Gen. Did they meet by chance, or had you notice they would be there that night?

Mr. Sheppard. Yes, I did hear it before.

Mr. Sol. Gen. Who had you notice would be there?

Mr. Sheppard. The Duke of Monmouth, my Lord Grey, my Lord Ruffel, Sir Tho. Armstrong, Col. Rumsey, and Mr. Ferguson.

Mr. At. Gen. Did they come with their Coaches, or a foot, in the night time, and in the dark?

Mr. Sheppard. I cannot tell; it was in the Evening, I did not let them in.

Mr. At. Gen. Were there any Coaches at the door?

Mr. Sheppard. None that I heard, or saw, they came not all together, but immediately one after another.

Mr. Serj. Jefferies. Had they any Debate before they went into the Room?

Mr. Sheppard. No, they went readily into the Room.

Mr. Serj. Jefferies. Was my Lord Ruffel both times there?

Mr. Sheppard. Yes, Sir, as I remember.

Mr. Serj. Jefferies. Had you any particular business with my Lord Ruffel, or he with you?

Mr. Sheppard. No, not at that time, but since I have had, about the Affairs of my Lord Shaftsbury.

Mr. Serj. Jefferies. Do you remember, Col. Rumsey at the first time had any Discourse about any private business relating to my Ruffel?

Mr. Sheppard. No, I do not remember it.

Mr. At. Gen. Besides the seizing of the Guards, did they discourse about Rising?

Mr. Sheppard. I do not remember any further Discourse, for I went several times down to fetch Wine, and Sugar, and Nutmeg, and I do not know what was said in my absence.

Mr. Serj. Jefferies. Do you remember any Writings or Papers read at that time?

Mr. Sheppard. None that I saw.

Mr. Serj. Jefferies. Or that you heard of?

Mr. Sheppard. Yes, now I recollect my self, I do remember one Paper was read.

Mr. Serj. Jefferies. To what purpose was it?

Mr. Sheppard. It was somewhat in the nature of a Declaration; it was read by Mr. Ferguson, who was present at the reading, I cannot say, whether they were all present or not. The purport of it was setting forth the Grievances of the Nation, but truly what Particulars I can't tell: It was a pretty large Paper.

Mr. At. Gen. But you can tell the Effect of it, When was that to be set out?

Mr. Sheppard. It was not discoursed, it was shewn only, I suppose, for Approbation.

Mr. At. Gen. Who was it shew'd to?

Mr. Sheppard. Sir Tho. Armstrong.

Mr. Serj. Jefferies. Who else?

Mr. Sheppard. As I remember the Duke was present, and I think Col. Rumsey.

Col. Rumsey. No, I was not, it was done before I came.

Mr. Serj. Jefferies. What was the design of that Paper? Recollect your self, what was the design?

Mr. Sheppard. The design of that Paper, was in the nature of a Declaration, setting forth the Grievances of the Nation, in order to a Rising, I suppose by the purport of the Paper; but cannot remember the particular Words of it.

Foreman of the Jury. Can you say my Lord Ruffel was there, when that Declaration was read, as you call it?

Mr. Sheppard. I can't say that.

Mr. At. Gen. But he was there when they talked of seizing the Guards?

Mr. Sheppard. Yes, my Lord was there then.

L. Ruffel.

L. Russel. Pray, Mr. Sheppard, do you remember the time when these meetings were?

Mr. Sheppard. I can't be positive as to the Time, I remember it was at the time my Lord Shaftsbury was absent from his own House, and he absented himself from his own House about Michaelmas day; but I can't be positive as to the Time.

L. Russel. I never was but once at your House, and there was no such design as I heard of. I desire that Mr. Sheppard may recollect himself.

Mr. Sheppard. Indeed, my Lord, I can't be positive in the times. My Lord, I am sure, was at one meeting.

L. C. J. But was he at both?

Mr. Sheppard. I think so, But it was 8 or 9 Months ago, and I can't be positive.

L. Russel. I can prove I was then in the Country. Col. Rumsey said there was but one meeting.

Col. Rumsey. I do not remember I was at two; if I was not, I heard Mr. Ferguson relate the Debates of the other meeting to my Lord Shaftsbury.

L. Russel. Is it usual for the Witnesses to hear one another?

L. C. J. I think your Lordship need not concern your self about that, for I see the Witnesses are brought in one after another.

L. Russel. There was no design.

Mr. Serj. Jefferies. He hath sworn it.

Mr. At. Gen. Swear my Lord Howard.

[Which was done.]

Pray will your Lordship give an account to the Court, what you know of a Rising designed before my Lord Shaftsbury went away, and afterwards how it was continued on.

L. Howard. My Lord, I appear with some Confusion. Let no man wonder that it is troublesome to me. My Lord, as to the Question Mr. Attorney puts to me, this is the Account I have to give. 'Tis very well known to every one, how great a ferment was made in the City, upon occasion of the long dispute about the Election of Sheriffs: And this soon produced a greater freedom and liberty of Speech one with another, than perhaps had been used formerly, tho' not without some previous preparations and dispositions made to the same thing. Upon this occasion among others, I was acquainted with Captain Walcot, a Person that had been some Months in England, being returned out of Ireland, and who indeed I had not seen for 11 Years before. But he came to me as soon as he came out of Ireland, and when these unhappy divisions came, he made very frequent applications to me; and tho' he was unknown himself, yet being brought by me he soon gained a confidence with my Lord Shaftsbury, and from him derived it to others, when this unhappy Rent and Division of mind was, he having before got himself acquainted with many Persons of the City, had entered into such Counsels with them, as afterwards had the Effect, which in the ensuing narrative I shall relate to your Lordship. He came to me and told me that they were now sensible all they had was going, that this Force put upon them—

L. C. J. Pray, my Lord, raise your voice, else your Evidence will pass for nothing.

One of the Jury. We cannot hear, my Lord.

L. Howard. There is an unhappy accident hap- pen'd that hath sunk my Voice, I was but just now

acquainted with the Fate of my Lord of Essex—My Lord, I say, He came to me, and did acquaint me, that the People were now so sensible, that all their Interest was going, by that violence offered to the City in their Elections, that they were resolved to take some course to put a stop to it, if it were possible: He told me there were several Consults and Meetings of Persons about it, and several Persons had begun to put themselves into a disposition, and preparation to Act; That some had furnished themselves with very good Horses, and kept them in the most secret and blind Stables they could; That divers had intended it, and for his own part, he was resolved to embark himself in it. And having an Estate in Ireland, he thought to dispatch his Son thither; (for he had a good Real Estate, and a great Stock, how he disposed of his Real Estate I know not;) But he ordered his Son to turn his Stock into money to furnish him for the occasion: This I take to be about August. His Son was sent away. Soon after this, the Son not being yet returned, and I having several accounts from him, wherein I found the Fermentation grew higher and higher, and every day a nearer approach to Action: I told him I had a necessity to go into Essex to attend the Concerns of my own Estate, but told him, how he might by another name convey Letters to me, and gave him a little Cant, by which he might blind and disguise the Matter he wrote about, when I was in the Country. I receiv'd two or three Letters from him, that gave me an Account in that disguised Style, but such as I understood, that the Negotiation which he had with my Correspondents was going on, and in good Condition; and it was earnestly desired, I would come to Town; this was the middle of September. I notwithstanding was willing to see the Result of that great Affair, upon which all Men's Eyes were fixed, which was the Determination of the Shrivalty about that time. So I ordered it to fall into Town, and went to my own House on Saturday night, which was Michaelmas day. On Sunday he came to me, and dined with me, and told me (after a general account given me of the Affairs of the times) that my Lord Shaftsbury was secreted and withdrawn from his own House in Aldersgate Street; and that though he had a Family settled, and had absconded himself from them, and divers others of his Friends and Confidants; yet he did desire to speak with me, and for that purpose sent him to shew me the way to his Lodging: He brought me to a House at the lower end of Wood-Street, one Watson's House, and there my Lord was alone. He told me he could not but be sensible, how innocent soever he was, both he and all honest Men were unsafe, so long as the Administration of Justice was in such Hands as would accommodate all things to the Humor of the Court. That in the Sense of this he thought it but reasonable to provide for his own Safety, by withdrawing himself from his own House into that Retirement. That now he had ripen'd Affairs to that head, and had things in that Preparation, that he did not doubt but he should be able, by those Men that would be in readiness in London, to turn the Tide, and put a stop to the Torrent that was ready to overflow. But he did complain to me, that his Design, and the Design of the Publick was very much obstructed by the unhandsome Deportment of the

the Duke of *Monmouth*, and my Lord *Ruffel*, who had withdrawn themselves, not only from his Assistance, but from their own Engagements and Appointments. For when he had got such a formed Force as he had in *London*, and expected to have it answered by them in the Country, they did recede from it, and told him they were not in a Condition, or Preparation in the Country, to be concurrent with him at that time. This he looked upon but as an artificial Excuse, and as an Instance of their Intentions, wholly to desert him; but notwithstanding there was such Preparation made in *London*, that if they were willing to lose the Honour of being concurrent with him, he was able to do it himself, and did intend speedily to put it into Execution. I asked him, what Forces he had, he said he had enough; says I, what are you assured of? Says he, there is above *Ten Thousand* brisk Boys are ready to follow me, whenever I hold up my Finger: Says I, how have you methoded this, that they shall not be crushed, for there will be a great Force to oppose you? Yes, he answered, but they would possess themselves of the Gates; and these *Ten Thousand* Men in 24 Hours, would be multiplied into five times the Number, and be able to make a Sally out, and possess themselves of *Whitehall*, by beating the Guards. I told him, this was a fair Story, and I had reason to think, a Man of his Figure would not undertake a thing that might prove so fatal, unless it were laid on a Foundation that might give a prudent Man ground to hope it would be successful. He said he was certain of it, but confessed it was a great Disappointment, that these Lords had failed him: I told him, I was not provided with an Answer at that time, That he well knew me, and knew the general Frame and Bent of my Spirit. But I told him, I looked upon it as dangerous, and ought to be laid deep, and to be very well weigh'd and consider'd of; and did not think it a thing fit to be enter'd upon, without the Concurrence of those Lords: And therefore desired, before I discover'd my own Inclination, to discourse with those Lords. He did consent, with much ado; but, says he, you will find they will wave it, and give doubtful and deferring Answers, but you will find this a Truth. I went to *Moor-Park* the next day, where the Duke of *Monmouth* was, and told him the great Complaint my Lord *Shaftsbury* had made, that he failed him: Says he, I think he is mad, I was so far from giving him any Encouragement, that I did tell him from the beginning, and so did my Lord *Ruffel*, there was nothing to be done by us in the Country at that time. I did not then own I had seen my Lord, but speak as if this were brought me by a third Person, because he had not given me liberty to tell them where his Lodging was. Says I, My Lord, I shall be able to give a better account of this in a day or two; Shall I convey it to my Lord, that you are willing to give a Meeting? Yes, says he, with all my Heart: This was the *second, third, or fourth* of *October*; I came to Town on *Saturday*, and was carried to him on *Monday*; and I suppose this was *Tuesday* the *second* of *October*; On *Wednesday* I think I went to him again (but 'tis not very material) and told him I had been with the Duke of *Monmouth*, and given him a punctual Account of what I had from him; and

the Duke did absolutely disown any such thing; and told me, he never did give him any Encouragement to proceed that way, because the Countries were not in a disposition for Action, nor could be put in readiness at that time: Says my Lord *Shaftsbury*, 'Tis false; they are afraid to own it. And, says he, I have reason to believe, there is some artificial Bargain between his Father and him, to save one another: For when I have brought him to Action, I could never get him to put on, and therefore I suspect him: And, says he, several honest Men in the City have puzzled me, in asking how the Duke of *Monmouth* lived: Says he, they puzzled me, and I could not answer the Question; for I know he must have his Living from the King; and says he, We have different Prospects; We are for a *Common-wealth*, and he hath no other Design but his own personal Interest, and that will not go down with my People now (so he called them) they are all for a *Common-wealth*: And then says he, 'Tis to no purpose for me to see him; it will but widen the Breach, and I dare not trust him to come hither. Says I, My Lord, That's a good one indeed, Dare not you trust him, and yet do you send me to him on this Errand? Nay, says he, 'Tis because we have had some Misunderstanding of late; but I believe he is true enough to the Interest. Says I, 'Tis a great Unhappiness to take this Time to fall out; and I think 'tis so great a Design, that it ought to be undertaken with the greatest Strength and Coalition in the Kingdom. Says he, My Friends are now gone so far, that they can't pull their Foot back again without going further; for, says he, it hath been communicated to so many, that 'tis impossible to keep it from taking Air, and it must go on. Says he, We are not so unprovided as you think for; there are so many Men, that you will find as brisk Men as any in *England*. Besides, We are to have 1000 or 1500 Horse, that are to be drawn by insensible Parties into Town, that when the Insurrection is, shall be able to scour the Streets, and hinder them from forming their Forces against us. My Lord, After great Enlargement upon this Head, and Heads of the like nature, I told him I would not leave him thus, and that nothing should satisfy me, but an Interview between him and the Lords: No, I could not obtain it: But if I would go and tell them what a Forwardness he was in, and that, if they would do themselves Right, by putting themselves upon correspondent Action in their respective Places, and where their Interest lay well, otherwise he would go away without them. So I went again to the Duke of *Monmouth*, I spake to him only (I never spake to my Lord *Ruffel* then, only we were together, but I had never come to any close Conjunction of Counsels in my Life with him at that time.) Says I to the Duke, This Man is mad, and his Madness will prove fatal to us all; he hath been in a Fright by being in the *Tower*, and carries those Fears about him, that cloud his Understanding: I think his Judgment hath deserted him, when he goes about with those strange sanguine Hopes, that I can't see what should support him in the Ground of them. Therefore says I, Pray will you give him a Meeting. God-so, says the Duke, with all my Heart, and I desire nothing more. Now, I told him, I had been with my Lord *Shaftsbury*, with

with other Enlargements that I need not trouble your Lordship with : Well, says he, pray go to him, and try if it be possible to get a Meeting : So I went to him, and told him. Says I, This is a great Unhappiness, and it seems to be a great Absurdity, that you are so forward to act alone in such a thing as this. Pray, says I, without any more to do, since you have this Confidence to send for me, let me prevail with you to meet them, and give them an Interview, or else you and I must break. I will no longer hold any Correspondence, unless it be so. Says he, I tell you they will betray me. In short, He did with much importunity yield, That he would come out the next Night in a Disguise. By this time it was *Saturday*, I take it to be the *sixth* of *October* ; an Almanack will settle that : So the next Night being *Sunday*, and the Shops shut, he would come out in a Concealment, be carried in a Coach, and brought to his own House, which he thought then was safest. I came and gave the Duke of *Monmouth* an account of it ; the Duke, I suppose, conveyed the same Understanding to my Lord *Ruffel* ; and, I suppose, both would have been there accordingly, to have given the Meeting ; but next Morning I found Colonel *Rumsey* had left a Note at my House, that the Meeting could not be that Day. Then I went to the Duke of *Monmouth*, and he had had the account before, That my Lord *Shaftsbury* did apprehend himself to be in some Danger in that House, and that the Apprehension had occasioned him to remove ; but we should be sure to hear from him in two or three Days. We took it as a Waver, and thought he did from thence intend to abscond himself from us, and it proved so to me, for from that time I never saw him. But Captain *Walcot* came to me, and told me, that he was withdrawn, but it was for fear his Lodging might be discovered, but he did not doubt, but in a Week he would let me know where his Lodging was. But told me within such a time, which I think was eight or ten Days, there would be a Rising ; and I told the Duke of *Monmouth*, and I believe he told my Lord *Ruffel* ; and we believed his Frenzy was now grown to that height, that he would rise immediately, and put his Design in execution ; so we endeavour'd to prevent it. Upon which my Lord *Ruffel* (I was told) and the Duke of *Monmouth*, did force their way to my Lord *Shaftsbury*'s, and did persuade him to put off the Day of his Rendezvous. I had not this from my Lord *Ruffel*, for I had not spoke a word to him ; but the Duke told me, my Lord *Ruffel* had been with him (I had indeed an intimation that he had been with him ;) but the Duke told me, says he, I have not been with him, but my Lord *Ruffel* was, having been convey'd by Colonel *Rumsey*. After this Day was put off, it seems it was put off with this condition, That those Lords, and divers others, should be in a readiness to raise the Country about that Day Fortnight, or thereabouts ; for there was not above a Fortnight's time given : And says the Duke of *Monmouth*, We have put it off, but now we must be in Action, for there's no holding it off any longer. And, says he, I have been at *Wapping* all Night, and I never saw a company of bolder, and brisker Fellows in my Life : And, says he, I have been round the Tower, and seen the Avenues of it ; and

I do not think it will be hard, in a little time, to possess our selves of it : But, says he, they are in the wrong way, yet we are engaged to be ready for them in a Fortnight, and therefore, says he, now we must apply our selves to it as well as we can. And thereupon I believe they did send into the Country ; and the Duke of *Monmouth* told me, he spake to Mr. *Trenchard*, who was to take particular Care of *Somersetshire*, with this Circumstance : Says he, I thought Mr. *Trenchard* had been a brisker Fellow ; for when I told him of it, he looked so pale, I thought he would have swooned, when I brought him to the brink of Action ; and said, I pray go and do what you can among your Acquaintance : And truly, I thought it would have come then to Action. But I went the next day to him, and he said it was impossible ; they could not get the Gentlemen of the Country to stir yet.

L. *Ruffel*. My Lord, I think I have very hard measure, here is a great deal of Evidence by Hear-say.

L. C. J. This is nothing against you, I declare it to the Jury.

Mr. *At. Gen.* If it please you, my Lord, Go on in the method of Time. This is nothing against you, but it's coming to you, if your Lordship will have Patience, I assure you.

L. *Howard*. This is just in the Order it was done. When this was put off, then they were in a great hurry ; and Captain *Walcot* had been several times with me, and discoursed of it. But upon this Disappointment they said, it should be the Dishonour of the Lords, that they were backward to perform their Parts ; but still they were resolved to go on. And this had carried it to the latter end of *October*. About the 17th or 18th, Captain *Walcot* came to me, and told me, now they were resolv'd positively to rise, and did believe that a smart Party might perhaps meet with some great Men. Thereupon I told the Duke of it ; I met him in the Street, and went out of my own Coach into his, and told him, That there was some dark intimation, as if there might be some Attempt upon the King's Person ; with that he struck his Breast with a great Emotion of Spirit, and said, God-so, Kill the KING ! I will never suffer that. Then he went to the *Play-house* to find Sir *Tho. Armstrong*, and send him up and down the City to put it off, as they did formerly ; and it was done with that Success, that we were all quieted in our minds, that at that time nothing would be done. But upon the Day the King came from *New-Market*, we din'd together ; the Duke of *Monmouth* was one, and there we had a Notion conveyed among us, that some bold Action should be done that Day ; which comparing it with the King's Coming, we concluded it was design'd upon the King. And a remember my Lord *Grey*, says he, by God, If they do attempt any such thing, it can't fail. We were in great anxiety of mind, till we heard the King's Coach was come in, and Sir *Thomas Armstrong* not being there, we apprehended that he was to be one of the Party (for he was not there.) This failing, it was then next determined (which was the last Alarm and News I had of it) to be done upon the 17th of *November*, the Anniversary of Queen *Elizabeth* ; and I remember it by this Remark I made my self, That I fear'd it had been discovered,

covered, because I saw a Proclamation a little before, forbidding publick Bonfires without Leave of my Lord Mayor. It made some Impressions upon me, that I thought they had got an intimation of our Intention, and had therefore forbid that Meeting. This therefore of the 17th of November being also disappointed, and my Lord *Shaftsbury*, being told things were not ripe in the Country, took Shipping and got away; and from that time I heard no more of him till I heard he was dead. Now Sir, after this we all began to lie under the same Sense and Apprehensions that my Lord *Shaftsbury* did, That we had gone so far, and communicated it to so many, that it was unsafe to make a Retreat; and this being considered, it was also considered, that so great an Affair as that was, consisting of such infinite Particulars, to be managed with so much Finesse, and to have so many Parts, it would be necessary, that there should be some General Council, that should take upon them the Care of the whole. Upon these Thoughts we resolved to erect a little *Cabal* among our selves, which did consist of six Persons; and the Persons were, The Duke of *Monmouth*, my Lord of *Effex*, my Lord *Ruffel*, Mr. *Hambden Junr.* *Algernoon Sidney*, and my self.

Mr. *At. Gen.* About what time was this, when you setled this Council?

L. *Howard.* It would have been proper for me in the next place to tell you that, and I was coming to it. This was about the middle of January last (as near as I can remember;) for about that time we did meet at Mr. *Hambden's* House.

Mr. *At. Gen.* Name those that met.

L. *Howard.* All the Persons I named before; that was, the Duke of *Monmouth*, my Lord *Effex*, my Lord *Ruffel*, Col. *Sidney*, Mr. *Hambden Junr.* and my self. When we met there, it was presently agreed what their proper Province was, which was to have a care of the whole: And therefore it was necessary some general things should fall under our Care and Conduct, which could not possibly be conducted by individual Persons. The Things that did principally challenge this Care, we thought were these; Whether the Insurrection was most proper to be begun in *London*, or in the Country, or both at one instant. This stood upon several different Reasons: It was said in the Country; and I remember the Duke of *Monmouth* insisted upon it, that it was impossible to oppose a Formed, well Methodiz'd, and Governed Force, with a Rabble hastily got together; and therefore whatever Numbers could be gathered in the City, would be suppressed quickly before they could Form themselves: Therefore it would be better to begin it at such a distance from the Town, where they might have an opportunity of Forming themselves, and would not be subject to the like panick Fear, as in the Town, where half an hour would convey the News to those Forces, that in another half hour would be ready to suppress them.

Mr. *At. Gen.* Was this determined among you all?

L. *Howard.* In this manner that I tell you, Why it was necessary to be done at some reasonable distance from the Town. And from thence it was likewise considered, that the being so remote from the Town, it would put

the King upon this Dilemma, that either the King would send his Forces to subdue them, or not; if he did, he must leave the City naked, who being *Proximi Dispositioni* to Action, it would give them occasion to Rise, and come upon the back of the King's Forces; if he did not send, it would give them time to form their Number, and be better ordered.

Mr. *At. Gen.* My Lord, We do not desire all your Discourse and Debates; What was your other General thing?

L. *Howard.* The other was, What Countries and Towns were the fittest and most disposed to Action: And the Third, What Arms were necessary to be got, and how to be disposed: And a Fourth (which should have been indeed first in Consideration) propounded by the Duke of *Monmouth*, That it would be absolutely necessary to have some Common Bank of 25 or 30000 *l.* to answer the Occasions of such an Undertaking. Nothing was done, but these Things were offered then to our Consideration, and we were to bring in our United Advice concerning them. But the Last and Greatest was, How we might so order it, as to draw *Scotland* into a Consent with us, for we thought it necessary that all the Diversion should be given. This was the Last.

Mr. *At. Gen.* Had you any other Meetings?

L. *Howard.* We had about ten Days after this at my Lord *Ruffel's*.

Mr. *At. Gen.* The same Persons?

L. *Howard.* Every one of the same Persons then meeting.

Mr. *At. Gen.* What Debate had you there?

L. *Howard.* Then it was so far, as we came to a Resolution, That some Persons should be sent to my Lord *Argyle*, to settle an Understanding with him, and that some Messengers should be dispatch'd into *Scotland*, that should invite some Persons hither, that were judged most able to understand the Estate of *Scotland*, and give an account of it: The Persons agreed on were, Sir *John Cockram*, my Lord *Melville*, and another, whose Name I have since been told upon my Description, Sir *Cambel*. For this purpose we did order a Person should be thought on that was fit —

Mr. *At. Gen.* Do you know who was sent, and what was done upon this Resolution?

L. *Howard.* I have heard (I never saw him in six Months before) that *Aaron Smith* was sent.

Mr. *At. Gen.* Who was intrusted to take care of that Business?

L. *Howard.* Colonel *Sidney*. We, in discourse, did agree to refer it to Colonel *Sidney* to have the care of sending a Person.

Mr. *At. Gen.* Who acquainted you *Aaron Smith* was sent?

L. *Howard.* Colonel *Sidney* told me he had sent him, and given him sixty Guineas for his Journey.

Mr. *At. Gen.* What more Meetings had you?

L. *Howard.* We did then consider that these Meetings might have occasioned some Observation upon us, and agreed not to meet again till the Return of that Messenger. He was gone, I believe, near a Month before we heard any thing of him, which we wonder'd at, and feared some Miscarriage, but if his Letter had miscarried, it could have done no great Hurt, for it carried only a kind of Cant in it; It was

was under the Disguise of a Plantation in *Carolina*.

Mr. At. Gen. You are sure my Lord Ruffel was there?

L. Howard. Yes, Sir, I wish I could say he was not.

Mr. At. Gen. Did he sit there as a Cypher, what did my Lord say?

L. Howard. Every one knows my Lord Ruffel is a Person of great Judgment, and not very lavish in Discourse.

Mr. Serj. Jefferies. But he did consent?

L. Howard. We did not put it to the Vote, but it went without contradiction, and I took it that all there gave their Consent.

Mr. Sol. Gen. The raising of Money you speak of, was that put into any way?

L. Howard. No, But every Man was to put themselves upon thinking of such a way, that Money might be collected without administering Jealousy.

Mr. At. Gen. Were there no Persons to undertake for a Fund?

L. Howard. No, I think not. However it was but Opinion, the thing that was said, was jokingly, rather than any thing else, that my Lord of *Effex* had dealing in Money, and therefore he was thought the most proper Person to take the care of those things; but this was said rather by way of Mirth, than otherwise.

Mr. At. Gen. What do you know else, my Lord?

L. Howard. I was going to tell you, I am now at a full Stop. For it was 6 Weeks or more, before *Smith's* Return, and then drew on the time, that it was necessary for me to go into *Effex*, where I had a small Concern; there I staid about three Weeks; when I came back, I was informed that he was returned, and Sir *John Cockram* was also come to Town.

L. C. J. Did you meet after this?

L. Howard. No, my Lord, I tell you, that I was forced to go three Weeks upon the account of my Estate, and afterwards I was necessitated to go to the Bath, where I spent five Weeks, and the time of coming from the Bath to this time, is five Weeks more; so that all this time hath been a perfect Parenthesis to me, and more than this, I know not.

L. C. J. My Lord Ruffel, Now, if your Lordship pleases, is the time for you to ask him any Questions,

L. Ruffel. The most he hath said of me, my Lord, is only Hear-say, the two times we met, it was upon no formed Design, only to talk of News, and talk of things in general.

L. C. J. But I will tell you what it is he testifies, that comes nearest your Lordship, that so you may consider of it, if you will ask any Questions. He says, after my Lord *Shaftsbury* went off (all before is but Inducement as to any thing that concerns your Lordship, and does not particularly touch you) after his going away, he says the Party concerned with my Lord *Shaftsbury* did think fit to make choice of six Persons to carry on the Design of an Insurrection or Rising, as he calls it, in the Kingdom. And that to that purpose Choice was made of the Duke of *Monmouth*, my Lord of *Effex*, your Lordship, my Lord *Howard*, Colonel *Sidney*, and Mr. *Hambden*.

L. Ruffel. Pray, my Lord, not to interrupt you,

by what Party (I know no Party) were they chosen?

L. Howard. 'Tis very true, we were not chosen by Community, but did erect our selves by mutual Agreement, one with another into this Society.

L. Ruffel. We were People that did meet very often.

L. C. J. Will your Lordship please to have any other Questions asked of my Lord Howard?

L. Ruffel. He says it was a formed Design, when we met about no such thing.

L. C. J. He says, That you did consult among your selves, about the Raising of Men, and where the Rising should first be, whether in the City of *London*, or in more Foreign Parts, that you had several Debates concerning it; he does make mention of some of the Duke of *Monmouth's* Arguments for its being formed in Places from the City; he says, you did all agree not to do any thing further in it, till you had consider'd how to raise Money and Arms: And to engage the Kingdom of *Scotland* in this Business with you; that it was agreed among you, that a Messenger should be sent into the Kingdom of *Scotland*. Thus far he goes upon his own Knowledge, as he saith, what he says after, of sending a Messenger, is by Report only.

Mr. At. Gen. I beg your pardon, my Lord.

L. C. J. 'Tis so, that what he heard concerning the sending of *Aaron Smith*.

Mr. At. Gen. Will you ask him any Questions?

L. Ruffel. We met, but there was no Debate of any such thing, nor putting any thing in method. But my Lord *Howard* is a Man hath a voluble Tongue, talks very well, and is full of Discourse, and we were delighted to hear him.

Mr. At. Gen. I think your Lordship did mention the *Cambells*?

L. Howard. I did stammer it out, but not without a Parenthesis, it was a Person of the Alliance, and I thought of the Name of the *Argyles*.

L. Ruffel. I desire your Lordship to take notice, that none of these Men I ever saw; my Lord *Melville* I have seen, but not upon this account.

Mr. Atterbury sworn.

Mr. At. Gen. *Aaron Smith* did go, and *Cambell* he went for, is here taken. This is the Messenger. Pray what do you know of the Apprehending of the *Cambells*?

Mr. Atterbury. If it please your Lordship, I did not apprehend Sir *Hugh Cambell* my self, but he is now in my Custody; he was making his Escape out of a Woodmonger's House, both He and his Son.

Mr. At. Gen. How long did he own he had been at *London*?

Mr. Atterbury. Four Days, and that in that time he had been at their Lodgings; and that he and his Son, and one *Baily*, came to Town together.

Mr. At. Gen. My Lord, we shall besides this, (now we have fixed this upon my Lord) give you an account, that these Persons, that were to Rise, always took them as their Pay-masters, and expected their Assistance. Mr. *West*, Mr. *Keeling* and Mr. *Leigh*.

Mr. *West* Sworn.

Mr. *At. Gen.* That which I call you to, is to know whether or no, in your managery of this Plot, you understood any of the Lords were concerned, and which?

Mr. *West.* My Lord, As to my Lord *Ruffel*, I never had any Conversation with him at all, but that I have heard in this, That in the Insurrection in November, Mr. *Ferguson*, and Colonel *Rumsey*, did tell me that my Lord *Ruffel* intended to go down and take his Post in the *West*, when Mr. *Trenchard* had failed them.

L. C. J. What is this?

Mr. *At. Gen.* We have proved my Lord privy to the Consults, now we go about to prove the Under-actors did know it.

Mr. *West.* They always said my Lord *Ruffel* was the Man they most depended upon, because he was a Person looked upon as of great Sobriety.

L. *Ruffel.* Can I hinder People from making use of my name? To have this brought to influence the Gentlemen of the Jury, and inflame them against me, is hard.

L. C. J. As to this, the giving Evidence by Hear-say, will not be Evidence; what Colonel *Rumsey* or Mr. *Ferguson* told Mr. *West*, is no Evidence.

Mr. *At. Gen.* 'Tis not Evidence to convict a Man, if there were not plain Evidence before, but it plainly confirms what the other Swears. But I think we need no more.

Mr. *Serj. Jefferies.* We have Evidence without it, and will not use any thing of Garniture; we will leave it as 'tis, we won't trouble your Lordship any further. I think, Mr. *Attorney*, we have done with our Evidence.

L. C. J. My Lord *Ruffel*, the King's Counsel do think to rest upon this Evidence that they have given against your Lordship. I would put your Lordship in mind of those things that are material in this Case, and proved against your Lordship; Here is Colonel *Rumsey* does prove against your Lordship this, That he was sent upon an Errand, which in truth, was Traiterous, it was a Traiterous Errand sent from my Lord *Shaftsbury* by him to that Meeting. He does Swear your Lordship was at that Meeting, and he delivered his Errand to them, which was to know what account could be given concerning the Design of the Insurrection at *Taunton*, and he says, your Lordship being there, this return was made, That Mr. *Trenchard* had failed them in his undertaking in the Business, and therefore my Lord *Shaftsbury* must be contented, and sit down satisfied as to that time. Mr. *Sheppard* does likewise speak of the same time, that your Lordship was there with the rest of the Persons, the Duke and others; That there was a Discourse concerning an Insurrection to have been made, (though he is not so particular, as to the very Notion of it, as Colonel *Rumsey* is,) as to the time they do agree.

L. *Ruffel.* Col. *Rumsey* is not positive that I say'd, or heard any thing.

L. C. J. My Lord, If you will have a little Patience to hear me, I will tell you what it presses you; there is this which I have mentioned, and Mr. *Sheppard* does say, there was a Paper purporting a Declaration then read among the Company there, which was to be Printed upon

the Rising, setting forth the Oppressions and Grievances of the Nation: And then my Lord *Howard*, (after a great Discourse concerning the many Designs of my Lord *Shaftsbury*) comes particularly to your Lordship and says, that Six of you, as a chosen Council among your selves, (not that you were actually chosen) but as a chosen Council among your selves, did undertake to manage the great matter of the Insurrection, and Raising of Men in order to surprize the King's Guards, and for to Rise, (which is a Rebellion in the Nation.) He says, that you had several Consults concerning it. I told you the several particulars of those Consults he mentioned: Now it is fit for your Lordship, and 'tis your time to give some Answer to these things.

L. *Ruffel.* My Lord, I cannot but think my self mighty unfortunate to stand here charged with so High and Heinous a Crime, and that intricated and intermixed with the Treasons and horrid Practices and Speeches of other People, the King's Counsel taking all advantages, and improving and heightening things against me. I am no Lawyer, a very unready speaker, and altogether a stranger to things of this Nature, and alone, and without Counsel. Truly my Lord, I am very sensible, I am not so provided to make my just Defence as otherwise I should do. But my Lord, you are equal, and the Gentlemen of the Jury, I think, are Men of Consciences, they are Strangers to me, and I hope they value Innocent Blood, and will consider the Witnesses that Swear against me, Swear to save their own Lives; for howsoever Legal Witnesses they may be accounted, they can't be Credible. And for Col. *Rumsey*, who 'tis Notoriously known hath been so highly obliged by the King and the Duke, for him to be capable of such a design of murdering the King! I think no body will wonder, if to save his own Life, he will endeavour to take away mine; neither does he swear enough to do it. And then if he did, the Time by the 13th of this King is Elapsed, it must be, as I understand by the Law, prosecuted within six Months, and by the 25 E. 3. a Design of Levying War is no Treason unless by some Overt Act it appear. And my Lord, I desire to know what Statute I am to be Tryed upon, for Generals, I think, are not to be gone upon in these Cases.

L. C. J. (To the *Attorney General*.) Mr. *Attorney*, You hear what it is my Lord objects to this Evidence, He says, that as to those Witnesses that testify any thing concerning him, above six Months before he was Prosecuted, he conceives the Act of Parliament, upon which he takes himself to be Indicted, does not extend to it, for that says that within Six Months there ought to have been a Prosecution; And my Lord tells you, that he is advised, that a design of Levying War, without actual Levying of War, was not Treason before that Statute.

Mr. *At. Gen.* To satisfy my Lord, He is not Indicted upon that Statute, we go upon the 25 E. 3. But then for the next Objection, surely my Lord is informed wrong. To Raise a Rebellion or a Conspiracy within the Kingdom, is it not that which is called Levying of War in that Statute, but to Raise a Number of Men to break Prisons, &c. which is not so directly tending against the Life of the King. To prepare Forces to fight against the King, that is a design within that Statute to kill the King; And to design to de-

depose the King, to imprison the King, to raise the Subjects against the King, these have been settled by several Resolutions to be within that Statute, and Evidences of a Design of killing the King.

L. Russel. My Lord, This is a matter of Law ; Neither was there but one meeting at Mr. Sheppard's House.

Mr. At. Gen. My Lord, If you admit the Fact, and will rest upon the Point of Law, I am ready to argue it with any of your Counsel. I will acquaint your Lordship how the Evidence stands. There is one Evidence since Christmas last.

L. Russel. That's not to the business of Sheppard's House. My Lord, one Witness will not convict a Man of Treason.

Mr. At. Gen. If there be one Witness of one Act of Treason, and another of a 2d, another of a 3d, that manifest the same Treason to depose or destroy the King, that will be sufficient.

L. C. J. My Lord, That has been resolved, the two Witnesses the Statute requires, are not to the same individual Act, but to the same Treason, if they be several Acts declaring the same Treason, and one Witness to each of them, they have been reckoned two Witnesses within the Statute of *Edw. 6.*

Mr. Serj. Jefferies. If my Lord will call his Witness—

L. Russel. This is tacking of two Treasons together, here is one in *November* by one Witness, and then you bring on another with a Discourse of my Lord *Howard*, and he says the Discourse passed for Pleasure.

L. C. J. If your Lordship do doubt whether the Fact proved against your Lordship be Treason or not within the Statute of *E. 3.* and you are contented that the Fact be taken as proved against your Lordship, and so desire Counsel barely upon that, that is matter of Law. You shall have it granted.

L. Russel. I am not knowing in the Law. I think 'tis not proved, and if it was, I think it's not punishable by that Act. I desire Counsel may be admitted upon so Nice a Point. My Life lies at Stake ; here's but one Witness that speaks of a Message.

Mr. Serj. Jefferies. The Fact must be left to the Jury, Therefore if my Lord *Russel* hath any Witnesses to call, in Opposition these matters, let him.

L. C. J. My Lord, There can be no matter of Law but upon a Fact admitted and stated.

L. Russel. My Lord, I do not think it proved, I hope you will be of Counsel for me ; its very hard for me that my Counsel may not speak for me in a point of Law.

L. C. J. My Lord, To hear your Counsel concerning this Fact, that we cannot do, it was never done, nor will be done. If your Lordship doubts whether this Fact is Treason or not, and desire your Counsel may be heard to that, I will do it.

L. Russel. I doubt in Law, and do not see the Fact is proved upon me.

Mr. Sol. Gen. Will your Lordship please to call any Witness to the Matter of Fact ?

L. Russel. 'Tis very hard a Man must lose his Life upon Hear-say. Colonel *Rumsey* says he brought a Message, which I will swear I never heard nor knew of. He does not say he spake

to me, or I gave him any Answer. *Mr. Sheppard* remembers no such thing, he was gone to and again, here is but one Witness, and seven Months ago.

Mr. At. Gen. My Lord, If there be any thing that is Law, you shall have it.

L. Russel. My Lord, Colonel *Rumsey*, the other day before the King, could not say that I heard it, I was in the Room, but I came in late, they had been there a good while ; I did not stay above a quarter of an hour, tasting *Sherry* with *Mr. Sheppard*.

L. C. J. Read the Statute of 25 *E. 3. c. 2.* My Brothers desire to have it read.

Cl. of Cr. Whereas divers opinions have been before this time, in what Case Treason shall be said, and in what not : The King at the Request of the Lords and of the Commons, hath made a Declaration in the manner as hereafter followeth. That is to say, when a Man doth compass or imagine the Death of our Lord the King, or of our Lady his Queen, or of their Eldest Son and Heir ; or if a Man do Violate the King's Companion, or the King's Eldest Daughter unmarried, or the Wife of the King's Eldest Son and Heir ; or if a Man do levy War against our Lord the King, in his Realm, or be adherent to the King's Enemies in his Realm, giving to them Aid and Comfort in the Realm or elsewhere, and thereof be proveable attainted of open Deed by People of their Condition. And if a Man counterfeit the King's Great or Privy Seal, or his Monney : And if a Man bring false Monney into this Realm, counterfeit to the Monney of England, as the Monney called *Lushburgh*, or other like to the said Monney of England, knowing the Monney to be false, to Merchandise or make Payment in default of our said Lord the King, and of his People : And if a Man Steal the Chancellor, Treasurer, or the King's Justices of the one Bench or the other, Justices in Eyre, or Justices of Assize, and all other Justices designed to hear and determine, being in their places during their Offices. And it is to be understood that in the Cases above rehearsed, that ought to be Judged Treason, which extends to our Lord the King, and his Royal Majesty.

L. C. J. My Lord, That which is urged against you by the King's Counsel, is this, You are accused by the Indictment of compassing and designing the King's Death, and of endeavouring to Raise an Insurrection in order to it ; That, that they do say, is, that these Councils that your Lordship hath taken, are Evidences of your compassing the King's Death, and are Overt Acts, declaring the same ; and upon that it is they insist your Lordship to be Guilty within that Statute.

L. Russel. It is in a Point of Law, and I desire Counsel.

Mr. *At. Gen.* Admit your Consultations, and we will hear them.

L. C. J. I would set your Lordship right, for probably you may not apprehend the Law in this Case; If your Counsel be heard, they must be heard to this, That taking it, that my Lord *Ruffel* has consulted in this manner, for the Raising of Forces within this Kingdom, and making an Insurrection within this Kingdom, as Colonel *Rumsey* and my Lord *Howard* have deposed, whether then this be Treason, we can hear your Counsel to nothing else.

L. *Ruffel*. I do not know how to answer to it. The point methinks must be quite otherwise, that there should be Two Witnesses to one thing at the same time.

Mr. *At. Gen.* Your Lordship remembers, in my Lord *Stafford's* Case, there was but one Witness to one Act in *England*, and another to another in *France*.

L. *Ruffel*. It was to the same point.

Mr. *At. Gen.* To the general point, the lopping point.

Mr. *Serj. Jefferies*. There was not so much Evidence against him, as there is against your Lordship.

L. C. J. My Lord, If your Lordship will say any thing, or call any Witnesses to disprove what either of these Gentlemen have said, we will hear your Lordship what they say. But if you can't contradict them by Testimony, it will be taken to be a Proof. And the way you have to disprove them, is to call Witnesses, or by asking Questions, whereby it may appear to be untrue.

Mr. *Sol. Gen.* If you have any Witnesses, call them, my Lord.

L. *Ruffel*. I do not think they have proved it. But then it appears by the Statute, that Levying War is Treason, but a Conspiracy to Levy War is no Treason, if nothing be done, 'tis not Levying War within the Statute. There must be manifest Proof of the matter of Fact, not by Inference.

Mr. *At. Gen.* I see that is taken out of my Lord *Coke*. Levying War is a distinct branch of the Statute, and my Lord *Coke* explains himself afterwards, and says, 'tis an Assuming of Royal Power, to Raise for particular purposes.

Just. Withins. Unless matter of Fact be agreed, we can never come to argue the Law.

L. *Ruffel*. I came in late.

Mr. *Sol. Gen.* Pray, my Lord, has your Lordship any Witnesses to call, as to this matter of Fact?

L. *Ruffel*. I can prove I was out of Town when one of the meetings was, but Mr. *Sheppard* can't recollect the Day, for I was out of Town all that time. I never was but once at Mr. *Sheppard's*, and there was nothing undertaken of viewing the Guards while I was there; Colonel *Rumsey*, Can you Swear positively, that I heard the Message, and gave any Answer to it?

L. C. J. (To Colonel *Rumsey*.) Sir, Did my Lord *Ruffel* hear you, when you deliver'd the Message to the Company? Were they at the Table, or where were they?

Col. *Rumsey*. When I came in they were standing at the fire-side, but they all came from the fire side to hear what I said.

L. *Ruffel*. Colonel *Rumsey* was there when I came in.

Col. *Rumsey*. No, my Lord. The Duke of *Monmouth* and my Lord *Ruffel* went away together, and my Lord *Grey* and Sir *Thomas Armstrong*.

L. *Ruffel*. The Duke of *Monmouth* and I came together, and you were standing at the Chimney when I came in; you were there before me. My Lord *Howard* hath made a long Narrative here of what he knew, I do not know when he made it, or when he did recollect any thing; 'tis but very lately, that he did declare and protest to several People, That he knew nothing against me, nor of any Plot I could in the least be questioned for.

L. C. J. If you will have any Witnesses called to that, you shall, my Lord.

L. *Ruffel*. My Lord *Anglesey*, and Mr. *Edward Howard*.

My Lord *Anglesey* stood up.

L. C. J. My Lord *Ruffel*, What do you ask my Lord *Anglesey*?

L. *Ruffel*. To declare what my Lord *Howard* told him about me, since I was confined.

L. *Anglesey*. My Lord, I chanced to be in Town the last Week, and hearing my Lord of *Bedford* was in some Distress and Trouble, concerning the Affliction of his Son, I went to give him a Visit, being my old Acquaintance, of some 53 Years standing. I believe, for my Lord and I were bred together at *Maudlin-Colledge* in *Oxon*, I had not been there but a very little while, and was ready to go away again, after I had done the good Office I came about, but my Lord *Howard* came in, I don't know whether he be here.

L. *Howard*. Yes, Here I am to serve your Lordship.

L. *Anglesey*. And sat down on the other side of my Lord of *Bedford*, and he began to comfort my Lord, and the Arguments he used for his Comfort, were, My Lord, You are happy in having a wise Son, and a Worthy Person, one that can never sure be in such a Plot as this, or suspected for it, and that may give your Lordship reason to expect a very good Issue concerning him, I know nothing against him, or any Body else, of such a Barbarous Design, and therefore your Lordship may be comforted in it. I did not hear this only from my Lord *Howard's* Mouth, but at my own home upon the *Monday* after, for I use to go to *Totteridge* for fresh Air; I went down on *Saturday*, this happen'd to be on *Friday*, (my Lord being here, I am glad, for he can't forget this Discourse,) and when I came to Town on *Monday*, I understood that my Lord *Howard* upon that very *Sunday* had been at Church with my Lady *Chaworth*. My Lady has a Chaplain, it seems, that preaches there, and does the Offices of the Church, but my Lady came to me in the Evening. This I have from my Lady——

L. C. J. My Lord, What you have from my Lady is no kind of Evidence at all.

L. *Anglesey*. I don't know what my Lord is, I am acquainted with none of the Evidence; nor what hath been done. But my Lady *Chaworth* came to me, and acquainted me, There was some Suspicion——

Mr. *Serj. Jefferies*. I don't think it fit for me to interrupt a Person of your Honour, my Lord, but your Lordship knows in what place we stand

stand here, what you can say of any thing you heard of my Lord *Howard*, we are willing to hear, but the other is not Evidence. As the Court will not let us offer Hear-says, so neither must we that are for the King permit it.

L. Anglesey. I have told you what happened in my Hearing.

Then Mr. Howard stood up.

L. C. J. Come *Mr. Howard*, What do you know?

Mr. Howard. I must desire to say something of my self and my Family first: My Lord and I have been very intimate, not only as Relations, but as dear Friends. My Lord, I have been of a Family known to have great Respect and Duty for the King, and I think there is no Family in the Nation so numerous, that hath expressed greater Loyalty, upon which account I improved my Interest in my Lord *Howard*; I endeavoured, upon the great Misunderstanding of the Nation, (if he be here he knows it,) to persuade him to apply himself to the King, to serve him in that great difficulty of State, which is known to all the World. I sometimes found my Lord very forward, and sometimes I soften'd him, upon which Parly, upon his Permission, and more upon my own Inclination of Duty, I made several Applications to Ministers of State, (and I can name them) that my Lord *Howard* had a great desire of serving the King in the best way of Satisfaction, and particularly in the great Business of his Brother. I wonder'd there should be so much sharpness for a matter of Opinion, and I told my Lord so, and we had several Disputes about it. My Lord, I do say this before I come to the thing. After this I did partly by his Permission, and partly by my own Inclination, to serve the King, because I thought my Lord *Howard* to be a Man of Parts, and saw him a Man that had Interest in the Nation, tell my Lord *Fewersham*, that I had prevailed with a Relation of mine, that may be he might think opposite, that perhaps might serve the King in this great Difficulty that is emergent, and particularly that of his Brother. My Lord *Fewersham* did receive it very kindly, and I writ a Letter to him to let him know how I had soften'd my Lord, and that it was my desire he should speak with my Lord at *Oxon*. My Lord *Fewersham* gave me a very kind Account when he came again, but he told me——

L. C. J. Pray apply your self to the matter you are called for.

Mr. Howard. This it may be is to the matter, when you have heard me; for I think I know where I am, and what I am to say.

L. C. J. We must desire you not to go on thus.

Mr. Howard. I must satisfy the World, as well as I can, as to my self, and my Family, and pray do not interrupt me. After this, my Lord, there never passed a Day for almost——

L. C. J. Pray speak to this matter.

Mr. Howard. Sir, I am coming to it.

L. C. J. Pray, Sir, be directed by the Court.

Mr. Howard. Then now Sir, I will come to the Thing. Upon this ground I had of my Lord's Kindness, I applied my self to my Lord in this present Issue, on the breaking out of this Plot.

My Lord, I thought certainly, as near as I could discern him, (for he took it upon his Honour, his Faith, and as much as if he had taken an Oath before a Magistrate,) that he knew nothing of any Man concerned in this Business, and particularly of my Lord *Ruffel*, whom he vindicated with all the Honour in the World. My Lord, it is true, was afraid of his own Person, and as a Friend, and a Relation, I concealed him in my House, and I did not think it was for such a Conspiracy, but I thought he was unwilling to go to the Tower for nothing again. So that if my Lord *Howard* has the same Soul on *Monday* that he had on *Sunday*, this can't be true that he swears against my Lord *Ruffel*. This I say upon my Reputation, and Honour, and something I could say more, he added, he thought my Lord *Ruffel* did not only unjustly suffer, but he took God and Men to Witness, He thought him the worthiest Person in the World, I am very sorry to hear any Man of my Name should be guilty of these Things.

L. Ruffel. Call *Dr. Burnet*. Pray *Dr. Burnet*, Did you hear any thing from my Lord *Howard*, since the Plot was discover'd, concerning me?

Dr. Burnet. My Lord *Howard* was with me the Night after the Plot broke out, and he did then, as he had done before, with Hands and Eyes lifted up to Heaven, say he knew nothing of any Plot, nor believed any, and treated it with great Scorn and Contempt.

L. Howard. My Lord, May I speak for my self?

Mr. Serj. Jefferies. No, no, my Lord, we don't call you.

L. C. J. Will you please to have any other Witnesses called?

L. Ruffel. There are some Persons of Quality, that I have been very well acquainted and conversed with, I desire to know of them, if there was any thing in my former Carriage, to make them think me like to be Guilty of this? My Lord *Carvendish*.

L. Cavendish. I had the Honour to be acquainted with my Lord *Ruffel* a long time, I always thought him a Man of great Honour, and too prudent and wary a Man to be concerned in so vile and desperate a Design as this, and from which he would receive so little Advantage; I can say nothing more, but that two or three Days since the Discovery of this Plot, upon Discourse about Colonel *Rumsey*, my Lord *Ruffel* did express something, as if he had a very ill Opinion of the Man, and therefore it is not likely he would intrust him with such a Secret.

L. Ruffel. *Dr. Tillotson.*

[*He appears.*]

L. C. J. What Questions would you ask him, my Lord?

L. Ruffel. He and I, happened to be very conversant. To know whether he did ever find any thing tending to this in my Discourse?

L. C. J. My Lord calls you as to his Life, and Conversation, and Reputation.

Dr. Tillotson. My Lord, I have been many Years last past acquainted with my Lord *Ruffel*, I always judged him a Person of great Virtue, and Integrity, and by all the Conversation and Discourse I ever had with him, I always took him to be a Person very far from any such wicked Design he stands charged with.

L. Ruffel.

L. Ruffel. Dr. Burnet. If you please to give some account of my Conversation.

Dr. Burnet. My Lord, I have had the Honour to be known to my Lord *Ruffel* several Years, and he hath declared himself with much Confidence to me, and he always upon all Occasions expressed himself against all Risings, and when he spoke of some People that would provoke to it, he expressed himself so determined against that matter, I think no Man could do more.

L. C. J. Will your Lordship call any other Witnesses?

L. Ruffel. Dr. Cox.

Dr. Thomas Cox stood up.

Dr. Cox. My Lord, I did not expect to have been spoken to upon this Account. Having been very much with my Lord of late, that is, for a Month or six Weeks before this Plot came out, I have had occasion to speak with my Lord in private, about these Publick Matters. But I have always found that my Lord was against all kind of Risings, and thought it the greatest Folly and Madness till things should come in a Parliamentary way. I have had occasion often to speak with my Lord *Ruffel* in private, and having my self been against all kind of Risings, or any thing that tended to the Disorder of the Publick, I have heard him profess solemnly, he thought it would ruin the best Cause in the World to take any of these irregular ways for the preserving of it, and particularly my Lord hath expressed himself occasionally of these two Persons, my Lord *Howard* and Colonel *Rumsey*. One of them, Colonel *Rumsey*, I saw once at my Lord's House, and he offered to speak a little privately. But my Lord told me he knew him but a little, I told him he was a valiant Man, and acted his Part valiantly in *Portugal*. He said he knew him little, and that he had nothing to do with him but in my Lord *Shaftsbury's* Business. He said, for my Lord *Howard*, he was a Man of excellent Parts, of luxuriant Parts, but he had the Luck not to be much trusted by any Party. And I never heard him say one Word of Indecency or Immodesty towards the King.

L. Ruffel. I would pray the Duke of *Somerset*, to speak what he knows of me.

D. of Som. I have known my Lord *Ruffel* for about two Years, and have had much Conversation with him, and been often in his Company, and never heard any thing from him, but what was very Honourable, Loyal, and Just.

L. C. J. My Lord does say, that he has known my Lord *Ruffel* for about two Years, and hath had much Conversation with him, and been much in his Company, and never heard any thing from him, but what was Honourable, and Loyal, and Just, in his Life.

Foreman of the Jury. The Gentlemen of the Jury desire to ask my Lord *Howard* something upon the Point my Lord *Anglesey* testified, and to know what Answer he makes to my Lord *Anglesey*.

L. C. Bar. My Lord, What say you to it, that you told his Father he was a discreet Man, and he needed not to fear his Engagement in any such thing?

L. Howard. My Lord, If I took it right, my Lord *Anglesey's* Testimony did branch it self into

Two Parts, one of his own Knowledge, and the other by Hear-say; as to what he said of his own Knowledge, when I waited upon my Lord of *Bedford*, and endeavoured to comfort him, concerning his Son, I believe I said the Words my Lord *Anglesey* has given an account of, as near as I can remember, that I looked upon his Lordship, as a Man of that Honour, that I hoped he might be secure, that he had not entangled himself in any thing of that nature. My Lord, I can hardly be provoked to make my own Defence, lest this Noble Lord should suffer, so willing I am to serve my Lord, who knows I can't want Affection for him. My Lord, I do confess I did say it; for your Lordship well knows under what Circumstances we were, I was at that time to outface the thing, both for my self, and my Party, and I did not intend to come into this Place, and act this Part. God knows how it is brought upon me, and with what Unwillingness I do sustain it, but my Duty to God, the King, and my Country, requires it, but I must confess, I am very sorry to carry it on thus far. My Lord, I do confess I did say so, and if I had been to visit my Lord *Pemberton*, I should have said so. There is none of those that know my Lord *Ruffel*, but would speak of my Lord *Ruffel*, from those Topics of Honour, Modesty, and Integrity, his whole Life deserves it. And I must confess, I did frequently say, there was nothing of Truth in this, and I wish this may be for my Lord's Advantage. My Lord, will you spare me one thing more, because that leans hard upon my Reputation, and if the Jury believe that I ought not to be believed, for I do think the Religion of an Oath is not tyed to a Place, but receives its Obligation from the Appeal we therein make to God, and, I think, if I called God and Angels to witness to a Falshood, I ought not to be believed now. But I will tell you as to that, your Lordship knows, that very Man that was Committed, was Committed for a Design of Murdering the King; now I did lay hold on that part, for I was to carry my Knife close between the Paring and the Apple, and I did say, that if I were an Enemy to my Lord *Ruffel*, and to the Duke of *Monmouth*, and were called to be a Witness, I must have declared in the Presence of God and Man, that I did not believe either of them had any Design to murder the King. I have said this, because I would not walk under the Character of a Person, that would be perjured at the Expence of so Noble a Person's Life, and my own Soul.

L. Ruffel. My Lord *Clifford*.

L. C. J. What do you please to ask my Lord *Clifford*?

L. Ruffel. He hath known my Conversation for many Years.

L. Clifford. I always took my Lord to be a very Worthy Honest Man, I never saw any thing in his Conversation to make me believe otherwise.

L. Ruffel. Mr. *Gore*.

Mr. Luton Gore. I have been acquainted with my Lord several Years, and conversed much with him; in all the Discourse I had with him, I never heard him let any thing fall that tended in the least to any Rising, or any thing like it: I took him to be one of the best Sons, one of the best Fathers, and one of the best Masters, one of the best Husbands, one of the best

best Friends, and one of the best Christians we had. I know of no Discourse concerning this matter.

L. Ruffel. Mr. Spencer, and Dr. Fitz-Williams.

Mr. Spencer. My Lord, I have known my Lord Ruffel many Years, I have been many Months with him in his House; I never saw any thing by him, but that he was a most Virtuous and Prudent Gentleman, and he had Prayers constantly twice a Day in his House.

L. C. J. What, as to the general Conversation of his Life, my Lord asks you, whether it hath been sober?

Mr. Spencer. I never saw any thing but very good, very prudent, and very virtuous.

L. Ruffel. What Company did you see used to come to me?

Mr. Spencer. I never saw any but his near Relations, or his own Family. I have the Honour to be related to the Family.

Then Dr. Fitz-Williams stood up.

L. Ruffel. If it please you, Doctor, you have been at my House several times, give an account of what you know of me.

Dr. Fitz-Williams. I have had the Knowledge of my Lord these fourteen Years, from the time he was married to his present Lady, to whose Father, Eminent for Loyalty, I had a Relation by Service; I have had Acquaintance with him both at Stratton and Southampton Buildings, and by all the Conversation I had with him, I esteemed him a Man of that Virtue, that he could not be guilty of such a Crime as the Conspiracy he stands charged with.

L. C. J. My Lord, Does your Lordship call any more Witnesses?

L. Ruffel. No, my Lord, I will be very short. I shall declare to your Lordship that I am one that have always had a Heart sincerely Loyal and Affectionate to the King and the Government, the best Government in the World. I pray as sincerely for the King's happy and long Life as any Man alive; and for me to go about to raise a Rebellion, which I looked upon as so wicked and unpracticable, is unlikely. Besides, if I had been inclined to it, by all the Observation I made in the Country, there was no tendency to it. What some hor-headed People have done there, is another thing. A Rebellion can't be made now as it has been in former times; we have few great Men. I was always for the Government, I never desired any thing to be redressed but in a Parliamentary and Legal Way. I have been always against Innovations, and all Irregularities whatsoever, and shall be as long as I live, whether it be sooner or later. Gentlemen, I am now in your Hands eternally, my Honour, my Life, and all; and I hope the Heats and Animosities that are amongst you will not so byass you, as to make you in the least inclined to find an Innocent Man Guilty. I call to witness Heaven and Earth, I never had a Design against the King's Life in my life, nor never shall have. I think there is nothing proved against me at all. I am in your Hands, God direct you.

Mr. Sol. Gen. My Lord, and you Gentlemen of the Jury, the Prisoner at the Bar stands Indicted for High-Treason, in Conspiring the Death of the King. The Overt Act that is laid to prove that Conspiracy and Imagination by,

is the Assembling in Council to raise Arms against the King, and raise a Rebellion here. We have proved that to you by three Witnesses. I shall endeavour as clearly as I can to state the substance of the Evidence to you, of every one of them as they have delivered it.

The first Witness Colonel Rumsey comes, and he tells you of a Message he was sent of to Mr. Sheppard's House to my Lord Ruffel, with several other Persons who he was told would be there assembled together. And the Message was to know what Readiness they were in, what Resolutions they were come to concerning the Rising at Taunton. By this you do perceive that this Conspiracy had made some Progress, and was ripe to be put in action. My Lord Shaftsbury that had been a great Contriver in it, he had pursued it so far, as to be ready to rise. This occasioned the Message from my Lord Shaftsbury to my Lord Ruffel, and those Noble Persons that were met at Mr. Sheppard's House, to know what the Resolution was concerning the Business of Taunton, which you have heard explained by an Undertaking of Mr. Trenchard's: That the Answer was, they were disappointed there, and they could not then be ready, and that my Lord Shaftsbury must be content. This Message was delivered in presence of my Lord Ruffel; the Messenger had notice my Lord Ruffel was there; the Answer was given as from them all, That at present they could not be ready, because of that Disappointment. Colonel Rumsey went further, and he swears there was a Discourse concerning the surprizing of the Guards; and the Duke of Monmouth, my Lord Grey, and Sir Thomas Armstrong, went to see what posture they were in, whether it were feasible to surprize them, and they found them very remiss; and that account they brought back, as is proved to you by Mr. Sheppard, the other Witness, That it was a thing very feasible. But to conclude with the substance of Colonel Rumsey's Evidence, he says, my Lord was privy to it, that he had Discourse among the rest of it, tho' my Lord was not a Man of so great Discourse as the rest, and did talk of a Rising. He told you there was a Rising determined to be on the 19th of November last, which is the substance of Colonel Rumsey's Evidence.

Gentlemen, the next Witness is Mr. Sheppard, and his Evidence was this: He swears that about October last, Mr. Ferguson came to him of a Message from the Duke of Monmouth, to let him know, that he and some other Persons of Quality would be there that Night; that accordingly they did meet, and my Lord Ruffel was there likewise; that they did desire to be private, and his Servants were sent away; and that he was the Man that did attend them. He swears there was a Discourse concerning the way and method to seize the Guards; he goes so far, as to give an account of the Return of the Errand the Duke of Monmouth, my Lord Grey, and Sir Thomas Armstrong went upon, That it was feasible, if they had Strength, to do it. Then he went a little farther, and he told you there was a Paper read, that in his Evidence does not come up to my Lord Ruffel, for he did not say my Lord Ruffel was by, and I would willingly repeat nothing but what concerns the Prisoner. This therefore Colonel Rumsey and Mr. Sheppard agree in, That there was a Debate among them how to surprize the Guards,

and whether that was feasible, and Mr. *Sheppard* is positive as to the return made upon the view.

The next Witness was my Lord *Howard*; he gives you an account of many things, and many things that he tells you are by Hear-say. But I cannot but observe to you, that all this Hear-say is confirmed by these two positive Witnesses, and their Oaths agree with him in it. For my Lord *Shaftsbury* told him of the disappointment he had met with from these Noble Persons that would not joyn with him; and then he went from my Lord *Shaftsbury* to the Duke of *Monmouth* to expostulate with him about it (for my Lord *Shaftsbury* then was ready to be in action) and that the Duke said he always told him he would not engage at that time. This thing is confirmed to you by these two Witnesses. Col. *Ramsley* says, when he brought the Message from my Lord *Shaftsbury*, the Answer was, They were not ready, my Lord must be contented.

Next he goes on with a discourse concerning my Lord *Shaftsbury*, (that does not immediately come up to the Prisoner at the Bar, but it manifests there was a design at that time) he had 10000 brisk Boys (as he called them) ready to follow him upon the holding up his finger. But it was thought not so prudent to begin it, unless they could joyn all their Forces. So you hear in this they were disappointed: And partly by another accident too, my Lord *Howard* had an apprehension it might be discovered, that was upon the Proclamation that came out forbidding Bonfires, to prevent the ordinary Tumults that used to be upon those occasions. Then my Lord *Howard* goes on and comes particularly to my Lord *Ruffel*, for upon this disappointment, you find my Lord *Shaftsbury* thought fit to be gone. But after that, the Design was not laid aside; for you hear, they only told him all along, they could not be ready at that time, but the Design went on still to raise Arms, and then they took upon themselves to consult of the methods of it; and for the carrying it on with the greater secrecy, they chose a select Council of Six, which were the Duke of *Monmouth*, my Lord of *Essex*, my Lord *Howard*, my Lord *Ruffel*, Mr. *Hambden*, and Colonel *Sidney*. That accordingly they met at Mr. *Hambden's* (there was their first meeting) and their Consultation there was, how the Insurrection should be made, whether first in *London*, or whether first in the Country, or whether both in *London* and in the Country at one time. They had some Debates among themselves that it was fittest first to be in the Country; for if the King should send his Guards down to suppress them, then the City that was then as well disposed to rise, would be without a Guard, and easily effect their Designs here.

Their next meeting was at my Lord *Ruffel's* own House, and there their Debates were still about the same matter, how to get in *Scotland* to their Assistance, and in order to that, they did intrust Col. *Sidney* one of their Council, to send a Messenger into *Scotland* for some Persons to come hither, my Lord *Melville*, Sir *Hugh Cambell*, and Sir *John Cockram*. Accordingly Col. *Sidney* sends *Aaron Smith* (but this is only what Col. *Sidney* told my Lord afterwards, that he had done it, but) you see the fruit of it. Accordingly they are come to Town, and Sir *Hugh*

Cambell is taken by a Messenger upon his arrival; and he had been but four days in Town, and he had changed his Lodging three times.

Now Gentlemen, this is the substance of the Evidence that hath been produced against my Lord *Ruffel*. My Lord *Ruffel* hath made several Objections, That he was accidentally at this meeting at Mr. *Sheppard's* House, and came about other business; but I must observe to you, that my Lord *Ruffel* own'd that he came along with the Duke of *Monmouth*, and I think, he said, he went away with him too. You observe what Mr. *Sheppard's* Evidence was: Mr. *Ferguson* came to tell him the Duke of *Monmouth* would come; and accordingly the Duke of *Monmouth* did come, and brought his Companion along with him, which was my Lord *Ruffel*; and certainly they that met upon so secret an Affair, would never have brought one that had not been concerned. Gentlemen, there are other Objections my Lord hath made, and those are in point of Law; but before I come to them, I would observe what he says to the second Meeting. My Lord does not deny but that he did meet both at Mr. *Hambden's* House, and my Lord's own: I think my Lord said they did meet only to discourse of News; and my Lord *Howard* being a man of excellent discourse, they met for his Conversation. Gentlemen, you can't believe that this designed Meeting was for nothing, in this close secret Meeting that they had no Contrivance among them. You have heard the Witness, he swears positively what the Conversation was, and you see the fruit of it, Sir *Hugh Cambell's* coming to Town, and absconding when it is discovered. Now my Lord *Ruffel* insists upon it, that admitting these Facts be proved upon him, they amount to no more than to a Conspiracy to levy War, and that that is not Treason within the Statute of 25 E. 3. and if it be only within the Statute of the 13th of this King, then 'tis out of time, that directs the Prosecution to be within six months: The Law is plainly otherwise. The Statute of the 13th of this King I will not now insist upon, though I believe if that be strictly looked into, the clause that says the Prosecution shall be within six months, does not refer to Treason, but only to the other Offences that are highly punishable by that Statute. For the Proviso runs thus:

13 Car. 2. Provided always, that no Person be prosecuted for any of the Offences in this Act mentioned, (other than such as are made and declared to be High-Treason) unless it be by Order of the King's Majesty, his Heirs or Successors, under his or their Sign Manual, or by order of the Council-Table of his Majesty, his Heirs or Successors, directed unto the Attorney General for the time being, or some other Council learned to his Majesty, his Heirs or Successors for the time being: Nor shall any Person or Persons by virtue of this present Act, incur any the Penalties herein before mentioned, unless he or they be prosecuted within six months next after the Offence committed, and indicted thereupon within three months after such prosecution; any thing herein contained to the contrary notwithstanding.

This word (Nor) is a Continuation of the former Sentence, and the exception of High-Treason will go through all, and except that out of the temporary limitation of Treason: But this is High-Treason within 25 E. 3. To conspire to levy War, is an Overt Act to testifie the design of the death of the King. And the Error of my Lord *Coke* hath possibly led my Lord into this mistake. But this, Gentlemen, hath been determined; it was resolved by all the Judges in the Case of my Lord *Cobham*, 1 Jac. A Conspiracy to levy War against the King's Person (as this was a Conspiracy to seize the Guards) what does that tend to but to seize the King? And that always hath been taken to be High-Treason. But there are some things called levying of War in Law, that are not so directly against the King, as if a number of men go about to levy Men to overthrow all Inclosures, this by the generality of the Intent, and because of the consequences, is accounted levying War against the King. A Conspiracy therefore to levy such a War which by construction only is against the King, perhaps that may not be such an Overt Act, as to testifie the imagination of the death of the King; but other Conspiracies to raise War against the King have always so been taken. 'Tis the Resolution of all the Judges in my Lord *Dyer's* Reports, the Case of Dr. *Story*: A Conspiracy to invite a Foreign Prince to make an Invasion, though no Invasion follow, is an Overt Act to prove the conspiring the Death of the King; and as it has been so taken, so it hath been practised but of late days. In the King's Bench I take it, the Indictment against *Plunket* that was hanged, he was indicted for Conspiring against the Life of the King, and his Charge went no further than for raising of Arms, and inviting the French King in, and he suffered. This is acknowledged by my Lord *Coke*, for he himself said in the Paragraph before that out of which this advice to my Lord *Ruffel* is extracted, That a Conspiracy to invite a Foreign Prince to invade the Kingdom, is a Conspiracy against the Life of the King. And in the next Paragraph, he says an Overt Act of one Treason cannot be an Overt Act of another Treason; but constant Practice is against him in that: For what is more common than to indict a Man for imagining the Death of the King, and to assign the Overt Act in a Conspiracy to raise Arms against the King? And sometimes they go on and say, Did levy War against the King. Now by my Lord *Coke's* Rule, levying War, unless the Indictment be particular for that, is not an Overt Act for the compassing the Death of the King; but the contrary hath been resolved by all the Judges in the Case of Sir *Henry Vane*, and it is the constant practice to lay it so in Indictments. It would be a strange construction if this should not be High-Treason. 'Tis agreed by every body, to take the King Prisoner, to seize the King, that is a compassing of the Death of the King; And to sit in council to conspire to effect that, that is an Overt Act of the imagination of the Death of the King: Now no man can distinguish this case from that; And this Consultation amounted to all this, for plainly thither it tended. The Consultation was to seize upon the King's Guards, that could have no other

stop but to seize upon the King's Person, and bring him into their Power. As to the killing of the King, I am apt to think that was below the honour of the Prisoner at the Bar; But this is equal Treason: If they designed only to bring the King into their Power, till he had consented to such things as should be moved in Parliament, 'tis equally Treason as if they had agreed directly to assassinate him. Therefore I think there is nothing for you to consider, but to see that the Fact be fully proved; and I see nothing that hath been said by my Lord *Ruffel* that does invalidate our Evidence. He hath produced several Witnesses, Persons of Honour; my Lord *Anglesey* he tells you of a discourse my Lord *Howard* had with my Lord of *Bedford*; That he told my Lord of *Bedford* that he needed not to fear, for he had a wife and understanding Son, and could not think he should be guilty of any such thing as was laid to his Charge. This is brought to invalidate my Lord *Howard's* testimony. Gentlemen, do but observe, My Lord *Howard* was as deep in as any of them, and was not then discovered: Is it likely that my Lord *Howard*, that lay hid, should discover to my Lord of *Bedford*, that there was a Conspiracy to raise Arms, and that he was in it? This would have been an Aspersion upon my Lord of *Bedford*, that any such thing should have been said.

Mr. *Edward Howard* is the next, and he proves, That my Lord *Howard* used solemn protestations that he knew nothing of this Conspiracy. I did observe, that worthy Gentleman in the beginning of his Discourse (for it was pretty long) said first that he had been several times tempting my Lord *Howard* to come over, and be serviceable to the King, and if he knew any thing, that he would come and confess it. Why, Gentlemen, Mr. *Howard* that had come to him upon these Errands formerly, and had thought he had gained him, I conceive you do not wonder if my Lord *Howard* did not reveal himself to him, who presently would have discovered it, for, for that Errand he came. But if my Lord had had a design to have come in and saved his Life, he would have made his submission voluntarily, and made his Discovery. But my Lord tells nothing till he is pinched in his Conscience, and confounded with the Guilt (being then in custody) and then he tells the whole truth, that which you have heard this day.

Gentlemen, this hath been all that hath been objected against the Witnesses, except what is said by Dr. *Burnet*; and, he says, that my Lord *Howard* declared to him, that he believed there was no Plot, and laughed at it. Why, Gentlemen, the Dr. would take it ill to be thought a person fit to be intrusted with the discovery of this; therefore what he said to him signifies nothing, for 'tis no more than this, that he did not discover it to the Dr.

But the last Objection (which I see there has been a great many Persons of Honour and Quality called to) is, That 'tis not likely my Lord *Ruffel* should be guilty of any thing of this kind, being a Man of that Honour, Virtue, and so little blameable in his whole Conversation. I do confess, Gentlemen, this is a thing that hath weight in it. But consider on the other hand, my Lord *Ruffel*, is but a Man, and hath his Human frailties about him. Men fall by several

Temptations; Some out of Revenge, Some by Malice fall into such Offences as these are: My Lord *Russel* is not of that Temper, and therefore may be these are not the Ingredients here. But, Gentlemen, there is another great and dangerous Temptation that attends People in his Circumstances, whether it be Pride or Ambition, or the cruel Snare of Popularity, being cryed up as a Patron of Liberty. This hath been a dangerous Temptation to many, and many Persons of Virtue have fallen into it, and 'tis the only way to tempt Persons of Virtue; and the Devil knew it, for he that tempted the Pattern of Virtue, shewed him all the Kingdoms of the World, and said, *All these will I give thee, if thou wilt fall down and worship me.* Tho' he be a Person of Virtue, yet it does not follow, but his Virtue may have some weak Part in him. And I am afraid, these Temptations have prevailed upon my Lord. For I cannot give myself any colour of Objection, to disbelieve all these Witnesses who give in their Testimony. I see no Contradiction, no Correspondence, no Contrivance at all between them. You have plain Oaths before you, and I hope you will consider the Weight of them, and the great Consequence that did attend this Case, the Overthrow of the best Government in the World, and the best and most unspotted Religion, which must needs have suffered; the greatest Liberty and the greatest Security for Property that ever was in any Nation, bounded every way by the Rules of Law, and those kept sacred. I hope you will consider the Weight of this Evidence, and consider the Consequences such a Conspiracy, if it had taken effect, might have had. And so I leave it to your Consideration upon the Evidence you have heard.

Mr. Serj. *Jefferies*. My Lord, and you Gentlemen of the Jury, this Cause hath detained your Lordship a long time, by reason of so many Witnesses being called, and the length of the Defence made by the Prisoner at the Bar; and if it had not been for the length I would not have injured your Patience by saying any thing, Mr. Solicitor having taken so much Pains in it. It is a Duty incumbent upon me, under the Circumstances I now stand, to see if any thing hath been omitted that hath not been observed to you; and I shall detain you with very few Words.

Gentlemen, You must give me leave to tell you, 'tis a Case of great consequence, of great consequence to that Noble Person that now is at the Bar, as well as to the King; for it is not desired by the King nor by his Counsel, to have you influenced in this matter by any thing but by the Truth, and what Evidence you have received. You are not to be moved by Compassion or Pity, the Oath you have taken is to go according to your Evidence; and you are not to be moved by any Insinuations that are offered by us for the King, nor by any Insinuations by the Prisoner at the Bar; but the Truth, according to the Testimony given, must be your Guide. How far the Law will affect this Question, that we are not to apply to you, for that we are to apply our selves to the Court (they are the Judges in point of Law) who will take so much care in their Directions to you, that you may be very well satisfied you will

not easily be led into Error. For the Instances that have been put, I could put several others; But I will take notice only of one thing that that Noble Person at the Bar seems to object. Gentlemen, It is not necessary there should be two Witnesses to the self-same Fact at the self-same time; but if there be two Witnesses tending to the self-same Fact, tho' it was at several times, and upon several occasions, they will be in point of Law two Witnesses, which are necessary to convict a Man for High-Treason. Gentlemen, I make no doubt this thing is known to you all, not only by the Judgment of all the Judges in *England*, but the Judgment of the Lords in Parliament, when I doubt not the Prisoner at the Bar did attend in the Case of my Lord *Stafford*, wherein one Witness gave an account of a Conspiracy in *England*, *Turberville* of another in *France*; and by the Opinion of all my Lords the Judges approved in Parliament, that was enough, and he was Convicted.

The Question is, Whether we have sufficiently proved this matter. Gentlemen, I must tell you, we rake no Goals, nor bring any profligate Persons, Persons that wanted Faith or Credit before this time. I must tell you, that notwithstanding the fair Notice that hath been given to the Prisoner at the Bar (that you see he hath taken an Advantage of it, he hath given an account of a private Conversation with my Lord *Howard* before that Noble Person that was Witness against him was taken) he has not given you in all his Proof hitherto, nay I say, he has not pretended any thing in the World: Wherefore you, Gentlemen, that are upon your Oaths, should take it upon your Consciences, that two Men, against whom there is no Objection, should come to damn their own Souls to take away the Life of this Gentleman, when there is no Quarrel, no Temptation wherefore these Gentlemen should come in the face of a Court of Justice, in the face of such an Auditor, without respect to that infinite Being to whom they appeal for Confirmation of the Truth of their Testimony: And if they had the Faith of Men or Christians, they must necessarily conclude, That if they did swear to take away a Man's Life that was innocent, God would sink them down presently into Hell.

Gentlemen, In the next Place I must acquaint you, That the first Witness, Colonel *Rumsey*, it is apparent that he was taken notice of by the Prisoner as a Man fit to be trusted; he was engaged by my Lord *Shaftsbury*: But, says he, would any Man believe that that Man that had received so many Marks of the King's Favour, both in Advantage to his Estate, his Honour, and Person, could be ever contriving such an hellish Design as this? Gentlemen, If you will argue from such uncertain Conjectures, then all Criminals will come off. Who should think that my Lord of *Essex*, who had been advanced so much in his Estate and Honour, should be guilty of such desperate things! which had he not been conscious of, he would scarcely have brought himself to that untimely End, to avoid the Methods of publick Justice. Colonel *Rumsey* tells you, my Lord *Shaftsbury* was concerned in this Conspiracy. I am sorry to find that there have been so many of the Nobility of this Land that have lived so happily under the benign Influence of a Gracious Prince, should make so

ill Returns. Gentlemen, I must appeal to you, whether in your Observation you found Colonel *Rumsey* to be over-hasty and an over-zealous Witness; he did not come as if he came in spight to the Prisoner at the Bar; you found how we were forced to pump out every thing; but after he had been pressed over and over again, then he came to it: So that I observe to you, that he was an unwilling Witness.

Gentlemen, Give me leave to observe to you, the Prisoner at the Bar, before such time as Mr. *Sheppard* came up and gave Evidence against him, says he, I came only by accident, only to taste a parcel of Wine. Mr. *Sheppard* when he comes up, he tells you, there was no such Design. *Ferguson*, that was the Person he kept Company with, the Reverend Dean and the rest of the Clergy of the Church of *England*, they were not fit to be trusted with it, but this Independent Parson *Ferguson*, he gives notice of the Coming of these Persons; and in pursuance of this notice they all come, they come late, in the Evening, not in the Posture and Quality they use to go, for you find they had not so much as a Coach. Is it probable they came to taste Wine? Wherefore did they go up into a Room? Wherefore did they order Mr. *Sheppard* that none of the Boys should come up, but that the Master must fetch the Sugar and Wine himself? Wherefore you may perceive the Action they were upon, there were only to be such Persons as had an Affection for such a Cause. You find pursuant to what Colonel *Rumsey* says, that there was a Direction to take a View of the Guards, that Sir *Thomas Armstrong* comes back and makes this Report: Says he, I have taken notice they are in such an idle careless Posture, that it is not impossible to surprize them. This Mr. *Sheppard* he does not come, nor does he appear to you to come here out of any vindictive Humour, to do the Prisoner at the Bar any Hurt.

In the next place we have my Lord *Howard*, he comes and positively tells you, after he had given an account (for you observe there were two Parts to be acted in this horrid Tragedy; there was first the Scoundrel sort of People were to be concerned to take away the Life of the King and the Duke, the Great Persons were to head the Party in the Rising) they put themselves in proper Postures, each of them consenting to something of the Surprize, inasmuch as you observe that Sir *Thomas Armstrong* and some other Persons might not be trusted. They come and resolve themselves out of a general Council, and they meet in a particular Council of Six, looking upon themselves as the Heads of the Party: And I must tell you many of them (we live not in an Age of such Obscurity, but we know them) how fond have they been of the Applause of the People! As that Person encouraged himself yesterday, they were *Liberatores Patriæ*, that could murder the King and the Duke.

My Lord, I must take notice that this Noble Lord is known to have an Intimacy with him; you observe with how much Tenderneſs he is pleased to deliver himself, how carefully he reports the Debates of the particular Consults of the Persons to be intrusted in the Management; he tells you, that Noble Lord the Prisoner at the Bar was pitched upon, and *Al-*

germoone Sidney, a Man famous about the Town: For what? To call in Parties from some of His Majesty's other Dominions, Persons we know ripe enough for Rebellion, to assist. Pursuant to this, you find Persons sent of a Message for some to come over, whereof some are in hold: So that for all dark and obscure sort of Matters, nothing can be brought better to light, than this, of taking all Matters together; with the concurring Circumstances of Time and Place.

Gentlemen, I must confess this Noble Lord hath given an account by several Honourable Persons of his Conversation, which is a very easy matter. Do you think if any Man had a Design to raise a Rebellion against the Crown, that he would talk of it to the Reverend Divines, and the Noble Lords that are known to be of Integrity to the Crown? Do you think the Gentleman at the Bar would have so little Concern for his own Life, to make this Discourse his ordinary Conversation? No, it must be a particular Consult of Six, that must be entrusted with this. I tell you, 'tis not the Divines of the Church of *England*, but an Independent Divine, that is to be concerned in this; they must be Persons of their own Complexion and Humour. For Men will apply themselves to proper Instruments.

Gentlemen, I would not labour in this Case; for far be it from any Man to endeavour to take away the Life of the Innocent. And whereas that Noble Lord says, he hath a virtuous good Lady, he hath many Children, he hath Virtue and Honour he puts into the Scale: Gentlemen, I must tell you on the other side, You have Consciences; Religion; you have a Prince, and a Merciful one too; consider the Life of your Prince, the Life of his Posterity, the Consequences that would have attended if this Villany had taken effect. What would have become of your Lives and Religion? What would have become of that Religion we have been so fond of Preserving? Gentlemen, I must put these things home upon your Consciences. I know you will remember the horrid Murder of that most Pious Prince the Martyr, King *Charles* the First. How far the Practices of those Persons have influenced the several Punishments since, is too great a Secret for me to examine. But now I say, you have the Life of a Merciful King, you have a Religion that every honest Man ought to stand by, and I am sure every Loyal Man will venture his Life and Fortune for. You have your Wives and Children. Let not the Greatness of any Man corrupt you, but discharge your Consciences both to God and the King, and to your Posterity.

L. C. J. Gentlemen of the Jury, the Prisoner at the Bar stands Indicted before you of High-Treason, in Compassing and Designing the Death of the King, and in declaring of it by Overt Acts, endeavouring to raise Insurrections and popular Commotions in the Kingdom here. To this he hath pleaded Not Guilty. You have heard the Evidence that hath been against him, it hath been at large repeated by the King's Counsel, which will take off a great deal of my Trouble in repeating it to you again. I know you cannot but take notice of it, and remember it, it having been stated twice by two of the King's Counsel to you; 'tis long, and you see what the Parties here have proved.

proved. There is first of all Colonel *Rumsey*, he does attest a Meeting at Mr. *Sheppard's* House, and you hear to what purpose he says it was; the Message that he brought, and the Return he had; it was to enquire concerning a Rising at *Taunton*; and that he had in Return to my Lord *Shaftsbury* was, that Mr. *Trenchard* had failed them, and my Lord must be contented, for it could not be that time. You hear that he does say that they did design a Rising; he saith there was a Rising designed in *November*, I think he saith the 17th, upon the Day of Queen *Elizabeth's* Birth. You hear he does say, there was at that Meeting some Discourse concerning inspecting the King's Guards, and seeing how they kept themselves, and whether they might be surprized; and this he says, was all in order to a Rising. He says that at this my Lord *Ruffel* was present. Mr. *Sheppard* does say, that my Lord *Ruffel* was there: That he came into this Meeting with the Duke of *Monmouth*, and he did go away with the Duke of *Monmouth*, as he believes. He says there was some Discourse of a Rising or Insurrection that was to be procured within the Kingdom, but he does not tell you the Particulars of any thing, he himself does not. My Lord *Howard* afterwards does come and tell you of a great Discourse he had with my Lord *Shaftsbury* in order to a Rising in the City of *London*, and my Lord *Shaftsbury* did value himself mightily upon 10000 Men he hoped to raise; and a great deal of Discourse he had with my Lord *Shaftsbury*. This he does by way of inducement to what he says concerning my Lord *Ruffel*. The Evidence against him is some Consults that there were by six of them, who took upon them, as he says, to be a Council for the Management of the Insurrection that was to be procured in this Kingdom. He instances in two that were for this purpose, the one of them at Mr. *Hambden's* House, the other at my Lord *Ruffel's* House. And he tells you at these Meetings there was some Discourse of providing Treasure, and of providing Arms, but they came to no Result in these things. He tells you, that there was a Design to send for some of the Kingdom of *Scotland* that might joyn with them in this thing. And this is upon the matter the substance of the Evidence that hath been at large declared to you by the King's Counsel, and what you have heard. Now, Gentlemen, I must tell you, some things it lies upon us to direct you in.

My Lord excepts to these Witnesses, because they are concerned by their own shewing in this Design: If there were any, I did direct (Some of you might hear me) yesterday, that that was no sufficient Exception against a Man's being an Evidence in the Case of Treason, that he himself was concerned in it; they are the most proper Persons to be Evidence, none being able to detect such Councils but them. You have heard my Lord *Ruffel's* Witnesses that he hath brought concerning them, and concerning his own Integrity and Course of Life, how it has been sober and civil, with a great Respect to Religion, as these Gentlemen do all testify. Now the Question before you will be, Whether upon this whole matter you do believe my Lord *Ruffel* had any Design upon the King's Life, to destroy the King, or take away his Life, for that is the material Part here. 'Tis used and given you (by the King's Counsel) as an Evidence of this, That he did conspire to raise an Insurrection, and to cause a Rising of the People, to make as it were a Rebellion within the Nation, and to surprize the King's Guards, which, say they, can have no other end but to seize and destroy the King; and 'tis a great Evidence (if my Lord *Ruffel* did design to seize the King's Guards, and make an Insurrection in the Kingdom) of a Design for to surprize the King's Person. It must be left to you upon the whole matter: You have not Evidence in this Case as there was in the other Matter that was tried in the morning, or yesterday, against the Conspirators to kill the King at the *Rye*. There was a direct Evidence of a Consult to kill the King, that is not given you in this Case; This is an Act of Contriving Rebellion and an Insurrection within the Kingdom, and to seize his Guards, which is urged as an Evidence, and surely is in itself an Evidence, to seize and destroy the King.

Upon this whole matter this is left to you. If you believe the Prisoner at the Bar to have conspired the Death of the King, and in order to that to have had these Consults that these Witnesses speak of, then you must find him Guilty of this Treason that is laid to his Charge.

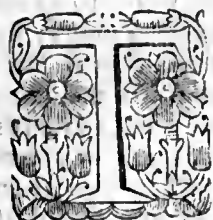
Then the Court adjourned till four a Clock in the Afternoon, when the Jury brought the said Lord Ruffel in Guilty of the said High-Treason.



THE
T R Y A L
O F
JOHN ROUSE.

Thursday, July 12. 1683. John Rouse and William Blague being set to the Bar, and after holding up their Hands, the following Indictment was read.

London.



HE Jurors for our Sovereign Lord the King, upon their Oaths present, That John Rouse late of London Gent. and William Blague late of London Gent. as false Traitors against the most Illustrious and Excellent Prince, our Sovereign Lord Charles II, by the Grace of God, of England, Scotland, France and Ireland King, their natural Lord, not having the Fear of God in their Hearts, nor weighing the Duty of their Allegiance, but being moved and seduced by the Instigation of the Devil, and the true Duty, and natural Obedience, which True and Faithful Subjects of our Sovereign Lord the King, towards him our said Lord the King do bear, and of right ought to bear, wholly withdrawing; and with their whole Strength intending the Peace and common Tranquillity of this Kingdom of England to disturb, and War and Rebellion against our said Lord the King to move and stir up; and the Government of our said Lord the King within this Kingdom of England to subvert, and our said Lord the King from his Title, Honour and Kingly Name of the Imperial Crown of this his Kingdom of England to put down and deprive; and our said Lord the King to Death and final Destruction to bring and put, the second Day of March, in the Year of the Reign of our Sovereign Lord Charles II, King of England, &c. the Five and Thirtieth, and divers other Days and Times, as well before as after, at the Parish of St. Michael Bassishaw, in the Ward of Bassishaw, London, Maliciously and Traiterously with divers other Traitors, to the Jurors aforesaid unknown, they did Conspire, Compass, Imagine and Intend our said Lord the King, their Supreme Lord, not only of his Kingly State, Title, Power and Government of this his Kingdom of England to deprive and throw down; but also our said Lord the King to kill, and to Death to bring and put; and the ancient Government of this his Kingdom of England to change, alter and wholly to subvert, and a miserable Slaughter amongst the Subjects of our said Lord the King through his whole Kingdom of England to cause and procure, and Insurrection and Rebellion against our said Lord the King to move, and stir up within this Kingdom of England. And to fulfil and perfect the said

most horrible Treasons, and traiterous Conspiracies, Imaginations and Purposes aforesaid, the said John Rouse and William Blague, then and there, and divers other Days and Times, as well before as after, as false Traitors, Maliciously, Traiterously and Advisedly, they did assemble, meet together, and consult between themselves and with the said other Traitors, to the Jurors aforesaid unknown, and with them did treat of the taking and seizing the Tower of London, and of and for the executing and perfecting their Treasons, and traiterous Compassings, Imaginations and Purposes aforesaid. And that they the said John Rouse and William Blague, as false Traitors, Maliciously, Traiterously and Advisedly, then and there, and divers other Days and Times, as well before as after, they and either of them did undertake, and to the said other Traitors did promise for themselves to be aiding and assisting in the execution of the Treasons and traiterous Compassings, Imaginations and Purposes aforesaid; and in providing Arms and Armed Men to fulfil and perfect the said Treasons, and traiterous Compassings, Imaginations, and Purposes aforesaid. And the said most wicked Treasons, and traiterous Compassings, Imaginations and Purposes aforesaid to fulfil and bring to pass, they the said John Rouse and William Blague, as false Traitors, Maliciously, Traiterously and Advisedly, then and there, did procure and prepare Arms, to wit, Blunderbuffes, Carbines and Pistols, against the Duty of their Allegiance, against the Peace of our Sovereign Lord the King, his Crown and Dignity, and against the Form of the Statutes in that case made and provided, &c.

Cl. of Cr. What sayest thou, John Rouse, Art thou guilty of this High-Treason whereof thou standest Indicted, or Not Guilty?

Rouse. Not Guilty.

Cl. of Cr. Culprit, How wilt thou be tryed?

Rouse. By God and my Country.

Cl. of Cr. God send thee a good Deliverance. What sayest thou William Blague, Art thou guilty of this High-Treason whereof thou standest Indicted, or Not Guilty?

Capt. Blague. Not Guilty.

Cl. of Cr. Culprit, How wilt thou be tryed?

Capt. Blague. By God and my Country.

Cl. of Cr. God send thee a good Deliverance.

Friday

Friday July 13. in the Afternoon, the Court being met, and Proclamation made.

Cl. of Cr. Set John Rouse and William Blague to the Bar. You the Prisoners at the Bar, these good men that you hear called, are to pass between our Sovereign Lord the King upon Tryal of your several Lives and Deaths; if you will challenge them or any of them, your time is as they come to the Book to be sworn, before they are sworn. *Nicholas Charlton.*

Capt. Blague. I hope I shall only speak for my self.

L. C. J. Yes, You shall be heard.

Sir Edmond Saunders.

Rouse. My Lord, I have had no liberty so much as sending for my Wife. Monday Morning they gave me notice of Tryal, but I have had no advantage of that notice; I presumed it is meant we should have the liberty of Subjects, but though notice was then given, yet I had not the liberty of sending for any body till Wednesday: It was 8 or 9 of the Clock on Wednesday night that one came and told me, I should have no liberty of Counsel, unless I had it from the Court; and yesterday morning I found that Captain Blague and I were joyned in one Indictment, which alters the Case with submission to the Court. What time I have had for Tryal has been so short, I have not been able to get my Witnesses ready. I desire nothing but as an English Man.

L. C. J. As an English Man? You can demand no time to prepare for Tryal, for those that will commit crimes, they must be ready to answer for them, and defend themselves. 'Tis Matter of Fact you are charged with, you knew long agoe what you were to be Tried for, for you were taken up and charged with High-Treason. You might then reasonably consider what kind of Evidence would be against you; if you be an innocent Person, you may defend your self without question. But if you have done an ill thing, the Law does not design to give you time to shelter your self under any subterfuge, or make any excuse, or to prepare any Witnesses to testify an untrue thing for you.

Rouse. My Lord, I only beg a little time, I don't design to make any Evasion, That I am innocent I thank God I am.

L. C. J. We can't give you any further time unless the King pleases, we are bound to Try those he brings before us.

Mr. Serj. Jefferies. Because Captain Blague does not desire to be joyned to the other, we that are for the King are contented that Rouse be Tried first.

Then Captain Blague was taken away, and after several Persons challenged by Rouse, the Jury that were Sworn, were

Robert Beddingfield,	} Jur'	Richard Hoare,
John Pelling,		Thomas Barnes,
William Windbury,		Henry Robbins,
Theophilus Man,		Henry Kempe,
John Short, Senior,		Edward Raddish,
Thomas Nicholas,		Edward Kempe.

Cl. of Cr. John Rouse, Hold up thy hand. You

of the Jury look upon the Prisoner and hearken to his Cause; he stands Indicted,—*Prout antea* in the Indictment *Mutatis mutandis*; upon this Indictment he hath been Arraigned, and thereunto Pleaded *Not Guilty*, and for his Tryal put himself upon his Country, which Country your are, your Charge is to inquire, &c.

Mr. Jones. May it please your Lordship, and you Gentlemen of the Jury, the Prisoner at the Bar stands Indicted for High Treason, in conspiring the Death of the King, and in order thereunto consulting how to seize the Tower, and in providing of Arms in order to destroy the King and subvert the Government; if we prove it upon him, you are to find him Guilty.

Mr. Serj. Jefferies. The Prisoner at the Bar was (as you have been acquainted) in that horrid Conspiracy, whereof several of the Conspirators have been brought to Tryal, and received a Verdict surely according to Evidence. The Prisoner at the Bar did bear a proportion among the rest. It does occur to your memories, there were several undertakers that undertook several stations; some whereof were to undertake the blackest part of this horrid Villany, by the taking off the King and his Royal Highness his Brother; others (in order to the same design) were to seize upon the King's Guards, and so to deprive him of all manner of defence whatsoever, and to prevent all persons to make any defence against them, as you heard there was another part to be acted, therefore the Town was to be divided into several Divisions, I think there was Twenty, but the most numerous and beneficial parts were thought to be about *Wapping*. A particular part of the Evidence was, that the Tower was to be seized and the King's Arms there, I know you observed that they took notice of a particular place of the Tower that was most capable of access. This Rouse is a Gentleman very well known, 'tis not the first time he hath been at this Bar: He was here at a time when the common Justice of the Nation could not be obtained in this place, in so much that the Judges who came to execute Justice, had more reason to fear being executed upon the Bench than the Prisoner at the Bar. It may easily appear how far Mr. Rouse was concerned (I don't love to aggravate matters, he has crimes enough) he was reckoned Pay-master to this Rabble, he was to take care to manage those Persons that were to seize upon the Tower. He is a Man of great skill in that subject, a Doctrine wherein he was well tutored under a Lord you heard mentioned this morning, but he is in his Grave, and so I shall say no more of him. We shall give you an account of a Design he had how to compass this business. *Black-beath* was looked upon as a convenient place, where there was to be a Golden Ball, for which the Sea-men were to play in great numbers, and he that won the prize was to have the Golden Ball, but his eye was upon the Tower all this while. He thought to allure these silly Sea-men by the advantage of the honourable winning of this Ball, and when they were fraughted with the success of this meeting, then it was proper to attack the Tower. We shall prove the other Prisoner that was at the Bar, ingaged with this Prisoner at the Bar. We shall not only prove this, but that Mr. Rouse hath been al-

always of an inclination against the Government. We shall call you Witnesses, that he hath undertaken to dispute by what Authority the King comes to govern in England, that he hath said *he had forfeited his Government*, that he told an ordinary Miferant one of his Levellers, *that he had as much right to the Crown as he had*. My Lord, if we prove this matter to your Lordship, and the Gentlemen of the Jury, it will be high time for us to endeavour to preserve the Crown upon that Royal Head, upon which all Loyal Men desire it should flourish as long as the Sun and Moon endure.

Mr. Burton. Call Thomas Leigh.

[Who was sworn.

Mr. Jones. Pray give us an account what you know concerning Mr. Rouse.

Mr. North. Of any design against the King, and providing Arms.

Rouse. If it please you my Lord, one word before he speaks: I have an exception against him. I wonder with what confidence you can look in my face at this time.

King's Counsel. Nay, nay, speak to the Court.

Rouse. My Lord, he is a Person that before he was taken up, was sworn by two persons to have a hand in the Plot, one was Mr. Keeling, the other Mr. How of Old street, and then being taken up, and conscious to himself that he was Guilty of such notorious Crimes, and knowing I was pretty well acquainted with him, he was deadly afraid I should come and Swear against him, and thereupon he took the boldness to Swear against me first.

Mr. North. My Lord, He hath offered nothing of Objection.

Rouse. I suppose, with submission to the Court, without he have his Pardon, he is no Evidence in this Case.

Mr. Serj. Jefferies. Come tell us all you know.

Mr. Leigh. If it please you, my Lord, I have been concerned in this Conspiracy, I know something of it, but I believe Mr. Rouse knows a great deal more. Mr. Rouse takes me to the King's Head Tavern in Switbins Alley, where after some time Mr. Goodenough came, where there was a Club of Men that were in the Conspiracy. I had seen Mr. Goodenough before, he acquainted me that there was an apprehension our Rights and Privileges were Invaded, and it was time to look to our selves, for Popery was designed, and Arbitrary Power; and therefore he desired to know whether I would engage in that Affair to prevent it, and withal he told me, the City of London and Middlesex was divided in Twenty parts, and he asked me to engage in one part. I told him, my acquaintance did not lie where I lived, but I would get a part where my acquaintance was. I acquainted Mr. Rouse and Mr. Goodenough what Men I had spoke to. Mr. Goodenough told me, the design was to set up the Duke of Monmouth, and kill the King and the Duke of York, but that all Parties must not know of it: But that we must tell some people there was like to be a Foreign Invasion, and ask them what readiness they were in, and if we found they were like to be compliant in that, then we might discourse with them about the other Matter. I discoursed with several Men about this Affair: And he told me, the Lord Mayor and Aldermen were to be killed immediately, (especially the present Lord Mayor Sir John Moore) and their houses plunder-

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ed, and there would be Riches enough, and that would help to maintain the Army, and we went on further in this Discourse. Then I acquainted Mr. Rouse with this business, but he knew of it before, and he did tell me he could provide Arms for an Hundred Men, and said nothing was to be done unless the King was seized; saying, we remember since Forty One the King went and set up his Standard; Therefore (says he) we will seize them, that they shall not set up their Standard. But (says he) I am for seizing them, but not for shedding their Blood. Mr. Rouse went off with that Discourse, says he, I must speak with Mr. Goodenough and some of those that are principally concerned. Mr. Rouse acquainted me, that it was a very convenient thing to have a Ball played upon Black-Heath, and to that end we must speak to some Sea-Captains, and (says he) I will engage Ten, and they shall manage that Affair, and he that wins the Ball take it. But when they have so done, every Captain shall take his Party and tell them they have other work, and then go with long Boats and Arms and seize the Tower. I acquainted Mr. Goodenough with this, and Mr. Goodenough asked me the charge of the Golden Ball, Mr. Rouse had told me it would be Ten or a Dozen Pounds; Mr. Goodenough said if it was Forty Pound he would be at the charge of it all. Several such Discourses Mr. Rouse hath in my hearing spoke to several Men at the King's-Head Tavern. I understood I was Sworn against, I heard of it at the King's-Head Tavern in his Company and Mr. Goodenough's. Mr. Rouse directed me to go to the Sun-Tavern near Moorgate, and he would come to me, and there Mr. Rouse and Mr. Goodenough came to me, and Mr. Rouse told me I should lie at his House. Mr. Rouse cut off my Hair, and went to Mr. Bateman's and fetched me a Perriwig; Mr. Rouse and I went several times to view the Tower, and took Mate Lee along with us. So Mate Lee directed us to Traitors-Bridge, and he said that was an easy place, and he would undertake to do it with an Hundred Men, so they had but hand Granadoes. We had some time before that appointed to meet at Wapping, to speak with the Sea-Captains, Mr. Rouse met the first day in order to this Business at the Amsterdam Coffee-house, and there Mr. Rouse met with two Sea Captains (as he told me) that were to officiate in this Business, and the Two Captains he took to the Angel and Crown in Thread-needle street. A small time after, about an hour and a half or thereabouts, Mr. Rouse came, (I am not positive whether Mr. Goodenough was there or no) and told me, he had spoke to both the Sea-Captains, and they were willing, but one was going to New Jersey, and therefore the work must be done before he went, or he could not assist: Another time he appointed Mate Lee to meet at the Anchor in Wapping. I did speak to Mr. Goodenough, but he did not meet us, so that we could not go down that day, but Mr. Rouse always undertook that Business to get Ten Sea-Captains, and get Arms for an Hundred Men. After I was Sworn against, and went to Mr. Rouse's House; the next day Mr. Nelbrop and Mr. Goodenough came to me to Mr. Rouse's, says Mr. Rouse, be not discouraged let the Business go on. I was directed by Mr. Nelbrop and Mr. Goodenough, when ever I was taken into Custody, I should deny all, and it could not touch my Life.

Y

I thank

I thank him for his kindness, I lay well, and eat well at his House, my Lord; but however I will tell the truth. We met afterwards several times, and went to Captain *Blague's*, and the rest of the Company, but at different places. We had an account that Mr. *Goodenough* was in the North raising Men, and that the Duke of *Monmouth* was thereabouts, and that a Deliverance should be wrought for all this.

L. C. J. About what time was this?

Mr. Leigh. In last *June*. The Design was so laid, that I was told it was to be done in a Fort-night. They never agreed on a way or method of killing the King, but they told me they had a Thousand Horse ready in the Country, and that there was Five Hundred Horse or thereabouts ready in the Town, and that the King should be killed coming from *Windsor*. Now they were contriving how to send Arms, that they might not be suspected, to some private place, they were to be sent in Trunks to some private House, and there they were to Arm themselves in the Night, and some Brick-men were to go to *Windsor* to know when the King came, and give Information; and so they were to set upon him in some convenient place, and both were to be taken off together, the King and the Duke; and Mr. *Rouse* said, take them off, and then no Man can have Commission to fight for them.

Mr. Serj. Jefferies. He is a Politician every inch of him.

Mr. Jones. What did he employ you to do?

Mr. Leigh. I was employed by Mr. *Goodenough* to make all the Friends I could in this Engagement. I went into *Spittle-fields* and engaged some Weavers and other People. They promised me a Gratitude, but I never had any thing.

Mr. Serj. Jefferies. If Mr. *Rouse* has a mind to ask him any Questions.

Rouse. I will, my Lord.

L. C. J. Propose your Questions to the Court.

Rouse. I ask him by the Oath he has taken, Whether ever I spake with him of any Design against the King and Government? I ask you, whether you did not begin with me?

L. C. J. You hear his Question, answer it.

Mr. Leigh. For that I answer, That Mr. *Rouse* was the first Man that ever I heard propose that the King and the Duke should be secured, and there is another thing come in my mind, Mr. *Rouse* hath been a Traveller, he did presume to say, and has said to me, and in Company, that the King was Sworn in *France* and *Spain* to bring in *Popery* and *Arbitrary Power* in so many Years, and therefore it was no Sin to take him off, and he told me he had it under his own Hand.

Rouse. It was impossible, my Lord.

Mr. Serj. Jefferies. I do believe it. I do not believe he thought thee fit to be a Secretary.

L. C. J. Look you, if you would have any thing asked him, propose it to me.

Rouse. What place was it I began to speak of any thing of this Design?

Mr. Leigh. The *King's-head*.

Rouse. Who was with us?

Mr. Leigh. Mr. *Goodenough* and several others.

Rouse. Was it discoursed of before them?

Mr. Leigh. No, You never discoursed of it before them.

Rouse. You discoursed of going an Hay-making in the Country; says you, I will trust them one alone, but says you, I am under an Oath of Secrecy not to communicate it but to one at a time, but I make bold to acquaint you with it; I give you an account what I heard from his own Mouth.

L. C. J. Look you, What you heard from him will signify nothing, unless you are able to make proof of it by other Witnesses: If you will ask him any Questions, you shall. We will hear what you can say for your self at last. But you must not invade the King's Evidence with any Discourse at random.

Rouse. Did I ever put you upon any thing of this nature? Did you not tell me, there was a Design to overturn the Government, but you would not shed Blood?

Mr. Leigh. I will answer; I can't be positive whether I came to Mr. *Rouse*, or he to me. I had been in his Company several times before, and whether he discoursed it first to me, or I to him, I cannot tell; but when that Point was discoursed, he was very zealous to get ten Captains, and that the Ball might be played, and the Tower taken.

Rouse. Did ever Mr. *Goodenough* and you and I meet upon such an account?

Mr. Leigh. Yes, at the *King's-head* Tavern.

Rouse. I can take my Oath I never saw Mr. *Goodenough* but twice in your Company, and I never knew you till *May* last.

Mr. Serj. Jefferies. You came to a very strict Alliance by that time it came to *June*.

Mate Lee sworn.

Mr. Serj. Jefferies. Tell my Lord and the Jury what you know, the whole Truth, and nothing but the Truth.

Lee. The whole Truth I will tell. About a Week before *Midsummer* or thereabouts I met Mr. *Rouse*, I think it was in *Pope's-head* Alley, going to look after Captain *Blague*: Says Mr. *Rouse*, I have something to say to you, but he did forbear speaking it then; so I went to the *King's-head* Tavern by the *Exchange*, we went into a little Room; says he, there is something I would have you do. What's that? says I. Says he, can't you get some Sea-men fitting to make Commanders of Ships? I did not understand Mr. *Rouse's* meaning in it, but I thought Mr. *Rouse* being in Employment might put me in, being destitute of Employment as well as other Men. So after we did appoint to meet at *Wapping*, at the Sign of the *Blew Anchor* in *Wapping-Dock*. Says Mr. *Rouse*, If I come not at ten of the Clock, do not look for me. Says he, Can you get no Men that are fit to make Commanders of Ships? Says I, I have no Acquaintance with any, I do not know but two or three: But, says I, I will see what I can do. I waited for Mr. *Rouse* and Mr. *Leigh* next Day (both were to come.) The next Day I asked him, what he intended by the Commanders of the Ships? Where would he have those Ships? He answered, some of the King's Men of War that lay at *Deptford* and *Woolwich* to make Guard-Ships. Says I, what will you do if you have no Powder and Shot? If you could take the Tower, then you might provide them with every thing fitting. Says Mr. *Rouse*, We must se-

cure

cure the *Tower* and *Whitehall* both, or we can do nothing. Says I, Mr. *Rouse*, where is your Oath of Allegiance then that is to the King? Says he, We will secure the King that he shall come to no Damage, and he shall remain King still. If Mr. *Rouse* hath any thing to object against what I say, I desire to hear it, I speak nothing but the truth.

Mr. Serj. *Jefferies*. Did you meet with him at any other time?

Lee. This was the first time he put out any such thing to me, concerning any such Contrivance.

Mr. Serj. *Jefferies*. Did you meet with him afterwards?

Lee. Yes, We had some Discourse, it was to the same effect, but it signifies nothing, and my Memory being shallow, I do not exactly remember it. I know I must give an account of this before a greater Court than this.

Mr. *Burton*. Mr. *Corbin*.

Mr. Serj. *Jefferies*. I did acquaint you, my Lord, that there was occasion to make use of Evidence against the Prisoner at the Bar, I gave you an account how that Evidence was not received. Now I desire to give you Proof, that the continual Inclination of this Man's Heart was the Killing of the King, and Destruction of the Government.

Mr. Thomas Corbin sworn.

Mr. Serj. *Jefferies*. Pray, Sir, tell my Lord, and the Gentlemen of the Jury, what Meetings you had heretofore with the Prisoner about the Year *Eighty One* or thereabouts. See whether you know him.

Mr. *Corbin*. What I have to say against Mr. *Rouse* is only what I gave in Evidence to the Court before.

Rouse. When was that?

Mr. *Corbin*. In *Eighty One*.

L. C. J. Pray what do you know of him? Don't tell us what you gave in Evidence, but you are on your Oath to speak truth, not what you said then.

Mr. *Corbin*. My Lord, Some few Days before the Members for the City of *London* went for *Oxford*, I happened to appoint a Gentleman (one Mr. *Wyat*) to meet me at Mr. *Leech's* in *Cornhil*. Mr. *Rouse* came by, I knew him very well, he was concerned in the Commission for Disbanding the Army as well as I. He came in, and saluted not only me but the Master of the Shop with *How do you?* He enter'd into Discourse, and said he intended to go for *Oxford*, and that he had agreed with the Coffee-men about Town to furnish them with News; says he, there are several Gentlemen resorting to your Shop, it would do well if you had it. Says Mr. *Leech*, what shall I give you? Says he, if you will go to the Tavern, we will agree it over a Glass of Wine. But Mr. *Rouse* told me he had a Kindness to beg of me, and (says he) I would have you engage some of your Friends to deliver them speedily to such a Person I shall appoint, *de die in diem*; for, says he, if they be delivered by the ordinary Letter-Carrier, they won't turn to account, nor give satisfaction. By and by Mr. *Wyat* came in, (that I was to meet at the Stationers) Mr. *Wyat* asked me, what I thought of the Sessions? Mr. *Rouse* made answer, he did foresee it would be a very short

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Sessions. Says he, these frequent Prorogations and Dissolutions of the Parliament won't avail him, for whatever the King has, the Parliament gave him, and they may take it away when they please. One bid him have a care what he said, and he reply'd, *the King had forfeited his Crown, and had no more Right to it than he had.*

L. C. J. Mr. *Rouse*. If you would ask him any Questions, pray direct your self to us and we will ask them.

Rouse. I desire he may be asked what was said before and after?

L. C. J. Can you tell him? Do you know there was any previous or subsequent Discourse to this, that might any way alter it?

Rouse. It was the same Question propounded in *Eighty One*.

Mr. *Just. Withins*. Pray, Did he say the King had forfeited his Crown?

Mr. *Corbin*. Yes, and when he was rebuked for it, he reiterated it.

Mr. Serj. *Jefferies*. We will trouble your Lordship but with one piece of Evidence more, only to give you an account Mr. *Rouse* is a Man very well known in the City of *London*, yet when there were Officers came to seize him, he had forgot his Name of *Rouse*, and did not remember it. Swear *William Richardson* (which was done.) Pray tell my Lord, and the Jury, whether you were at the taking of this Mr. *Rouse*, and what Name he went by.

Mr. *Richardson*. I was upon the Fourth of July instant, to search for one *Armiger*, and coming to Widow *Hay's* Coffee-house (I think they call it) the Widow told me there was no Man in the House: I went down the Street and came back again, and one said he saw a Man go into the Garden; says he, do you stay here and I will go and see; he saw this Gentleman, says he, what is your Name? He said *Johnson*, I asked him and he said *Johnson*. I told him, we must have an account of him. Some said they did not know him. We went to the *Half-Moon Tavern* in *Aldersgate-street*, he sent for other Men, they said they did know him, but they could say nothing in his behalf.

Mr. Serj. *Jefferies*. Is that the Man, *Johnson*?

Mr. *Richardson*. That is the Man that said his Name was *Johnson*.

L. C. J. Look you now, Mr. *Rouse*, this is your time to speak for your self. What have you to say to this that is charged upon you? You hear the first Witness does say, That you would have engaged him in a Design of raising of Men, and you told him you designed to surprise the *Tower*, and to that purpose he surveyed it with you, and you told him what your Design was you met Mr. *Goodenough* about, it was to raise Men. *Goodenough* was for Killing the King, you, it seems, at first was but for securing the King, and making him do what you please; but afterwards it was come to an higher matter, and then you had found out a way to engage some Captains to seize the *Tower*, and others were to seize *Whitehall*, both were to be done at once. What say you to this? (Here are three Witnesses that testify very strongly against you) and the Device you had to get Men to *Black-beath* to secure the *Tower*.

Rouse. My Lord, I stand here for my Life; it never enter'd into my Heart, nor came out of my Mouth, but he came to me several times about

about it, and I opposed it. At last he dogg'd me so often, that he gave me occasion to ask him the meaning of it. The first place I saw him in was the *King's-head* (as he saith truly) in *Switbin's-Alley*. There were several Persons (as they met there every Day upon their private Occasions) that is true. He asked me a strange Question, (that was the first time I heard of it) whether I was willing to oppose a Foreign Invasion that was like to be made speedily? And whether I would engage in the Defence of it? And this he did two or three times afterwards. To which I replied, Sir, I and every honest Man are bound (as we are Subjects, and have taken the Oaths of *Supremacy* and *Allegiance*) to engage in such a thing you put me upon, that was, to engage against a Foreign Invasion. The next time, he asked me how far I would assist, if such a thing should fall out as a Foreign Invasion. I wonder'd to hear it so often repeated; I answered, I never had but one Sword for several Years, tho' I have had occasion for many in other Countries, but I make no question but by the Assistance of my Friends, to *Raise an hundred Arms*, that was my very Expression. But withal I demanded what he meant by Invasion, and that I insisted upon several times; for, says I, I know of none, and I hope there is none like to be. I took an account of this in Characters, and have acquainted His Majesty and the Council with it. He replied to me, says he, I wonder you are a Stranger to such a thing. 'Tis true, says he, that is the *Word* goes up and down, but, says he, there is another kind of Invasion meant by some Men. I asked him what other Invasion do you mean? He answered presently, Don't you know? Are you a Stranger in *England*? in *Israel*? Says he, there is an Invasion upon our *Rights* and *Liberties* and *all we have*: Whereupon I was a little startled. This was at the *King's-head* Tavern. Another time I desired him to explain his meaning, being a Stranger to it, when I expressed my readiness to serve the King upon such an Occasion in those Words; they that know me, know that I am not in the Capacity of Raising an hundred Arms, but I intended it, as God knows, in opposition to a Foreign Invasion. But I thank God, I took Characters day by day, and with a Resolution day by day to discover it; but he has got the start of me, for fear I would swear against him. He insisted still upon it, that our Rights and Liberties were invaded, and that was the Invasion all along intended, and that was the way to hook in Persons, only upon that pretence of a Foreign Invasion. I asked him in *what manner* he meant Invasion? Says he, what with their *Doctrines* on one hand, and *Oppression* on the other, they lye so heavy that we *can't bear it no longer*. Says I, What do you mean by this? What Course do you think of? What can you propound to your self to extricate your self out of these Troubles you so much complain of? To which he answered, You are a Stranger to what is a foot and hath been a foot a great while. Do you not know the Persons that are engaged in the Design? (I was a little inquisitive to know what was meant by the Persons.) No (says I) positively, I know not what you mean, I am a perfect Stranger to these Persons and this Design, and I wished him and

all others (as they were Men and Christians) that they would take care of *opposing the Government they lived under*, that was my very Words. Says he, that we have consider'd very well, and how to secure the *two things*, and, says he, you shall see we will do it dexterously, without shedding a drop of Blood, nay, says he, not the Blood of the Duke of *York*, tho' he be the veriest Dog in *England*. I desired him to explain himself, he answered, The mischief of it is we can't agree among our selves, for it was *Us* and *We* at every Word; so I concluded he was of the Cabal and Club that met together on this Design (that hath come before your Lordship;) and I am pretty confident there was such a hellish Design, tho' I thank God I had no hand in it. Said I, Who are the Persons? Pray declare the bottom of this Story you come to me about one day after another. With much ado, he told me Mr. *Goodenough* was one. After this Discourse I never saw Mr. *Goodenough* but twice, once was at the *King's-head* Tavern, where I believe was twenty; the second time was a day or two after I saw the Proclamation and his Name in it. So much I speak of Mr. *Goodenough*. I asked him the Names of the other Persons that were engaged in this Design, and (says he) I must conceal them, for I am under an Obligation; but the first time I saw the Proclamation against Colonel *Rumsfey*, and the others, says he, I was deadly afraid I was in the Proclamation; but (says he) all these Persons are concerned and several others. Thereupon he told me, that when they met they came to this Resolution of seizing the *Tower*, the *Aldermen*, and taking of *London*. Says I, Pray what Money have you to carry on this? Money! Oh, says he, we don't want Money; says he, Mr. *Goodenough* hath assured me there is 40000 *l*.

L. C. J. Look you, You invert all his Discourse: He hath sworn it against you. Have you any Evidence in the World? You are not in a Capacity to swear against him.

Rouse. My Lord, he hath turned it upon me, he spake to me always in private.

L. C. J. Look you, You have fixed but upon one Person here was *Mate Lee*, that gives a very shrewd Evidence against you; Did he come and teach you? Did he use these Words?

Rouse. My Lord, I have nothing to say against *Mate Lee*, I hope he is an honest Man. But I having a Design to discover this whole thing, and having so much out of *Leigh* the *Dyer*. —

L. C. J. What did you use these Words to him for then?

Rouse. To satisfy the Gentlemen that put me upon it, that I might come to the bottom of the Design.

Mr. Just. With. You say you know a great deal more: How came it to pass you never told the King one word of this till after you was taken?

Rouse. I have told it since I was taken.

Mr. Sol. Gen. Pray, when you had got to the bottom of all this (as you call it) Why did you deny your Name?

Rouse. I did not deny my Name.

Mr. Serj. Jefferies. He hath as many Names as he has Designs, and they are abundance.

Rouse. I did not know they were Officers. I did not think there was any Obligation upon me to tell every Man my Name.

L. C. J. You hear what Evidence is given against you concerning your Discourse in *Eighty One*, which tho' it be not the thing for which you are directly called in Question; yet if you could clear your self of it, it would import you much, for that does shew your Spirit, and that you have had a long while a Design against the King's Life, if that be true; therefore it would be very fitting that you purged your self of it, and that you could some way or other give an Answer to what you said, *That the King had forfeited his Crown, and had no more Right to it, than one of those sorry Persons you spoke to:* And to say the Parliament might take away the King's Authority. These are strange Treasonable Expressions.

Rouse. My Lord, Tho' this thing be revived, which was out of doors two Years since, and I suppose it is well known to your Lordship, who was then upon the Bench. As I was told, there was a Word in the Indictment called *Colloquium*: He was asked what Discourse passed before? But if Mr. Corbin would remember himself, I do confess I did say these Words; but the Words that followed before.

Mr. Just. Wimb. What do you mean, the Cart before the Horse?

Rouse. Mr. Wyat was urging of several Discourses, the Popish Grandure in Deposing Kings, and I gave this Answer in these Words: Sir, (says I) *If it were in the Power of any Pope to depose the King, then he might as well take away the Crown off the King's Head; but he hath no such Power; if he had that Power, says I, then the Crown of England is yours as much as his.*

Mr. Sol. Gen. What was the *Colloquium*, when you said the Parliament might take it away?

Rouse. I never said that.

L. C. J. I have heard a great deal of your Discourse, if you think you can make any of it good by Witnesses to your Advantage, call them.

Rouse. My Lord, I have not had time to collect my Witnesses. How can it be supposed I should call Witnesses? I don't know whether they are here. Here are Witnesses called to prove a Matter, whereof upon a Tryal two Years past I was acquitted.

Mr. Just. Wimb. Pray do not go away with that, here are two Witnesses since.

L. C. J. You were told, that was not the thing laid to your Charge now, that does only shew the Temper of your Spirit, and how your Inclinations have been all along. Look you, this you are now charged with, is a Design to *Seize and Kill the King*, and to that purpose to have enter'd into a Conspiracy with *Goodenough* and others, for the raising of Men, and the making of a *Rebellion and Insurrection* here in the Kingdom; whereby you might have seized not only the King but his Fort here the *Tower*, and made your selves Masters of his Ships, and so enter'd into a perfect War with him in his own Kingdom, to the Destruction of himself and the Government. You hear what the Witnesses say against you.

Rouse. I do declare in the Presence of God Almighty, before whom I must stand, it never enter'd into my Heart.

Mr. Jones. If that would do, we should have none hanged.

Rouse. I appeal to your Lordship, and this honourable Court, whether 'tis likely for me, who am such a silly Person, to engage in such a devilish Design, especially being concerned with no Person in the World about it; for I declare, if I was upon ten thousand Oaths, I never had any Discourse with any Person in the World about it. In the next place, I was never in any Meeting, tho' I have heard of several darkly that they met in *London*, and in several Clubs, but I could never find out the places. I desire to ask him, whether he knows with whom I did concern my self.

L. C. J. Look you, Did you never meet him with any Company concerning any of these Treasonable Designs that you have spoken of?

Mr. Leigh. I will give your Lordship, and the Jury, an account. Mr. Rouse acquainted me he could make ten Sea-Captains, I acquainted Mr. Goodenough with it. He told me he would have a Golden Ball, and told me the Charge. We went to the *Angel and Crown Tavern*, from thence he came to meet Mr. Goodenough to tell him what he had said to these Captains. The next Day he met Mr. Goodenough; and Mr. Goodenough, Mr. Rouse, Mr. Pachin, and I, went from *Joseph's Coffee-house* in *Exchange-Alley*, and he discoursed about getting of these Captains.

Rouse. Who was present?

Mr. Leigh. We never discoursed the Matter joyntly, but singly with one Man. Mr. Rouse and Mr. Goodenough went into a Room apart above stairs, and discoursed this Matter (as I believe) half an hour.

Rouse. How do you know what Discourse I had with Mr. Goodenough when you was not present?

Mr. Leigh. Mr. Goodenough thanked me for bringing him acquainted with you.

L. C. J. How do you know what Discourse they had?

Mr. Leigh. I know only what Mr. Rouse told me, Mr. Rouse told me that he would engage ten Sea-Captains, that a Ball should be played, and every Man take his Dividend.

L. C. J. Did he tell you he had discoursed this with Mr. Goodenough?

Rouse. Did I tell you so?

Mr. Leigh. Yes, Sir.

L. C. J. You speak of several in Company, one Pachin and others.

Mr. Leigh. We went from the *King's-head Tavern*, for there was Company we did not like, tho' we discoursed there but of *Hay-making*, and getting Men to help the Country People.

L. C. J. What did you mean by that?

Mr. Leigh. That was to get Men for this Business.

L. C. J. What did he say the Intention was of raising these Men?

Mr. Leigh. Mr. Rouse hath frequently and often acquainted me, that the King had taken an Oath in *France* and *Spain* to bring in *Popery* and *Arbitrary Power* in so many Years, and that he had not done it, made the *Popish* Party angry, but that he would do it.

L. C. J. Well, what Design was there in raising of Men and seizing the Tower?

Mr. Leigh. He told me all things must be done together. The King and the Duke must be seized, for that was the principal Work.

Rouse.

Rouse. It never enter'd into my heart. Be pleased to ask him if he was not arrested by one *Keeling*, and what was the account of it.

Mr. Leigh. No.

Rouse. I mean sworn against.

Mr. Leigh. I will give your Lordship an account of it. *Mr. Goodenough*, *Mr. Rouse*, *Mr. Pachin*, and I, had been at the *King's-Head Tavern*, a Man came and told me, a Man had been at my House, and that one swore against me, and it would be dangerous to go home. A while after comes one *Armiger*, and he told me *Mr. Bateman* was gone one way and he another to seek for me, and desired me to have a care of my self. With that *Mr. Rouse*, *Mr. Goodenough*, and *Mr. Pachin* came out to me. *Mr. Rouse* directed me to go to the *Sun-Tavern* at *Moorgate*, and I went; *Mr. Rouse*, *Mr. Goodenough*, and *Mr. Pachin*, came to me. I told them I would meet my Wife, but they would not let me go on by any means, but sent one *Mr. Thomas* a Coffee-man for my Wife.

She came and told me *Mr. Goodenough* had sworn against several People, or he was sworn against, I went to *Mr. Rouse's* House, where *Mr. Goodenough* came to me, *Mr. Rouse* would have had *Mr. Goodenough* staid there all night: *Mr. Goodenough* sent for his Wife, to know if his Brother had sworn, she acquainted him he had not sworn; *Mr. Rouse* invited him to lie with me. He shewed me behind the Bed a Window to go into another man's Room to make my Escape, if any man should come to search the House. I lay there on *Saturday*, *Mr. Goodenough* and *Mr. Nelthrop* came to me; *Mr. Goodenough* told me, he had lain at *Mr. Nelthrop's* all Night, but he had seen his Brother, and he had not sworn against me: I heard that *Mr. Keeling* had sworn against me, and did say in Discourse, if I did light of *Keeling*, I would kill him.

Rouse. I desire to ask him another Question, When he was told he was sworn against, what did he say?

L. C. J. He tells you before-hand, that he said he would kill *Keeling* if he could meet him.

Rouse. He says, *Mr. Goodenough* and *Nelthrop* came to my House, ask him if I was in the House, or saw *Mr. Goodenough*?

Mr. Lee. I am not positive whether he saw them together, but that he saw *Mr. Goodenough* there the *Friday* Night, for he invited him to lie with me.

L. C. J. Pray what was your Reason in putting *Mate Lee* upon the inquiring out men to make Masters of Ships?

Rouse. To satisfy the Gentleman, because he told me there was such a Design in hand, to get to the bottom of that Design, that so his Majesty might come to no damage. Pray, my Lord, How could I acquaint the King, or any Justice of Peace, what he meant by it, unless I understood it?

L. C. J. Have you any thing more to ask? Or would you have any Witnesses called?

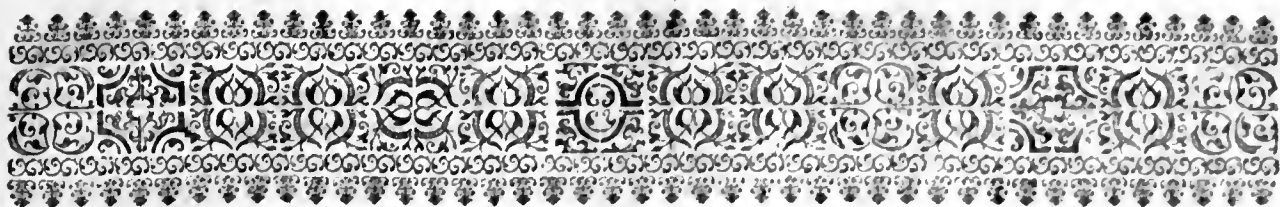
Rouse. My Lord, 'Tis my unhappiness I have no Witnesses.

Mr. Serj. Jefferies. He hath confessed the Treason enough.

L. C. J. Look you, Gentlemen, of the Jury. You hear that this person at the Bar is Indicted for High-Treason in conspiring the King's Death, and declaring this by Overt Acts, that is, endeavouring to raise Men here for to seize the Tower, and to make an Insurrection here, and a Rebellion within the Kingdom: You hear two positive Witnesses of what they have heard from him: He did endeavour, says *Lee*, to bring him into it, and he told him the whole Design, he did declare to him the manner how they intended to seize the King and the Duke of *Tork*: *Mr. Goodenough* was one of the Persons that confederated with him, one of them, but several others they had. They had covert Terms to disguise this, by getting the Country People in their Harvest. He told them of a Design he had to get the Seamen, a Thousand of them together, to seize the *Tower* and *White-Hall* both at a time. And you hear that *Mate Lee* had the same discourse in substance with him, of endeavouring to seize the *Tower* and get Arms, for to seize the King's Ships, to raise a Thousand Persons for the effecting of this: All these things you have heard proved against him, he gives no Answer to any of them, but only tells you, That in truth he did not say these things to them; but they, that is the first *Lee*, said these things to him. He hath no Evidence at all of it. You hear likewise (which does agree with this case) the Testimony by the other person concerning his Discourse in 8r. How he said, The King had forfeited his Crown, and had no Right to it; but the Parliament gave him his Authority and might take it away. All these Discourses they favour of a wicked Spirit as can be in the whole World. I must leave it to you whether you believe him Guilty.

The Jury presently gave their Verdict that he was Guilty.





T H E
T R Y A L
O F


WILLIAM BLAGUE.

William Blague having been Arraigned on Thursday, July 12th, pleaded Not Guilty, and put himself upon his Country was brought to the Bar again Friday July 13th. He made no Challenges, and the former Jury was Sworn.

*Robert Beddingfield,
John Pelling,
William Windbury,
Theophilus Man,
John Short, Senior,
Thomas Nicholas,*

Jur.

*Richard Hoare,
Thomas Barnes,
Henry Robbins,
Henry Kempe,
Edward Raddish,
Edward Kempe.*

Clerk.  Entlemen of the Jury, look upon the Prisoner, and hearken to his Charge. He stands Indicted by the Name of *William Blague*, late of *London*, Gent. that he, together with *John*

Rouse, &c.

Mr. North. Gentlemen, you that are sworn; the Prisoner at the Bar, is charged with compassing the death of the King, and conspiring to raise War and Rebellion to destroy the Government, and take possession of it; that he did conspire with one *Rouse*, and several others not yet known, to bring these things to pass, and being join'd together to seize the *Tower*, and to provide several Arms: To this he hath pleaded not Guilty, &c.

Mr. Serj. Jefferies. My Lord, and you Gentlemen of the Jury, we shall not need to trouble you much with the Prisoner at the Bar, for this Prisoner, with him that went before, were to undertake that part of this horrid Conspiracy relating to the seizing the *Tower*, because the the same Witnesses that were against the former, are against the Prisoner at the Bar. We shall not need to trouble you with the history, we will cause our Witnesses to prove it.—Do you hear, *Lee*, you must tell my Lord and the Jury what the Prisoner at the Bar was concerned in.

L. C. J. What do you know of any Treasonable practices of his?

Mr. Lee. I will acquaint your Lordship and the Gentlemen of the Jury, that *Capt. Blague*, and *Mr. Rouse* were frequently at the Tavern. I

presume many times they came in about business, and sometimes there were Discourses to carry on this Conspiracy. *Mr. Rouse* told me he had acquainted *Capt. Blague* with it, about getting ten Sea-Captains; *Captain Blague* told him, they had better engage one or two Ships to shoot Mortar-pieces into the *Tower*, which would presently destroy it; and discoursing with *Captain Blague* about the Affair, he told me he would be ready in a Fortnight or Three Weeks.

Capt. Blague. My Lord, Will you please to ask what time that was.

L. C. J. You shall have any question asked by and by.

Capt. Blague. Very well.

Mr. Lee. *Capt. Blague* told me he would be ready in a Fortnight or something more, and he had an intention to lay in about fourteen Guns in his own Ship that he had bought, he would have twenty four in it, and lay it on *Southwark* side against the *Tower*. He would venture his Ship, but they must see they were provided with money for the Sea-men. I acquainted *Mr. Goodenough* with this, and *Mr. Goodenough* desired to speak with *Capt. Blague*; I told *Capt. Blague* of it, and we took Coach at *Stocks-Market*, and went to the *King's-head* in *Chancery-Lane*, where we met with *Mr. Richard Goodenough*, and *Mr. Francis Goodenough*, *Capt. Blague* asked what money they had provided, they said, about 40000 *l.* says *Capt. Blague*, the Sea-men will swallow that up immediately.

L. C. J. What did *Capt. Blague* say?

Mr. Lee. *Mr. Goodenough* and *Capt. Blague* discours'd about the matter at the *King's-head* Tavern at *Chancery-lane* end, and the Discourse about the matter was, how to seize the *Tower*, he then told them again, the only way was to do it with Mortar pieces, that he would venture his own Ship, and provide Two hundred Men.

L. C. J. What did he say about Money?

Mr. Lee.

Mr. Lee. He asked what Money was provided, he said, there was about 40000 *l.* then he said, that would be easily swallowed. Mr. Goodenough said, that there would be more provided at any time. Captain Blague and Mr. Goodenough, both of them, drank a Glas or two of Wine together, and so at that time we parted. I met with Captain Blague again, and he bid me for God's sake, don't discourse before my Mate such a one, but my Mate Lee is a very honest Fellow: Said he, I will undertake once in twenty times to dismount them six Guns that face towards Surrey side, which I understood to be about Traitors-Bridge, he would undertake to dismount them. What Discourse Captain Blague and Mr. Goodenough had apart I can't tell, but Mr. Goodenough told me, he would get some other Captains to engage in that Affair. That Business was left to him and I, and I was desired to be frequently with Captain Blague for the managing this Affair of the Tower; and, says he, I have had a Commission, tho' not in England, by Land as well as by Sea.

L. C. J. Will you ask him any thing, Sir? Now he shall be asked any thing that you will propose. First, You do propose to him about what time this Meeting was. What say you to that?

Mr. Lee. If it please your Lordship, I believe it was toward the latter end of May, or the beginning of June.

Capt. Blague. If you please, my Lord, I will give you a Journal or Narrative of all my Proceedings.

L. C. J. Will you ask him any more than that?

Capt. Blague. No, my Lord.

Mr. Serj. Jefferies. We will call Mate Lee. This Mate Lee was the Man that might not be trusted. — Mate Lee, Tell my Lord, and the Gentlemen of the Jury, what Discourse you have had with the Prisoner at the Bar, Captain Blague, about seizing the Tower.

Mate Lee. I shall, Sir. The first Discourse that ever I understood, was one time he and I was riding in a Coach, says Capt. Blague, one of these days we shall have a Ball to toss. I did not know the meaning of this Ball, till afterwards Mr. Rouse, and Mr. Lee and I came together, and he told me of tossing a Ball upon Black-beath. Then I began to understand it. And after this, I can't tell whether it was before that, Captain Blague and I walking about the Tower, and discoursing of this, my Way was to scale the Tower, and take it that way; says Captain Blague, the best way is to shoot Mortar-pieces on Southwark side; this was all the Discourse.

Mr. Serj. Jefferies. Can you say any thing about the Ship?

Mate Lee. Nothing about the Ship, but about Mortar-pieces on Southwark side.

Mr. Serj. Jefferies. What time was that?

Mate Lee. I cannot be positive, about six Weeks ago, or less.

Mr. Serj. Jefferies. The first time was in the Coach?

Mate Lee. That was about the Ball; I did not understand it, only tossing up a Ball, I did not understand the meaning of it, till afterwards Mr. Rouse and Mr. Lee and I came together.

L. C. J. How came you to discourse with him concerning the best way of taking the Tower?

Mate Lee. Mr. Rouse, and Mr. Lee and I, and Captain Blague had been together. We discours'd about taking the Tower. And we had this Discourse among our selves, which was the best way to take the Tower; my Approbation was Scaling Ladders, and Hand Granadoes, that was the best Way, Captain Blague's way was with Mortar-pieces on Southwark side.

L. C. J. To what Intent was this Discourse, had you had any former Discourse with any Persons?

Mate Lee. Not at all, if it please your Lordship. The first Discourse I had was with Mr. Rouse and Mr. Lee.

L. C. J. And was that about taking the Tower?

Mate Lee. To surprize the Tower, and Mr. Lee and Mr. Rouse and I went down to view the Tower.

L. C. J. Then afterwards Captain Blague came in about the way to take it?

Mate Lee. This Discourse with Captain Blague about the Tower was between him and I. I don't remember it in any other Company.

L. C. J. What was your Business with Captain Blague?

Mate Lee. My Business was with Capt. Blague to be his Mate, and I was conversant with him at the Exchange, the Coffee-house, and the King's-head Tavern. And we had Discourse about these things.

L. C. J. Come Captain Blague, Would you have him asked any Question?

Capt. Blague. My Lord, Otherwise I had gone to Sea soon after I came home, but so it was, that I had an occasion for Pennsylvania, and New York, and coming one day to the Exchange, I met Mr. Rouse, whom I had not seen in 16 or 17 Years before, for Mr. Rouse made a Voyage to Virginia with me about 20 Years ago. Now, my Lord, meeting with Mr. Rouse, I had an occasion then to take up two or three hundred Pounds, and knowing Mr. Rouse was a Broker, I did employ him to procure it me; but he did not; however, daily I came to him to dispatch that Affair, and Mr. Rouse being a Man for a Tavern, I went to the King's-head Tavern, and the Sun Tavern, if he was not at one place I found him at another, in order to perfect this Business. So, my Lord, when I came into his Company, several People use to be with him that I never saw in my Life, and Mr. Rouse would say, sit down a little, and I will go with you presently, so I would sit down and drink a Glas of Wine, and go to the places where the Affair was to be managed; after I had done thus several days, and to no purpose, I did it my self. Now, my Lord, Mr. Rouse in that time brought me acquainted with Goodenough, because Goodenough was in his Company and Mr. Lee, not that I ever saw Mr. Goodenough in my Life before, and not as Mr. Lee says, that I ever was with him at the Dragon.

Mr. Lee. The King's-head Tavern in Chancery-Lane.

Capt. Blague. I was just coming home when Mr. Lee was going to meet with Mr. Goodenough, and I went in there and took a Glas of Wine, and bid him farewell, and so went home. When

I was with Mr. *Rouse*, I was asking what People they were that were in his Company. he said very honest Men. drank a Glass of Wine and went away, and still I found them together. I was saying to this Mr. *Leigh* here, if you will go along with me, you shall give me as much for your Passage as any of the rest of the Passengers do. Now at this time my Ship was not in my Possession; this very Day three Weeks I had it in my Possession, and now at this very Day she is in the Carpenter's Hands, who is here now, I suppose.

L. C. J. Well, go on.

Capt. *Blague*. Now Sir, whereas Mr. *Leigh* reports that I discours'd with Mr. *Goodenough* concerning any publick Affairs, or any thing tending to the Disturbance of the Peace, then am I not a Christian. Besides, Sir, I did not speak twenty Words, or ten Words at the time, but your Servant, Sir, or here's to You in a Glass of Wine; and this I do speak in the Presence of God Almighty. And when I came into a Room, I never staid longer than Mr. *Rouse*, for my Business was with him, and so went about my own Affairs. As for Mr. *Goodenough*, I believe I was three times in his Company before I could remember his Name, I would ask *Rouse* several times, What do you call that Man? But in reference to the *Tower* that Mr. *Leigh* speaks of, that must be touched at; I do remember very well, I shall by no means palliate it, if I were presently to die; Coming up from the Ship, we were coming by Water, indeed I should have had Possession of the Ship a Fortnight before, if they had done me Justice, I had two or three hundred Pounds for them before, but coming from the Ship, we were coming up by Water by the *Tower*, I don't know how it was, I spake it to the Water-man, this Place is not well fortified, and if any occasion should happen, this Place lies in more peril and jeopardy than any Place of the *Tower*, and so it does. It is an easy matter for any to give their Sentiments, whether they be accepted of or no. This is the very thing I said, and then they were talking of a *French War*, and the like. Then I said, you silly Fools, if they should take it, it is but going over a t'other side, and throwing half a dozen Bombo's to them and set them out again. But however, Mate *Lee*, if he remember, I told him the same thing at that same time; and I told Mr. *Leigh*, It was pity a thousand times that Place was not better Fortified. But as to what Mr. *Leigh* says, to have two hundred Men in a poor Pink, I have refused several in that very Ship, because I could not stow an hundred Men, Women and Children, and that I should press two hundred Men in that Ship, that will not hold. And besides, it is a Pink, let any one look upon her, and see whether that Ship be fit or no to take in two hundred Men. But whereas they say I had Arms and such things, I bought the Ship and Arms together, I had

4. Blunderbusses, 2 Javelins, and Half-Pikes, that is all.

L. C. J. You forget to answer several things, you had Discourse about a Bank of Money.

Capt. *Blague*. A Bank of Money, my Lord, I never discours'd of. And as to the Ball that my Mate speaks of, my Lord, I know no more what it means to this very day, than one that never saw a Ball.

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L. C. J. Look you, Sir, you were with Mr. *Leigh*, this Mr. *Leigh* hath sworn, he says, you told him, That you would undertake to get two hundred Men, and you had bought fourteen Pieces of Ordnance already, and that you would within a Fortnight's time, do you remember, bring your Ship to *Southwark*, and be ready to beat down that part of the *Tower*.

Capt. *Blague*. My Lord, I have told you already the Ship was not mine to bring till this Day three Weeks.

L. C. J. That was within compass, for they tell you this Discourse was about a Month ago.

Capt. *Blague*. It was in *May*, my Lord, they talk of.

L. C. J. No, they speak of about a Month ago, you were to have them in a Fortnight's time — What says the first *Leigh*, what time does he speak of?

Mr. *Leigh*. If it please your Lordship, he said his Ship would be ready in a Fortnight's time or thereabouts.

L. C. J. How long was that ago?

Mr. *Leigh*. About a Month or five Weeks.

L. C. J. To what purpose did you meet Mr. *Goodenough* so often to discourse about this matter of the *Tower*?

Capt. *Blague*. My Lord, I never met with him at all, but when I came to Mr. *Rouse* about this Business of the two hundred Pounds.

L. C. J. Mr. *Leigh*. What say you concerning his Enquiry for Money?

Mr. *Leigh*. If it please your Lordship, Mr. *Goodenough* and the Captain met at the *King's-head* Tavern, they met several times apart out of Company, and discours'd of the Business apart; Mr. *Goodenough* asked me for the Captain many times, I told him what the Captain said to me. Mr. *Goodenough* took the Captain out, and discours'd him about this Affair. Mr. *Goodenough* hath told me several times the Captain would be very serviceable. The Captain asked what Money there was; I told him about 40000*l*. and he said that would be quickly gone. I enquired of Mr. *Goodenough* again, and Mr. *Goodenough* told me there was more Money in *Holland*.

L. C. J. What Money was he to have?

Mr. *Leigh*. Two hundred Men — The Captain says, I named him before the King and Council, to be at a Meeting at the *Green-Dragon* Tavern. It is true, I did acquaint the King and Council, that Mr. *Rouse* had Business at the *Green-Dragon* Tavern. But this was at the time of my absconding, I could not tell where to meet him again.

L. C. J. What Guns did he say he had provided?

Mr. *Leigh*. If it please your Lordship, he said, he had fourteen Guns in the Ship, and would make them up twenty four: He would undertake in twenty shot, to dismount them Guns.

L. C. J. Where was this Discourse you had with him, about this two hundred Pound?

Mr. *Leigh*. If it please your Lordship, it was at several times, one was with Mr. *Goodenough* at the *King's-head* at the corner of *Chancery-Lane*.

L. C. J. Look you, Sir, by the Oath you have taken, did he undertake to raise Men, and to assist with his Ship in taking the *Tower*?

Z

Mr. *Leigh*.

Mr. Leigh. If it please your Lordship, he told me he would so do it. He told me he would have twenty four Guns.

Jury. Did the Captain tell you so?

Mr. Leigh. Captain Blague that is here.

Capt. Blague. My Lord, in reference to the two hundred Men, this is the thing that I would answer, I could not flow a hundred Men, Women and Children.

L. C. J. Two hundred Men he says for this Service.

Capt. Blague. Yes, my Lord, I mean so. Who can you have to say so besides your self?

Mr. Leigh. If it please your Lordship, this Discourse was only with Mr. Rouse, Mr. Goodenough, Captain Blague and I.

Capt. Blague. My Lord, Mr. Lee said before the King and Council, that he was never along with me but once, and of what I said then, he could tell only he was there when I went to look Mr. Rouse. How can these two Expressions go together?

Mr. Leigh. My Lord, As to that before the King and Council, I did say I was not apart with Captain Blague and Mr. Goodenough at the King's-head Tavern, but Captain Blague and Mr. Goodenough were there several times, and they were apart by themselves, and that I had Discourse with Captain Blague and Mr. Goodenough, and came with them once to the King's-head Tavern.

L. C. J. What did Captain Blague tell you of what Discourse he had with Mr. Goodenough?

Mr. Leigh. Captain Blague did tell me, that we must have a great care, or else we should be all ruined, and that his Ship should be ready, and always encouraged me. And says he, when I have done the Business, I have been a Captain ashore in another Country, I have been in Commission in another Country ashore, and can tell how to manage Men ashore as well as aboard. Another thing was, after all this, some time, when I understood I was sworn against, I was indeed, the Captain says right, to have gone with him a Passenger, and was with him several times, I gave him a Report how the Tower might be taken by Ladders and Granadoes, and he told me that Nelthrop's Brother came to see him, and did inform me that neither Mr. Goodenough nor his Brother was taken, and that the Duke of Monmouth was in the Country, and quickly would come.

L. C. J. Who told you this?

Mr. Leigh. Captain Blague.

Mr. Serj. Jefferies. This is a pretty matter to smirk at, Captain.

Capt. Blague. I will assure you, Sir, there is no truth in it.

Mr. Serj. Jefferies. Would you smile the Witnesses out of their Oaths?

L. C. J. Look you, Mate Lee, what say you to this? In your Judgment and your Thoughts, was the Discourse concerning taking the Tower in a jesting way?

Mate Lee. No, an't shall please your Lordship, I was in earnest in discoursing of it, my Way was, as I told your Lordship before, Scaling Ladders and Hand-Granadoes.

L. C. J. Had you any Talk before of surprizing the Tower?

Mate Lee. No, my Lord, by no body but Mr. Rouse and Leigh.

L. C. J. What had they spoken to you concerning surprizing the Tower?

Mate Lee. Mr. Rouse spoke to me of getting some Sea-men, that might be fit to make Masters of Ships, and I asked him what he would do with those Sea-men to make Commanders of Ships? He said, to put them aboard the King's Men of War, and make Guard-Ships of them; I said, what can you do with them to make Guard-Ships, when there is neither Powder, Shot, nor Ammunition? But said I, if you can take the Tower you may do well enough: So that our Discourse was about taking the Tower.

L. C. J. Was Captain Blague with you then?

Mate Lee. What Discourse we had about taking the Tower was between our selves.

L. C. J. How came you to discourse concerning this?

Mate Lee. This was our common Discourse, I suppose the instigation might be by Mr. Rouse. I was acquainted with Mr. Rouse, by going with Captain Blague; this was my first Discourse with Mr. Rouse and Mr. Lee together.

L. C. J. Who was with you when you discours'd it first?

Mate Lee. There was only Mr. Rouse and Mr. Leigh, I can be positive that Captain Blague was not, but this Captain Blague did say, when I gave my Way of taking the Tower by Scaling Ladders, and Hand-Granadoes, no, says Captain Blague, it is a better Way to have Mortar-pieces over the Water, and shoot into the Tower.

Mr. Serj. Jefferies. Hark you, Friend, Did Leigh or Rouse tell you that Blague was made privy to it?

Mate Lee. I understood nothing of it, but what we discours'd together, for I was acquainted with none of the Cabal, but Mr. Rouse and Mr. Leigh.

L. C. J. What did you discourse about?

Mate Lee. About taking the Tower. I won't mince it, I am upon my Oath.

L. C. J. Therefore we would have the truth out of you.

Mate Lee. I did gather from Mr. Rouse and Mr. Leigh, that the Intention was to take the Tower.

L. C. J. Give some account how you and Blague came to discourse of such a thing as this is, and in order to what Design.

Mate Lee. The Design was to take the Tower.

L. C. J. Did Blague and you discourse it to this purpose?

Mate Lee. Captain Blague and I discours'd it to that purpose of taking the Tower.

Mr. Sol. Gen. Did you discourse of it as a thing that might be done, or that was intended to be done?

Mate Lee. We did discourse of it as a thing that might be done, or was intended to be done.

L. C. J. Now, Captain Blague, if you have any thing to ask him, you may.

Capt. Blague. Ask him, whether there were any Projections or Provisions made for the taking it, and whether or no there was any Resolution taken, that the Tower should be taken.

Mate Lee. An't shall please your Lordship, the King's Majesty asked me when I said what Captain Blague said about taking the Tower with Mortar-pieces, if it please your Majesty, said I, I don't

I don't know whether there was any such thing discours'd, that I did not hear.

L. C. J. Well, was there any thing provided or designed in order to it?

Mate Lee. An't please your Lordship, there was nothing of Men or Guns provided, that I did know or hear of.

Mr. Serj. Jefferies. How many times did you talk with Captain Blague about this?

Mate Lee. Several times.

L. C. J. Had you any Order from any other Persons for to discourse Captain Blague in order to this?

Mate Lee. No, An't shall please your Lordship, to the best of my knowledge I had no order, for they were commonly together, Captain Blague, Mr. Rouse, and Mr. Lee, and I came to them when I had business with Captain Blague.

L. C. J. Did you ever discourse this thing with Captain Blague before them?

Mate Lee. I cannot be positive in that.

Mr. Sol. Gen. Did those other Persons that you said you discours'd with engage you?

Mate Lee. Mr. Rouse and Mr. Lee, and I went out, to view the Tower, how it might be taken.

Mr. Sol. Gen. Did they engage you?

Mate Lee. Yes, they did engage me.

Jury. My Lord, We desire to have the Witnesses asked, Whether the Captain knew he went to view the Tower.

L. C. J. Had he any intimation you went to view the Tower?

Mate Lee. My Lord, I can't be positive in that: Some time after we met the Captain, and did tell the Captain we had view'd the Tower; but I don't remember what Observations we made.

Mr. Serj. Jefferies. Nor what he said to you?

Mate Lee. No, nor what he said to me upon it.

L. C. J. Look you, Mr. Lee, Mate Lee, the Captain told you of this Ball that was to be thrown upon Blackbeath, how long ago was it?

Mate Lee. An't please your Lordship, I cannot be positive, it was five or six Weeks ago, I think it was the last time I rid along with him to the King's-head Tavern. I went to Chancery-Lane, and you gave me Coach-hire for nothing, and then you spoke of tossing up the Ball.

L. C. J. What was it he said?

Mate Lee. This was all, I did not know his meaning, neither did he express his meaning, he was saying to the best of my remembrance, we shall see a Ball toss'd up, I don't remember he said upon Blackbeath; the Confirmation of it was by Mr. Rouse and Mr. Leigh, then I came to understand what the Ball did mean.

Sir James Butler. With his Lordship's Leave, Did you speak first to the Captain about the Tower, or did he speak to you, was it your motion to him, or his to you?

Mate Lee. I don't know but it might be my motion to him.

Sir James Butler. Then, my Lord, give me leave to ask another. How were these Mortar-pieces to be brought up, to be planted on Southwark-side to play upon the Wall of the Tower?

Mr. Serj. Jefferies. That was t'other Man, Sir James.

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L. C. J. Is there any thing more that you would have asked of any of these Witnesses, or have you any Witnesses of your own?

Capt. Blague. My Lord, The Witnesses that I have, in reference to the Number of Men are here. I desire, my Lord, you will be pleased to order them to come in, to know upon what account I Shipped them.

Jury. My Lord, Pray let us ask t'other Leigh one Question.

L. C. J. The first Leigh.

Jury. We desire to know, whether he heard any thing of the Ball or Tossing it?

L. C. J. He hath told you a long Story of it.

Mr. Leigh. The Story of Blackbeath I acquainted you with it, about Mr. Rouse. There was a Golden Ball to be play'd upon Blackbeath, a thousand Sea-men to be at the playing of this Ball, ten Sea Captains to manage these thousand Sea-men, and after the Play was over, every Captain to take his Division apart, and treat them with Punch, and after that was done, to tell them they had other Work to do, and to have Long-boats and Arms ready, to go and seize the Tower.

Jury. Did Captain Blague acquaint you with this?

Mr. Leigh. Mr. Rouse told me, Captain Blague was acquainted with it, I never discours'd with Captain Blague about it. Captain Blague told me, the best way was to set a Ship on t'other side, and shoot Mortar-pieces into the Tower.

L. C. J. What would you have Mr. Wright asked?

Capt. Blague. My Lord, Please to ask him upon what account he was shipped.

L. C. J. Was you shipped upon the Captain's Ship, and upon what account?

Mr. Wright. An't shall please your Honour, I was shipped upon him almost four Months and three Weeks ago.

L. C. J. Upon what account?

Mr. Wright. I was shipped upon him upon the account of New York, England and Holland.

L. C. J. Well, what use do you make of this Evidence?

Capt. Blague. Only, my Lord, if you please to ask the rest, Whether I have shipped any more Men, or spoke with any more than these are.

Mr. Wright. An't like your Honour, I have waited upon the Captain ever since I have been shipped: I have waited upon him in London at the Coffee-house about Business: Since I have belonged to him I was in Pay, altho' we had not a Ship in Possession: Sometimes at the Mayor's Court Office, Mr. Briggs, sometimes with Mr. Rouse, who had something to do for Captain Blague. I kept at the Coffee-house commonly every Day from Eight or Nine a Clock in the Morning, sufficient Persons know me in London. I have kept at the Coffee-house from Nine or Ten a Clock in the Morning till Four or Five in the Afternoon, and so I have satisfied him about what People have inquired after him.

Capt. Blague. Call Roberts Chappel.

L. C. J. Captain Blague, What would you have him asked?

Capt. *Blague*. Carpenter, Declare to my Lord how long you have been with me, and upon what account I shipped you?

Chappel. Four Months and an half.

L. C. J. What besides?

Chappel. We were to go to *New York*. I have been shipped four Months and an half to go to *New York*: We came to the Coffee-house in *Birchin-Lane*.

L. C. J. Well.

Chappel. We have had the Ship a Month in our Hands next *Monday*.

L. C. J. Is she fitted?

Chappel. No, she is not fitted.

L. C. J. Was she in a condition to have done any Service upon the Water?

Capt. *Blague*. Carpenter, Do you hear what my Lord says?

Chappel. The Ship is a small Vessel, about an hundred and fifty Tun, between that and an hundred.

Capt. *Blague*. My Lord asks you if she be in a condition to do service.

L. C. J. Was she capable to do any service upon the Water?

Chappel. No service at all upon the Water she could do three Weeks ago.

Mr. Serj. *Jefferies*. A Ship of one hundred and fifty or two hundred Tun, would hold a great many People, she was to lie still, that was the Mischiefe.

Chappel. We haled her down to the Carpenter's Yard, she is now in a condition to work.

L. C. J. Have you any more Men?

Capt. *Blague*. Doctor, Upon what account were you shipped?

Bellinger. For *New York*, *England*, and *Holland*.

Capt. *Blague*. When were you shipped?

Bellinger. Seven Weeks ago.

L. C. J. When were you to begin your Voyage?

Bellinger. I belonged to the Captain before he had a Ship.

L. C. J. But when did you reckon to begin your Voyage?

Bellinger. That I cannot tell.

Capt. *Blague*. My Bill upon the Exchange doth specify it, Sir.

Jury. Pray, my Lord, will you ask if he have any Guns aboard, and how many?

L. C. J. What say you? What Guns are there about the Ship?

Bellinger. Fourteen, Sir, and four Wooden ones.

L. C. J. What are they?

Bellinger. Six above Deck, four in the Hold.

Capt. *Blague*. They are Saker Guns.

L. C. J. Saker?

Capt. *Blague*. Yes, Sir ——— *Richard Clarke*, What Voyage had we?

Clarke. *New York*.

L. C. J. Surely it doth appear that these Men were shipped a great while ago.

Capt. *Blague*. Some of them have had a Dependance upon me a great while, one hath depended upon me I believe seven Months.

L. C. J. Have you any thing more to say?

Capt. *Blague*. No, my Lord.

L. C. J. Look you, Gentlemen, You that are of this Jury, This Gentleman is Indicted for conspiring the death of the King, and doing

some Acts in order to it, that is, endeavouring to surprize the Tower, and raising of Men, and preparing of Shipping and Guns, and this on purpose to surprize the Tower. That there was an evil Design, a very wicked notorious Design of seizing the King's Person, and killing the King, that is most certain, you have heard it by a great many Witnesses, and it is a thing I think not to be doubted of by any. The question is, whether this man be guilty of it, and hath undertaken any thing in relation to it. Look you, you ought to have in such Cases of High-Treason, as you have been told, you ought to have two Witnesses against a Person. Here are two Witnesses produced, one of them does speak very shrewdly to the Case, and tells you, he had it from this person himself, that he had spoken with *Goodenough* about this matter, about surprizing the Tower, and that he told him it was an easy thing to surprize the Tower, and that he could do it; that he had a Ship ready, and he would undertake that 200 Men should be ready with Mortar-pieces from *Southwark-side* to throw them and beat down the Tower, so that it might have presently been down. First, Mr. *Leigh* doth say, That the Captain there at the Bar, that he was oftentimes with Mr. *Goodenough*, and Mr. *Rouse*, and others, who it is plain were in that Design, both *Rouse* and *Goodenough* was, and that he heard *Goodenough* say, That the Captain had undertaken it; and he says, that the Captain had Discourse with *Goodenough* about it. He says, the Captain asked him in order to this, what Money could be raised, and he told him there was 40000 *l.* and the Captain told him that was but a small matter, the Sea-men would eat up that; and *Goodenough* told him, there was a greater Bank in *Holland*, that would be brought over. So that this Evidence goes a great way. But then, Gentlemen, you must consider whether you have another Evidence or not. There is a Person that you call *Mate*, the *Mate* doth give a dark kind of an Evidence; he does say here, That he and the Captain had Discourse about the way of taking the Tower, and he believes it was in order to take the Tower; but he does say, when he heard it, no body was present but himself, and he was of one Opinion how the Tower might be taken, that is, by Scaling Ladders and Hand-Granadoes, and that the Captain was of another Opinion, whether it might be the better taken by Mortar-pieces thrown from *Southwark-side*, but whether the Captain had any notice of this Design of taking it, he cannot tell, or whether he had any Acquaintance concerning it. So that his Evidence does seem to be somewhat dark. Whether this were sportive, or a Trial of their Skill, or whether it was a Design to have Counsel and Advice one of another, which way to take it, I must leave it to you, whether it was done with an Intent and Design, for to find out the best way in order to the taking of it. But if it were only a Discourse at large between them, and Endeavour to try their Judgments one with another, and speaking their Minds one with another in that Case, then this Evidence doth not come home to make him guilty of the Plot of taking the Tower, or taking away the King's Life. He tells you, he did speak of a Ball to be thrown up, but whether he ever heard of the other Design that *Leigh* speaks of, the first *Leigh*, *Thomas Leigh*, of throwing up a Ball by Sea-men

in order to the taking of the Tower, he knows not. *Leigh* says, the first Witness, he does not know any thing whether this Man at the Bar was ever acquainted with the Ball or not. If upon what you have heard, you believe that there are two Witnesses to prove this Gentleman at the Bar Guilty of this Design of surprizing the Tower, and killing the King, and taking the Tower in order to it in this manner; then you ought to find him Guilty: But if you have not two Witnesses that do testify the thing, then Gentlemen, under two Witnesses a Man cannot be Guilty.

After which the Jury withdrawing to consider of their Verdict, in a short time returned, and brought him in Not Guilty.



Saturday 14th, July, My Lord Ruffel was brought to the Bar.

Cl. of Cr. **W**illiam Ruffel Esq; hold up thy hand (*which he did.*) Thou hast been Indicted for High-Treason against our Sovereign Lord the King, and thereupon hast pleaded Not Guilty, and for thy Tryal hast put thy self upon the Country, which Country has found thee Guilty. What canst thou say for thy self why Judgment of Death should not pass upon thee according to Law?

L. Ruffel. Mr. Recorder, I should be very glad to hear the Indictment read.

Mr. At. Gen. You may read it.

Cl. of Cr. Will you have it read in Latin or in English?

L. Ruffel. In English.

The Clerk read to the Words, Of Conspiring the Death of the King.

L. Ruffel. Hold, I thought I had not been charged in the Indictment as it is, of Compassing and Conspiring the Death of the King.

Mr. At. Gen. Yes, my Lord.

L. Ruffel. But Mr. Recorder, If all that the Witnesses swore against me be true, I appeal to you and the Court, I appeal to you whether I am guilty within the Statute of 25 E. 3. they having sworn a Conspiracy to levy War; but no Intention of killing the King: And therefore I think truly Judgment ought not to pass upon me for Conspiring the Death of the King, of which there was no Proof by any one Witness.

Mr. At. Gen. That is no Exception.

Mr. Recorder. My Lord, that was an Exception proper (and as I think you did make it) before the Verdict; whether the Evidence does amount to prove the Charge, that is proper to be observed to the Jury; for if the Evidence come short of the Indictment, they can't find it to be a true Charge: But when the Jury has found it, their Verdict does pass for Truth. We

are bound by the Verdict as well as your Lordship, we are to go by what the Jury have found, not their Evidence.

L. Ruffel. Without any Proof?

Mr. Recorder. The Jury must be governed by their Evidence.

L. Ruffel. I think it very hard I must be condemned upon a Point that there was not one thing of it sworn, therefore I think I may very Legally demand Arrest of Judgment.

Mr. Recorder. I hope your Lordship will consider 'tis not the Court can give a Verdict, it must be the Jury. I believe there is no body in the Court does delight in giving such Judgments, especially against your Lordship. The Verdict is found, and the King's Attorney General on behalf of the King does demand it.

Mr. At. Gen. I do demand Judgment of the Court against the Prisoner.

Proclamation made for silence, whilst Judgment was giving.

Mr. At. Gen. My Lord Ruffel, your Lordship hath been Indicted, and Tryed, and found Guilty of High-Treason, the greatest of Crimes, your Quality is great and your Crime is great. And I hope and expect that your behaviour and preparation in this Condition will be proportionable. My Lord, It is the Duty of the Witnesses to give Evidence according to Truth: It is the Duty of the Jury to proceed according to Evidence, and 'tis the Duty of the Court to give Judgment according to the Verdict. It is the King's Pleasure signified by his Attorney General, to demand Judgment against your Lordship according to this Verdict, and therefore, my Lord, I shall not delay it with any further circumlocution. The Judgment the Law hath provided, and is the Duty of the Court to give, is,

That you be carried back again, to the place from whence you came, and from thence be drawn upon an hurdle to the place of Execution, where you shall be banged up by the Neck, but cut down alive, your Entrails and Privy Members cut off from your Body, and burnt in your sight, your Head to be severed from your Body, and your Body divided into four Parts, and disposed at the King's Pleasure. And the Lord have Mercy upon your Soul.

Mr. At. Gen. Set up the other now.

Cl. of Cr. Set Captain Walcot to the Bar, Rouse, and Hone.

Which was done, and they bid severally to hold up their hands, which they did; and Captain Walcot being asked, What he could say why Judgment of Death should not be passed upon him, said,

Capt. Walcot. I have nothing to say, only I have one favour to beg of the Court, whether it be proper to beg it now or no, I can't tell.

Mr. Recorder. What is it?

Capt. Walcot. I would beg the favour that the Youth my Son might come and see me, and some of my Friends.

Mr. Recorder. Capt. Richardson does not deny it to any man after he is condemned, that is a piece of Humanity you need not ask, I never knew it denied.

Then

Then Hone was asked, what he could say against Judgment.

Hone. I beg the same favour.

Mr. Recorder. Ay, Ay, God forbid. You had best ask for some Divine to come to you.

Then Rouse was asked the same Question.

Rouse. I would speak of the disadvantages I had when I came upon my Tryal. When I was put upon my Tryal, you know very well, I begged the favour of some things; one was a Copy of the Indictment, when I saw a person come before me, who in his own Conscience knew was the Author of all these things: I have nothing to say against the Judgment or Verdict, I always had a great Veneration for the Constitutions of the Kingdom, I pray God forgive them that came against me. I wish I had no more weight upon my Legs than I have in my own Conscience. I prayed a Copy of

my Indictment. These things unexpectedly came upon my Tryal, that I had not opportunity to speak what I should.

Mr. Recorder. We are content to hear you. But observe, You are to answer the Question that is asked. Why Judgment should not pass upon you. You say you won't speak against the Jury, we must not hear you, nor against the Verdict.

Rouse. I have one word more, and that is, the vast difference between the Indictment and their Oaths; the Indictment was, That such and such Words and Discourses, passed the second of March; the Oaths sworn were, That the Words were not spoken then, but the last of June, which was three Months difference, but however the Jury have pleased to find it. I must throw my self at His Majesty's Feet, I have nothing more to say.

Then Silence was proclaim'd, and Judgment given against Walcot, Hone, and Rouse, in like manner as upon the Lord Ruffel.



The Magistracy and Government of England Vindicated. In Three Parts. Containing, I. A Justification of the English Method of Proceedings against Criminals, &c. II. An Answer to several Replies, &c. III. Several Reasons for a General Act of Indemnity.

IN the present Age, when the variety and multiplicity of new Prints is such, that the Money and Time required for their Purchase and Perusal, is more than an ordinary Gentleman can reasonably allow; it may deservedly be thought a Nuisance to the Publick to have their Numbers increased; especially since the Complaint of the ingenious Author of the *Trimmer's Character*, that for this very Cause, he could almost have wished himself unable to read; but yet the Support of Magistracy and Government is a noble Theme, so useful to the Publick, and so generally agreeable to the Humour of Mankind, that the meer Subject will (I presume) be an Excuse for this Publication, if any thing can be so.

At this time of day none would have thought that a Necessity should happen of writing upon such a Topick, when every *English* Protestant was entertaining himself with the pleasing Prospect of Impartial, Due, and Indifferent Administrations, when Authority was becoming Amiable and Easy to the People, when the People were inclining to a Zeal and Affection for the Honour of Magistrates; in short, when the Law was recovering its clouded Credit: In this Conjunction none expected to see all the Pillars and Posts in the Town daubed with plen-

tiful Title-Pages (like so many Histriomastrixes of *William Prinn's*) directing their Spectators to Books of Obloquy and Reproach, not only on the Persons and Opinions, but the Authority of Judges; when neither of the three are corrigible, or so much as censurable any otherwise than in and by a Parliament; much less was it expected, that Gentlemen of the long Robe would appear in Print to ridicule their own Profession, and expose our Law even to the Scorn of Foreigners. It would not have been so very strange to have seen a Doctor of the Commons exercising his Wit and Railery on the Common Law Proceedings, when he saw his dearest *Diana*, I mean his Excommunication-Process, in danger of becoming useless, and a fair occasion given him for such an Essay from the Disgust of the People against *Westminster-Hall*.

But none imagin'd that Satyrs and Invectives upon past Proceedings should be writ by Lawyers, who expect a farther Benefit from their Profession by the Grace and Favour of the Government, which if they happen to acquire, according to their Expectations, I would only remember them that Mocking is catching in the Proverb. There was once upon a time a certain Master of Arts, who, whilst at *Cambridge*, did ridicule and expose the Clergy of the

the *English Church*, by writing the pretended Causes of their Contempt; but the *Templars* said, that he, whilst at *London*, did give an occasion for a third Part to the same Tune, or at least a new Edition of the Book, with Additions by the Author himself, even of his own dull—as proper for the like use. In petty Corporations they who have most complained of other Hardships have frequently outdone their Predecessors, when once they have got their Places. A whining complaining Servant doth often prove a peevish imperious Master; and I am sure, in the Inns of Court, the most noisy, troublesome and mutinous Students and Barristers, make the stiffest and most magisterial Benchers. I make no application, but I leave the Reader to do what he pleaseth. Better things are to be hoped of all concerned in Publick Government.

Since the Press seems open, and Lawyers Books are published without a License, another may assume the same Liberty with equal Authority, and with more Reason, when his Province is only to correct the Misrepresentations of Things, Actions and Persons, tho' made by Authors of Age, Experience, Figure and Learning, (I will not say Candour or Honesty,) especially since they are private Men, and having vented their own Thoughts in Print, they remain no longer theirs, but are equally exposed to the Censure or Applause of every Reader. Besides, 'tis generally presumed, that an Author expects a publick Animadversion, or otherwise he would never have become such. He presumes his Arguments irrefragable, and then an Answer does him no mischief; and if they are otherwise, he deserves it. And surely he stands as liable to be corrected by others, as others were to be censured by him. And it is more warrantable certainly to write and print for the Vindication of former Proceedings, than it can be either candid or gentle to arraign or expose them; especially, since to do so, is and must needs be mischievous to past, present, and future Governments, as Experience will unquestionably teach us; but the other is and will be of Service to future Administrations, by maintaining the Reputation and Credit of Judiciary Proceedings.

It is well known, that the Lord *Russel* being so unfortunate as to fall under the Accusation of Treason, was the most pitied of any under those Circumstances, by all who knew either his Family or personal Character; great Expectations were then had of the Issue of that Tryal, the Event gave great occasion for Discourse afterwards, and almost ever since; the printing of his Last Speech, with the several Answers to it, did much augment the Talk. It cannot but be remember'd how various and different the Sentiments of most were upon that Subject; the Debates concerning it generally concluded in a Pity to his Person and Relations, as a great Misfortune upon both, and in truth upon the Nation, that a Gentleman of such Qualifications should be guilty of so much Inadvertency (to say no worse) as to engage so frequently in such Consults as he unhappily did. Some blamed the Jury, most censured the Witnesses, but very few arraigned either Counsel or Court; and in truth, the Fairness and Indifferency of that Tryal was such, that his own Relations were pleased, and his Enemies angry, with

those that then sat upon the Bench; and thus it continued till the present Revolution.

Then the Memory of that unfortunate Gentleman was revived by the Publication of a Defence of his Innocency; the Name subscribed to the Title-page is so great, that I should be afraid to proceed, but that I am resolved not to be known; and therefore if any thing falls from my Pen indecent or disrespectful, he must excuse it as a Privilege claimed by Authors, especially of Books that have no Name to them.

To begin at the end; for what purpose was that Pamphlet printed?

It could not be for the Good of the Nation, as a means for consumption of Paper; for, as I have been told, that's a *French* Commodity.

It could not be for the Bookseller's Profit only, for a Reason to be guessed at.

It could not be for the sake of that Lord's Memory, or any of his surviving Relatives; for no Man will think it a Service to them, to renew the Thoughts of that unhappy Accident in so Noble, Ancient, and Worthy a Family. In truth, the whole Treatise is nothing but a painting to the life the too deep Concern of that Branch on't in a weak as well as criminal Enterprize; for what else doth signify the Expression, *pag. 4.* that being present at a Consult of Traitors a second time, or oftner, raises a strong suspicion, that the Party who does so, likes it, consents to it, and approves it; or else he would have forborn after his having been once amongst them. And many other such Expressions there are with the like Reflections; as *pag. 7.* that *Rumsey* and *Sheppard*, the two first Witnesses, &c. raise a strong suspicion upon my Lord, and make it probable that he was guilty. And in the same Page the Author seems to agree him guilty of Misprision. And *pag. 17.* he re-publishes the Evidence of *Rumsey*, that there was a Consent, and this the Author agrees to be High-Treason; but he then endeavours to invalidate the Credibility of that Evidence, by shewing the wildness of his own Memory. Now how this could serve the Reputation of the Deceased, or cure the Resentment of his Relations upon that account, I confess my self utterly unable to imagine. Nor can any Reader suppose the Title verified by the Book, *viz. A Defence of Innocence*, when there's not one Word to be read of it but in the Frontispiece. Surely there's no thanks due to the Author from that Family, no more than was an extraordinary Fee due to that Lawyer who pleaded for a Defendant to this effect: *My Client, I must confess, is a Wag, but not so great a Wag as the Counsel of the other side would represent him; their Proof is very strong, but not so strong as they would boast it to be; our Defence is but dark and weak, but not so weak as they would argue it.* So that the Book could not be writ for a Service to that Family, unless a Concession of Guilt can be called a *Vindication of Innocence*.

It could not be for the sake of the Government: for it can never be deemed a politick Service to rake into old Sores, when lenifying and moderate Methods are more advisable; and if every thing should be re-published which hath given disgust to the People, few would escape the lash, the Righteous themselves would scarcely be saved; for abundance of them have tript either in their publick or private Conversation, and

and some in both, and that notoriously too: I name no Body. Besides, the Government must of necessity never allow the Doctrines divulged in this Pamphlet, unless 'tis intended that its being and continuance shall be as precarious as a *Beneficito* Judgeship, and as dependent upon the People's humour as that is upon the King's: Nor can any Government countenance and encourage the Arraignment of a considerable number of wealthy worthy Citizens, with the Printed Censure and Insinuation of their being a parcel of corrupt, ignorant, injudicious, dishonest and partial Fellows, and this is done to the full, when said, that the contrary would have sworn to a Not Guilty, or at least wise they should, if the Author had been there. But most of his Readers are of another opinion, notwithstanding the second Letter, *pag. 7.*

It could not be for the sake of popular Applause; for it's thought, that the Treatise will never deserve or procure it, especially if you take it in pieces, and consider them apart, and with sober Reflections. So that no Man can tell what it was writ for.

When the Title of the Book, and Name of the Author was first published, Mankind was full with a pregnant expectation of some rare, abstruse, uncommon Learning upon the Point of Treasons with which the World was before unacquainted. No Man looked for a Preachment concerning the Body and Blood of our Saviour, the World to come, and the Guards of Heaven, as Topicks proper for an Animadversion upon that Tryal, especially from such an Author. But there's nothing strange under the Sun.

The Preface is an Encomium upon the Author himself, declaratory of his readiness for publick Services, and seems to be calculated for a Cooler, or a Defence against the Heats and Rigors of an harsh and oppressive Government, for an help to such as may possibly hereafter fall into the like danger and trouble: and to teach the People the fear and jealousy of a possibility of such Occurrences again, can never be thought a publick Service. As to part of the Preface, it is so dark, that a slender understanding can never reach the sense of it, I mean that long Paragraph, *The Copies of, &c.*

The first Letter begins with a seeming shew of a bold Resolution in the Author to perform the Duty of a Friendly Counsel, maugre all the inconveniencies that might happen to himself thereby. But it concludes with an extraordinary caution and care to prevent all danger, even to such a degree as much diminishes the credit of that invincible and heroick Resolution at first boasted of. And if his Courage had been so strong, why were not these Letters published formerly, and in times when in the Author's judgment there was more occasion for their use, than the present can possibly afford? But rather it may be again asked why are they Printed at all, the Observations contained in them having been Printed not above 500 times already, and perhaps with as much advantage? Was it a Secret to the World, that a variance between the Indictment and the Evidence might be alledged on the general Issue? Did no Man in Town know that Treason and the Misprision of it are different Crimes? Is the distinction between them such a new invention, and so very useful, as to be an equivalent for

the want of Counsel in capital Tryals, as the Preface and Letter do insinuate, if they do any thing? Who ever doubted, but that Proofs of Treason must not be by Hear-say or Argument only? Was it ever a Question for this Hundred Years, but that every Indictment of Treason must contain an Overt Act? Or that less than two Witnesses was allowable for proof of that Crime? Or did any Man ever scruple but that *Keble's* Statute-Book contains a true Copy of the 13 Car. 2. *cap. 1.* which requires Witnesses credible? Now, if these Questions must be answered in the Negative, how can the advice of these Letters be assistant to a better Defence, than was known long since?

The Book itself begins with Stories of Transubstantiation of Bodies, and Transmigration of Souls, as much to the purpose, as the Parson's Text was to his Doctrine, who Preached upon the Certainty of a Day of Judgment from that Verse in *Genesis*, *And Adam knew Eve, and she conceived, &c.* But perhaps the Author intended all that first Page for a Flourish, and to entice his Reader into a patient perusal of what follows, and prejudice him against the Sheet he pretends to answer. He is very frank in styling it a Libellous Pamphlet, and the Author some rank bigotted Papist, but to what purpose no Man can divine, unless it were to expose him to the rage of the Mobile; but his Name was never posted, and so he is safe from that danger.

The Assertions are two, that there was neither Charge nor Proof; that the Indictment and Evidence were both insufficient.

I must confess, that it would be a mighty Addition to the Liberty of the Subject, to have the Law established, and declared to be what the late Judge doth argue it is; for then there would be a freedom for Malecontents to endeavour their own satisfaction by Conspiracies and Consults, and that with Impunity. But as the Law was, and always hath been taken to be, an *English* Subject hath very little colour for his pretence to such a privilege as that Doctrine gives.

The Indictment is, that at such a place and time he did compass and imagine not only to Deprive the King of his Government and Royal State, but to kill and put him to Death, and to procure a miserable Slaughter amongst the King's Subjects; and to Subvert the Government of England, and to raise a Rebellion against the King. Then follows, *That to fulfill and perfect these Treasons and traiterous Imaginations, he, together with other Traitors, did then and there with them traiterously Consult, Conspire, Conclude and Agree, to raise a Rebellion, and to seize and destroy the Guards of the King's Person, contra, &c.* Now whether these last Acts be not a natural and genuine Evidence of the former, let any rational Man judge. But I will particularly prove, that this Indictment was sufficient to warrant the Judgment which the Court gave, and pronounced upon a Verdict, that the Accused was guilty of that Fact in the Indictment, and then answer the Objections started against it.

First, There's a sufficient Treason alledged. And, secondly, Here's a sufficient Overt Act; both these I'll agree are necessary, and if either were wanting, the Indictment was naught. Now it must be agreed to me, that the first is clear and plain, for by the Law, to compass or imagine the Death of the King, Queen, or their

their eldest Son, is High Treason. It is true, by the same Law some Open Act of which human Justice can take a Conusance is requisite to be proved; the very Words of the Statute do expressly require it; and in truth it is no more than what must have been, had no such Words been used; for Thoughts are secret, and can never be arraigned, proved, or censured, any otherwise than as they are discovered by some Overt Act; so that the Clause requiring an appearance of the Compassing and Imagination by some Overt Act or Open Deed, is no more than would have been impliedly requisite, had the Clause been omitted. 'Tis the Imagination and Compassing which is the Treason, that alone is the *Crimen læsæ Majestatis*, which is prohibited and condemned; the Overt Act is not the Treason, that's only a necessary Circumstance, without which no Court can ever take Conusance of the other. And it is necessary to alledge some such Deed, *a necessitate rei*, without respect to the Words of that Statute. I insist the longer upon this, because it is used as an Objection, that the Clause of *proveably attaint by*, &c. is restrictive, whereas it is not so; for it is only to make that first specified Treason of Imagination and Compassing to be a thing intelligible and triable; and farther to prove this, it is considerable, that this Requisite of the Overt Act is of use and necessity barely, and only in the Case of that which is first mentioned, *viz. Compassing*; for the other sorts of Treason are Acts themselves whereof notice may be had, as Levying War, Violating the Queen's Bed, and the like; and in an Indictment you need only alledge the Facts themselves, as that there was a War levied, there was a carnal Knowledge had, and the like. And this farther appears from the very Form of Indictments used ever since that Statute; for there never was an Indictment (and if there were, it could never be good) barely averring an Overt Act without an express Allegation of the Compassing.

Then the Matter results solely into this Question, Whether the Fact here laid be naturally and necessarily declaratory of the Party's Imagination to destroy the King; for if so, the Indictment is undoubtedly good; and it can never be called a constructive Treason, or a thing devised by the Judge's Interpretation of the Statute; for they adjudge no more Treason, than what the Statute declares, and that is an Imagination of the King's Death; now whatsoever is significative of a Man's Intention or Imagination, is a sufficient Overt Deed to demonstrate, that that Man had such Intention or Imagination; and whatsoever is expressive or significative of a Man's Intending, Compassing, or Imagining of the King's Death, is a sufficient Overt Act to prove and make such a Man a Traitor within this Law. Now that a Consult about, and an Agreement and Conclusion actually to seize the King's Guards, and raise a Rebellion, are a natural and genuine Declaration, that the Person who did so consult, agree and conclude, did Compass and Imagine the Death of the King, is surely plain enough; for a Rebellion, if successful, can determine in nothing else but the King's Death, either Natural or Civil, which is all one within this Law; now he that designs and intends the necessary means naturally conducing to a particular end, that

Man may certainly be said to intend and design that end, *Causa Cause est Causa Causari*. If the Deed tend and conduce to the Execution of the Treason, that's a sufficient Overt Act, says Coke 3 Inst. 12. and in the same Book, fol. 6. he hath these Words, *That he who declareth by Overt Act to depose the King, is a sufficient Overt Act to prove, that he Compasseth and Imagineth the Death of the King*; and so it is to imprison the King, to get him into his Power; and to manifest the same by some Overt Act, this is also a sufficient Overt Act for the Intent aforesaid.

In 3 Inst. p. 12. 'tis held, That a Preparation by some Overt Act to depose the King, or take the King by Force and strong Hand, or to imprison him till he hath yielded to certain Demands, that is a sufficient Overt Act to prove the Compassing and Imagination of the King's Death; for that this, upon the matter, is to make the King a Subject, and to despoil him of his Regal Office; and so he says it was resolved by all the Judges of England, Hil. 1. Jac. 1. in the Case of the Lord Cobham, Lord Grey, Watson, and Clark, Seminary Priests; and so he tells us in the same place, that it had been resolved by the Justices in the Case of the Earls E. and S. Now if we consider the reason why these were Overt Acts of Treason, 'twill appear to be only because of their natural tendency to the Accomplishment of that particular Treason of Compassing, which holds the same in the Author's Case as well as in those there mentioned.

A Conspiracy with a Foreign Prince, is agreed by my Lord Coke, *ib.* 14. to be Treason, if it be to invade the Realm; and an Overt Act of such Practice to be a sufficient Overt Act of a Compassing the King's Death; and the reason is, because such Actions cannot be thought to be intended for any other purpose; and yet that particular Act may be accomplished, and it may so happen, as that the King's Death may not follow, and yet they are Overt Acts of that treasonable Imagination, because of their Conduciveness and Tendency thereto. The Case of Cardinal Poole was, writing a Book of the Pope's Supremacy, in which were contained Incitements of Charles the Emperor to an Invasion of this Realm; and that was held an Overt Act of Imagining the King's Death. In the Lord Cobham's and Sir Walter Rawleigh's Case, a Conspiracy, Consult and Agreement to promote an Insurrection and procure an Invasion, was held an Overt Act, 1 Jac. 1. and their Meeting, Consulting and Agreeing, was laid as an Overt Act, tho' discovered before the thing took effect. Dr. Story's Case, which is mentioned by the Lords Dyer and Coke, was no more than a Practice or Perswasion to promote an Insurrection and Invasion, and the Overt Act that was alledged was the Writing of Letters for that purpose; which is no more influential towards it, not so much as frequently Meeting, Consulting and Conspiring, and at last Concluding and Agreeing to make an Insurrection. The Case of Mr. Coleman was no other; for whatsoever the Indictment laid, the Evidence was only of Letters to the like effect (as to this point) with those of Dr. Story; and the Case of Dr. Story was before the 13 Eliz. which made a new Treason during her Life; for the Tryal was in Hilary Term, and the Parliament did not begin till April following. A Machination or Agreement to raise a Rebellion naturally tends

to the Destruction both of King and People; and an Advice to it hath been adjudged so: As in the Reign of *Hen. 4.* one *Balsal* going from *London*, found one *Bernard* at Plow in the Parish of *Osley* in the County of *Hertford*; *Balsal* told him, that King *Ric. 2.* was alive in *Scotland*, (which was false, for he was then dead) and advised him to get Men, and go to King *Richard*; in *Mich. 3 Hen. 4. Rot. 4.* you'll find this adjudged Treason. *Throgmorton's* Case is as plain, for his was only a Conspiracy to levy War within this Realm; he did not join in the Execution, and the Conspiracy alone was declared to be a sufficient Overt Act by the Judges; 'Tis no Answer to it, to say, that a War was afterwards levied, for *quoad* him 'twas a bare Consult; his Offence was no more than that. In *Sir Henry Vane's* Case, Meeting and Consulting were alledged and held to be Overt Acts. The Case of *Constable*, mentioned in *Calvin's* Case, was only an Act tending to deposing the Queen, as dispersing Bills in the Night, that *Edw. 6.* was alive and in *France*; and held an Overt Act declarative of his Compassing her Death, and he was executed for it: And in the Report of *Calvin's* Case you have several other Cases mentioned, where Endeavours to draw Subjects from their Allegiance have been adjudged Overt Acts of this species of Treason, The Compassing, &c.

The Word Compass in the Statute is of a larger extent than only to mean an actual Assault on the King's Person, and an Endeavour to cut his Throat; it most certainly implies any Consult or Practice of another thing directly which may produce that effect, as the dissuading People from their Fidelity; such was *Owen's* Case in King *Jac. 1.* his Time, in the 13th Year of that Reign: This Advice was to this effect, That King *James* being excommunicated by the Pope, might be killed by any Man, and that so to do was no Murder; for being convicted by the Pope's Sentence, he might be slaughter'd without a Fault, as an Executioner hangs a Criminal condemned by Law; and for this he was hanged as a Traitor. He that denies the Title to the Crown, and endeavours to set it upon another's Head, may do this without a direct and immediate desiring the Death of him that wears it; (so said *Saint-John* in his Argument against the Earl of *Strafford*;) and yet this is Treason as was adjudged in the Case of *Burton*, and in the Duke of *Norfolk's* Case, 13 *Eliz.* This denying of the Title, with Motives, tho' but impliedly of Action against it, hath been adjudged on Overt Act of Compassing the King's Death, as it was in *John Sparhawke's* Case, *Pasch. 3. Hen. 4. Rot. 12.* The like was the Case of *John Awater*, who was indicted for a Treason of that nature in *Kent*, and the Indictment removed into *B. R. Trin. 18 Ed. 4.* see *Rot. 17.* and he was thereupon afterwards out-lawed as a Traitor; and so was *Thomas Heber* at the same time; and Words significative of an actual Intention have been held so, as are the Opinions of *Yelver. 107. 197.* *Arthur Crobagan's* Case, *Cro. Car. 332.* and abundance of others might be named as they are reported in our Law-Books, but I do not particularly mention them, for that their Authority in some of them is very slender, and may be ill used, to the straining of rash and unadvised Words into a Signification of a Man's Compassing, when perhaps the Man

never thought as he spoke: However all of them do evince, that advised and deliberate Preparations moving to a Danger to the King's Person, have all along been held Overt Acts of a Compassing his Death; and some of them prove, that Preparatives and Motives to the levying of a War have been held Treason, as was *Sir William Ashton of Suffolk, 31 Hen. 6.* mentioned in *Cro. Car. 119.* for making Ballads reflecting upon the King, and writing Letters to the Men of *Kent*, exciting them to rise to aid the then Duke of *York*, &c. *ad guerram levandam*; and no mention of any War actually levied. *Germain* and *Taylor's* Indictment hath very little more in it mentioned than the like Preparations and Incitements to a Rebellion; and yet the Treason there laid was a Compassing of the King's Death, *anno 2 Ed. 4.* The Case of *Thomas Burdett*, in 17 *Ed. 4.* as at large it appears in the same Report of *Cro. Car.* amounts to no more than the Indictment in question, *viz.* That he compassed the King's Death; and to accomplish that Intention, he did disperse divers Writings, &c. *ad intentionem* that the People should rise and levy War, &c. the Judgment in that Case, Drawing, Hanging, and Quartering; the like in *Collingbourn's* Case, 2 *Rich. 3.* in the same Rep. 122. where he is indicted in like manner, for exciting and moving the People to an Insurrection and War, and he incurred the like Judgment; which Cases are infinitely short of this in question; and it cannot but be wonder'd that any Man who has read them should question, whether a consulting and conspiring about Rising, and an actual Agreement and Determination to rise, be an Overt Act of Compassing the King's Death. In the very Tryal of the Lord *Stafford* it is affirmed by *Sir William Jones* (who was certainly of great Authority with the Author) that the meeting and consulting together is an Overt Act, tho' the thing agreed on be never put in Execution; and 'tis there resolved by the Judges that the same Treason may be proved by two Witnesses to several Overt Acts, tho' one speak of Words or Actions that were spoken or done at one time and place, and another speak of Words and Actions at another time and place; which argues, that Words, much more a Consult and Agreement, may make an Overt Act. Even in the Case of *Stephen Colledge*, in which tho' the Tryal hath been censured, yet the Indictment never was, and in that Indictment the Treason is laid as in this Case, That he traiterously Imagined and Compassed the King to depose, kill, and destroy; the Overt Acts are, That he armed himself, and advised others to arm, and spoke several Words, &c. Here was no War levied, only a Preparation, and yet that was allowed an Overt Act; and as for the Words, if they are allowed to be one, with much more reason may Meeting, Consulting, Concluding, and Agreeing to do.

As to the Objection, Surely there is no weight in the first which is *Page 10.* that criticizes upon the Word *fait* Act, and that 'tis only a Meeting to agree, and an Agreement to do, but 'twas not done: Suppose they had concluded and agreed to poison or stab, &c. according to the Opinion in that Page, this was no Treason; for 'tis only agreeing and concluding upon a thing to be done, but it is not done. He doth in

in Page 13. argue, that this can never be an Overt Act of Compassing the King's Death, because levying War is a distinct species of Treason, and a Conspiring to levy War is not a Levying War, and even Levying War it self cannot be assign'd as an Overt Act of Compassing, unless the Indictment were particularly for that; but surely another sort of Act that favours of another species of Treason, if it naturally conduce to the Accomplishing of the first species, *viz.* that of Compassing, it may be assigned as an Overt Act of it; and Sir Henry Vane's Case is quite otherwise, for there a Levying War was the Overt Act alledged of the Compassing, and allowed by all the Judges; and all the Indictments in the *West* upon *Monmouth's* Rebellion were so, and yet drawn by very good Advice; besides, what Answer can be given to the Cases which I have cited, where Consults, Conspiracies, Practices, Advices, Letters, Perswasions, and other Motives and Preparatives to an Insurrection, have been held Overt Acts of an Imagination of the King's Death, tho' no War was levied, though no Insurrection was made.

'Tis apparent from what was said before, that to take the King Prisoner, or to seize his Person, is a Compassing of his Death; and if so, then to sit in Council to Conspire the effecting of that, is an Overt Act of Compassing the King's Death; and this Case amounts to that, here was a Consultation to seize upon the King's Guards, which could tend to nothing but the seizing of his Person; and then the Consequence is plain. The Author says, Page 14. If it had but been alledged in the Indictment, that in pursuance of the Consult and Agreement, there had been a View of the Guards, and a Report made that the thing was feasible, this would have been more to the purpose, how much more, no Man can tell; for every Objection in the Book would have been as good against that as this. The great Objection he seems to rely on, is, That the Law takes no notice of them: For once I will suppose that it doth not, and then let us observe if any Argument can be drawn from thence: Perhaps the thing was not used or known when the 25 *Edw. 3.* was made. Can nothing be Treason, if the Plot laid to accomplish it be concerning a thing not in *esse* at the time of the Statute? Certainly it may. If several Malecontents should consult and agree and prepare (in order to an Insurrection) to seize the *Tower*, *Portsmouth*, *Hull*, and *Plymouth* Fort, would not this be an Overt Act of Treason? And yet our Law takes no notice of any Garisons there or any where else; they have no relation to the Militia, nor were there any Arms in those places in *Edward III.* his time that we read of in our Law-Books; if this be otherwise; Why did not the Author find fault with *Rouse's* Indictment, which was tried much at the same time with this in question? Suppose all the Gentlemen Pensioners, Grooms of the Stole, Gentlemen of the Bed-chamber, and the like, killed in the Night, and the Doors in *Whitehall* broken up, and all the Swords, Muskets, and Pistols there taken away, and yet it happen'd that the King's Person was left untouch'd; would this be an Act of Burglary and Murther only? We have no Law-Books that take notice of Arms at *Whitehall*, or such Names as those Servants go by; and suppose, at the same time,

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upon the Consult, that the Conspirators did move, discourse, debate, and conclude of an Insurrection, would it not then be Treason? If not, nothing can be so, unless the King's Person be murdered or seized, and the Statute should not have said Compass or Imagine, but Seize or Kill, &c. It suffices then, that the Guards are in common Understanding known to be used and employed for the Attendance upon and Preservation of his Person. If common Sense and Reason be Judge, no Man can think but that he who intended to move an Insurrection and seize the Guards, had a farther Design upon the King's Person; and then 'tis Treason; if otherwise, a King of *England* is in a worse Condition than the worst and meanest of his Subjects; for a King must not, cannot, in or by our Law, assault, strike, seize, attach, or imprison in Person, and consequently cannot defend himself; and shall not his Servants, Guards, and Attendants (which are all of the same nature) wear a Sword, or carry a Musket before him? If they do so, is it not then known that they do it? If it be commonly known to be so, doth not he that seizes and destroys those Attendants, endanger the King's Person? And if that be so, the Inference is easy. It can never be, it will never be allowed for Law, that a Seizing all the King's Guards is only a Breach of the Peace, unless we renounce the Law, and will judge more by Inclinations and Partyships than by Reason and Precedents. As to the distinction between an actual Seizing them, and a Consult and Agreement to seize them, what I have urged before overthrows it; and what the Author says doth not maintain it, for both have a tendency to the Execution of the Treason intended.

I will not take the pains to remark upon all the Inconsistencies of the Concessions and Denials in the Book, they are obvious to the Readers. As to his Quarrel at the King's Guards as an illegal thing, and terrible to the People, somewhat of the *French* Growth, I hope the King will always preserve them for his own personal Preservation, notwithstanding the Author's Opinion. As to his Temporary Laws, which declare Words Treason, most part of them were affirmative of the Old Law, and were made only in Compliment to a New-crown'd Head, when they prohibited nothing but what was before so; and for the rest, no Conclusion could be made from them for the maintenance of his Assertion if he had repeated them; which since he does not, nor will I.

As to the Cases cited by the Author of the Antidote (which I have mentioned,) he agrees to *Constable's* Case, but does not distinguish it in its Reason from that in Dispute. He denies the Authority and Law of *Dr. Story's* Case, which no body ever denied before him. He says, that in the *Lord Cobham's* Case there were People assembled, but gives not any Answer to what the Antidote affirmed, *viz.* That the Overt Act, taken notice of in the little Book, called, *The Pleas of the Crown*, was only the Conspiring to make an Insurrection. He doth confess, that in the *Lord Grey's* Case there was only a Conspiracy: He says, that in *Sir Henry Vane's* and *Plunket's* Case there were several other Ingredients to mount them to Treason, but what they were no body must learn at least not from the Author, for he names none of them.

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He consumes half a Page in an Encomium upon the Judiciousness of that Court, which made a conscientious legal Scruple, Whether the Murder of a Mistress by her Servant were Petit-Treason, by reason of the difference of her Gender? But at last he tells us, That the Judges of the *Common Pleas* did upon much Deliberation satisfy those of the *King's Bench*, that Master and Mistress were in effect but one.

In the conclusion of the first Letter, he says, That Conspiring against the King's Person, is most justly taken to be to conspire against the King's Life; but in the Book he will not allow a conspiring and agreeing to seize (*i. e.* beat and destroy) the Guards, which are ordinarily and commonly known to attend the King's Person, to be a conspiring against his Person; which whether it be or not, the next Tryal of this Nature will determine. Now, after all, what can be a greater Reflection upon the Learning, Judgment, and Integrity of the King's Counsel, Judges, and Recorder, than to declare and publish in Print, that the first prosecuted, the second tried, and the last condemned a Gentleman as a Traitor, when the Charge had nothing in't of that nature: If true, the bare Printing it is unbecoming the — But as for their Reputations, let them justify themselves. The reason of my undertaking to explode such a Reflection, was my own and every Man's Duty to the present Government (the King and Queen's Majesties being both concerned, and eminently too, in the Consequence of such Doctrines) and a Love to my Countrey-men, that they may not presume upon the Authority of such a Defence; for if they do, they may find their Mistake, when noozed through the Power of Truth, the contrary Opinion.

As to the Proof I will not rake into it, since the Author hath represented too much of its Strength, and *De mortuis nil nisi bonum*, it can never be thought a grateful Province to debate or

convince of Guilt; but yet I may say so much, that there was Evidence enough to justify All concerned in the Prosecution and Tryal, though for several Reasons the Attainder is fit to be reversed, but hardly for those which this Author mentions.

Since the Writing of this Sheet, there came to my Hands a Treatise, calling it self, *The Lord Russel's Case*, which favours more of Policy than Law, and his Topicks are the Rights of the People and Power of Parliaments; they argue the Author to be a greater Statesman than Lawyer, and therefore much too great for me to encounter; and a Debate concerning the Heads he insists on, is neither safe nor allowable without Doors. I shall make but three Remarks on what he says: First, He may assure himself, That that Power from which he argues his Law, is now apparently lodged in the Commonalty, not in the Nobility. Secondly, the King's Solicitor (whom he reflects on) twitted more Reason and Law than yet hath been or ever will be answered: And thirdly, The Indictment contained no new constructive Treason; but only that which was plainly and directly declared in and by the 25 *Edw. 3.* if the Letters of it make Words, and the Words Sense, and one Man may be allowed able to read them as well as another.

Since the writing of the last Paragraph, there came to my Hands another Pamphlet, written by a new Observator; but I suppose the Judges that shall be, will correct that Sort of Licentiousness which he assumes in his Remarks; Which if they do not, they'll have fine easie Places on't as well as their Predecessors; and much good may it do them.

*Ætas parentum pejor avis, tulit
Nos nequiores, mox daturos
Progeniem vitiosiore.* Horat.

A Second Vindication of the Magistracy and Government of England, by way of Answer to the several Replies, &c.



IT is very observable, that since the late Revolution, nothing hath more disturbed our Peace than the Liberty of the Press: And amongst all our new Prints, the most malignant and mischievous Libels on the present Government, have been written by those Lawyers who pretend themselves the greatest Zealots for its Honour and Service, which may be suspected as false, unless it be withall considered, that some modern Royalists have nothing commendatory of themselves, but the Miscarriages of others, and others of them have such great ones of their own, that an Extenuation or Excuse is impossible, and therefore to cloud their own Deformities, they would blacken other Men's Reputations, and in order to it they have censured Innocence, and arraigned Laws; and where a Slip or Fault hath been, though so small as scarcely to deserve the name of one, they have magnified it into an execrable Villany; and for

a colour of such their Calumny and Slander, they have vented new Gospel and Law both: Nay, they have broached such Notions to the World, as are directly fatal to that Crown, of which they boast themselves the Makers and Supporters, and yet in doing so they pretend to merit——

It is strange but true, for the Fact is plain, and the Consequence too: Upon the present Change, the Republicans of both Gowns did deem it their Policy and Interest to bespatter and reproach other Men's Actions; and, like base and means Spirits, gave ill Names and Words to every thing in which themselves had not been concerned, and made Reviling so customary, that it is become the modish Sin of the Age. It is most certain, the old *English* Honour, Frankness, Ingenuity, and good Nature, is quite abandoned from some Companies and Places in the Town, and instead of Folly, we have assumed a Vice in our common Conversation, instead of Drolery and Banter, the new fashioned Wit at——

allows

allows nothing as acceptable but Lying and Slander; nay, the very Spark of a Courtier hath changed his Note: Whereas, fustian, gross, and false Flattery was wont to be his Talent, he is now got to the other Extreme, i. e. revengeful, weak, and false Characters, both of Persons and Actions: Which is the worst is difficult to determine, but Faithfulness is the most predominant humour in both; and that Age is surely unhappy, which is plagued with a Surfeit of either, especially when the Excess is so great as now, that no Gentleman can be thought a good Companion, no Clergyman a true Protestant, no Lawyer an honest *Englishman*, no Courtier a faithful Servant, unless he can, and do rail and snarl, and scold, and that at Things that were justly used in former Times, and must necessarily be used in these Times, and will be so in all Times whatsoever, even in *Secula Seculorum*: These little stinging Animals, do value themselves upon their Honesty, because they find Faults, but it is in Cases where no Eye can spy them but their own; they value themselves upon their Wit, because their Censures are sharp and biting, but that is so easy, so very easy a Province, that Nature teaches even the rudest of her Breed to be satirical, and the Natural oftentimes outdoes the pretended Scholar in Ribaldry, and hath perhaps a better Faculty that way than Fancy for Picquancy of Reflection.

Now as the Fact is thus criminal and ridiculous both, so must the Consequence prove fatal to the Government which they would be thought (but intend not) to support; for when once resolved to arraign all past Proceedings, they are forced for the maintenance of such their Reflections to vent those Opinions, Doctrines, and Rules in Divinity and Law, which have in every Age (save one) been justly exploded, as destructive to the Honour and Being of the then Possessors of the Crown; and can conduce to no other end than the utter Subversion of this, and every other Government that doth but smell of a Monarchy.

It cannot be denied but in most Reigns there have been some Occasions given for Disgust to the People, that Kings have born too hard upon their Subjects, that the Subjects have worthily complained of some Warps from the Law, but no Man ever with Sense pretended that this is a Reason to induce a Belief, that every Act of State, and every Judgment of Law in former times was Arbitrary and Unwarrantable: No surely, the Publishers of such Reflections are of another thought themselves; and some folks imagine, they who formerly were engaged in Seditious Practices against the Crown, would now upon the present occasion explode that Law which doth condemn such Practices, that they may with impunity repeat them whenever the King or his Ministers shall chance to disoblige them, and that this is the true reason of half the new Libels and Invectives upon past Proceedings.

It is now apparent to all Mankind, that every Line, or at least Page of some Men's Works are designed only as a Courtship to the Mob, by bridling the Sovereignty, and clipping the Prerogative, even to such a degree, as doth absolutely deprive it of those Rights, Powers, and Authorities, which the ancient Law, continued Usage, and our present Representatives consent to allow it.

To check this growing Itch of Pamphletting the Nation into another Change, and to vindicate the Rights of the Crown, and justify the Magistracy of England, from the Obloquy which was industriously thrown on it in one Particular, there was three Months since, a Sheet Printed and Published, at which some Men took Offence, but others were of Opinion, that its Publication was seasonable and well-timed; that its reflection on the trifling Defence which it assumed to answer, were just and smooth, and very soft, considering the occasion given for a more Satirical Style, from the fondness and incoherence of the Defenders Expressions and Inferences, and that the mode of managing his Argument, was modest and tender, with a decent and due regard to the Memory of the unfortunate Deceased, which had suffered more than enough of Injury by that pretended Justification.

A Cholerick and Sedulous Enquiry hath been made after the Author's Name, but the Inquisitor is still at a loss, notwithstanding his Confidence of a certain Knowledge who it was that came behind and struck him, &c. But to give him some Satisfaction, after all his fatigue in searching, I will ascertain who it was not; he may assure himself that none concerned in that Trial, were concerned or privy to its Vindication, and when it was composed and writ, the Party intended it chiefly for his own and the World's Diversion, from the ungrateful necessity of Reading always on one Side, by the interposal of a few Lines on the other; that our Humours might not be quite sowed, and our Genius turn too peevish, through the Influence of Satyr and Libel, with which the World hath too much abounded of late Years; nor had there been one Word more published upon that Subject, but that the Authority of the Defender doth challenge a Vindication, and the Word of a Priest says, that it needs one; both shall have an Answer presently.

But first it is remarkable, that this new Reply hath got a License, when none of his other elaborate Works could procure one; however, it is possible that the Licenser may hereafter renounce, or retract his Allowance in this Case, as he hath done in several others already, when his Superiours are acquainted with the Contents and Tendencies of that to which he hath given his *Imprimatur*; for it is not to be supposed, that Ministers of State will ever be so incurious of their Master's Honour, and the Rights of his Crown, as to approve their Diminution, when once they perceive it.

The single Point which the Advocate for Magistracy assumed to maintain, was that the Indictment in question was Legal and Good, sufficient both for Matter and Form, and did warrant the Judgment which was pronounced upon the Verdict that affirmed its Truth; this seems the principal Assertion in that Paper, which whether his Precedents and Authorities, Arguments and Reasons, are sufficient to prove, the Reader must judge; that the Cases he cites are truly reported for so much as he uses them, none can deny, and that the Law is with them upon the whole Matter, shall be farther evinced.

But since that Sheet hath made some noise amongst angry Men (which was little expected by him that wrote it,) it will not, I hope, be thought impertinent to spend a few Paragraphs upon

upon the boisterous and blustering Invectives and Remarks made against its Author, in a pretended Reply. In his Vindication therefore I shall observe, the Temper, the Wit, the Guess, the Reason, the Religion, and lastly, the Law of that Replication.

As to the Temper, it seems to be writ under some disappointment, for the Author doth in every Sentence declare his Passion, and plainly tells us, that he was then discomposed; but whether his Displeasure were conceived at a past or present Chief, is not so easie to determine: To expose his Fury, it is enough to repeat his Epithets of Daring, Bold, Impudent, Presumptuous, Base, Ingenuous, Insolent, &c. and all this despised by his reputed Author, and smiled at by the real one. He is pleased to call the Sentence and Execution a plain Murther; which if so, sure I am that he is bound in Conscience to Prosecute an Indictment against the Judges, the Recorder, the Grand and Petit Jury, the Witnesses, the Clerks, the Solicitors, the Goaler, the Sheriffs and the Executioner, for they were all concerned either as Accessories, or Principals, and demerit a Halter if the Repliant's Opinion be Law; but it is observed amongst *Honest Men*, that none of these Parties shew any fear on't; and the reason they give for it is, because the Indictment was as good as their Jurisdiction, and the Concurrence of those two makes them as safe as an Act of Indemnity can do: But all this was Passion.

As to the Wit on't, most of his Readers are at a loss where to find it, unless it be in his *English Verses*, which do so hit the sense of the Original, and contain such strong and pregnant flights of *English Poetry*, that some of his Readers have compared them even with *Sternhold* and *Hopkins*; and others are of Opinion, that they do not come short of the Essays of the two *Grays-Inn Poets*, one of which Translated *Grotius, de Veritate Christianæ Religionis*, and the other *Coke* upon *Littleton* into Rhime, but the generality do declare that for Height of Fancy, Propriety of *English*, and Exactness of Rhime, he hath much out-done all those: but for my part, I believe, that last Rhapsody was added not so much for the Ingeny sake, as to menace the Answerer with a design to Sacrifice him whensoever an occasion should offer it self, and consequently to do what the whole Book complains of; but that Advocate is not so much a Coward as to be afraid on't.

As for the Guess, it is very cunning, and argues more Figure-Knowledge than true Judgment in Styles, Modes, Dialects, or Peculiarities of Speech, or Writing, for he will have the Author of that Sheet, to be the Author of the *Antidote*, though he never saw it till he had the misfortune to have read the *Defence*; and his particular Idioms are as different from those of the *Antidote*, as they are from those of the *Defence*; but this is all Guess. He will have it one of the Counsel of that Tryal, because he hath put Counsel before Court: A Cunning Man would have guess'd the contrary, as supposing it done *fallendi gratia*, for the sake of disguise; but he may be assured it was meer accident that occasioned that fault. He will have it to be the then Solicitor, because of his Reputation, which is supposed to be touched in that *Defence*: But his Readers think that that Gentleman's Figure for Learning, Honour, and Virtue, is so

far above the reach of a little Pamphlet, that all the virulent Reproaches of the Reply cannot fully it, nor is it in the power of his Tongue or Pen, to prejudice his Character in the World; but however it is prudent to suppose to my self an eminent Adversary, that if a Foil be my fortune, it may be the easier.

But since we are at guessing, the World guesses, that he who wrote the Reply, did write the Half Sheet called the *Justification*; and it is really sportive to read the *Justifier*, commending the *Defender* for a learned worthy Person; and the *Repliant* doing the same good Office for the *Justifier*, and almost in the same words commending him: Nay, he spends a whole Page in the fulsom Praises upon that *Small Bulk* Author, and rejoices that the Work was done to his Hands, which is a very pretty jest. However, it is at most but R. for A. and A. for R. and R. A. still, which is much better than the contrary practice, of which some Authors have been guilty.

As to the Reasoning part, the Reader must excuse my brevity, for in truth there is very little in it of that nature; however, a few remarks may quicken and revive that faculty against the next turn. The Advocate owns it to be writ in answer to his Defence, ergo it reflects upon the Nation's Wisdom. He expresses a Repentment at my Lord *Russel's* engaging in such a weak and criminal Enterprize, ergo he reflects upon the Nation's Justice. He names the Lord *Russel*, (though with the most tender Appellations that could be used,) ergo he reflects on that Lord's memory. He vindicates the Indictment as good, ergo he justifies all the Proceedings in that Case. He argues that the Sentence was legal upon such a Verdict, ergo he is against the Reversal. He puts a Case, offers a Point, and makes a Proof on't, ergo he is transcendently impudent. These, and such like, are the Inferences, and do demerit a Laugh.

As to Religion, I see none in it, unless it be in the mention of the Devilish Powder Plot, which is still as much to the purpose of his Reply, as the story of Transmigration of Souls, was to that of his Defence; only Meekness is transparent in his Style, Humility in the Title Page, and true Christian Charity in his Menaces of an exception out of the Act of Indemnity, which he repeats three or four times at least, as if his whole interest were designed to promote it. The Gentleman's Danger is from publick and scandalous Actings in the Eye of the World; which were (says he) labouring to Support the Government, every Man knows what sort; lashing the innocent with a bitter and sharp Tongue, and inveigling of *Juries* with Rhetorical Flourishes. Now to examine a little these three monstrous Transgressions, let us go backwards. As to the last, a Duty can never be a Crime; every Servant owes Truth to his Master, while such: Every Advocate is to do his utmost, and a failure in it had deserved both the worst of Names, and Punishment, which the *Repliant* could invent, or his Interest procure. For all Mankind must agree that the now Servants of the present Crown are obliged to do the like upon the like occasion; if otherwise, the *Jacobites* side will be the safest. I will not reflect on the weakness of the *Juries* that were thus inveigled, if any such there were, but rather suppose that the Oaths of Witnesses, not the Pleading of Counsel,

fel, did govern their Consciences. As to the second, that is false, and needs no other answer. As to the first, that Gentleman's Honour and Merit afterwards, is as remarkable as his Fault at first, if it were any; but however he is likely to have abundance of Company, in Desert at least, if not in Censure; for a Duke of York's Creature is certainly as culpable as a King James's Servant. And *Andrew Marvel's* Characters in his *Growth of Popery*, will be as true a Directory to decypher Criminals as the Four Volumes of noted Tryals. And perhaps if the Ordinance of May 10. 1650. should chance to be revived, Danger and Fear may seize other Men, as well as those that served past Governments; it is therefore thought advisable, for all to sit down quiet and forgive and forget what is past, but serve God and their Majesties for the future, and not belabour the excepting one another; for if any should be such Fools, the Knaves will get the better of it, and the Righteous scarcely be saved. So much for Religion.

Now for the Law if we can find it: But because the *Defender* seems somewhat displeased at the Repetition of that unhappy Lord's Name, whose Case gives occasion for the present Question. Let us therefore put it like Mooters, *John a Styles* was indicted, for that he, at such a time and place, did compass to deprive his Natural Lord the King that then was, of his Regal State, and to destroy his Life, and to subvert the Government, and raise a Rebellion, and to fulfil that Imagination, he, together with others, did then and there consult and agree to raise a Rebellion against the said King, and to seize and destroy the Guards of the said King's Person, contrary to, &c. The Question was not whether *J. S.* was not Guilty? nor, If the Witnesses swore false? Whether his Attainder were fit to be reversed, But the Dispute was, Whether that Indictment were legal? Whether supposing *J. S.* to be found Guilty, the Court that pronounced the Sentence of Treason against him, ought to have arrested such Judgment on the motion of *J. S.* that the Indictment was insufficient? The Sheet argues that the Indictment was good, and consequently the Sentence pursuant thereto was warrantable by the Laws of this Land. The Argument seems founded both upon the Reason of Things, and the Authority of Precedents.

First, The Reason alledged was, that the last part, which in Lawyers terms is called an Overt Act, was a natural and genuine Sense or Declaration, or Overt signification of the first part, which is an internal secret Thought, i. e. the Imagination and Compassing, which is the Treason prohibited and condemned. That the latter directly and consequentially tending and conducing in the common Sense and Reason of all Mankind, (excepting the *Defender*, and two or three more,) to the accomplishment of the former, makes a good and sufficient charge within the Stat. Ed. 3. A Repetition is tedious, and an Abridgment is scarcely possible, the whole Sheet being but a Breviate, I shall therefore refer you thereto.

Secondly, The Authorities there urged, are either the Opinions of Judges and other Lawyers, or Precedents of Indictments of the like, or the same nature, from which the Legality of this may be justly concluded: The substance of them on the whole matter is, that Overt

Acts to depose the King, or despoil him of his Regal Office, or take him by Force or strong Hand, or to imprison his Person till he yields to the demands of those who practise such endeavours, are sufficient Overt Acts to prove the Compassing and Imagination of his Death. That levying War, causing an Insurrection, promoting an Invasion; nay, that Consults, Conspiracies, Practices, Advices, Letters, Persuasions, and other Motives, and Preparations to an Insurrection, or Invasion, though none succeed, have been held Overt Acts of Imagining the King's Death. I will not repeat the Cases, but as occasion offers from the other side.

The Objections there mentioned and answered from the Penning of the Statute are too trivial to deserve a remembrance, nor would they have ever been thought otherwise, but that *J. S.* was a Noble Person, and the *Defender* a great Man, and the Prefacer thought so too, either by himself or others. These and such like Ingredients, have made some semblance of difficulty: And in truth, had there been a real doubt in the Case, the Author of the *Remarks* on that Tryal, who wanted neither Sense nor Will to censure it, had his Opinion so inclined, I say, he would certainly have fallen foul on it in those invidious Observations of his upon the late Times. He quarrels with the Legality of the Jurors, the *Defender* with that of the Indictment, and both with the Evidence. The Author of the Sheet differs from them in the two first, but agrees with them in the last, that Testimony delivered for fear of Life, or hopes of Pardon or other Reward, is hardly creditable; but that is not the Point. Let us see if the *Replication* doth overthrow the Charge as insufficient; and for my part I cannot find a Line of Argument in it, but only it is naught, because it is naught. The consulting and concluding to make an Insurrection and Rebellion, and seize the King's Guards, is not a Declaration of the Party's compassing the King's Deposal or Death, and why? Because conspiring to levy War, is not a levying War, and levying War is a distinct Treason; this is the substance of the tenth Page, if I can read: The Sheet said truly, That levying War it self might be alledged as an Overt Act of Compassing, and hath been so frequently, and meeting and agreeing to rebel and seize the Guards, hath a direct tendency to promote a Demise of the King either natural or civil, and therefore might as well be alledged an Overt Act as most things whatsoever.

I had almost forgot one Clause, and that is the Unnecessariness of making 13 Car. 2. if it should be as the Advocate argues; I suppose he means the first Paragraph, for the second is agreed to be introductive of a new Law, &c. but the first is only a Paraphrase upon the 25 Ed. 3. It is thus, That if any Person or Persons whatsoever, shall within the Realm or without, compass, imagine, invent, devise, or intend death or destruction, or any bodily harm, tending to death or destruction, maim or wounding, imprisonment, or restraint of the person of our Sovereign Lord the King, or to deprive or depose him, from the style, honour, or Kingly name of the Imperial Crown of this Realm, or of any other his Majesty's Dominions or Countries, or to levy War against his Majesty within this Realm

Realm or without, or to move or stir any Foreigner or Stranger with force to invade this Realm, or any other his Majesty's Dominions and Countries being under his obedience, and such compassings, imaginations, inventions, devices, or intentions, or any of them shall express, utter, or declare, by any printing, writing, preaching, or malicious advised speaking, being legally convicted thereof, by the Oaths of two lawful and credible Witnesses upon Oryal, or otherwise convicted or attainted by due course of Law; then every such, &c. shall, &c. Now what is this but a Confirmation of the old Statute in words at length; which was agreed to be so in the *House of Commons*, 1 Jac. 2. when a Motion was made to renew that Law, the Lawyers Answer was, that the 25 Ed. 3. did the same thing, and a Man may boldly say it, that here's nothing declar'd Treason, but what had been adjudg'd so before, and Attainders and Executions had pursuant to it: The Sheet mentions Cases enough, and to the purpose, tho' some think otherwise; but I'll not repeat them.

In the 11th Page the Reader is referr'd to the Justification in the Half-sheet; and therefore let's examine that a little; a third part of it is spent upon the Evidence, but that is not within my Province, which is only to vindicate the Vindication: As to the rest, the Force of it, if any, seems only to be founded on his first Assertion, the Conspiring to do a thing is not the doing a thing, and he quotes two great Men's Names for it, I would have agreed that, tho' he had spar'd the Authority to justify it; but this is sufficiently answered in the Sheet: He offers an Argument from the late Statutes declaring Treasons, because they were temporary, but I answer as the Sheet doth, they were in affirmance of the Old Law, and I can shew him three or four temporary, and an hundred other Acts of Parliament that are so, and therefore that is no Argument at all; but I am, as the Parry I justify was, confin'd to a Sheet, and therefore cannot enlarge.

He lays down a Rule for Construction of Statutes, that a thing particulariz'd in one part is not to be construed within the general Words of another part, but that Rule hath near fourscore Exceptions in the Books; besides it comes not to this Case, for here's Compassing the King's Death made Treason, and declar'd by Overt Act; then Levying War is made Treason: Now says the Repliant, nothing can be an Overt Act of and conduce to promote and accomplish the first, that doth any ways concern the latter, I say it is a *non sequitur*; for there are several Instances mentioned in the Sheet, which respect the Levying War, and yet are a genuine Evidence of the Intention and Compassing; and if so, the Judges who have ruled such Indictments to be good, did neither assume an Arbitrary Power, nor transgress any Rule of Law, as the half Sheet insinuates.

Then the Lord Cobham's Case is endeavoured to be answered, by a Wonder that Sir Edward Coke, late Lord Chief Justice, and then Sheriff, should differ from Mr. Attorney Cook; for we know his thoughts in Sir Walter Rawleigh's time, and his Speeches in Car. I. his time; they are as different each from other as the times were, and in this particular that Gentleman hath had

more Followers than Precedents; but the Query is, What is Law?

Then Sir Henry Vane's Case is endeavoured to be answered by this, that Syderfin mentions not the Overt Act in the Indictment, but he oth say, the Treason alledged was a Compassing the King's Death, and every Man knows what Sir Henry Vane did to accomplish that: He neither sign'd the Warrant to execute that Murther, nor was he actually concerned in it, the Justifier says, he does not remember it printed any where but in Syderfin's Report; for the refreshment of his Memory, I'll tell him of another Book where it is, and that Keble's First Volume of Reports, 304. and there the Indictment is said to be for Compassing the King's Death, and endeavouring to accomplish the Treason, by Changing and Usurping the Government, and Levying War, which Case doth directly overthrow all the Defender's, Justifier's, and Repliant's Arguments, from the distinctness or difference of the Sort of Treason.

Then for Dr. Story's Case, he says, 'tis hard to justify it for Law; whereas there are above Forty Places in our printed Law-Books, where 'tis cited and agreed to be Law: Now 'tis pretty odd, that a Case so resolved and so ratified, should one Hundred and eighteen Years after, be arraigned in Print, for 'twas Hil. 13 Eliz. if any thing be Law, that is so, and not distinguishable from this Case in question, but that the Evidence was different, which the Justifier would make a reason to invalidate this Indictment; the Logick of it passeth all Understanding: Besides, 'tis observable, that the Benches were filled both with Learning and Integrity in 1571, and 1662, neither of those Times were *Tory* or *Popish*; and in Dyer, 298. the reason given was, That it could not tend but to the great Peril of the King's Person, and therefore an Attempt to promote such Invasion, though none followed, was adjudged as aforesaid. In 2 Anderson, pl. 2. fo. 5. Grant's Case, 'twas held, That when any Person intendeth or contriveth to levy War for a Thing, which the Queen by her Law or Justice ought or may do in Government as Queen, it's not material whether they intend any hurt to her Person; but if they intend to levy War against the Office and Authority of the Queen, that's enough, and that Resolution overthrows the Justifier's Notion, that J. S. his Design was only to defend the Laws, though the 13 Eliz. also was then in force, it's a good Argument to answer that Pretence.

Now I have repeated and observed all the Replication or Justification offers in answer to my Friend's Sheet, the Reader may perhaps expect some new Matter, not so much for Confirmation, as to give occasion for a farther defence. In Sir Fr. Moor's Rep. fol. 621. pl. 849. on the Tryals of the Earls of Essex and Southampton, before the then High Steward, the Justices did there resolve, that when the Queen sent to the Earl of Essex the Keeper of her Great Seal, and others, with a Command to him to disperse the Persons armed which he had in his House, and to come to her, and he did refuse to do so; and continued the Armour and armed Persons in his House, that this was Treason; and they did also resolve, that when he went with a Troop of Captains and others from his House to the City of London, and there prayed Aid of the Citizens to assist him in defence of his Life, and

and to go with him to Court, that he might get into the Queen's Presence, that he might be sufficiently powerful to remove from her his Enemies who were then attendant, that this was High Treason, because it tended to a Force on the Queen, &c. I make no Inference, let the Reader do that; 'tis plain, that an actual mental intention of Hurt, is not material in the one Case or other. As the Duke of Norfolk's Case is related by *Cambden*, in his History of Q. *Eliz.* 163. the Treason which the Duke confessed, was a Plot to seize upon the Tower of London, and deliver the Queen of Scots; and that's all.

There's nothing remains in doubt, but the legality or illegality of the King's keeping Guards for the preservation of his Person; they say the Law takes care of him, and therefore he is to take none of himself, and that the Judges are his Guards, and therefore he needs no other, that *Henry VII.* was the first that had any other. But let us reason a little; can it be supposed, that he should be so sacred in his Person, so great in his Power, and of such Authority as to make War or Peace Abroad, and raise Forces and suppress them at Home, as the Danger or Defence of his Realm should require, and not be able to provide for his own Personal Safety *de presenti*? Can he only punish by his Judges afterwards, or prohibit by Proclamation before, but not defend himself for the present? Is it Sense to suppose it? The Kings of England might have, and actually had Soldiers or Guards (call them what you will) even in times of Peace, and long before *Hen. VII.* as well as continually since; I may be so bold as to defy any Man to shew me the Year, the Month, the Week, or the Day, since the Conquest by *William I.* that England was without armed Men, actually upon Duty in some part or other of the Nation. This Sheet is not intended for a studied Argument on this Subject; and perhaps it would be difficult to justify a standing Army as warrantable, when there's no Occasion for it; but to say he can't by Force, even by Force, provide for his own Personal Safety, when he apprehends it in Danger, as every English King hath continual reason to do, especially if some Men's Doctrine prevail, it may be modestly affirmed unreasonable: Hath not every Subject power to keep Arms, as well as Servants in his House for defence of his Person? Is not his Mansion called his Castle? And yet the Law protects him too by Prohibitions *à parte ante*, and Punishments *ex parte post*: There are many Tenures in England, which oblige to the annual Payment of certain Sums towards Soldiers Wages, for Defence of the King and Kingdom; there are others oblige to the annual finding certain quantities of Grain in kind, for the supplying the King's Castles and Garrisons, as well as Household; which being annual, do demonstrate the lawfulness of their continuance, even in Times of Peace, and their being immemorial, do conclude a Common Law Right in the Kings of England, to have those Occasions, as they do conclude him a Right to have them supplied by such like Services: Nay, Grand Serjeantry, is either by Services of Attendance on the King's Person in Time of Peace, or for Military Aids in Time of War. The Crown may raise Forces by Commission, or of the Militia, to suppress Insurrections, in case the Civil Power of the Sheriff is not sufficient, or ineffectual: The King's of England have the sole Pow-

er and Force of the Nation; Complaints have been in Parliament against Billeting Soldiers contrary to the Will of the Hosts, but never for maintaining a Guard for their own Person at their own Charge; Complaints have been of a standing Army, but never of a select Company for his Personal Preservation; a Terror to the People may as well be pretended from his Coachmen, Footmen, or Grooms, if their Numbers be great: Besides, for a competent Power in Arms he always may have occasion, when his Subjects know nothing on't; 'tis his Province to foresee and prevent as well as suppress and punish domestick Tumults, and the Business of War is separately his Office, and that exclusive of his Subjects, any otherwise than as they are bound to obey and fight, or desired to assist with Aids and Subsidies; and for this to avoid a numerous Volume of Citations, I'll name one notable Roll or two in *Parliament. 6 Ric. II. Mem. 9.* the manner and way of the Prosecution of a War, being given in Charge to the Commons to advise upon, they answered, That this *nec doit nec solayt appertain al eux mes al Roy*, and so they did, 31 *Edw. III. Parte prim. n. 11. & 21 Edward III. n. 5.* It's true in 5 *Edward II. n. 4.* Ordinances were made, that the King without the assent of his Barons could not make War; but those were repealed and dampned, 15 *Edw. II. Parl. Rot. M. 13.* because prejudicial to the Royal Power of a King; and this is sufficiently affirmed by the Act concerning the Militia, in *Carol. II.* his Time. It is well known in what Time *Bryan* Chief Justice said, that if all the Subjects of England should war with the Subjects of another Kingdom, that this is no War, unless the King denounces it: It suffices for my Friend's Point, that the King may lawfully have armed Men or Guards, when himself judges his Person or People to be in danger, or stand in need of them: And that he may, when reasons of State will not admit their Publication to the World. But however, some standing Force the Crown ever had, and ever will have, though not always to such a Degree as shall be burdensome or oppressive; and our old Law-Books say, that Arms as well as Laws are necessary for the Prince, not only in, but against the Times of Necessity, I mean War or Tumult; besides in *Bracton, Lib. II. Cap. 3. de Corona*, 'tis said, that *Crimen læsæ Majestatis*, is the greatest Crime, because of the Greatness of the Person against whom 'tis committed; his Description of it is, *Presumptio contra personam ipsius Regis*; then when he particularizes the several Sorts of Treason, the first which he names is, *Si quis ausu temerario machinatus sit in (i. e. towards) mortem domini Regis, vel aliquid egerit vel agi procuraverit ad seditionem Domini Regis vel exercitus sui, licet id quod in voluntate habuerit non perduxerit ad effectum.* I'll make no Inference, there needs no Paraphrase, the Words are plain; an Act tending to the Destruction of the King's Host is High Treason against his Person, *agere ad seditionem exercitus regis est presumptio contra personam Regis, & presumptio contra personam Regis est crimen læsæ Majestatis*: Now can *Bracton* be thought to speak only of Treasons in Time of War? *Glanvil, Lib. XIV. Cap. 1. Crimen læsæ Majestatis dicitur de seditione Domini Regis, vel regni, vel exercitus*; and *Fleta, L. I. c. 20. De seductione exercitus sui: & cap. 21.* the same Words, *Seductionem ejus vel exercitus sui*; this was the Sense of the old Law, and is very appositely applicable to the Case in question, as I could

easily shew, would my Paper bear it. There is one Thing which I had quite forgot, and that is, that the Instrument of Grievances which the Prudence of the present Parliament hath provided, complains of a *Standing Army*; the Answer is easie, 'tis not of *Personal Guards*, and the wise Enquiry of the *House of Commons*, into the *quantum* requisite to maintain such and such Forces during the present Occasion, and of the Expences of the Crown in Household, Courts, Guards, &c. afterwards do plainly shew, that that was not the intended Grievance: Now, to sum up what is not answered at all or endeavoured to be so by the Defender, nothing is said to the reason of the Thing, or the necessity and nature of an Overt-Act, to the Opinion of *Coke* in the Places cited, to the Case of Sir *Walter Rawleigh*, the Case of the Cardinal, the Case of Mr. *Coleman*, the Case of *Constable*, the Case of *Owen*, the Case of *Burton*, the Cases of *Sparhawk*, *Awater*, and *Heber*, the Indictment against Sir *William Ashton*, *Germain*, and *Taylor*, and *Thomas Burdett*, *Collingbourne*, and *Colledge*, nor to the Opinion of the Judges in the Lord *Stafford's* Case, as if 'twere all impertinent, but the Reader is Judge if it be so.

Now for the Prefacer, I'll be as short upon him as he was upon my Friend; he said that the Sheet needed a Vindication, and I have given it one, and if this needs another, I hope the Crown will find a Friend to write some Third. He seems so us'd to the Word *Libel*, that he cannot forbear calling it an *infamous* one; he says, it has not one true material Word in it; I'll remember him of one, that Mocking is catching in the Proverb, that is, *A Grumbletonian in the Stirrup generally proves a Tyrant—in the Saddle*; that's enough for him to remember: If he wants any more Truth, and that he may not say this hath none in't, Treasons are easier committed than distinguish'd, by some Men especially, and the reason why I say this, is because of his *Ottavo* Preface, where he is grumbling still, for I always thought that he had smarted too much for Libelling on Ministers of State and Male-Administrations, to venture again; but when a Priest meddles with Law, he is like an Apothecary at Politicks, he generally runs himself into a Noose, for he'll never leave off till he's advanced one way or another. To conclude, the Design of the Sheet was to justify the Prerogative of the King and Queen, and the Rights of their Crown; and the Republican is angry that either should have any, and from thence flames the Passion; nay, rather than it should be allowed, they'll attempt another Change, from which good Lord deliver us, *Prov. 28. 2.*

During the compofure of the Premises, News was brought me, that another Pen had been procured to attack the Vindication, *viz.* The Author that runs a-muck at all Mankind, except his own Patrons: A deserved and full Remark upon so voluminous a Book, is not here to be expected, however, this Appendix may serve for an Advertisement to the World, that the new Repliant is in several Particulars obliged to Solicitor *Coke*, and the other Regicides Defence on their Tryals for much of his Materials; Time is wanting to shew the Parallel; at present 'tis fit to be observed, that his blind Side also is apparent, and consequently capable of a sufficient Answer, and to give my Reader a Specimen thereof, I'll take notice of a few (amongst

many) Mistakes, both in Fact and Law, which he hath wilfully committed. In the first Page he says, That to justify what hath been taken ill, accuses the present Government of Injustice; which is false. In *pag. 2.* he says, That the Vindication ventures on a Point of Law, which it pretends is the result of the Evidence given; there's no such Pretence in the whole Paper, the only Debate was upon the Indictment. He says in the same Paper, that it's said his Relations were pleased with the justness of the Tryal; it only says, his Relations were pleased, and his Enemies angry with those who then sat upon the Bench, and that's true; for some of his Relations cannot deny it, the Fact is so well known. The last Line of *pag. 3.* and first of the next are also false; for 'twas neither written, perus'd, nor approv'd by any of his pretended Criminals: I believe they thought the Point too clear to need a Vindication; but this is just like his wonted positiveness in his Remarks; where for instance, he says, that one of the Judgments he cavils at, was the first that was ever given without Argument or Reasons delivered in Court, which is also false; for in *Plowden's Comment*, 459. In Sir *T. Wroth's* Case, the Author takes express notice, that the reasons of the Judgment were not disclosed, when the same was pronounced; and Fifty other Cases I could name him of the same, but one Instance is enough to falsifie a general indefinite Position, though there are several more even in that very Book.

But to run over his Volume, *Pag. 2.* is only a farther scurrilous Reflection to vindicate his own Remarks, and an impertinent bombast of Words on the Phrase of *English Proceedings*: The 3d *pag.* assigns four Reasons of Printing, the two last are applicable to himself only, and he thinks so of the fourth, or else his Story is foolish like — In the 4th *pag.* he boulders himself in his Railery, by resorting to his refuge of the Parliament's Authority that reversed the Judgment, which all Men agree to be just, but it was not because the Recorder did not arrest the Judgment on that trivial Exception to the Indictment, but because the Prosecution was supposed malicious, and the Evidence supposed false or deficient, or both.

The 5, 6, 8, 9, and 10th Pages are all impertinent to the Point in question, and contain nothing but a Vindication of his justly condemned Clamour in his former Book; concerning which, I'll boldly say it, in seventeen Points of twenty he is out in his Law; if 'twere convenient to publish the Proof on't, I could make it plain. His Design is to shew in those Pages his Wit and Fancy, more than Candor or Law; for my Part, I am of his Friend's Mind, that he comes not short of the old Observator for managing a Dialogue: But all this is not to the Purpose, he is not come at it yet, the 12 *pag.* favours of the same Kidney, and 13 and 14 are no better: There he vents his Gall, and that in Ribaldry; no softer a name than Tools can be afforded to Men of Worth and Honour: If himself be one, as some suppose him, I am sure it is not to the present Government, for he plainly condemns it, and declares the People, *i. e.* his sort of them, unsatisfied with it, for its sparingness in Vengeance; and it is because others are not punished for maintaining the Law, and themselves not preferred for arraigning it: Some Men know my Meaning. He says, he is only

only for mumbling of Judges and Counsel, *Causa patet.*

But I must tell him two things, 1. The Inclinations of *Englishmen*, and the Laws of the Land, will never quadrate with a Commonwealth.

2. His supposed Criminals do not depend on their Number, but the Law, which ought, and will justify them; if it doth not please, let it be changed by Parliament, or if the Author thinks that a tedious way, let us burn all our Law-Books at once, and then perhaps his *Remarks* and *Reply* will be thought to be Reason, and himself the greatest and only Lawyer in the Realm; but till then, he must give others leave to know, and to say that they know, he is mistaken: For Resolutions, and Opinions, pursuant and agreeable to the Opinions and Rules of former Ages, I mean, frequent and repeated Precedents, approved by the Lawyers of the Age that used them: I say these will be the Law to the End of the World, unless altered by new Statutes.

And now we are come to debate the Question, all that is past is upon the Times, and not the Point. In p. 18. is his Reasoning-part which is no more than was said before in, &c. To redargue him I must repeat; if therefore he will observe what is said by the Sheet, p. 22. I will say no more on't, but submit to the Judgment of the Reader; he says the Inferences are ridiculous, I say they are Rational and Genuine: The single Issue is, if his or my Friend's Arguments are the most Logical and Natural, let the Reader judge.

Now for Authority, let us see if he urges any on his side, or answers that on the other. He admires (p. 24.) at the Assurance of the Sheet-Author, and others admire at his. He says the Parliament had often adjudged it, but none can shew any Judgment in the House of Lords, or Vote of the Commons House to that purpose. I have shewn the Sense of the present Parliament in the Point of Guards, and his temporary Laws are already answered; nor would any Man but he, and one more, pretend that they are Judgments in the Case. Surely it will not be pretended that his Case of the Earl of *Northumbreland* in *Hen. IVth's* Time, is any thing to the purpose: Nor is it any Argument to say, no King of *England* was ever killed for want of Guards.

Now for Cases, p. 26. He saith that in the Earl of *Essex's* Case there was an actual War levied, and that, as I said before, destroys the Argument from the Different sorts of Treason. As to Cardinal *Pool's* Case, he only says there was another Statute in force then, but no Record or History says that he was indicted on any other than the 25 *Edw. 3.* As to Dr. *Story's*

Case, he tells a long Tale out of *Camden* about the Fact, but answers not one Word to the Indictment, whatsoever the Evidence was, the Indictment was as the Sheet alledges, and that is enough.

His Answer to *Coleman's* Case is that, that things happening afterwards proved more, but the Evidence was no more than what my Friend alledges. As to Sir *Henry Vane's* Case, his Answer is, his own Hearsay of what was proved, but the Indictment he never perused; argued like a Lawyer. As to *Constable's* Case and the rest, he gives no Answer, but only that a Repetition of a number of Cases makes a Mutter and a Noise, and so it does when they govern and rule the Matter in question, and are not answered. *Owen's* Case, he says, the Author presses it strangely, and that is all. He says, the Cases of *Burton*, Duke of *Norfolk*, *Awater*, *Heber*, and *Crobagan*, are not to the purpose, let the Reader judge if they are not pertinent: As to the Opinion of the Judges in the Lord *Stafford's* Case, he doth not mention it, but says the reviving that Case might have been spared, and that is all, a pretty Answer: As to *Colledge's* Case, he talks of a Proof of a Self-defence, but nothing to the Point it was urged for. As to the Cases of Lord *Cobham*, *Grey*, and *Rawleigh*, in 32, 33, 34, 35, Pag. Setting aside his scandalous Invectives and Reflections upon those Times, Ministers, and Governments, he no ways attempts to answer the Argument drawn from them, viz. That the Charge was the same as in the Case in Dispute.

Now I appeal to any Man of Sense and Reason that will read and think closely, if the *Repliant* hath offered any one Argument more than the Lord *Russel's* Case, Defence and Justification had alledged. If he hath shewn any one Judgment where such Indictment was resolved naught; if he hath given any Answer to Dr. *Story's*, *Collingborn's*, Sir *William Ashton's*, *Burdett's*, and Sir *Henry Vane's* Indictment; in short, if he hath answered any two of the Cases cited; or if he hath done any thing but reflect on past and late times, and if the Indictment remain not good, both for Matter and Form, notwithstanding all these pretended *Replies*. Upon the whole, I desire the Reader to peruse the Book cited, and to judge if there be not Precedents enough unanswered to justify the Indictment in question, and that the Recorder gave a good Judgment upon the Verdict that affirmed its truth; *quod fuit Probandum.*

To conclude, Since the *Repliant* is in love with *Horace*, I would advise him to consider one hint of his,

— Forum, putealque Libonis
Mandabo siccis, — Hor.





The third and last Part of the Magistracy and Government of England Vindicated, with Reasons for a General Act of Indemnity, &c.



It hath been the observed Misfortune of most mix'd Governments, particularly of our own, never long to enjoy the intire Friendship of all its individual Subjects ; the lowermost Side hath too frequently acquired the greatest share of the People's Love, or at least Pity : It's then no point of Wonder, that the Servants of former Crowns should have incurred their proportion of Envy, Hatred, and Reproach ; and amongst all those none more obnoxious to it, than the Ministers, Officers, and Instruments of Justice ; for such are the vitiated Sentiments of Persons interested in all Suits, that the Vanquish'd is certainly injured, or thought, or said to be so, which is all one, by the Persons themselves, their Friends or Relatives, their Patrons or Creatures. In truth there's scarce a Tryal on the Plea or Crown-side, but one Party, and sometimes both, do leave the Court with a swinging Curse or two on Judge, Counsel, Jury, Witnesses, and perhaps all concerned ; upon which account, it can never be deemed a justifiable, much less a commendable and meritorious Employment, for Lawyers to note and report, and afterwards publish to the World the Clamours of such Malecontents, with the addition of Sarcasm instead of Argument, and blushless Lies instead of Law and Precedents, and all this under the pretence of serving their Majesties and the Government, but 'tis a meer pretence ; for first, it's not their Province ; these Publications are made by them, not as Legislators or Judges, but as private Persons ; and one of their *Libels* seems calculated only for private Lucre, as either the Hopes of a Place, or Encrease of Practice, by telling the Town in the first and last Pages where the Author lives, of what Profession, and how long standing ; an Art learn'd from some of those exquisite Doctors inhabiting towards the Fields, whose Knowledge and Conversation is pretended to be in Heaven : Another writes for Bread, and scribbles that he may eat, &c. A third, or rather the first and prime, is inspired with Venom and Revenge, even the pure Spirit on't, as one baulk'd he is angry at all, and because some were not his true Friends, he's resolved to make Enemies of those who despise him, and of them the number is great. But secondly,

It's of no use to the present Government, for Truth only can be a sure Basis of Respect to that ; and in case of Slander, the Filth rebounds, and the Dirt thrown most surely turns on, and dawbs their own Faces, especially when they arraign those as ignorant, whose Learning, Knowledge, and Judgment, are so clear and acknowledged, as to render the Censors unworthy even of being their Bag-bearers ; the like when they censure those as corrupt, who

have always boldly done their Duty, even in defiance of a Court Cabal, or a Popular Faction ; who have always adhered to the old English Law and their just Opinions in it, tho' Frowns from *Whitehall*, or Clamours from *Wapping*, tho' Lampoons from *Grub-street*, or a worse Usage from an *Observer*, tho' a *Supersedeas* or a *Take him*, &c. were the only Reward they could expect for such their (formerly called Puritanical, now Arbitrary) Justice : Gentlemen who never poll the Law (which the great and good Sir *Mat. Hale* did truly call a robbing the Poor of Justice) for the acquiring a Farm or an Office, or a lumping Summ for Sale of it ; who never begg'd an Executorship for to gain a Fortune ; Gentlemen who never gave strain'd Opinions concerning the Revenue when made for their Clients the Farmers, but clamour'd at the same when used by their King with more Moderation ; Gentlemen who parted with their Places, tho' of Honour and Profit, rather than comply with a Court-Opinion or a Club-Notion, when others (I name no body) offered entire and everlasting Service, if they could have preceded or succeeded them, (Teste . . . *apud St. James's* and the *City of Gloucester*.) but missing their Aim then, asnow they do, their Gall must have a Vent, and so it hath with a vengeance, when a true and bold Justice is made the Subject on't : The Reason is plain, those Men's Repute is too great for Truth, Probity, and Usefulness : An Eclipse is necessary if possible, for if otherwise, the Defender will never be *Keeper*, the Remarker *Solicitor*, nor the *Gray's-Inn* Poet wear Scarlet in *Wales* ; their Hopes are but small, unless they can postpone all their Betters by Death, Commitments, or that which is but little worse, Reproach and Slander ; but some think their String grows weak, for 'tis apparent, that there are a sort of Men, who tho' they might and did love His Majesty when as Prince, yet do not, will not, cannot love him, or any Man else, as King ; and this is now pretty plain. But thirdly,

Their *Libels* are criminal, and injurious to common Justice, for they create a Disrespect and Contempt upon all Judiciary Proceedings ; to arraign all past is to excite a Suspicion of all present and future Administrations ; whereas *Plowden* saith, fol. 38. *It's a good and sure way to believe the last Judgment* ; and if so, 'tis plain what Name the contrary Practice deserves ; besides, were it otherwise, the Institution of Judges and Courts were vain, and our State, as *Englishmen*, the most unfortunate ; for we have no Rule but *ex ore Judicum*, or from particular Statutes, and of them they are the Expositors. Now let's inquire which is law, the Defender's Fancy in his Argument *inter S. and B.* or the Judgment in the Exchequer Chamber, affirmed

affirmed by the Lords? If the Judicial Resolution be so, then the Publication of his Argument was injudicious, and I am not to follow him as my Guide; but perhaps he'll tell me, That manifest Reason and good Lawyers ought to govern me; if so, then I ask him, Who shall I follow in the E. of D's Case of a *Capias pro fine pnis Judgment*, &c. whether the Eleven best Lawyers, or the Vote of the House? If the latter, why not so in the former Case? And if otherwise, then his Judgment was mistaken; so that *quacunq; via data*, there's no Infallibility in this World, and consequently no Excuse for Private Censures of Publick Proceedings in Courts of Justice: Besides, the Books are pretty clear, that such things are punishable; but I leave the Reader to peruse them at leisure. Then let us consider the Confusion that must ensue upon the publick countenancing such a Practice as these Scribblers have introduced; for if allowable on a Disbanded Judge, 'tis so on a Sitting one, for the Case is the same in respect of private Lawyers, who pretend to think their Judgments erroneous or corrupt; but surely both are unlawful. Besides all this, in the present Case;

They have palpably wrested the Law in divers Instances: I need name no more than the Indictment in question, which that it was legal and good, most Men do now agree, especially since the dint of the Opposal seems current only on the Evidence, with a Waver of the other, and more since that Guards are proved lawful, and the Observator concedes it the most legal part of the Procedure, and the Justice of Parliaments, &c. supposed written by the Defender, strains all its Forces on the Evidence and the Times: and their Follower, the Poet, in his new *Non-conformist*, pag. 10. runs the same way too: Only

There remains one Objection to the first Vindication, which is, that it affirms, Words may be Treason within the 25th of *Edw. 3.* and the Remarker challenges a Proof of it, and asks where it may be found; and the *Non-conformist* quarrels at the Lawyer that did assert it, and some others have done the same *ore tenus*.

I confess, that the first Sheet did publish the Assertion, but waved its Eviction, for fear of a strained Use of such Opinion to ill purposes, for the serving a turn upon particular Occasions; nor had there been any more said on it, but that their Confidence and Malice seems so exorbitant as to extort a Check, for the Regulator is grown so confident of his own Knowledge as to undervalue the greatest of Judgments; whereas his Common-place-Book affords us no Titles but those of Collusion and Malice pre-pense; and his Practice hath been much of the same Stamp, only that sometimes he hath added a little of the Lunatick, as appears by his *Rhimes, Prophecies, Dreams, Politicks*, and other *Religionary Works*.

To prove the Assertion, I depend not on the Authority of the Sense of the Commons House. 1 *Jac. 2.* tho' (let the Cryer for Justice, or who else pleases, contradict it) it was in Fact then affirmed and agreed unto, and upon that, the then King's Council and Courtiers desisted the Motion and Prosecution of a Bill to make Words, &c. But that's a supernumerary Argument, there's more than enough besides.

I am not to maintain, that all rank, malicious, gross Words against the King or Queen's Person are such, nor that whosoever drinks an Health to our Sovereign Lord the People, or to the late King *James*, is a Traitor; but that Words significative and expressive of a present Intention to do an Act to the King's Destruction, such Words deliberately, maliciously, and advisedly spoken on purpose to accomplish the Demise of the King, as by Promise of Money with importunity to commit the Fact, may be an *Overt fait* to prove the Imagination within 25 *Edw. 3.*

To evince this, let us think a little and 'twill be plain.

The Words of this Statute are clear and of an easy Construction, if we will allow those dull old Times to speak Sense: They are to this effect. That if it shall compass or imagine the Death, &c. and *de ceo provablement soit attainé per overt fait*: Now the Objection is this, That Words are not Deeds within that Clause; to this the Answer is very clear; for by all the Grammatical and other Rules for Interpretation of the Sense of Words, the latter part of a Sentence is to be construed (if used by way of opposition) as opposite to the thing mentioned and intended in the foregoing Part, and not as oppos'd to every thing which it may *ex vi termini* exclude in other Cases; and this is an agreed difference, both amongst Divines in Exposition of Sentences in Scripture, and Grammarians in almost all Cases whatsoever. Now to apply this:

Overt fait is used not in opposition to Words, for there's no such thing mentioned; but 'tis added in contradistinction to that which was before specified, *viz.* Thoughts, and such are Imagination and Compassing; and therefore *overt fait* must mean any open manifest thing as can truly discover those Thoughts, as may proveably attain the Traitor of such his Imagination; and it is a most natural and proper Mode of Speech, if they did intend, as most undoubtedly they did, that the Thought should be the thing prohibited, then 'tis as plain they intended by the Word *fait* any Discovery of such Thought by Words or Actions; and so said *Newton* in 19 *Hen. 6.* That to imagine the Death of the King, is Treason, tho' he do no act towards it, if such Imagination be disclosed that it can be tried if he did so think and imagine. If that Thoughts and Words are mentioned both in a Sentence, and afterwards Deeds in opposition, then the last will exclude both the former; but here when used only in contradistinction with Thoughts, it seems plainly otherwise. That Deed, when used in opposition to Thought, doth include both Words and Acts, none can deny; a thousand Instances might be given of it; and in the exactest propriety of Speech, Words are Deeds when and as contradistinguish'd from Thoughts; for the Soul thinks even as abstractly considered from the Body, but Man never speaks without Action and Motion: The difference is plain, and needs no Explication. But further,

I would fain know, What is a Consult or Plot, but the mutual and reciprocal Declaration of two or more Traitors Minds each to the other? Each declares his Traiterous Imagination by Words, and so of an Agreement to commit

commit the actual Murther, 'tis but a Declaration of their Minds by Words each to the other, only they do happen to agree. Now suppose one Man thinks and intends to destroy the King, and by Words doth willingly, deliberately, and advisedly declare this to another that is not of his Mind, tho' by mistake is thought to be such; is not this the same thing? If a Man traiterously offers and promises to another a thousand Pounds to perpetrate the villainous Act; if he accept it, and a parole Agreement is made between them accordingly, surely the Apologists for Treason will agree that to be an Overt Thing, and both guilty, if it can be proved by two Witnesses of Credit. Suppose then the Party offered and promised doth abhor and refuse, will that make a distinction? If it does, 'tis without a difference: Perhaps the Word *Consalt* will be called a new Cant; we know whose Coin it is, and who gave it the first Stamp; 'twas no less a Man than Sir *William Jones*, who at the time of such his Invention was no Prerogative Lawyer, tho' considerably so in Times then lately past: Nor is it imaginable what is the meaning of a Conspiracy or Plot to take away the King's Life, but a Communication by Words between several Traitors concerning such Act, and the method of its Accomplishment, and a Declaration by Words of each Man's being fixed in that purpose; which, if it be proved by sufficient Testimony, will undoubtedly be an Evidence of a Compassing, &c. which is the Treason Prohibited and Punishable; nor can the Meeting make it more so, for they could not discourse unless they met; and therefore 'tis the Words only that are the manifest *overt fait*. Nor doth *Hugh Pyns*'s Case, or the Resolution of the Judges therein, contradict this, notwithstanding the Confidence of the Remarker that it did; they only say that the Words in that Case were not Treason, that those Words were not an Evidence of Compassing, that for those Words he could not be Indicted upon that Statute; but their Opinion doth plainly imply, that had the Words been Evidence of a Compassing, &c. as they were only slanderous and reflective, it had been otherwise; and the Instances there mentioned are full to this, as *John Quick*'s Indictment was only for Words to King *Henry*, unless standing up and speaking will alter the Case: *Thomas Kiver*'s, *John Clipsham*'s, and *John Mirfield*'s, are all for Words, and some others there specified. Besides, it's observable, that in most Indictments on this Statute, some Words have been alledged in them as an *overt fait* to demonstrate the Imagination, which would be impertinent if the Law were thought otherwise. I'll not insist on *Colledge*'s, because the Case hath been cavilled at, tho' with no colour as to the Indictment: Part of *Patrick Harding*'s Indictment was *loquendo publicavit*, but I'll not dwell on that, because foolishly drawn; but *Arthur Crohagan*'s Case in *Cro. Car.* is pretty full, and for Words; and the Words of the Book are, That the traiterous Intent and Imagination of his Heart was declared by his Words, and therefore held High-Treason within the expresse Provision of 25 Ed. 3. and upon his coming into *England* he was arrested, &c. Now no Answer can be to this, but that he came into *England*; but the Words only shewed his Intent, and by that Book the

Words are alledged as the *overt fait*; besides the Case of *Blanchflower* and *Atwood*, *Mic. 5. Jac. 1. B. R.* in *Telverton*'s Reports 107. *per curiam*, resolved, that Words may be Treason; and that is an expresse Resolution; for there was then no temporary Law in being concerning Parole Treasons that I know of. The Case of *Berisford* and *Pressc. Hill. 8 Jac. 1. B. R. Telvert. 197.* adjudged, That Treason may be committed by Speech as well as by Act, for any thing which discovers the Mind of a Man to be Traiterous to his Sovereign, is capital to the Party: *Hitcham ad. Brook Pasch. 1 Car. 1. Huitt. 75.* held *per cur.* that the speaking of Treason was Treason, and that *sermo est index animi* as well as Preaching or Writing; and no Man can doubt but those are Acts; and Speech is as much so.

Besides, If the Consequence of the contrary Doctrine be well consider'd, 'twill appear to be a plain Evasion of the Statute of 25 Edw. 3. as is manifest upon the reading it; and the common Books are full of this, for otherwise no Action could lie for saying a Man hath spoke Treason: But here's enough said to answer the Challenge, where's the Authority for such an Assertion? Tho' infinitely more might be said for it, nay 'tis as easy to dumbfound the contrary as 'tis to transcribe Law Cases. If this doth not give them satisfaction, they shall remain unsatisfied for me, I'll plague the World no more with writing on this dull, flat, unprofitable Subject, Crown-Law, lest I should provoke our new Scribblers to double the Plague by their Replies: If they attempt an Answer, I'll leave the Tobacconist and Grocer to confute them; and unless a Trunk or Band-box chance to bring them to my View, I'll never be temptred to read them; and of this they may assure themselves. I say it to complement the Reader with Patience to peruse the rest of the Sheet, being ascertained never to hear more on't, at least not from this Hand.

Some perhaps may wonder at the reason of the Publication of these Sheets, and conceive them the Product of Malice on one side, as those virulent Pamphlets are on the other: To solve that Scruple, I need only repeat the Reasons alledged in the first; but a Repetition is damnably dull, as well as tedious and irksome: I'll therefore add a new one, and that's to shew the Reasonableness as well as the Necessity of a general, indefinite, speedy Act of Oblivion; for tho' the Blood-hounds fret, and huff, and bounce, as if all their Madness and Rage were founded on a true Basis; yet 'tis apparent from the Premises, that their Foundation is false, and the Law is direct and plain in their Teeth, and doth and will justify in most of the Particulars, at which they foam their Curses and Execrations: Reason therefore as well as Necessity enjoyns a silence as to what is past, for otherwise the Kingdom can never have its desired satisfaction; for in Points justifiable, or at least doubtful, the Justice of inflicting Punishments can never be vindicated, did I call them Punishments, I beg the Reader's Pardon for the Impropriety; however I'll not name their proper Term, but with calmness endeavour to evince three things.

1. That it would be grateful to the Nation in general, and every good Man in particular.
2. Conducing to the Settlement and Interest of

of the present Government ; and lastly, That 'tis consistent with, and promotive of the highest and truest Justice.

First, The Nation did and doth expect it, for Revenge is never natural but when freshly pursued, and Time wears off the Sense of Injuries, by the Intervention of new ones either real or imaginary, which is all one as to this Purpose : The Horror of any Crime, or at least the Detestation of the Criminal, grows faint and languid upon the removal of the Object, especially if Time interposes with the accession of present Fears, which at present do more affect us than greater if more distant. It can never therefore be thought the Desire of the People of England, to have their Neighbours or Acquaintance harassed and persecuted by Fines, Confiscations, Imprisonments, Marks of Disgrace, or the like, for Actions done in the last or former Reigns, about which the World hath been so much divided, if lawful or not : Besides, that this was the general Expectation of the Kingdom on the the new Settlement, or at least the Coronation, of which nature there never was an Instance before this without an Act of Grace ; and it is most plain, that none are Adversaries to it, but the *Republicans* and the *Jacobites*, not for that they need it not, as I shall shew anon, but for different ends, each drives at and wishes a Change, it matters not to what, for if to the latter, the other hopes a Common-wealth will be the more desirable : If the *Republican* succeeds, then the other believes a Restoration the more easie, but both dislike the present, and therefore dread a Settlement, and consequently dread the People's Satisfaction and Quiet under their Majesties, and consequently dread an Act of Indemnity : 'Tis true, the Cry for Vengeance is loud, but 'tis only from these two Corners ; which leads to the second Particular, that

It will establish and promote the Interest of the present Government, while the Popular Bully is full of his Damme's and Menaces, there's certainly Danger, and where there's Danger there's Fear ; now fear causes an Aversion, and Aversion begets Hatred ; and the Object of it is that from whence the supposed Danger arises, which is from the Government irritated by the Venom and Fury of those hot-headed Animals ; whatsoever hath Power and Will to hurt me, must and will be abhorr'd ; and though none are immediate actual Patients, yet the being possibly obnoxious to it, and the want of Security for the contrary, doth of necessity cool their respect to the present Power, under which they were not safe, and this tempts them and their Friends upon Contrivances and Attempts of Danger, both to Themselves and the Publick ; and Danger by the Attempt is no Discouragement where the like Danger attends their forbearance : And this is of Weight, unless *Cromwell's* Politicks be thought Christian, to cherish and promote a Plot, as of advantage to Settlement, if seasonably discovered and subtilly managed ; but however 'tis as true, that Enemies who are desperate, ought never to be thought inconsiderable ; for they may shake and baiter what they can't destroy, they may do Mischiefs, though they can't work Ruin to their Adversaries, upon which Account, the Temptation of continual impending Danger is fit to be removed : Besides

The want of Security, and the fear of Danger,

making Men uneasy in their Thoughts, replenishes them with Complaints and Murmurs at every awkward Action, or supposed miscarriage of the Government feared ; it makes them Mutineers at publick Taxes and Impositions, partly because they think it strengthens and increases the Power of hurting them, and partly because it sponges and bleeds them of that, which they fear an occasion of themselves to bribe Black-rods, Serjeants at Arms, and other Goalers with ; and in a conjuncture when extraordinary Aids are indispensibly requisite, no temptation to Complaint is deserving of Countenance ; besides, that it cramps Trade, and discourages Projects for Publick Good, &c. but farther, it's the living, not the dead, the happy, contented, and cheerful, and free, not the oppressed, miserable, forlorn, or imprisoned Subject, that doth Service to the Crown and the Publick.

It hinders all such as are thought to be so obnoxious from any bold Essays for the Use of the present Government, for that if Success be the attendant of such their Attempt, they continue unsafe notwithstanding, for no Man will adventure an hazard to secure that Authority, which he is not sure will make him safe, if he doth undertake the present Adventure, and escapes that Danger, and performs the Service ; so that Self-preservation renders it their Policy to unhinge themselves from, or to be shy of the present Power ; of which a considerable number might prove useful Friends, which are now Neuters at least, if not Enemies.

It's observable in all foreign Policies, either to work a total Extirpation of the whole Party, or an universal Indemnity, after so grand a Revolution as this was ; the former is not to be practis'd here for two Reasons : 1. Because we want People : 2. Many of our Friends must be banish'd too, for divers of the supposed Criminals were instrumental to the present Change, &c. Ergo the latter only is, and can be most advisable ; for once I'll suppose their Numbers but small, in comparison to the Saints and Innocents, (if any such there are in the Nation) yet under our present Circumstances, all are to be obliged as Friends that possibly may ; but if the thirteen Heads, with the Surrenderer's Clause, and all its and their Subdivisions had been reduced into a Law, in the designed Act of Attainder, one third at least of the Nation had been involved, who with their disobliged Relatives and Dependants is not so contemptible a Flock, though but of Sheep for the slaughter. Besides,

It's impolitick as well as unjust to deny or delay it to those who have submitted to the Government, yielded it Obedience, and quietly bore its publick Charges according to their Proportion, and yet give a free, full, and general Pardon, both in *Scotland* and *Ireland*, to all that took up Arms, for all their Sins then past and present ; it provokes the former to repent their Non concurrence with the latter, for 'twas but resuming their Quiet and Submission at pleasure, and then they were safe, which now they are not, but under continued Menaces and Dangers of both, as appears in their being baited by every barking Cur, that can but write with Gall in his Ink, or speak with a Damme in his Mouth.

Experience farther tells us, that nothing turns or changes the Humour of the *English* Commoner, like Rage, Insolence, and Cruelty in their Fellow-Subjects, when made Superiors, and such

s raking into old Sores, thought to be; it matters not whether justly or no as to this Purpose, the Effect is generally such: The Star-Chamber in *Car. I.* his Time, the Major-Generals in *Cromwell's*: The Tophanizing of Abhorrrers in *Car. II.* his Time: The Western Campaign, and the other Criminal Prosecutions in the beginning of *Jac. II.* I say all the Violences used in these several Periods (and yet they had their respective Provocations) did most notoriously alter the Kindness of the Commons, and made even their once beloved, first dreadful and terrible, then odious and loathsome; they produced considerable Changes in their several Consequences: I could come nearer Home, even to the teasing of *Moore* and *North*, and other Citizens of *London*, which first turn'd the Stomach of that City, as is now apparent; but *Sat verbum, &c.* But farther,

The want of this renders both the Policy and Honour of the great Bellowers for Vengeance to be justly suspected: 1. Their Honour in taking care of their own Servants, for all their Excesses upon the Revolution, and opposing the Indemnity of all others, as by the Act appears. 2. Their Policy, for that it's observable in *Story*, that the Association in *Queen Eliz.* Time, was under a Protestant Prince for the Protestant Religion, and no ill Success attended it, yet those wise Ancestors of ours thought fit to secure themselves, by turning the Association into a Law, and a general Act of Indemnity; I do not say they needed it, but the Associators in that Reign thought it needful; and 'tis very considerable, that in no Reign was there more Peace and Quiet than in *Hers*, and in none were there ever more free and general Pardons, and in truth the latter was the occasion of the former; for when Men are once safe and quiet, no small Temptation will provoke any more Adventures, though they like another better, yet Men being easy are generally contented. There was one free and general Pardon of the Queen's at first confirmed, 5 *Eliz.* cap. 11. another 8 *Eliz.* cap. 18. 13 *Eliz.* cap. 28. 18 *Eliz.* cap. 24. 23 *Eliz.* cap. 16. 27 *Eliz.* cap. 30. 29 *Eliz.* cap. 9. 31 *Eliz.* cap. 16. 35 *Eliz.* cap. 14. 39 *Eliz.* cap. 28. 43 *Eliz.* cap. 19. Eleven in number, and never five Years without a Parliament-Pardon, and this made Parliaments and Crowns the Darlings and Desire of the People. Besides, it's the Interest of each Party amongst us, though some don't see it; the *Whig* ought to promote it for two Reasons; 1. Left being the lesser Part he chance to feel the want of it, and for that he has given some Provocation. 2. That if it be the greater, the Memory of his Vengeance and Fury may be forgotten, and himself restored to the good Opinion of the rest of Mankind, by one act at least of good Nature: The *Tory* ought to pursue the same Measures, and much for the same Reasons, for his Top-gallantry hath been, and if retracts'd, will be again as odious and loathsome to the moderate and good, as ever it was, or as the others could be; Temper therefore is now the Game, and a Veil over all that's past, is certainly the most Politick, especially considering the Multitude of the supposed Criminals, and the Justice of their several Excuses, which comes next: For,

Lastly, It's consistent with, and promotive of the truest and highest Justice, for in most of the Cases the Law was doubtful, and to punish O-

pinion in Matters of Law, is as unjust, as to persecute Mistakes in Matters of Religion is unchristian, and new Laws for Government *de futuro*, are more agreeable to natural Equity, than a retrospective Fury; that it was the doubtful, is plain, the modern Scribblers have sufficiently proved it. In two of the Cases cited they differ themselves, for *Dr. Story's* Case, the Defender cries 'tis not Law, the Remarker agrees 'tis, and that he was well hanged; for *Plunket's* Case, the Defender cries, he was well hanged, for there was Treason enough in his Charge, the Remarker insinuates as if he suffer'd hardly; now what shall a little Lawyer believe between these two great Bodies of Learning? The like may be said of *Soames's* Case, and the other above mentioned. But what is more: In the Voluminous Argument against the *Dispensing Power*, owned by *Sir R. A.* he doth concede, that there are some Prerogatives so personally and inseparably inherent in the Crown, that no Act of Parliament can cramp or diminish, or at least take away; and that being granted, I'm sure all that the rest of the Book says can never make that a plain Case, and in Truth his own Argument shews and leaves it a disputable Point; and if that were doubtful, every particular else may well be buried in Oblivion; besides in Cases of Construction the nature of the thing admits of Doubt, and then there's no Colour for Punishment. Besides,

In respect of Inferiour Persons, by our Constitution they are obliged to submit to and follow *Westminster-Hall*, which is the *Lex loquens Angliæ*, and when all these Things are duly considered, there will remain but few grand execrable Criminals, who are fit to be made Examples of, only to tickle some, aggrrieve others, and terrify none; for that will be the Consequence; for that's the Case of all Violence, where the Justice of the Thing is not clear and undoubted. Then for Exceptions;

Let us think a little; Is it reasonable that some should suffer for not being afraid of Punishments never declared or promulgated, and others should escape, because their Countenances are more fawning, or that by consent their Relations have play'd on the other Side, or that their swinging Fortunes enable them to scatter Mice for their personal Indemnity, or that they have had the lucky Principle of being faithful to all Changes, and true to nothing else, or that they have been forward to subvert their old Master, after their Fire and Folly had ruined him, and endangered themselves? These and such like are no Pleas for Justice, and yet this is the Case. Farther,

The Drift is to magnify and aggrandize Punishments by Bill, which by the standing Laws and common Justice of the Realm could not be inflicted, and they urge two Reasons for it, 1. Their particular Pardons will otherwise excuse them. To that I answer, Either they are valid in Law, or not, if not, there's no need of Bills; if they are valid in Law, the same Law and Justice of the Land enjoin their allowance; even the same Law by which the Countrey-man plows his Land, the Gentleman receives his Rent, the Trader recovers his Debt, and the Senator sits in the House; and by the same Reason that these enjoy their Properties, the Criminal ought to have his Pardon allowed, for one's a Right accrued by the Law, as well as the other.

other. 2. The common Channel is too smooth; Severity is sometimes necessary, and that now if ever; and therefore the Legislative Authority ought to exert its Power, and punish according to Demerit. To answer that, I say, either they are no Offences by Law, and there needs a Bill to make them such, and inflict Evils upon them as such; or else they are Offences, but deserve a greater Punishment than a common Court may pronounce: Now if the first be the Case, then I'm sure 'tis rank palpable tyrannical Injustice, and that's the Plague of living under an Arbitrary Power, for none can know what's not Criminal: If they mean the latter, as I suppose they do, then I ask, to what end were Punishments invented in Societies, but to restrain Men from doing particular Actions, through the power and influence of Fear? And how could that Consequence be expected, when the Penalty was never known before 'tis inflicted? And to inflict an Evil afterwards, which was not known before, is to make a Man suffer that which he could not fear, because he could not know it, and this because he did not fear it: And the Justice of that is plain too.

I agree with the Satyrists, that there are some Precedents of this last Method of proceeding, but most of them are repealed; I'll name two that are so; the Earl of Strafford's, which the very Law it self did enjoin Posterity not to observe, or follow, or do the like. I can't forget one Expression of his to this Effect upon the Tryal, if there be an Error in a Judge, so that he give a Sentence otherwise than a Man of better Understanding conceives Reason for, there's no cause the Offence should be heighen'd; because he was not so wise a Man as he might have been, nor so understanding as another; which if allowed, will make it more eligible to follow a Plow than serve a Government, to dig in a Ditch than bear an Office; for all

Men stand obnoxious to the Constructions and Passions of succeeding Times. There's one Instance more, and that was Sir Tho. Haxey's, who was attainted of Treason, for bringing in a Bill into the Commons House against the Prerogative, though while and as a Member: I suppose the Sparks will not much applaud the Justice of that Procedure for their own Sakes; but as I said before, that, and most others of their Precedents, were repealed, when a cooler Assembly met upon the next Session, and so was Haxey's, in 1 Hen. 4. Cott. abr. rec. 362, 363.

But if Vengeance be requisite, it ought to be without respect of Persons, the Justice of it ought to be impartial, true, and Catholick: And then come in the Pensioners and Surrenderers, the Regulators and Promisers, the old High Commissioners, and the new Creed Makers, &c. and, God knows, *quis non?* &c. To conclude; our Saviour's Rule, if observed, will be the most infallible Indemnity that can be contrived, and that is, John 8. 7. *Let him that is without Sin amongst you, cast the first Stone.* And in truth a Censor of the Manners of others ought himself to be pure, clean, and innocent, *in omni re quacunque*; and if there be no Danger but from such, I'm sure there's no Danger at all, and that it should be so, is the truest Justice in the World, *quod fuit probandum.*

I'll not mention the Argument from the Vacancy, that the Government was dissolved, every Thing reduced into its primitive State of Nature, all Power devolved into Individuals, and the Particulars only to provide for themselves by a new Contract; for if so, there's yet no new consent for Punishment of Acts done before the Dissolution, and consequently revenge for that is at an end; Indemnity therefore ought to be promoted by those who made that Vote, for otherwise their Truth may be suspected, &c.



The Lord Ruffel's Innocency further Defended; in Answer to the Magistracy and Government of England Vindicated.



HERE is a Pamphlet very lately published, which stiles it self, *The Magistracy and Government of England Vindicated.*

It appears by the following part of the Title, to be no less than a *Justification of the Proceedings against Criminals*; impudently declaring in plain and exprefs Words, as also by all his subsequent Discourse, That by the *Criminal* he means the late Lord Ruffel, Pag. 2. Column 2. in the middle of it.

And the Author does professedly own, That the Book is written by way of Answer to a small Discourse or Argument lately printed, which bears the Title of *A Defence of the late Lord Ruffel's Innocency.*

It argues a transcendent Boldness in this Answerer, to call this Noble Lord a *Criminal*, and Vol. III.

to justify those Proceedings against him, which all honest Men ever accounted no less than Murder, under a Pretence and Colour of a legal Proceeding, and to presume to publish such a Discourse as this, after the King and the Two Houses of Parliament have, by the most Solemn Judgment that can be given, pronounced that Noble Lord to have been Innocent; and thereby have done so great Right to his Memory, and that with so high a Zeal, and so mighty a Concernment for him, as the like cannot be shewn in former Precedents.

It is most evident, that the Author was composing this scandalous Libel even when he very well knew the Bill was brought down from the Lords to the Commons, for reversing this Noble Lord's Attainder; and the Author could not but observe with what Zeal and Affection

the Bill was entertain'd at its first Entrance into that House.

The Author, by endeavouring to conceal himself, is from thence, as he plainly professes, encouraged to take the more liberty to lay about him in the dark (as he fancies) and thinks to escape unseen; and not only strikes at the Author of the *Lord Russell's Defence*; but, as far as in him lies, wounds that Noble Lord in his Honour, whose Justification and Defence was so undertaken, and labours to overthrow that Right and Justice that hath been done by the Supreme Authority of the Nation.

This is no way agreeable to a Noble and Generous Soul, to come behind a Man and strike him; it rather follows the Example of that devilish *Powder-Plot*, to destroy and blow up the King and both Houses, and to do it in such a close and clandestine way, as it should not be known who hurt them; for he was too much a Coward to set his Name to it.

But it is very easy to tell you what are the first Letters of this Author's Name, without casting of a Figure. His Argument in Law plainly speaks his Profession; and what Robe he wears; and his Style and Phrase of speaking having appear'd in so many noted Tryals, as do in so many visible and legible Characters disclose the Author, Sir R. S. does under his Hand readily and utterly disclaim it; and is heartily believ'd in what he says.

This slanderous Author acknowledges, that upon the *Lord Russell's* Tryal some blamed the Jury, most censured the Witnesses, but very few arraigned the Counsel or Court. Here it evidently appears how our Author is concerned, first for the Counsel, and then the Court, and *Self* hath the Preference, tho' it be here with a breach of good Manners to name the Counsel before the Court.

Page 1. he takes it heinously that any Gentlemen of the *Long Robe* should appear in Print to ridicule their own Profession, this grossly speaks our Author, one that was of Counsel in the Tryal. *Et tu, Brute?*

If it had been an open Enemy, a Doctor of the Commons exercising his Wit and Raillery on the Common Law Proceedings, then (as he expresses himself) this Author could have born it; but he did not imagine that Satyrs and Invectives upon past Proceedings should be writ by Lawyers.

In reply to which it may be justly said, That when Lawyers will make use of their Wit and Rhetorick, as this Answerer has done, to bolster up an unjust and revengeful Proceeding, and out of ambitious Designs, to get or continue in Favour, and to gain greater Preferment, or shew their Parts, will engage in Causes of Blood, and help to destroy the Innocent, and be instrumental in subverting the Laws and Government, it is every Lawyer's Duty, as far as in him lies, to vindicate the Profession, by utterly disclaiming and abhorring all such Practices: And the Defender can appeal to all that have known his Conversation for above these forty Years and under, whether ever he used any such pitiful, mean and ungenerous Arts and Methods, better becoming the Stage than a Court of Justice; and whether he did not, when it was in his Power, constantly restrain and condemn that scandalous and disgraceful way of Practice. And he can as freely appeal to all

that will be at the pains to read his Printed Argument (which this conceal'd Author so unjustly censures) whether any such bitter Reviling, and revengeful Humour appears in any part of what he so publish'd, or the least reflecting upon any particular Person, but only in the general, and no further than the meer Justice of the Cause did extort from him; so far was he from this Author's scurrilous and rude Course of reflecting upon any Person's private Conversation; but some Men's Faculties lie this way, and they are very well known, tho' after such manifest and gross Provocations that have been given by this Author, and such publick and scandalous Actings of his in the Eye of the World, it might justly be said with the Poet:

Difficile est Satyras non scribere.

The Author of this Answer, in his first Paragraph, would have the World believe that he writes upon no other Design than to support *Magistracy*, and the *Government*; a noble Theme (as he terms it.) Every Man knows what sort of Government he labour'd to support but the other day, and how far he was instrumental in it; but it is rather thought fit to leave him to a general Act of Indemnity and Oblivion, than take any Revenge upon him.

He seems to allow the *Lord Russell's* Defender, in his fourth Paragraph, to be an Author of Age, Experience, Figure, and Learning, (but he will not say Candour or Honesty.) Thus he writes.

The *Lord Russell's* Defender is very glad he hath so little of this Adversary's Commendation, for it would gain but small Esteem amongst Men of true Worth, to be commended by him. It might be said to him with the Philosopher upon the like Occasion, being commended by an infamous Person, *What Ill have I done, that thou should'st thus Commend me?* Yet that Candor and Honesty, which he covertly refuses to allow, is that which the *Lord Russell's* Defender prefers before all this Answerer's mercenary Wit and Rhetorick.

In his fifth Paragraph he judges the *Lord Russell* very unfortunate to fall under the Accusation of Treason, and says, that Noble Lord was most pitied, of any under those Circumstances.

That Noble Lord's Misfortune (among other things) was his falling under the lash of so bitter and sharp a Tongue as yours, who, however you seem now to mention that Lord with Pity, had then no Pity for him, but used him with Severity, as may appear by your own Printed Narrative of that Tryal, and your Rhetorical Flourishes in a Case of innocent Blood, which contributed in an high degree to inveigle the Jury, and bring that Noble Lord to the Scaffold.

He confidently says in the same Paragraph, that in truth the fairness and indifferency of that Tryal was such, that his own Relations were pleased.

How untrue this is, in both the Parts of it, that the Tryal was very fair and indifferent, and that his nearest Relations were highly exasperated and offended, shall appear before we part.

In the sixth Paragraph of his Sheet, he complains that *the Memory of that Unfortunate Gentleman was revived by the Publication of the Defence of his Innocency.*

Why, what Hurt in the reviving of his Memory? His Memory is precious, he dyed a Martyr for his Religion, and for the Rights and Liberties of his Country, and fell a Sacrifice under cruel and merciless Hands.

It is indeed this Answerer's Conscience that flies in his Face, the reviving of this Noble Lord's Memory speaks Terror and Amazement to the Answerer. Thus did bloody *Herod* when he heard of the Fame of *Jesus*, he presently cries out, *This is John whom I beheaded.*

He does prepare himself to make use of indecent or disrespectful Language, (as himself expresses it) and comforts himself with the thought, that his Name shall not be known. A pitiful and unmanly dealing, not becoming a Person pretending to Ingenuity. The Lord *Russel's* Defender dealt otherwise, and owns his Name, and will let the World know what this Answerer is.

In the four next ensuing Paragraphs, he is much to seek for what end and purpose the Lord *Russel's* Defence was Printed in that Pamphlet (as his wonted Rhetorick thinks fit to call it.)

It could not be (as he most contemptuously says) for Consumption of Paper.

Nor for the Bookseller's Profit, for a Reason to be guess'd at.

Forbear, for shame, to use these sly and silly Intimations, they are fitter for School-boys, or the Mountebank's Stage, or for *Billingsgate*, than for a Man of your Figure, one may be ashamed to have any Dispute with such an Emperick, or rather a jesting and jeering Merry-Andrew. Pray keep this Sport for the next *Bartholomew-Fair*, and learn more Gravity and Civility.

It could not be (as he further proceeds upon the same Enquiry) for the sake of the Lord *Russel's* Memory, or any of his surviving Relations; for what was written in the Lord *Russel's* Defence, is (says he) but a painting to the Life the too deep Concern of that Noble Lord, in a weak as well as criminal Enterprize.

This is wonderful Boldness and daring in this Answerer, still to pronounce him a Criminal (that Noble Lord) whom the Supreme Power of the Nation, and the highest Judicature and Authority have adjudged innocent. And yet he has the Impudence to entitle his undutiful Pamphlet, *The Magistracy and Government of England Vindicated*: And to publish this, after he, as well as any Man, knew that the Act of Parliament had pass'd, asserting the Innocency of that Noble Lord, and the Barbarity and Injustice of the Proceedings against him! Wherein this Answerer had so great an Hand, and so bitter and sharp a Tongue.

One would think that an ordinary Wit might have served to put him in mind, that as yet there is no Act of General Pardon and Indemnity pass'd: And who knows upon whom the great Exception may light.

But he gives a very just occasion to the Lord *Russel's* Defender, to let the World know for what end and purpose he long since writ, and so lately printed so despised a Pamphlet; by which, even his Adversary may be convinc'd it was not merely for Consumption of Paper, or for the Bookseller's Profit, but truly for the

sake of that Lord's Memory, in asserting his Innocency, and at the desire, and for the sake of his surviving Relations. And for the truth of what is thus affirm'd, he does appeal to those Noble Relations of his who are yet alive.

While that Noble Lord was upon his Tryal, or very soon after, there came a Letter to his Defender's Hand, who was then in the Country, near 80 Miles from *London*, and this from a Person of great Honour, and one of the nearest Relations to that Noble Lord, requesting the Author of his Defence to afford the best Advice he could; and accordingly he heartily and freely gave it: Much of which does appear by what is printed by him.

This was not the only Letter he receiv'd from that Lord's great Relations, upon that sad occasion: But after that bloody Stroke had been given, a Paper was Publish'd, as the Speech intended by that Dying Lord.

In Answer to which, the now Answerer and Adversary (as is too evident) did publish his first Pamphlet, Entitled, *An Antidote against Poyson*, compos'd (to use its own Words) of some Remarks upon the Paper printed by the Direction of the Lady *Russel*, and mentioned to have been delivered by the Lord *Russel* to the Sheriffs at the Place of the Execution. Thus far of the Title of that pretended *Antidote*.

In the latter end of his second Page, that which is mentioned in the Discourse out of his Pamphlet call'd the *Antidote*, and which is barely repeated in order to be answer'd and confuted, he grossly mistakes in this latter Pamphlet, and falsely affirms, it is admitted to be true; and from thence endeavours to have the Lord *Russel's* Defender understood as arguing against the Lord *Russel*, and acknowledging his Guilt: Which is a very unworthy way of dealing by this pretended Answerer, but easily discern'd by any wary and intelligent Reader. Nay, this Answerer himself immediately after, before he is aware, clears the Lord *Russel's* Defender again from the Imputation, by taking notice that the Defender of the Lord *Russel* endeavours to invalidate the Credibility of the Evidence given against the Lord *Russel*.

This Reply declines the taking notice of many of this Answerer's Paragraphs, that are spent merely in vilifying the Lord *Russel's* Defender, it being obvious that they were intended only to render mean and contemptible the Person he undertakes to answer; it being beneath this Reply to repeat them, and to follow the Answerer in his rude and scurrilous way of writing.

It was indeed no Secret to the Learned, that a Variance between the Indictment and the Evidence, might be alledged on the *General Issue*; nor that *Treason* and the *Misprision* of it are different Crimes; nor that Proofs of *Treason* must not be by *Hearsay* nor *Argument* only; nor that less than two Witnesses are not to be allow'd for Proof of that Crime; nor that the Witnesses ought to be credible: But these are not so generally known to such as are not profess'd Lawyers, and may be usefully remember'd to such as are brought upon their Tryals for their Lives, and are denied the Help of Counsel when they most need it, and are apt to be more under a Consternation, when they are beset with such sad Apprehensions of their Danger, and baited at by a multitude of crafty Wits, and such as abuse their Parts and Eloquence,

quence, to destroy the Innocent, and the Court (it may be) not always so indifferent as they should be. And these useful and well-intended Assistances, as ordinary and useless as the pretended *Answerer* would represent them, were very thankfully entertain'd, and made use of by several Persons of great Abilities, and of the best Quality, who afterwards fell under the like cruel and malicious Prosecution; but they were no profess'd *Lawyers*. And most of these are still living, and will and do testify the truth hereof.

The *Answerer*, in his fourth Page, falls to argue the Points in Law upon the great Head and Title of Treason.

This *Reply* forbears to repeat what the *Answerer* says upon this Subject, or to repeat what this *Repliant* has formerly printed, but therein refers himself to what is so printed.

Only finds it necessary to state the Point in question in as few and plain Words as he can, and leave it to any impartial Reader to judge of it.

The great Statute of Treason, *viz.* that of the 25th of *Edw. 3.* was the only Statute upon which the Lord *Russel* was indicted, and this is acknowledg'd and profess'd by the *Attorney General*, as appears by the printed Narrative of the Tryal, and he could best know his own Meaning.

They could not proceed against the Lord *Russel* upon the late Statute of Treasons, made in 13 *Car. 2.* for that Statute limits the Prosecution to a certain time, after the Treason committed, which was elaps'd in the Lord *Russel's* Case.

Now the Statute of 25 *Edw. 3.* does specify and enumerate the several and particular Heads, and Sorts, or Species of Treason, that might be proceeded upon, or tryed and adjudged in the ordinary Courts, *viz.* in the *King's-Bench*, or Judges of *Oyer and Terminer*, or Goal-delivery. Such as that of *Newgate*, or the Sessions for Goal-delivery at the *Old-Baily*, where the Noble Lord *Russel* was brought to his Tryal.

The scope and drift of that Statute of 25 *Edw. 3.* (as appears by the Preamble) was to confine those ordinary Courts and the ordinary Judges to plain manifest Rules, what they should adjudge Treason, and what not, it being of so great Concernment to the Lives of Men; and not to allow the Judges or Lawyers a latitude or liberty to make what they thought fit to be Treason, or to exercise the Tongues and unruly Noises of *Lawyers* in a matter of that moment. And that Statute of 25 *Edw. 3.* being in its nature a confining, restraining and explanatory Law, ought therefore not to be largely extended or improv'd and stretched beyond the plain Words and apparent Sense of them.

Now among other several Species, or Heads, or Sorts of Treason, particularly enumerated by that Statute, there are these two, pertinent to our Case, *viz.*

1. Compassing or Imagining the Death of the King.
2. Levying War against the King.

Whereupon the common Reader (for whose Satisfaction this is written) may easily observe this distinction, That the first of these is Treason

(in the very Imagining or Conspiring) tho' the King's Death do not ensue.

But the latter is not Treason in the Conspiring and Imagining, but the Treason must be in the actual Levying of War.

So that barely to Consult, Conspire, or Imagine to levy War, tho' there be never so plain nor so open or overt an Act of such Consulting or Conspiring or Imagining of it, will not amount to this Species or sort of Treason, upon this Statute of 25 *Edw. 3.* which is the only Statute upon which the Lord *Russel* was concern'd.

For that Statute of 25 *Edw. 3.* did not intend to make it Treason, to Consult or Conspire to levy War, without the actual Levying of War.

This will not be denied nor disputed by the Lord *Russel's* Adversaries, nor by this *Answerer*.

But perfectly to evade this Statute and the manifest Intent and Meaning of it, they insist,

That tho' Conspiring to levy War, be not Treason within the Statute of 25 *Edw. 3.* yet to Conspire, Consult, Agree, or Conclude to stir up, or raise, or move Insurrection and Rebellion against the King, and to Consult or Conspire to seize the King's Guards (which signify one and the same thing with Consulting or Conspiring to levy War) these (say they) may be an open or overt Act, to prove a Consulting or Conspiring to kill the King.

What is this but to confound the several and distinct sorts and species of Treasons, which the Statute of 25 *Edw. 3.* doth so carefully and industriously labour to distinguish?

And what is this, but to make a bare Conspiring and Consulting to levy War, without any actual levying of it, to be Treason within this Statute of *Edw. 3.* which plainly this Statute would not have to be so taken? And so the good Design and Scope of the Statute, the Security of Men's Lives, is wholly overthrown by this Artifice; and what shall be taken to be Treason, and what not, will be still as uncertain as it was before the making of that Act of 25 *Edw. 3.*

And it was then a needless idle thing in those that made the Statute of 13 *Car. 2.* and so of former Statutes, to make the Conspiring to levy War to be Treason; for by this Practice and Construction it is already made so to their Hands, by 25 *Edw. 3.*

Now the Lord *Russel* was Indicted for Conspiring to kill King *Charles II.* and the overt or open Act alledg'd to shew and signify it, is nothing but his Consulting and Conspiring to raise and stir up Insurrection and Rebellion, and Consulting to seize the King's Guards, (tho' they were not actually done) which are just the same thing with Conspiring to levy War; which plainly is no Treason within the Statute of 25 *Edw. 3.* and therefore most clearly the Lord *Russel* was not guilty within that Statute, upon that Indictment and Evidence.

Since the Lord *Russel's* Defender has compos'd this short State of his Case upon this great Point, there hath come to his Hands a Printed Half-sheet, which has excellently well done the same Work, which, had it been but a few Hours sooner, had saved the Labour of this part of the present Discourse and Argument: This Half-sheet is justly entituled, *A Justification of the late Act* of

of Parliament, for the Reversing the Judgment against the Lord Russell.

There is but one Point more to speak to, and then the Lord Russell's Defender will bid his *Answerer* and Reader Adieu: And it is that Point which the *Answerer's* first Print, viz. his *Antidote against Poyson*, did not mention, and so no occasion was given then to consider of it; but it is largely debated by Court and Counsel, at the Lord Russell's Tryal; yet being then but suddenly started, tho' it were well argued by the Lord Russell's Counsel assign'd, no Authorities however were then cited (tho' called for by the Court) to justify and make good the Arguments and Reasons urged by the Counsel; and it is a Point in Law which the Act for Reversing the Judgment against the Lord Russell is principally and in the first place grounded upon, viz. That there had been an undue and illegal Return of Jurors to Try that Noble Lord (too often practised of late) and that the Noble Lord was refus'd his Lawful Challenge to them for want of Freehold. The truth of this as to matter of Fact, doth evidently appear by the large Narrative of the Tryal, Printed by that Lord's Adversaries; and this is not in the least touched upon by the printed Half-sheer, stiled, *A Justification of the Act for Reversal of the Judgment against that Lord*.

That Point in Law now only remains to be spoken to, viz. That in all Cases of the Tryal of a Man, especially in a Tryal for his Life, the Jurors ought to be Freeholders even at the *Common Law*, and before the Statute of 2 H. 5. Cap. 3. and that not only in Tryals within the City of London (as the Lord Russell's was) but in all other Cities or Towns Corporate, where there was a Jurisdiction of Trying for Life in Cases Criminal.

It was not material at the *Common Law*, how much, or of what yearly Value that Freehold was, or is to be, but some Freehold (tho' never so small) the Jurors ought to have, or else it was a just Cause of Challenge.

It was indeed the Statute of 2 H. 5. C. 3. that first set the yearly Value of the Freehold, and requir'd it should be of 40 s. *per Annum*, which 40 s. *per Annum* was then in that King's Reign, being so long since, equivalent to a much higher Value now.

And therefore the Books and Authorities that speak of Freehold of a less Value than 40 s. *per Annum*, must of necessity be understood not to speak of Cases within that Statute, but of Cases at the *Common Law*.

3 H. 4. fol. 4. b. Rolle's Abridgment, Title-tryal, fol. 648. It is there held, that Freehold of any Value was sufficient for a Juror. This proves that Freehold is requisite, and that it was so before the Statute of 2 H. 5. it being in the Reign of King Henry Vth's Father; and with this agrees Kelloway, fol. 46. towards the end.

Some other Cases after the Time of King Henry V. prove the same, as 16 Edw. 4. fol. 8. half an Acre of Land, so it be within the Hundred, says that Book, is sufficient, and it is well known, that as to this Qualification of having Freehold, the same Rule governs in the rest of the Jurors, as in those of the Hundred 10 H. 6. Brooke's Abridgment, Challenge 192. Hales's Pleas of the Crown, 260.

Nor do these Authorities distinguish at all between Cases Criminal and Civil; nor in Cases Criminal between that of Treason and in Cases less Criminal.

This being so at the *Common Law*, and the Statute of 2 H. 5. c. 3. only adding the yearly Value, viz. 40 s. *per Annum* Freehold, which before at the *Common Law*, might be of any lower Value. Now tho' that Statute of 2 H. 5. be Repealed, as to Tryals in Treason, as in truth it is by the later Statute of 2 and 3 of Philip and Mary, cap. 10. which enacts that all Tryals in Treason, shall be according to the Course of the *Common Law*, the Result is, that still there must be Freeholders to Try, tho' they may be Freeholders as at the *Common Law*, of any yearly Value whatsoever.

That the Statute of 2 H. 5. (while it was in force) did extend to Cases of Treason (tho' Treason was not expressly mentioned in it, and the Statute speaks very ambiguously and obscurely) appears by the Authorities following, viz. *Stamford's Pleas of the Crown*, 161; and *Poulton de Pace Regis & Regni*, 187; and by the Statute of 33 H. 8. c. 23. in the Proviso, that reserves to the Party the Challenge, for want of 40 s. Freehold, even in Case of Treason, tho' it make the Treason tryable in any County.

See Sir Christopher Blunt's Case, Justice Croke, 37 Eliz. fol. 413. In an Information of Intrusion, by the Queen; a Juror was challenged for want of Freehold, and upon Examination of the Juror, it appear'd he had Freehold of 15 s. *per Annum* Value, and that was adjudg'd sufficient; which admits it had been a good Cause of Challenge, had there been no Freehold at all; and it necessarily implies that it was requir'd by the *Common Law*, for no Statute interposed as to any lower Value than 40 s. *per Annum*. Nor does this Case distinguish between the Case of Intrusion upon the Queen, and any other Case.

But it may reasonably be argued, if Freehold be necessary in a Juror, who is to try a Case of Intrusion only, *a Fortiori*, it is requisite in a Case of High Treason, but in that Case of Sir Christopher Blunt, another Juror was challenged that had no Freehold, and he was therefore set aside.

Now that the Challenge, for want of Freehold, extends to the City of London, and other Cities and Burroughs, as well as to the Counties, is abundantly proved by the Statutes of 11 H. 6. c. 1. 7 H. 7. c. 5. and 23 H. 8. c. 13. to which the Reader for brevity's sake is referred.

It is no where maintain'd that an Agreement to Poyson or Stab, &c. is no Treason, if the very Act do not ensue, as the *Answerer* very falsely alledges in the second Column of his sixth Page, towards the lower end; for those have a manifest tendency towards killing, nor are they any distinct species or sorts, or kinds of Treason from the Killing of the King, as that of Levying of War, and Seizing the King's Guards (especially not shewing what Guards) are a distinct species from that of Killing the King, and need not necessarily be understood to terminate and conclude in a Killing the King, taking the King Prisoner, or seizing his Person, may more reasonably be thought to aim

at a Killing of the King, or have a tendency towards it.

And the Indictment ought surely to have declar'd and express'd clearly and plainly what Guards were meant, there being variety of Guards; for every Indictment ought to contain Certainty.

Herein the very Indictment was faulty.

The bold *Answerer* hopes the King will always preserve those Guards, tho' the Parliament have declared their Sense to the contrary, when the present extraordinary Occasion shall be over.

This daring presumptuous *Answerer*, in defiance of the Act for Reverfal of the Lord Russel's Attainder, the Tryal having been partial, unjust, and illegal, as the Act affirms it, yet dares to averr in his last Page, that there was Evidence enough to justify all concerned in the Prosecution and Tryal.

The *Answerer*, towards his Close, takes great Care, and is much concern'd to justify the King's Solicitor that then was.

And this would incline one to think that the then King's Solicitor was not the Author of that *Antidote against Poyson*; nor of this last Print, intituled, *The Magistracy and Government Vindi-*

cated; which are so much alike in their Style and Strain. And in truth that late King's Solicitor doth utterly deny that he had any Hand in either of them. And Sir George Jefferies, the last Lord Chancellor, could not compose this last. This being so, it may easily be judged where it must fix: For this, look into the printed Tryal.

I now refer the *Answerer* to justify himself at Law, if he happen to be in danger of an Exception out of an Act of General Pardon and Indemnity, where he may have a fairer Opportunity to defend himself in his own more immediate Concern for endeavouring to subvert the Law, which ever proves too hard for all its Opposers. And I will so far follow his Humour and Vein, as to conclude with Verses too.

*Rode Caper Vitem, tamen hic cum stabis ad Aras
In tua quod fundi cornua possit, erit.*

Which I thus English:

*Go, spiteful Satyr, browse that Sacred Vine
(The LAW) but know there shall not want for Wine
To pour upon thy Head, which may suffice
To render Thee a perfect Sacrifice.*



The CASE of William Lord Russel, Tryed for High-Treason, July 13. 1683.

THE Indictment is very long: But for substance it is, for *Conspiring the Death of the King, and intending to Levy War, and to that end to seize the Guards*: For the Indictment concludes, *and the Guards for the Preservation of the Person of our said Lord the King to seize, and destroy, against the Duty of his Allegiance, against the Peace, &c. and also against the Form of the Statutes, &c.*

Those that gave their Evidence against the Prisoner, were *Rumsey, Sheppard*, and my Lord *Howard*.

The Overt Act of *Conspiring the Death of the King, is Consulting to Levy War, and to that intent to seize the Guards*. So that the Design to seize the Guards, is the Overt Act assign'd of Conspiring the King's Death.

The *Quære* then is, Whether my Lord *Russel* was Guilty of High-Treason within the Statute of 25 Ed. 3. (for upon that Statute he was tryed) And I conceive he was not; and therefore his Attainder ought to be Reversed.

But before I speak to the Matter of Law, on which I shall chiefly insist, I must desire you to observe some Inconsistencies and Contradictions in the Evidence.

First, That none of these Persons had their Pardons: Which was otherwise in the Popish Plot. For no Person gave Evidence before he had his Pardon. Therefore being unpardon'd, tho' they might be Legal; yet not Credible Wit-

nesses: Both which are required by the Statute. For whilst the Fear of Death attends a Man, he is thinking how he may save his Life; rather than to speak nothing but the Truth; and he that is so base to purchase his own Life at the Price of another Man's, will be sure not to speak less than the Truth.

Next, I observe how the King's Counsel, by the Questions they put to the Witnesses, did lead, if not, in a manner, dictate to them what to say.

And I take notice, that my Lord *Howard*, who must be supposed to have a full Knowledge of the Plot, yet never says a word of their Intent to seize the Guards, which was the principal thing in the Evidence of *Rumsey* and *Sheppard*: For had there been any such Intent, it is strange that my Lord *Howard*, who had brought in so many other things by Head and Shoulders, should forget so remarkable a piece of Evidence, and so home as that.

This is only in general. But in particular, do but observe *Rumsey's* Evidence.

He says, He was not there above a quarter of an hour; and whilst he was there, two things were debated, and resolved, and a third thing discoursed. Surely they were things which they did not much value; or else they were Men of wonderful Dispatch, that could receive, and debate the Message which he brought from my Lord *Shaftsbury*, then debate the Matter of the Guards, and come to a Resolution in both; and

and afterwards discourse about the Declaration; and all this in a quarter of an hour; or else *Rumsey* is perjured.

In the next place it is very remarkable, where he says, *He was not certain whether he was at another Meeting, or else heard Mr. Throgmorton make a Report of another Meeting to my Lord Shaftsbury.* And again he says, that *he was not certain, whether he did hear something about a Declaration, when he was at that Meeting; or that Mr. Ferguson did report it to my Lord Shaftsbury, that they had debated it.* To say no more of it, It is very strange, that a Man cannot be certain, whether he knows a thing of his own knowledge, or by hear-say. And if in so plain matters as those, he spoke on uncertain Knowledge, it is not unreasonable to suppose that he might as easily be mistaken in the rest of his Evidence.

Then as to *Sheppard*, He first swears point blank, that my Lord Ruffel was at two Meetings at his House. But being press'd by my Lord Ruffel, he can remember but one; and when that was, he could not recollect himself, tho' not above eight or nine Months before, as he confesses. It's strange that a Man should be so much in a wood about so remarkable a thing. But surely it must be hard upon the Prisoner, that the time could not be better fix'd: For if Witnesses may give Evidence at that rate, it will be much ado for any Prisoner to make his Defence.

As to my Lord Howard, his Evidence is so notorious that I need say nothing of it, but refer you to the Printed Tryal for your Satisfaction. Only I will take notice of one thing which he says, to reconcile what he said to my Lord of Bedford, my Lord Anglesey being present, and what he afterwards swore against my Lord Ruffel at his Tryal. Says he, *Your Lordship knows that every Man that was committed, was committed for a Design of Murdering the King. Now I laid hold on that part: For I was to carry my Knife close between the Paring and the Apple; and I did say, that if I were an Enemy to my Lord Ruffel, and to the Duke of Monmouth, and were call'd to be a Witness, I must have declared in the Presence of God and Man, that I did not believe either of them had any Design to Murder the King.*

As to the first, What he said to my Lord of Bedford, was as to the Plot in general, and if to any particular Part of it, it must be as to the *Insurrection*: For there was to be my Lord Ruffel's Province.

2^{ly}. My Lord Howard knew that all that were committed, their Commitments run as well for *Levying of War*, as for *Conspiring the King's Death*. So that his Lordship must find out something that will reconcile himself to himself, better than his *Knife betwixt the Apple and the Paring*, or else it will follow, That he solemnly said one thing and swore another.

I have but only touch'd these things; because I hasten on to the matter of Law. For tho' it were without contradiction, that every thing sworn against my Lord Ruffel were true, yet it did not amount to *High-Treason*.

First, Because a *Conspiracy to Levy War*, is not an *Overt Act of Imagining the Death of the King*.

In arguing of this, I will not meddle at all with the Original of *Allegiance*, nor the true Nature of it; neither make any Discourse, that heretofore it was a less Offence to Plot against the King's Life, than against the Government;

but I will leave those fore Places, and endeavour to prove my Point, by considering these five things,

First, Whether any Court, the Parliament excepted, can try a Man upon an Indictment for High-Treason, that is grounded upon the Common Law?

Secondly, To what end and intent the Statute of 25 Edw. 3. cap. 2. was Enacted?

Thirdly, Whether [*Conspiring the Death of the King*,] and [*Levying of War*] are distinct Species of Treason?

Fourthly, Whether every Law is not to be construed most strictly, to restrain the Mischief against which it was Enacted?

Fifthly, What is the true Meaning and Signification of being *Provably Attainted by Overt Deed*?

1. As to the first, It seems to be out of doubt, at this day there can be no such thing as an Indictment at Common Law for High-Treason; tho' for other things there may: Because there is no Precedent of it, since the Statute of 25 Edw. 3. For nothing is more common, than for every Prisoner that is Arraigned for High-Treason, to demand upon what Statute he is Indicted. And the Court, or King's Counsel, to tell him the particular Statute. Besides, every Impeachment before the Lords in Parliament, is grounded upon some Statute: And if so, *a fortiori*, no inferior Court can Try a Prisoner upon an Indictment for High-Treason grounded upon the Common Law. For the Law, which greatly delights in Certainty, especially in Case of Life, will not allow of an Indictment at Common Law: Because no Issue can be joyn'd upon it by reason of the Uncertainty.

As to the second, *viz.* to what End or Intent the Statute of 25 Edw. 3. was made? I thus answer:

Edward III. was a Victorious Captain, and Potent Prince, whereby he became very Renowned. But that which made his Name the Greater, and his Fame the more lasting, was those good and wholesome Laws which were Enacted in his Time; by which he restored and beautified the Government, that had been defaced, and almost destroyed, by the illegal Proceedings during his Father's irregular Reign. And of all the Oppressions under which the Nation groan'd, there was none that lay heavier upon the People, than the extravagant Licence which the Judges took in the Interpretation of Treason. And this appears by the particular, and universal Joy expressed by the whole Land at the making of the said Statute. For tho' he called Parliaments very frequently, and none of them prov'd abortive of good Laws; yet that Parliament which was held in the 25th Year, did more than any of the rest. And of all the beneficial Laws that were then Enacted, the second Statute whereby *Treason* was reduc'd to Certainty, gave the People the greatest Cause to lift up their Heart and Voice in Thankfulness to God, and the King; because the Jaws of that devouring Monster were broken, which had torn in pieces so many Families, and threatened Destruction to the rest. So that this Statute was made to restrain, and limit the Judges from calling any thing *Treason*, that might be so by Inference or Implication, and only to judge upon that which is Literally so within

that

that Statute. For it is there provided, That if any such like Treasons shall come before any of the Justices, that they must stay, without going to Judgment, till the Cause be declared before the King and his Parliament. And all Subsequent Statutes of *Treason*, are all as so many Confirmations of this Statute. For they had been needless, if the Judges could have called any thing *Treason*, but what is Literally such within that Statute. And the Statute it self had been made to no purpose, if it had not strictly restrained the Judges. And my Lord Chancellor *Nottingham*, was of Opinion, that even the Lords in Parliament, could not proceed upon an Indictment for *High Treason*, unless the Fact therein alledg'd, were first Declared by some Statute to be *Treason*.

3. As to the Third Thing, It never was, nor ever will be deny'd, That *Compassing the Death of the King*, and *Levying of War*, are two distinct Species of *Treason*, unless all *Treasons* are of the same Kind. But if there are several Sorts of *Treasons*, then it will follow, that these are also Distinct: Because in every Statute of *Treason*, which mentions *Conspiring the Death of the King*, and *Levying of War*, they are named Distinctly. Besides, they are different in the manner of Proof: For that which is necessary to prove the one, does in no Sort prove the other. And furthermore, the one may be effected, and the other never so much as intended, or designed. As for Example, the King may be Murder'd, and no War Levied, nor Intended. And moreover, in the one Case it is *Treason*, as well to Intend as to Execute it, without tacking it to any other Thing: But it is not so in the other. For it is in it self, and abstractly from every thing else, *Treason*, as well to *Compass the King's Death*, as to *Kill him*. But an Intention to Levy War, and doing all Things in order to it, is not *Treason*, unless the War be Levied, except by Implication, or Inference. And I am perswaded that the want of observing that these are distinct Species of *Treason*, has been the occasion of that Mistake, of calling a *Conspiracy to Levy War*, an *Overt Act of Conspiring the King's Death*.

4. As to the Fourth, No doubt, every Statute is to be construed most strictly, to restrain the Mischiefs against which it was Enacted. For the uninterrupted Course of all Judgments, and Resolutions have been accordingly; and nothing can more directly thwart Common Sense, than to make it otherwise. And therefore if the Statute be absolute, the more forcibly it is construed to restrain that Mischief, the more truly is the Intent of that Statute pursued. For how shall any Evil be suppressed, if the Remedy must be applied but by halves? The Law then would be rather a Mockery, than a Means to redress the Evil, if it shall not be taken most strongly against it. Either it is, or it is not a Restraint of the Grievance complained of. If it is not, why was it made? If it is, why must it not be understood in that Sense, whereby the Mischief, or Evil may be more effectually suppressed and prevented?

5. As to the Fifth, The Answer will be best understood, by considering, first the Significa-

tion of the two Words apart, viz. *Provably* and *Overt*.

Provably signifies to prove, or make good by Evidence, Argument, Reason, or Testimony.

Overt has all these Significations, *Open, Clear, Plain, Apparent, Manifest, Notorious, Evident, Publick, Known, Undoubted, Certain, Perspicuous*.

These then being the Significations of those Words, what can follow more naturally than that, To be *Provably Attainted by Overt Deed*, is, that the Fact must not only be Direct, Apparent, and Notorious to the Point, but it must also be proved Clearly, Evidently, Plainly, and Perspicuously, void of all Doubt, or Obscurity? And those two Words being taken together, do the better expound each other, and seem to be choice Words, and Words of Art, cull'd out by the Penners of that Statute, as the most expressive, to exclude all Implications, or Inference, that might be made in Case of *Treason*.

These Things being premis'd, which are as easily proved, as alledg'd, there will remain very little, besides Shifts and Evasions, to prove, That a *Conspiracy to Levy War*, is an *Overt Act of Compassing the King's Death*.

The Things that are chiefly and commonly urged to maintain that Opinion, are these two.

First, It would be of dangerous Consequence, if a *Conspiracy to Levy War*, may not be interpreted an *Overt Act of Compassing the King's Death*: Because there is no means left to prevent it, and the Mischief attending it, when the War is levied.

Secondly, If a War be Levied, the Death of the King must needs be intended, and will certainly ensue, if the Rebels prevail.

In answer to these, it may be replied, That the one of them is but a bare Objection, and the other no substantial Argument; because it begs the Question; which is surely a feeble way of Arguing.

But I will give a more particular Answer to them. And it will be more proper to begin with the Second; because in speaking to it, the other will in a great measure receive an Answer.

Now as to the Second, It may be observed, that the Death of the King is made so certain, and necessary a Consequence of *Levying of War*, that by reason of that Certainty, a *Conspiracy to Levy War*, is an *Overt Act of Compassing the King's Death*. If therefore the Certainty will not hold, but that many Cases may be put, and instances produced wherein the King's Death is not intended, nor did ensue upon the prevailing of the Party, then is the whole weight and strength of the Argument of no effect.

The *Huguenots* in France have heretofore assembled in Arms: And tho' they repeated it several times, yet on which of those Occasions does it appear, either by the Cause of their coming together in that manner, or by the Effect of it, that it was levell'd at the King's Life? No, the Cause of their Rising in Arms was for the Asserting of their Religion, and just Rights. For as soon as their reasonable Demands were satisfied, they laid down their Arms more willingly than they took them up; neither did they attempt any

any thing against the King's Life, when he was in their Power; but after they were answered in those Things to which they had Right, both by the Laws of Nature, and the Government, immediately they returned Home in Peace, and upon all other Occasions proved the most firm, and Loyallest Subjects of all other in that King's Dominions, and so this present King of France must testify for them, if he will do them right.

If the Protestants in France should at this time rise in Arms upon so just a Provocation as now they have, it would be senseless to suppose, that they Levied the War with a principal Design to Murder the King, and not for the Defence of themselves and just Rights, which are so inhumanly, and against all Law, and Justice, at this time Invaded, and Ravished from them. Story is full of like Cases and Instances to this. But to speak more particularly to England, What was the Barons Wars? The Answer to which must be, That they took up Arms to assert their Rights and Liberties, which the King contrary to his Oath withheld from them, and though it lasted near Forty Years, yet the King's Death was never intended, nor his Life in any danger. For as soon as their just Demands were answered, they put up their Swords, and every Man returned Home, and prayed for the Life of the King. And out of English Story, what one Instance can be produced, where the Cause of War was Declared to be against the King's Life; or if the Party prevailed, the King was to be put to Death by their general Consent and Approbation? For though it be true, that there are some Instances where they have been Murdered after the War; yet it is also as true, that it was by private Assassination, and not by the Consent and Privy of those who Levied the War. For all those who were concerned in the Murder, were afterwards Condemn'd and Executed for it, as Traytors. As in the Case of *Edw. 2.* and *Ric. 2.*

As for that of *Charles the First*, which is so much press'd and urg'd, though the Cause of War had been expressly against his Life; yet as one Swallow does not make a Summer; so neither does one Precedent prove the Point. But besides, in that Case of *Charles the First*, To infer from thence, that the King's Death is principally intended by Levying of War, is altogether as weak an Argument, as to say, because a Thing falls out by Accident, therefore that very Thing was the principal Design and Aim of the whole Action. For in that War, those who first took up Arms, did it to oppose the King's Arbitrary Practices: And though he was afterwards put to Death; yet it was altogether against their Consent or Desire; and most of the Army was against it, and would have prevented it, but that they were at that time so broken into Factions and Parties, that they durst not trust one another. For after that Tragedy was acted, those who first took up Arms, immediately upon it laid them down, and were afterwards the chief Instruments of the late King's Restoration.

But if the King's Death be the Principal Thing intended by Levying of War, to what purpose is the War Levied? Cannot the King be taken off more easily by Poison, or a private Assassination? To the effecting of which, Opportunity cannot be wanting; and so with more certainty the End is obtained, and a less Hazard run in the Execution, than could be

done by a War; except those who Levy the War to kill the King, are not content with the Murder of him, unless they cut the Throats of all those that would defend him. Indeed to do it by an open War, rather than by Poison, or a private Assassination, is the more generous way; for they give him fair warning to look to himself; like a Noble Enemy that scorns to kill his Adversary basely. 'Tis indeed to go round about, for the nearest way. Therefore a War when Levied, must be for some other Intent than to take away the King's Life. Since Englishmen, if they enjoy their Properties, no Prince is so Great and Happy in the Heads, Hearts, Hands, and Purse of his Subjects, as an English King.

But yet allowing that upon every War levied, the Death of the King would certainly ensue, if the Rebels prevail; yet this Question does naturally arise, *viz.* Where is that Statute which does in express Terms say, That a Conspiracy to Levy War is Treason? For if it be not so expressly, and literally, within some Statute, then it is a Constructive Treason, and consequently no such Treason, as upon which the Judges may proceed, if the Statute of the 25th Ed. 3. was made to any purpose. For that the Statute restrains all Constructive Treason, or none. But if the Judges may in any one Case, make a Constructive Treason, they may do it in all: And so we are left in the same Uncertainty about Treason, as we were before that Stat. 25th. Ed. 3d. was made.

If the Judges might judge upon Constructive Treason, yet it seems to be a far-fetch'd Construction to make a Conspiracy to Levy War, an Overt Act of Compassing the King's Death. For this is not to be Provably attainted by Overt Deed.

First, Because the Conspiring the Death of the King, and Levying of War; are two distinct Species of Treason; and therefore it would be very unnatural, and too much forc'd to join these together, and as it were, to make them one and the same thing, that are so different, and divers, not only in the Manner and Matter of Proof, but also in themselves.

For then, Secondly, A Conspiracy to commit any other Treason, may also be called an Overt Act of Imagining the King's Death: Which was never yet pretended.

Thirdly, A Conspiring of any one Treason, may then be Overt Act of any other Treason.

Fourthly, Any other Criminal Act may then as well be called, An Overt Act of Conspiring the King's Death.

Fifthly, This is to make a Conspiracy to Levy War, Treason in it self. For there is very little difference, between calling a Thing Treason in it self, and to make it an Overt Act of some Treason within the Statute.

Sixthly, Because a Conspiracy to Levy War, was not Treason at Common Law.

Seventhly, The Statutes of 23d, of Eliz. and the 1st, and 3d Jac. 4th. which make it High Treason to Reconcile any to the Church, or See of Rome, or to be so Reconciled, were Enacted to

no Purpose, if a *Conspiracy to Levy War*, is an *Overt of the Compassing the King's Death*. For what can tend more plainly, and directly, to *Levy War*, than to persuade the People to renounce their Allegiance to the King; and to promise Faith and Obedience to some other Power? So that these, and all other Statutes concerning Treason; which have been made since the Statute 25th Ed. 3. are as so many Confirmations of it; and consequently prove that the Judges can call nothing Treason, but what is Literally such; within that, or some other Statute.

Eighthly, My Lord Cook says, That *Conspiracy to Levy War* is not Treason, unless the War be Levied in fact. And questionless his Opinion is very good Law: Because in many Cases it is not Treason to *Levy War*: & à fortiori, a Conspiracy cannot. For look into the Statute, Queen Mary 12. and there you will find several Things provided against, which are plainly, and directly a *Levying of War*; and yet they are declared to be but Felony.

But it may be objected, That by Stat. 3, and 4 Ed. 6. the Offences mention'd in 1 Queen Mary were made Treason. It is very true: Yet it does not alter the Case, but rather prove the Point. For First, they being made Treason by Statute, proves that it was no so in it self: Secondly, because in the two next succeeding Reigns it is declared to be but Felony. For the Statute of Queen Mary is confirmed by 1 Eliz. 16. And thereupon the Argument is the stronger; because those two Queens were of different Religions. Thirdly, because when a Thing is declared an Offence by Act of Parliament, and is afterwards made a less Offence by Statute, it proves that it was not so great in it self; but that the necessary Circumstances of Time and Affairs requir'd it should then be such.

But the Case is yet stronger, because in some Cases it may be but a Trespass to *Levy War*; as it was in the Case of my Lord Northumberland, 5 Henr. 4th. He did actually raise Forces, and such as were taken to be a *Levying of War*: For which he was questioned before the Lords, and tryed for High Treason. But though the Lords did find the Fact, yet they adjudged it but a Trespass; because the Powers raised were not against the King, but against some Subjects. This Precedent seems to carry great weight in it: First, because it is a Judgment given in the highest Court of Judicature; Secondly, because it was given so soon after the making of the Statute of 25 Ed. 3. who must be supposed to understand the Intent and Meaning of that Statute full as well as succeeding Ages.

The Case of those who aided Sir John Oldcastle might also be urg'd; who were acquitted, because in their Defence, it did appear, that by reason of Fear, and to save themselves, they were constrained to what they did. Which is Ground for another Argument, if there were Occasion; because it proves, that the Maxim in Law, *Actus non sit reus, nisi Mens sit rea*, holds in Case of Treason, as well as in all other Cases. But I think there's no need of it. For if War may be Levied, which is neither Treason nor Felony; it must be a very unnatural Construction of a Conspiracy to Levy War, to make it an *Overt Act of Compassing the King's Death*.

Thus the Second Thing objected has received a full Answer; and likewise the First, in a great measure. Yet I will add a few Words; that no Doubt may remain.

If the Consequence on all Hands be duly considered, the Danger will be found to lie on the other hand. Yet be it as great as can be pretended; it must be remembered, that the Law has settled the Point; and so it must stand, till by the same Authority it be altered. For the Rule in Law is not to be forgotten, *Nemo Legibus Sapientior*. It is pretended, that out of a tender Regard which the Law, and all Subjects ought to have for the King's Life, a *Conspiracy to Levy War*, is taken to be an *Overt Act of Compassing the King's Death*: To this it may be answered, by way of Question, How comes it about that this Age should have a greater Care of the King's Life, than our Fore-fathers had? Can it be imagin'd that they did not understand the Nature of the Government as well as we do? Nor did know of what Consequence to the Publick, the Preservation of the King's Life is? Can it be thought that they did not impartially weigh, and consider the Consequence on all Hands? Yet however let the Defects be never so many; seeing it is settled by Law, it cannot be alter'd but by the same Power: For if it may, then let the Consequences be seriously debated, of leaving it in the Breast of the Judges to rectify the Mistakes, or Defects, be they fictitious or real. For then, when a Turn is to be serv'd, the Law will be sure to be Defective; and so in effect they shall *Legem dare*. Treason will then be reduced to a Certainty; that is, if the Judges please; otherwise not: There will be then no need of Parliaments: for the Judges shall both declare, and make Law. What will all our Laws signify, though made and penn'd with all the Wisdom and Caution that a Parliament is capable of, if the Judges are not tied up, and bound by those Laws? It renders Parliaments useless, and sets the Judges above that great Council. They can undo what the other has done. The Parliament chains up some unruly Evil, and the Judges let it loose again. But besides, where is this dangerous Consequence, as is objected? Indeed there had been some Weight in the Objection, had a *Conspiracy to Levy War* been wholly left unpunishable. But the Law has provided a Punishment commensurate to the Offence: Which though it does not extend to Life; yet is sufficient to deter Men from the Commission of it. Yet if a *Conspiracy to Levy War* is to be punish'd in as high a degree as a War when Levied, this would be to punish Thoughts as highly as Deeds; which if it be just, yet is *summum jus*.

Mr. Solicitor Finch twitter'd out two or three imperfect Precedents, viz. that of my Lord Cobham, Dr. Story, and Plunket. These, as they are not altogether to the purpose, so they are so very modern, that no great regard is to be had to them; and they rather prove the Ignorance, or Boldness of those Judges, than that a *Conspiracy to Levy War* is an *Overt Act of Compassing the King's Death*. Because the Statute of 25 Ed. 3. has provided, That if any such like Treasons come before the Justices, they must tarry without going to Judgment, till the Cause be shew'd before the King and his Parliament. And therefore for those Judges to take upon them to judge upon that which was doubtful, and not

not literally nor expressly a *Treason*, was to assume the Part which the King and Parliament had reserved to themselves. And therefore upon what has been said, this Conclusion will follow, that no Man can (before the Judges) be Convicted of *Treason*, unless the Fact be expressly and literally *Treason* within some Statute, and he be thereof provably Attainted by some Overt Deed, and consequently a *Conspiracy to Levy War*, is not an *Overt Act of Compassing the King's Death*; but a *Trespass*, or *High Misdemeanour*: And therefore the Judgment against my Lord Ruffel was manifestly unjust; and so of Course it ought to be Revers'd.

If a *Conspiracy to Levy War* were *Treason* of it self, or an *Overt Act of Imagining the King's Death*; yet my Lord Ruffel was not Guilty of *High Treason* within the Statute of 25 Ed. 3: because the Overt Act assign'd against him, was *His being of a Council of Six, to manage an Insurrection*, and in order to it, to *seize the Guards*. For had he actually seiz'd the Guards, yet it could not be *Treason* within the Statute 25 Ed. 3.

First, Because the *Guards* are not settled by Act of Parliament, and consequently they are no Legal Force. For the Law has pronounced that all standing Force, other then the *Militia*, is in *terrorem populi*, illegal, and a Grievance. And the Reason of it is clear; because the Law does never Protect or Countenance any Thing that is, or may be burthensome, or that is useless. And it is so evident, that in the *Pensionary Parliament*, this Vote pass'd in the House of Commons, *Nemine Contradicente*. That all Standing Force other than the *Militia* is illegal, and a Grievance. And though they have the King's Commission, as may be objected; yet his Commission cannot make that Lawful that is illegal; no more than he can tolerate a Riot, or pardon a common Nuisance. For if several Persons were Try'd for a Riot, and it manifestly appear upon the Evidence to be such, would their producing the King's Commission keep them out of the Compass of the Law? Or should those who did assemble together to suppress them, be Guilty of *Levying War*, because those other Persons had the King's Commission? Therefore if my Lord Ruffel had assembled a Force sufficient to seize the *Guards*, the most that could have been made of it, was to bring it within the Statute of the 1st, Qu. Mary 12: which makes it but Felony. And this being duly compared with the Precedents urg'd by Mr. Attorney, and Mr. Solicitor, will retort them strongly upon themselves.

Secondly, It could not be *Treason* within the Statute, 25 Ed. 3. because at the Time of making that Statute, there was no such thing as the *Guards*. For the first thing of that Sort was the Band of Pensioners which Hen. 7th, set up, in imitation of what he had seen, and learned in France. For in Ed. the 3^d's Time, though he was the Third, that without interruption, had succeeded to the Crown; yet Succession had not then obtained so sacred a Reputation, as not to stand in need of the People to uphold them in the Throne. And therefore Kings were then too wise, to do any thing that would be so apparent a Distrusting of the People, as to call in *Guards* to their Aid. And besides, the constant Wars, either with France, or Scotland; made them

stand continually in need of the People's Supplies: And therefore they would be sure cautiously to avoid all Things, that might give the Nation occasion of Offence. And nothing could be more distasteful to the People, than to be nosed by a standing Force, which the Law had adjudged to be illegal, and a Grievance. And therefore, as there were no such things as *Guards* at the making of that Statute 25 Edw. 3. So that Statute cannot be supposed to take notice of them.

Thirdly, If the *Guards* were Established by Act of Parliament, yet if they were so Established since the 25 of Ed. 3. my Lord Ruffel was not within that Statute, because it provided for nothing but what was lawfully in being at the time when it was made. So that if it were an Offence to seize the *Guards*, my Lord Ruffel ought to have been Indicted upon that Statute which did so make it an Offence. For if a Prisoner is Indicted upon a wrong Statute, and the Evidence proves nothing of that Statute on which he is Indicted, but comes very home, and point blank to the Statute on which he ought to have been Indicted, he may plead specially to it, and the Court must direct the Jury to bring him in *Not Guilty*.

Fourthly, My Lord Ruffel was not within the Statute 25 Edw. 3. Because the Indictment concluded falsely; and more falsely than any Indictment that I ever saw or heard of. For it says [*And the Guards for the Preservation of the Person of our said Lord the King to seize and destroy, against the Duty of his Allegiance, against the Peace, and also against the Form of the Statutes.*] This Conclusion contains in it four Parts, and none of them is true. First, That the *Guards* are for *Preservation of the King's Person*. It will be an easier Matter to find a World in the Moon, than that the Law has made the *Guards* a lawful Force, or any Statute that has Established any Force, particularly for the Guard of the King's Person. And though the Law had established any such Force; yet it was not done by the 25 Ed. 3. and therefore in this the Indictment concluded falsely.

The Second Thing is this, That to seize and destroy the *Guards* was against the *Duty of his Allegiance*. To speak fully to the Nature of *Allegiance*, would require a long Discourse. But a few Words will lay this upon it's back. It cannot be deny'd, that Nature and the Law did nothing in vain. And if so, can it be imagin'd that the Law would establish such a Thing as the *Guards*, which had made so much a better Provision for the Preservation of the King's Person, even the Duty and Interest of every one of his Subjects? In the next Place, *Subjection* and *Protection* are Convertible Terms, and therefore if the Subjects do not receive Protection by the *Guards*, it is not against their *Allegiance* to seize and destroy them: Whereas to seize the *Militia* is against their *Allegiance*; because they receive *Protection* by them. Besides, no Man becomes an Offender, till the Law has been promulged so, as that no Man can reasonably be supposed to be ignorant of it. Now then, though the King by his Commission might make the *Guards* such a lawful Force; yet *non constat*, that they are so Commission'd by him. For it has not been publish'd in that due manner and

form, as that the Nation can regularly take notice of it. And besides, there is no Record enter'd, or remaining of it in any Court, or any other Place, whereby the People may come to a certain knowledge of it. Which is also a forceable Argument against the *Legality* of such a Commission. So that tho' in other Cases *Ignorantia Juris* is not allow'd; yet in this Case it is a very good Plea, That it was not against my Lord *Russel's* Allegiance to seize the Guards, tho' the King's Commission did make them a lawful Force.

The *Third* thing is, That it was against the Peace, which is an untrue Conclusion. For it is not against the Peace to seize any Force that is not countenanced by Law. And a Needle may sooner be found in a Cart-load of Hay, than any Statute that hath Established the Guards. And if the King's Commission can make a Force a lawful Force, then it's hard to say, whether the Rebellion in *Ireland* did not act upon sufficient Authority, since no clear Answer has yet been made to the Commission under the Broad Seal, which the Rebels produced to justify their Pro-

ceedings. In the next place, every Treason is against the Peace. But to conclude, because it is against the Peace, therefore it is Treason, is neither Law, nor Reason. For every Offence is against the Peace; but every Offence is not Treason. Furthermore, the King's lawful Commission is not to be opposed in any Case; and the Indictment upon it will run, that it is against the King's Crown and Dignity, and against the Peace. Therefore to conclude, that it is Treason, is a *non sequitur*. For it is not Treason in many Cases, to seize and destroy those that Act by the King's Lawful Commission.

The *Fourth* thing is, that it was against the Form of the Statutes. The Statutes thus mention'd must be those Statutes, or at least must comprehend some Statute that settles the Guards for the Preservation of the King's Person: For the Seizing of the Guards, is the Overt Act assign'd of Compassing the King's Death. Now if there be no such Statute, then is this Part of the Conclusion of the Indictment also false. And consequently the Judgment against my Lord *Russel* ought to be revers'd.



The ARRAIGNMENT of Algernone Sidney Esquire, November the 7th, 1683.

Algernone Sidney, Esq; was by Habeas Corpus brought up to the Bar of the Court of King's-Bench, and the Clerk of the Crown having read the Return, Mr. Attorney General inform'd the Court there was an Indictment against the Prisoner, and prayed he might be charged with it.

Cl. of Cr. *Algernone Sidney*, Hold up thy Hand. (which he did.)

Midd. ff. The Jurors for our Lord the King, upon their Oaths do present, That *Algernone Sidney*, late of the Parish of St. Martin in the Fields, in the County of Middlesex, Esquire, as a false Traitor against the most Illustrious, most Excellent Prince, our Lord *Charles II*, by the Grace of God, King of England, Scotland, France and Ireland, and his Natural Lord, not having the Fear of God in his Heart, nor weighing the Duty of his Allegiance, but moved and seduced by the instigation of the Devil, utterly withdrawing the cordial Love, and true, due and natural Obedience, which a true and faithful Subject of our said Lord the King should bear, towards him the said Lord the King, and of Right is bound to bear; Contriving, and with all his Strength intending, to disturb the Peace and Common Tranquillity of this Kingdom of England, and to stir up and move War and Rebellion against the said Lord the King, and to subvert the Government of the said Lord the King, in this Kingdom of England, and to Depose and Deprive the said Lord the King, from the Title, Honour, and Regal Name, of the Imperial Crown of his Kingdom of England, and to bring and put the said Lord the

King to Death, and final Destruction, the thirtieth Day of June, in the Five and thirtieth Year of the Reign of our Lord King *Charles II*, now King of England, &c. and divers other Days and Times, as well before, as after, at the Parish of St. Giles in the Fields, in the County of Middlesex, Maliciously, and Traiterously, with divers other Traitors to the Furors aforesaid unknown, did Conspire, Compass, Imagine and intend to deprive and cast down, the said Lord the King, his Supreme natural Lord, not only from the Regal State, Title, Power and Rule of his Kingdom of England; but also to Kill and bring and put to Death the same Lord the King, and to change, alter and utterly subvert the Ancient Government of this his Kingdom of England, and to cause and procure a miserable Slaughter among the Subjects of the said Lord the King thorough his whole Kingdom of England, and to move and stir up an Insurrection and Rebellion against the said Lord the King, within this Kingdom of England, And to fulfil and perfect those his most horrid, wicked and diabolical Treasons, and traitorous Compassings, Imaginations and Purposes, the same *Algernone Sidney* as a false Traitor, then and there, and divers other Days and Times, as well before as after, Maliciously, Traiterously, and Advisedly, did Assemble himself, meet and consult, with the aforesaid other Traitors to the Furors aforesaid unknown, and with the same Traitors did Treat of, and for those his Treasons and traitorous Compassings, Imaginations and Purposes, to be executed and fulfilled. And that the aforesaid *Algernone Sidney* as a false Traitor, Maliciously, Traiterously and Advisedly, then and there, and divers other Days and Times, as well before as after, upon himself did assume, and to the aforesaid other Traitors did promise that he would be Aiding

Aiding and Assisting in the Execution of their Treasons and traitorous Compassings, Imaginations and Purposes aforesaid, and to fulfil, perfect and reduce to effect those their most horrid Treasons and traitorous Compassings, Imaginations and Purposes aforesaid, the same Algernone Sidney as a false Traitor, then and there, Falsely, Maliciously, Advisedly and Traiterously did send one Aaron Smith into Scotland, to invite, procure, and incite divers evil disposed Subjects of our said Lord the King, of his Kingdom of Scotland, to come into this Kingdom of England, to advise and consult with the aforesaid Algernone Sidney, and the aforesaid other unknown Traitors in this Kingdom of England, of Aid and Assistance to be expected and supplied from the Kingdom of Scotland to fulfil, perfect, and reduce to effect those their most wicked, horrid, and traitorous Treasons aforesaid. And that the aforesaid Algernone Sidney to fulfil and perfect those most wicked, horrid, and devilish Treasons, and traitorous Compassings, Imaginations and Purposes aforesaid, And to persuade the Subjects of the said Lord the King of this Kingdom of England, That it is lawful to make and stir up an Insurrection and Rebellion against the said Lord the King that now is, the said Thirtieth Day of June, in the Five and thirtieth Year of the Reign of the said Lord the King that now is, at the Parish of St. Giles in the Fields, in the County of Middlesex, falsely, unlawfully, wickedly, seditiously, and traiterously, did make, compose, and write, and caused to be made, composed, and written a certain false, seditious and traitorous Libel, in which said false, seditious and traitorous Libel among other things is contained as followeth in these English Words, viz. The Power Originally in the People of England is delegated unto the Parliament, He (the most Serene Lord, Charles II. now King of England, meaning) is subject unto the Law of God, as He is a Man to the People, that makes him a King, inasmuch as He is a King, the Law sets a measure unto that Subjection, and the Parliament judges of the particular Cases thereupon arising, He must be content to submit his Interest unto theirs, since He is no more than any one of them in any other respect than that He is by the Consent of all, raised above any other: If he doth not like this Condition, He may renounce the Crown; but if he receive it upon that Condition (as all Magistrates do the Power they receive) and swear to perform it, He must expect that the Performance will be exacted, or Revenge taken by those that He hath betrayed. And that in another place in the said false, seditious and traitorous Libel, among other things, these false, seditious, and traitorous English Sentences are contained (that is to say) We may therefore change or take away Kings, without breaking any Yoke, or that is made a Yoke which ought not to be one, the Injury is therefore in making or imposing, and there can be none in breaking it, Against the Duty of his Allegiance, against the Peace of the said now Lord the King, His Crown and Dignity, &c. And against the Form of the Statutes in this Case made and provided, &c.

How say'st thou, Art thou Guilty of this High Treason whereof thou standest Indicted, or not Guilty?

Col. Sidney. My Lord, I find here an heap of Crimes put together, distinct in nature, one from another, and distinguished by Law; and I do conceive, my Lord, That the Indictment it self

is thereupon void, and I cannot be Impeached upon it.

L. C. J. We are not to admit of any Discourses, till you answer the Question, Whether you be Guilty or not Guilty.

Sir George Jefferies.

Mr. At. Gen. If he will demur, my Lord, we will give him leave.

Sir Robert Sawyer.

Col. Sidney. I presume your Lordship will direct me, for I am an ignorant Man in Matters of this kind, I may easily be surprized in it, I never was at a Tryal in my life of any body, and never read a Law-Book.

L. C. J. Because no Prisoner under your Circumstance is to have Counsel, but in special Cases to be assigned in Matters of Law, the Court is bound by their Oaths and Duty of their Places, that they shall not see any wrong done to you: But the business we are to tell you now is, You are to plead Guilty, or not Guilty, or Demur, which is a Confession in point of Law.

Col. Sidney. Under favour, my Lord, There may be Indictments that are erroneous, and if they are erroneous and vitious, they are null, and ought not to be answered to.

Mr. Just. Withins. If you please to demur to it, you shall have liberty to make any Exceptions.

Col. Sidney. I don't demur, 'tis only Exceptions. I think in Matters of Life, a Man may give in his Exceptions to the Bill, and plead not Guilty afterwards. I am sure in Sir Henry Vane's Case, the Court said it, and offered him to do it; That which, under favour, I hope to do.

L. C. J. You must Plead or Demur.

Col. Sidney. My Lord, If I put in Exceptions to the Bill, I don't Plead till those Exceptions are over-ruled. This was in the Case of Sir Henry Vane.

L. C. J. Sir, I must tell you, You must either Plead or Demur.

Col. Sidney. My Lord, There are in this Indictment, some Treasons or reputed Treasons, that may come within the Statute of the 13th of this King, which is limited by time, the Prosecution must be in six Months, and the Indictment within three. Now, my Lord, if that this Business that is mentioned, be above six Months before my Commitment, or above three before the Indictment, I think, under favour, I ought not to answer to these Matters.

L. C. J. You are mistaken in the Law. That will be saved when the Fact comes to appear. If they alledge the thing to be at a time, which, according to that Allegation would maintain the Indictment, if upon the Tryal it appear otherwise, the Court is bound to take notice of it when you come to your Tryal, but we are not bound to examine that before you have pleaded.

Col. Sidney. My Lord, Every body will acknowledge, that there have been, or may be, vitious Indictments. Now if I plead to an erroneous Indictment, and am acquitted, I may be indicted again. Bills of Attainder have been upon Errors in Original Indictments, as that of the Duke of Somerset. Now if there be here several things distinct in Nature, distinguished by Law that are put together, 'tis impossible to make a positive Answer to any one. If any one should tell me, that I by my self, or by other

others, by Sword or by Pistol conspired to kill the King, I can say, I did it, or I did it not. If any one say, I have levied War, and by several Acts undertake to prove I have done it, I can say I have done it, or I have not. But here I don't find any thing specify'd, or can tell upon what Statute I am indicted. I pray I may see the Record.

L. C. J. That we can't do. You shall hear it read again if you will. If you think it to be a void Indictment, Demur to it if you will.

Col. Sidney. My Lord, I desire you to accept of this. (*Shewing a Parchment.*)

L. C. J. What is it? Put in what Plea you shall be advised; but if you put in a special Plea, and Mr. Attorney demurs, you may have Judgment of Death, and by that you waive the Fact.

Col. Sidney. I can't make any Objection to the Bill after I have pleaded, Not Guilty, for I accept the Bill thereby to be good.

L. C. J. If you can assign any Matter of Law, do. But otherwise what a kind of thing would it be? All Criminals would say in all Cases, I doubt whether the Bill be good or bad. And after I have thus considered of it, I will Plead. You are mis-informed, and this the Court tells you, as a Duty incumbent on them.

Mr. Just. Withins. If you Demur, and shew what your Causes are, We will assign you Counsel.

Col. Sidney. I desire you would not try me, and make me to run on dark and slippery Places, I don't see my way.

L. C. J. Don't apprehend your self to be so, as if the Court would run you on any Inconvenience. But they are bound to see the Methods of Justice preserved, they are those that you, and all the King's Subjects are bound to conform to. If any one of us were in the same Condition, we must observe the same Methods of Law.

Cl. of Cr. Art thou Guilty, or not Guilty?

Col. Sidney. Then pray, my Lord, will you tell me this, Is it true, That a Man, how vicious soever an Indictment is, must Answer or Demur to it?

L. C. J. He must either Answer or Demur.

Col. Sidney. Are there no Exceptions to be admitted?

L. C. J. None: And if you don't do the one, or the other, Judgment passes, as if you had pleaded.

Col. Sidney. This is a Plea.

Mr. Just. Withins. Will you stand by it? Consider your self, and your Life, If you put in that Plea, and Mr. Attorney Demurs, if your Plea be not good, your Life is gone.

Col. Sidney. Pray, my Lord, give me a Day to consider of it.

L. C. J. No, We must not introduce new Methods or Forms for any body. The same Case that is with you, may be with other People.

Col. Sidney. My Lord, I do not pretend to any thing but what is Law, and due to every Man upon English Ground. I would be very sorry to do that which may be hurtful.

L. C. J. You have the Rule of the Court. You must do one or the other. Call him to it.

Col. Sidney. I desire this may be read. (*Shewing the same Parchment.*)

L. C. J. It shall not be read, unless you put it in as a Plea.

Mr. At. Gen. I must do my Duty, *Mr. Williams* exceeds his Liberty, he informs the Prisoner several things.

Mr. Williams. I only said, if it was a Plea, put it in, Mr. Attorney can hear all I say. (*Whereupon Mr. Williams was reproved by the Lord Chief Justice*)

Col. Sidney. I only give it as Exceptions to the Bill.

Cl. of Cr. Art thou Guilty, or not Guilty?

Col. Sidney. If any one should ask me any particular thing, I could tell how to answer.

L. C. J. He asks you a particular thing. 'Tis the Duty of the Court to pronounce Judgment, if you do not plead.

Col. Sidney. Why then, if you drive me upon it, I must plead.

L. C. J. I am sure there is no Gentleman of the Long Robe would put any such thing into your Head. There was never any such thing done in Capital Matters.

Col. Sidney. My Lord, I am there indicted for Conspiring the Death of the King; I have not Conspired the Death of the King; I am there Indicted for Levying of War, I have not done that. I am indicted for having invited in others, of another Nation, I have not done that neither. I am there indicted to have written a seditious Libel to stir up the Spirits of the People against the King, I have not written any thing to stir up the People against the King.

L. C. J. We are not to hear all this, you must Plead as other People, or else in plain English we will pronounce Sentence. We ought to give all Men satisfaction that will be satisfied; but if they won't be directed, we can't help that.

Col. Sidney. My Lord, If you put me upon this inevitable necessity, it lies upon you; I must plead then.

Cl. of Cr. Art thou Guilty, or not Guilty?

Col. Sidney. Not Guilty.

Cl. of Cr. Culprit. How wilt thou be tryed?

Col. Sidney. By God and my Country.

Cl. of Cr. God send thee a good Deliverance.

L. C. J. If you be not Guilty, I pray God you may escape.

Mr. At. Gen. My Lord, Will you please to appoint a Day for his Tryal, that he may take notice of it now?

L. C. J. What time would you have?

Mr. At. Gen. A Week's time, do you think that will be enough?

Col. Sidney. No, Pray, my Lord, give me a Fortnight's time.

Mr. At. Gen. I won't oppose it.

Col. Sidney. In the next place I desire a Copy of the Indictment.

L. C. J. We can't grant it by Law.

Col. Sidney. I desire you would please to give me Counsel.

L. C. J. We can't do it, If you assign us any particular Point of Law, if the Court think it such a Point as may be worth the debating, you shall have Counsel. But if you ask for Counsel for no other reason than because you ask it, we must not grant it. The Court is bound to see that nothing be done against you, but what is according to the Rules of Law. I would be very loth to draw the Guilt of any Man's Blood upon me.

Col.

Col. Sidney. Has not every body Counsel?

L. C. J. No.

Col. Sidney. I have several Points of Law.

L. C. J. Tell us them.

Col. Sidney. My Lord, Will you oblige me that am an ignorant Man; and confess my self so, upon hearing my Indictment for things I know not of, a long thing, presently to raise a Point of Law.

L. C. J. 'Tis not we oblige you, Mr. Sidney, 'tis the Law obliges you. We are the Ministers of the Law, 'tis the Law says we are not to allow you Counsel without making your Objections, that the Court may understand whether it be fit; 'Tis the Law says we may not allow you a Copy of the Indictment. Therefore don't go away and say that we as Men sitting here impose upon you, we sit here only to administer the Justice of the Nation.

Mr. Just. Withins. Sir, You will have a Fortnight's time to consider of Objections in Law.

L. C. J. If you will have it read, you shall. Those things that you may have by Law, God forbid but you should have the Benefit of them.

Col. Sidney. I desire, my Lord, to hear it read again.

Mr. At. Gen. Would you have it read in Latin.

Col. Sidney. Yes, if you please, I do understand a little Latin.

Then the Indictment was read in Latin.

Col. Sidney. What is that Statute?

L. C. J. When you come to your Tryal, Mr. Attorney will tell you what Statute he goes upon. And he may give in Evidence, any Act of Parliament that comprehends Treason.

Col. Sidney. Methinks he should say what Statute he goes upon.

Mr. Just. Withins. Sir, Would you have a new Indictment for you?

L. C. J. He must take notice of his Tryal this Day Fortnight. Lieutenant of the Tower, you may take the Prisoner back again.

Then the Lieutenant of the Tower took away his Prisoner.

The TRYAL of Algernone Sidney Esquire, November the 21st, 1683.

Algernone Sidney, Esq; was brought to the Bar of the Court of King's Bench by Habeas Corpus, and Proclamation for Information being made, he desired Pen, Ink and Paper, which were granted him. And he also desired, that two Persons, (*viz.*) Mr. Wynn and Mr. Gibbs, might write for him, which was also allowed by the Court.

Col. Sidney. My Lord, When I was last here before your Lordship, I did desire a Copy of my Indictment, and I thought the Law did allow it me. But being in an hurry, carried first to a Tavern, then led through Soldiers, and surprized absolutely, I could not give that Reason why I thought the Law allowed me a Copy. My Lord, I was denied a Copy, and thereby I was deprived of the Benefit of a special Plea I designed to have put in. This would have been a great Help to your Lordship, and to me; the Denial of which hath been a great Prejudice. Now, my Lord, that which I thought was Law then, I think I can give a better Testimony that 'tis so now upon the Statute of 46 E. 3. wherein 'tis expressed, that *tout parties & tout gents*, that is, all People shall have a Copy of every Record; and it enumerates several Matters, as well that against the King as other People. This is a General Law still in force: My Lord Strafford had a Copy, and my Lord Stafford, and the Lords in the Tower had Copies of their Indictments. And, under favour, I think it was never more necessary than to me, there never having been, perhaps, a Charge so long, and so confused. Now, my Lord, I have a Copy transcribed of this Statute.

[Shewing a Paper.]

L. C. J. We remember the Law very well. Mr. Sidney did move for a Copy of the Indictment, and the Court denied him then, and so shall now. And yet all this while we shall deny you nothing that is Law. You shall have the Right that becomes a Subject in your Condition. And we must tell you, that notwithstanding all that Case we ought not to have given you so much Favour (perhaps in strictness) as we did. And because you did particularly take notice of the Case of Sir Henry Vane last time, I will shew you the Court did indulge more to you than was done to that Person. In Sir Henry Vane's Case, by the Opinion of all the Judges, it was declared, that no Copy ought to be given, neither of the whole, nor any part of the Indictment, except they shew Matter of Law. But your Counsel, since you went away, moved for the Copy of the Indictment; and to satisfy them, I directed the Case that you took notice of to be read in the Court. And I thought they had been sufficiently satisfied. You had the Indictment read to you in Latin, which was denied in the Case of Sir Henry Vane. And there is a later Case known to most Persons here. By the Opinion of all the Judges of England, a Copy of the Indictment was denied to my Lord Russell. Therefore arraign him upon the Indictment; we must not spend our time in Discourses to captivate the People.

Col. Sidney. Is not this a good Law, my Lord?

[Holding out the Paper.]

L. C. J. You have the Rule of the Court.

Mr. Just. Withins. Any thing the Law will allow you, you shall have; but I am sure if you did advise with your Counsel, they must tell you the same thing.

So the Clerk of the Crown called the Jury, and after several Challenges, the Names of the Jury were as follow,

John Amger	} Jur'	Josias Clerke
Richard White		George Glisby
William Linn		Nicholas Baxter
Lawrence Wood		William Reeves
Adam Andrews		William Grove, and
Emery Arguise		John Burt.

J. C. J. Look you, Gentlemen of the Jury, There are some Gentlemen at the Bar, as we are informed, are apt to whisper to the Jury; 'tis no part of their Duty; nay 'tis against their Duty: And therefore, Gentlemen, if you hear any of them by you that offer to whisper, or make Comments in this Cause, as you are upon your Oaths, and I doubt not but will do your Duty between the King and the Prisoner; so I expect if you hear the Counsel say any thing, you will inform the Court. Let us have no Remarks, but a fair Tryal in God's Name.

Cl of Cr. You that are sworn look upon the Prisoner, and hearken to his Cause. He stands Indicted by the Name of *Algernone Sidney*, of, &c. (as in the Indictment) your Charge is to inquire, &c.

Then Proclamation for Evidence was made.

Mr. Dolben. May it please your Lordship, and you Gentlemen that are sworn. This is an Indictment of High Treason, preferred against *Algernone Sidney*, the Prisoner at the Bar. The Indictment sets forth, That he, as a false Traitor against our most Illustrious Prince, *Charles* the Second, his natural Lord, not having the Fear of God in his Heart, &c. On the Thirtieth of June, in the Thirty Fifth Year of the King, and divers other Days and Times, as well before as after, in the Parish of *St. Giles in the Fields*, in the County of *Middlesex*, traiterously, with divers Traitors unknown, did conspire the Death of the King, and to levy War within this Kingdom. And to complete these Traiterous Purposes, did then, and there maliciously, advisedly and traiterously, send one *Aaron Smith* into *Scotland*, to excite some ill disposed Persons of that Kingdom to come into this, and to consult with the said *Algernone Sidney*, and other Traitors, of and upon Assistance from the Kingdom of *Scotland*, to carry on those Designs. And the Indictment sets forth further, that to perswade the People of *England* it was lawful to raise Rebellion, the said *Algernone Sidney* did cause to be written a false Seditious Libel, in which are contained these *English* Words, *The Power originally in the People of England is delegated unto the Parliament. The King is subject to the Law of God, as he is a Man to the People that makes him a King. In as much as he is a King, the Law sets a measure unto that Subjection, &c.* (as in the Indictment.) This is laid to be against the Duty of his Allegiance, against the Peace of the King, his Crown and Dignity, and against the Form of the Statute in that Case made and provided. If we prove him Guilty, we doubt not but you will find it.

Sir Robert
Sawyer.

Mr. At. Gen. My Lord, and you Gentlemen of the Jury, the Prisoner at the Bar stands indicted of the highest Crimes, the conspiring the Death of the King, and the Overthrow of the *English* Mo-

narchy. Gentlemen, we shall use this Method in our Evidence. We shall shew by many Witnesses, that there was a Design of raising and making a Rebellion within this Kingdom. For, Gentlemen, you must take notice, and I think there is no *Englishman* but does believe, that for several Years last past a Design was laid, and for that purpose several secret Insinuations were made use of, and publick Libels spread Abroad to perswade the People, that the King was introducing Arbitrary Power, that he subverted all their Rights, Liberties, Properties, and whatever was dear to them. They endeavoured to make the World believe the King was a *Papist*. And when, Gentlemen, by such Stratagems they had worked upon many incautious Persons, when they thought they had gotten a sufficient Party, then there was a Design of an open Rising (for they thought all Things were ripened) and that was to be in several Parts of the Kingdom. Some Persons to effect this Design, were for a present Assassination of the King. Others would do it in a more fair and gentle way. They thought it below Persons of that great Quality as the Prisoner is, and therefore were for doing it by open Force.

When we have given that general Evidence, we shall then come to shew you what Share and Part the Prisoner had in this Design. For certainly he was looked upon as a very eminent Person, whose Education Abroad, and former Practices at Home had rendered him fit to advise and proceed in such Affairs. We shall prove when these Matters were ripe, this Gentleman was of the Council of State, of the Six that were to manage this Matter of the Rising. We shall shew the several Consultations they held: One at Mr. *Hambden's* House, another at the House of my Lord *Russel*. There we shall acquaint you what Debates they had; for they acted like very subtle Men; and there they debated, whether the Rising should be first in the Countrey or City, or both together. They came to a Resolution it should be in both Places at once. Then when they had asserted that Point, they come to consider the Time of Rising; and upon that they thought fit to call in Aid of *Scotland* first; and that was this Gentleman's particular Province. For he being a Man of great Secrecy, was to send an Emissary into that Kingdom, and invite some Persons over to treat with them about it. We shall prove that an Emissary was sent, and this Gentleman gave him a considerable Sum to bear his Charges. We shall prove that several *Scotch* Gentlemen, in pursuance of this Resolve, came here to treat with this great Council of State, about this Affair: And shall make it appear to you, that as soon as ever the least Discovery of this Plot was, These Persons concealed themselves and withdrew, as the rest of the Plotters that have fled from Justice.

Gentlemen, this was not enough for this Gentleman to consult on these several Passages, but to demonstrate to the World, That his Head and Heart was intire in this Service, and that he might carry it on the more effectually, he was at this very time, when this Emissary was gone into *Scotland*, preparing a most Seditious and Traiterous Libel, we instance in some particular Words of it. But we shall shew you, that the whole Design of this Treatise is to perswade the People of *England*, that it is lawful, nay,

may, that they have a right to set aside their Prince, in case it appear to them, that he hath broken the Trust laid upon him by the People. Gentlemen, he does use in that Treatise several Arguments drawn from the most Rebellious Times that ever were in *England*, from the late Rebellion (I must needs use that Word notwithstanding the Act of Oblivion, when a Gentleman shall now attempt to do those Things for which he was pardoned then) and from other Kingdoms, where Rebellion hath been prosperous against Princes. Then he falls to Reasoning, and uses great Reason in the Case, That all the Power of the Prince is originally in the People, and applies that Discourse, that the Power of the King was derived from the People upon Trust, and they had already declared the King had invaded their Rights, and therefore he comes to argue, they might assume that Original Power they had conferred. And he tells the King, that is no hard Condition; if he thinks it so, he should lay down his Crown, if not, he threatens the Condition would be exacted, or otherwise should be revenged by those he had betrayed; and who but this Gentleman and his Confederates, that thought himself not only able to govern this Nation, but many Monarchies, should call him to Account for it? For he lays down this Principle, That tho' all the People do rise against their Prince, it is no Rebellion. The whole Book is an Argument for the People to rise in Arms, and vindicate their Wrongs. He lays it down, *That the King has no Authority to dissolve the Parliament; but 'tis apparent the King hath dissolved many; therefore he hath broken his Trust, and invaded our Rights.* And at last concludes with that Passage laid in the Indictment, *We may therefore shake off our Yoke; for 'tis not a Yoke we submitted to, but a Yoke by Tyranny* (that must be the meaning of it) *they have imposed on us.*

Gentlemen, if we prove all these Matters to you, I doubt not you will do right to the King and Kingdom, and shew your Abhorrence of those Republican Principles; which, if put in Practice, will not only destroy the King, but the best Monarchy in the World.

Mr. Sol. Gen. Pray call Mr. West.

Mr. Finch.

[Who appeared.]

Col. Sidney. I pray one Word, my Lord, before Mr. West be sworn, I have heard, my Lord, Mr. West hath confessed many Treasons, I desire to know whether he is pardoned, or no?

L. C. J. I don't know that.

Col. Sidney. My Lord, how can he be a Witness then?

L. C. J. Swear him: For I know no Legal Objection against him. He was a good Witness in my Lord Russell's Tryal.

Col. Sidney. My Lord, if another did not except against him, 'tis nothing to me.

Mr. North. Pray give an Account to the Court of what you know of a general Insurrection intended in *England*.

Col. Sidney. What he knows concerning me.

L. C. J. We will take care of that, that no Evidence be given but what ought to be.

Col. Sidney. Is it ordinary that he should say any thing, unless it be to me and my Indictment?

L. C. J. Mr. Sidney, You remember in all the Tryals about the late *Popish* Plot, how there was first a general Account given of the Plot in

Coleman's Tryal, and so in *Plunket's*, and others: I don't doubt but you remember it. And Sir *William Jones*, against whose Judgment, I believe you won't object, was Attorney at that time.

Mr. North. Mr. West, What do you know of the general Insurrection lately design'd?

Mr. West. My Lord, I have had the Honour to know Colonel *Sidney* several Years; but I don't remember that I ever saw him from the time I came acquainted with any part of the Conspiracy, till the Discovery that was at the Council.

Mr. North. Pray give an Account of what you know of the Plot in general.

Mr. West. My Lord, in *October* last, Captain *Waleot* came to me, and told me that my Lord *Shaftsbury* had designed an Insurrection in *November*; I used some Arguments to dissuade him from it. But a little afterwards he came and told me, the Thing was wholly disappointed, and then it went off, and my Lord *Shaftsbury* went for *Holland*. Colonel *Rumsey* afterwards about *Christmas*, said there were some Lords and Gentlemen intended to make an Insurrection, the Persons were the Duke of *Monmouth*, my Lord of *Essex*, my Lord *Howard*, my Lord *Russel*, the Prisoner at the Bar, and Mr. *Hambden*, *Jun.* After some time he told me they had altered their Measures, and were resolved not to venture upon an Insurrection in *England*, till they had a Concurrence in *Scotland*. Afterwards I was not privy to any thing else, but what I had the Report of from Mr. *Nelthorp* and Mr. *Ferguson*. Mr. *Nelthorp* told me the Prisoner had said—

Col. Sidney. My Lord, I am very unwilling to interrupt the Gentleman—

L. C. J. You must not interrupt the Witness. Go on, Sir.

Mr. West. Mr. *Nelthorp* told me, the Prisoner at the Bar had sent *Aaron Smith* into *Scotland*, and given him a Sum of Money to bear his Charges, and sent Letters to some *Scotch* Gentlemen to invite them to Town. The Letter bore a Cant of settling some Business in *Carolina*; but the Business was coming up about the Insurrection. After this Mr. *Smith* returned, and some *Scotch* Gentlemen with him; and soon after Mr. *Ferguson* gave an Account of that Affair, and said, the *Scotch* proposed, if they might have thirty Thousand Pounds in ready Money, they would undertake to make an Insurrection in *Scotland*, without the Concurrence of *England*. He said this Proposal was agreed to, and Money would be soon ready; and he said that *Sheppard* would return the Money. That the Arms were ready bought, and my Lord of *Argyle* would go into *Scotland*, and head the *Scots*. He told me when Things were thus settled, some difference arose about raising the Money; and at last he told me, my Lord *Grey* did offer to raise ten Thousand Pounds out of his own Estate, if the rest would pay their Proportion. Then the *Scots* came down to less, but that would not be complied with. The Places for the Rising were *Bristol*, *Taunton*, *York*, *Chester*, *Exeter*, *London*. That there had been some Debates, whether they should begin at *London*, or the other Places, and at last it was resolved they shou'd begin at *London* with the rest of the Places.

My Lord, This was the Account I had of the Matter in general of Mr. *Ferguson*; but he said they were disappointed. Afterwards he told

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me, the Prisoner at the Bar, and Major *Wildman*, were very instrumental in working of it off, because they could not agree upon the Declaration to be made upon the Insurrection. The *English* were for a Common-wealth ; but the *Scotch* Gentlemen answered fairly, it might come to it in time, but the Noblemen there would not agree to it at present. As to the Prisoner in particular, I know nothing, and did never speak with him till since the Discovery.

Mr. At. Gen. Colonel *Rumsey*. [Sworn.]

Mr. North. Pray Sir, will you give the Court an Account of what you know of any Insurrection intended, and how they designed to carry it on.

Col. *Rumsey*. My Lord, the latter end of *October*, or beginning of *November*, I was desired by my Lord *Shaftsbury* to go to Mr. *Sheppard's*, to know of the Gentlemen that were met there, what was done about the Rising intended at *Taunton* ; and I had their Answer, that Mr. *Trenchard* had failed them, and that it must cease for that time. That was all at that time.

Mr. Sol. Gen. What else do you know of any Insurrection afterwards ?

Col. *Rumsey*. After that we had several Meetings at Mr. *West's* Chamber, where we had divided the City into twenty Parts, and seven Parts Mr. *Goodenough* had brought an Account of ; the other thirteen he said nothing of ; for he had not spoke with those that were to tell him how many Men they would afford. There was there Captain *Walcot*, Mr. *West*, the two *Goodenoughs*, Mr. *Borne*, Mr. *Wade*, and my self.

L. C. J. What was the Result of those Debates ?

Col. *Rumsey*. To see what Number of Men they could produce in the City for the Insurrection.

L. C. J. Was there a Rising designed ?

Col. *Rumsey*. Yes.

L. C. J. And did these People meet ?

Col. *Rumsey*. There was no time set.

Mr. Sol. Gen. When was the meeting ?

Col. *Rumsey*. There were several meetings in *March*, and *April*, and *May*.

Mr. Sol. Gen. After the meeting at *Sheppard's* ?

Col. *Rumsey*. Yes, a great while. It ceased, I think, six Weeks or three Months.

L. C. J. Who did you meet with at Mr. *Sheppard's* ?

Col. *Rumsey*. There was the Duke of *Monmouth*, my Lord *Grey*, my Lord *Russel*, Sir *Thomas Armstrong*, Mr. *Ferguson*, and Mr. *Sheppard*.

Mr. Sol. Gen. Who did you expect should head this Army ?

Col. *Rumsey*. That was never said any thing of.

Mr. At. Gen. Who were to manage the Rising ?

Col. *Rumsey*. We that met there.

Mr. At. Gen. Had you no expectation of great Men ?

Col. *Rumsey*. Mr. *West* told me, and Mr. *Goodenough*, that there was a Council, which were the Duke of *Monmouth*, my Lord *Essex*, my Lord *Howard*, Colonel *Sidney*, Mr. *Hambden*, and my Lord *Russel*, there were Six.

L. C. J. What did he tell you of them Six ?

Col. *Rumsey*. He told me they were managing a Business with *Scotland*.

L. C. J. A Business, pray speak plain, tell all you know.

Col. *Rumsey*. For the Insurrection.

L. C. J. Say so then, we know nothing of the Business you were about.

Col. *Rumsey*. My Lord, Mr. *West* had that Discourse with my Lord *Howard* I never had ; he is more fit to speak to that than me.

L. C. J. Speak your own Knowledge and no more.

Mr. Jones. After the death of my Lord *Shaftsbury*, who were the Managers, and were to carry it on ?

Col. *Rumsey*. I told you, Mr. *West* and Mr. *Goodenough* did tell me the Duke of *Monmouth*, my Lord *Essex*—

Mr. At. Gen. He told you so before. Do you know there was an Insurrection then intended ?

Col. *Rumsey*. Yes, because we met towards the management of it, the Company that met at Mr. *West's* Chamber, and other Places.

Mr. At. Gen. What Discourse had you with Mr. *Ferguson* about it ?

Col. *Rumsey*. Not about those Gentlemen.

Mr. North. The next Thing we shall shew, shall be that the *Scotchmen* came to Town.

Col. *Sidney*. My Lord, I must ever put you in Mind, whether it be ordinary to examine Men upon Indictments of Treason concerning me that I never saw, nor heard of in my Life.

L. C. J. I tell you, all this Evidence does not affect you, and I tell the Jury so.

Col. *Sidney*. But it preposses the Jury.

Mr. Keiling called and sworn.

Mr. At. Gen. I ask you in general, what you know of the Rising to have been last Spring ?

Mr. Keiling. My Lord, It was some time last Summer, Mr. *Goodenough* came to me, and brought me three Papers numbered on the back-side ; I asked him to what end he delivered them me ? He told me, One was for my self, and I was to deliver the other Two to whom I could trust in the two Divisions. I asked him, What was the Design ? He said, to raise Men ; says I, Do you design a general Insurrection ? He said, if he did not, if the King was taken off this would do well ; for then People would know how to have recourse to a formidable Body. And I have heard him say, that Colonel *Sidney*, whom I don't know, had a considerable Part in the Management of that Affair.

Mr. At. Gen. We charge him with Conspiring, and there must be Confederates in the Case. Now then we come to the Prisoner, We will call my Lord *Howard*, that was one of the Persons that did Consult.

The Lord Howard Sworn.

Mr. At. Gen. Pray acquaint my Lord and the Jury of your Knowledge, of what Transactions there have been with the Prisoner about this Affair of the general Rising.

Lord Howard. Truly my Lord, In the entering of the Evidence I am about to give, I cannot but observe, what a natural Uniformity there is in Truth. For the Gentlemen that have been before, have so exactly instanced, in every Particular, with what I have to say, that two Tallies could not more exactly fall into one another, though I confess I had not seen their Faces, till the Plot brake out, for some Months before.

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My Lord, and Gentlemen of the Jury, About the middle of *January* last, it was considered by some of us that met together, That it was very necessary and expedient to an Enterprize that had been long in Hand, and fallen flat then, that it should be revived by some Consult or Cabal that should be set up to give Life to it, and Governance to the Motions of it. The first (for ought I know) Movers of this, were the Duke of *Monmouth*, the Gentleman at the Bar, and my Self: And there we did agree, That we should bethink our selves of some few, we were willing it should not exceed *Five*, at the most *Seven*. This Agreement being at first between us *Three*; I remember the Duke of *Monmouth* undertook to ingage my Lord *Russel*, and my Lord *Salisbury*; and this Gentleman Colonel *Sidney* for my Lord of *Essex*, and Mr. *Hambden*; and these being put together, did presently constitute a little Cabal, of as great a Number as was intended. This being settled among them, it was within a few Days after, I can't certainly tell when, but between the middle and latter end of *January*, that I was told, That the Persons had agreed to enter into this Conjunction of Councils; and in order to that, they had appointed a Meering at Mr. *Hambden's* House, to which I was invited. This in time was between the middle and latter end of *January*, but I can't tell exactly. When we came there, there were all those Gentlemen I before-named, the Duke of *Monmouth*, my Lord *Essex*, my Lord *Russel*, Colonel *Sidney*, Mr. *Hambden*, and my Self. It was at Mr. *Hambden's* House, which ranges on the same Row with *Southampton* House: And being met, Mr. *Hambden*, I suppose, did think it most properly belonged to him to take upon him the Part as it were to open the Sessions, that was, to give us a little Account of the Reason, End, and Intention of that Meeting: In which Discourse, he took Occasion to recapitulate some Design, that had been before chiefly carried on by my Lord *Shaftsbury*, before this time Dead; and also took Notice of the ready Disposition and Inclination of the Minds of Men to go on with it; and did give one Instance of his Judgment of it, That it being a Design communicated to so many, it had not been so much as Revealed, or a Murmur or Whisper gone about it: From whence he took occasion to tell us, That it was absolutely necessary for the future, there should be some Council, that should be as a Spring, a little to guide and govern the Motions of the rest, for that there were divers Things to be taken care of, which if not taken care of by particular Persons, would all miscarry. This was the Substance of the Prologue and Introduction he made. From hence he made a Transition to some particular Things, that he thought were most principally to be taken Care of. And though it is impossible for me to remember the Order and Method in which we discoursed, or who said this or that, but that which the Sense of all resulted to was this: That since we did not come prepared for it, we should consider what were the Things that would hereafter challenge our particular Care, that was, The time when, the Places where, and the Persons by whom these Things should be carried on. This led into some particular Discourse, concerning some of these Heads: For the Time; that it should be shortly, lest the Minds of Men should chill; and

then as to the Place where, whether in City or Countrey, or both jointly. In all these, some Opinions were given, but not settled to any Resolution, but they were committed to our Thoughts to be digested afterwards. But these being the Things that every one was to take upon his Thoughts, there was this Prerequisite to the Undertaking, and that was to consider what *Magazines* were to be got; and that led to another Particular, which was, With what they should be gotten, and that was Money; and thereupon was propounded a considerable Sum to be raised: and as I remember, the Sum propounded by the Duke of *Monmouth* was *Twenty-Five Thousand Pounds*, or *Thirty Thousand Pounds*. And then it was considered, how it should be raised without drawing Observation or Jealousy. These are only the Heads that were then agreed on, hereafter to be better considered. But the present Resolution that was taken, was, That before any Procedure was made in any of these Things, or any Advance towards the Undertaking; the first Thing to be considered, was, How to make a Coalition of Councils between *Scotland*, and what we were doing here; and for that Purpose, we should bethink our selves of some fit Person to be sent thither, to Unite us into one Sense and Care. This is as much as occurs to my Memory upon that Meeting. About a Fortnight or three Weeks after, which I suppose carried it to the middle of *February* next, we had another Meeting, and that was at *Southampton* House at my Lord *Russel's*, and there were every one of the same Persons; and when we came there, there happen'd to fall in a Discourse which I know not how it came in, but it was a little warmly urged, and thought to be untimely, and unseasonable; and that I remember was by Mr. *Hambden*, who did tell us, That having now united our selves into such an Undertaking as this was, it could not but be expected, that it would be a Question put to many of us; To what End all this was? Where it was we intended to Terminate? Into what we intended to Resolve? That these were Questions he met with; and it was probable, every one had or would meet with from those Persons whose Assistance we expected; and that if there was any thing of a Personal Interest designed or intended, that there were but very few of those, whose Hearts were now with us, but would fall off: And therefore, since we were upon such an Undertaking, we should resolve our selves into such Principles, as should put the Properties and Liberties of the People into such Hands, as it should not be easily invaded by any that were trusted with the Supream Authority of the Land; and it was mentioned to Resolve all into the Authority of the Parliament. This was moved by him, and had a little harshness to some that were there; but yet upon the whole Matter we generally consented to it, That it was nothing but a Publick Good that we all intended. But then after that, we fell to that which we charged our selves with at the first Meeting, and that was concerning sending into *Scotland*, and of settling an Understanding with my Lord of *Argyle*: And in order to this, it was necessary to send a Messenger thither to some Persons, whom we thought were the most leading Men of the Interest in *Scotland*: This led us to the insisting on some particular Persons; the Gentlemen named, were my Lord

Melvin, Sir *John Cockram*, and the *Campbels*; I am sure it was some of the Alliance of my Lord of *Argyle*, and I think of the Name. As soon as this was propounded, it was offered by this Gentleman Colonel *Sidney*, that he would take the Care of the Person; and he had a Person in his Thoughts, that he thought a very fit Man to be intrusted; one or two, but one in special, and he named *Aaron Smith* to be the Man, who was known to some of us, to others not; I was one that did know him, and as many as knew him, thought him a proper Person. This is all that occurs to me that was at the second Meeting, and they are the only Consults that I was at.

Mr. At. Gen. What was he to do?

Lord *Howard*. There was no particular Deed for him, more than to carry a Letter. The Duke of *Monmouth* undertook to bring my Lord *Melvin* hither, because he had a particular Dependence upon him, and I think some Relation to his Lady: But to Sir *John Cockram* there was a Letter to be sent under the disguise of carrying on some Business of the Plantation in *Carolina*. This Letter I suppose was writ by my Lord *Russel* (tho' I know it not) for he was personally known to my Lord *Russel*, and I don't know that he was known to any of us. About three Weeks after this, then he was dispatched I suppose.

Mr. At. Gen. To what purpose were these Gentlemen to come up?

Lord *Howard*. These were to acquaint us how they found *Scotland* tempered, and what Opportunities or Advantages there were or might be of putting them into a Commotion, and how Men might be Raised, and how they would fall under *Argyle*, and also to keep Time and Place with us. After this, I was with Colonel *Sidney*, when he was going into *London*, and he did take out several Guineas, I can't tell how much it was, I suppose they might be about sixty, and put them into his Pocket (and set me down at my Lodging) which he said were to give *Aaron Smith*; whether he gave it or no, I don't know; and after that he was sent.

Mr. At. Gen. Who told you so?

Lord *Howard*. Col. *Sidney*, For I was inquiring of him; and he said, he had not heard of him in three Weeks, or but once, when he was about *New Castle*. After this, I had Occasions that called me into the Country, and there I was. Some time after that I went to the Bath: And this is all the Account I can give.

Mr. Sol. Gen. Do you know that *Aaron Smith* did go?

Lord *Howard*. I know nothing but by hear-say. Col. *Sidney* told me he was gone, and was upon the Road, and he heard from him about *New-Castle*.

L. C. J. Did you understand by the Discourse after he was gone, that he went in pursuance of that Debate?

Lord *Howard*. Yes, my Lord, That was the whole end of his going.

Mr. Just. *Wibbins*. I think you say, that Gentleman (speaking of Col. *Sidney*) undertook to send him?

Lord *Howard*. Yes, he did.

L. C. J. Will you ask him any Questions?

Col. *Sidney*. I have no Questions to ask him.

Mr. At. Gen. Silence——You know the Proverb. The next Step is to shew you, my Lord,

that these Persons came up immediately after *Aaron Smith* went down thither; and according to that which was said to be the shadow and pretence of their coming hither, they pretended they came about *Carolina* Business. Sir *Andrew Foster* and Mr. *Blathwaite*.

Sir *Andrew Foster* sworn.

Mr. At. Gen. Pray, Sir, give an account what Scotch Gentlemen came up lately.

Sir *Andrew Foster*. My Lord, About the end of the Spring, or beginning of Summer, as I remember, these Gentlemen, Sir *John Cockram*, and Commissary *Monro*, and the two *Campbels* Father and Son, came up hither. I did not see the Father at all, but I saw the Son the day of the Lord *Russel's* Tryal; but the other two, I think, I saw a little before the Discovery of the Plot.

Mr. At. Gen. What did they pretend they came about?

Sir *Andrew Foster*. They pretended they came to make a Purchase in *Carolina*, and I saw their Commission from the Persons said to be concern'd in that Design.

L. C. J. Who do you speak of?

Sir *Andrew Foster*. Sir *John Cockram* and Commissary *Monro*.

Mr. At. Gen. As soon as the Rumour came of the Plot, what became of those Gentlemen?

Sir *Andrew Foster*. Sir *John Cockram* absconded, but Commissary *Monro* never absconded, and the *Campbels* I heard were seized changing their Lodging from place to place.

Mr. *Atterbury* sworn.

Mr. At. Gen. Mr. *Atterbury*, Will you give my Lord and the Jury an account what you know of these Scotch-men, their absconding and lying hid.

Mr. *Atterbury*. My Lord, Upon the latter end of *June*, or the beginning of *July*; the beginning of *July* it was, I was sent for into *London* upon a Discovery of some Scotch Gentlemen that lay about *Black-Fryars*; and when I came down there, there was the Common Serjeant and some others, had been before me, and found them making an Escape into a Boat.

Mr. At. Gen. Who were they?

Mr. *Atterbury*. Sir *Hugh Campbel*, and Sir *John Cockram*, and one that was committed to the Gate-house by the Council as soon as brought thither.

Mr. At. Gen. We shall end here, my Lord: How long had they been in Town?

Mr. *Atterbury*. They had been in Town some little time.

Mr. At. Gen. We have done with this piece of our Evidence. Now, to shew that while this Emissary was in *Scotland*, at the same time the Colonel (which will be another Overt Act of the Treason) was, writing a Treasonable Pamphlet. I will call you the Witnesses. It is all of his own Writings. Sir *Philip Lloyd*.

Mr. At. Gen. Sir *Philip Lloyd*, Pray will you look upon those Papers, and give my Lord and the Jury an account where you found them.

Sir *Philip Lloyd*. I had a Warrant, my Lord, from the Secretary by the King and Council, to seize Mr. *Algernone Sidney's* Papers, and pursuant to it, I did go to his House, and such as I found there I put up. I found a great many upon

upon the Table, amongst which were these, I suppose it is where he usually writes, I put them in a Pillowbear I borrowed in the House, and that in a Trunk; I desired Col. Sidney would put his Seal upon them, that there should be no Mistake; he refused, so I took my Seal, and sealed up the Trunk, and it was carried before me to Mr. Secretary *Jenkins's* Office. When the Committee sat, I was commanded to undo the Trunk, and I did so, and found my own Seal upon it. And I took the Papers out of the Bag I put them into before.

L. C. J. Was Col. Sidney present when you seized these Papers?

Sir Phil. Lloyd. Yes.

Mr. At. Gen. Are these some of those Papers?

Sir Phil. Lloyd. Yes, I verily believe it.

Mr. At. Gen. In the next place, I think we have some Papers of his particular Affairs which will prove his Hand. Call Mr. Sheppard, Mr. Cooke and Mr. Cary.

Mr. North. Sir Philip Lloyd, When were they seized?

Sir Phil. Lloyd. Towards the latter end of June, my Lord.

Fury-man. Which June?

Sir Phil. Lloyd. Last June.

Mr. Sheppard sworn.

Mr. At. Gen. Pray will you look upon those Writings. (*Shewing the Libel.*) Are you acquainted with Col. Sidney's Hand?

Mr. Sheppard. Yes, my Lord.

Mr. At. Gen. Is that his Hand-writing?

Mr. Sheppard. Yes, Sir, I believe so. I believe all these Sheets to be his Hand.

Mr. At. Gen. How come you to be acquainted with his Hand?

Mr. Sheppard. I have seen him write the Indorsement upon several Bills of Exchange.

Mr. Cary sworn.

Col. Sidney. My Lord, I desire you would please to consider this, That Similitude of Hands can be no Evidence.

L. C. J. Reserve yourself till anon, and make all the advantageous Remarks you can.

Mr. At. Gen. Have you had any dealing with him?

Mr. Cary. I never saw him write, to my knowledge, more than once in my life, but I have seen his Indorsement upon Bills, and 'tis very like that.

L. C. J. Do you believe it is his Hand, as far as you can guess?

Mr. Cary. My Lord, It is like what came to me for his Hand-writing.

L. C. J. And you believe it to be his Hand?

Mr. Cary. Yes.

Mr. Cooke sworn, and the Papers shewn him.

L. C. J. What say you, Mr. Cooke?

Mr. Cooke. My Lord, I did never see Col. Sidney write, but I have seen several Notes that have come to me with Indorsement of his Name, and we have paid them, and 'tis like to this.

L. C. J. And you were never called to account for Mispayment?

Mr. Cooke. No, my Lord.

Mr. At. Gen. I pray it may be read. We will read as much as is necessary to prove the Indictment.

Col. Sidney. I pray it may be all read.

L. C. J. Mr. Attorney must have what part he desires read, and you shall have what part you will have read afterwards.

Col. Sidney. I desire it may all be read.

Mr. At. Gen. Begin there. Secondly, There was no Absurdity in this, because it was their own Case.

Clerk reads.

Secondly, There was no Absurdity in this, tho' it was their own Case; but to the contrary, because it was their own Case; that is, concerning Themselves only, and they had no Superior. They only were the competent Judges, they decided their Controversies, as every Man in his own Family doth, such as arise between Him and his Children, and his Servants. This Power hath no other Restriction, than what is put upon it by the municipal Law of the Country, where any Man, and that hath no other Force, than as he is understood to have consented unto it. Thus in England every Man (in a degree) hath a Right of chastising them; and in many places (even by the Law of God) the Master hath a Power of Life and Death over his Servant: It were a most absurd Folly, to say, that a Man might not put away, or in some places kill an Adulterous Wife, a Disobedient Son, or an Unlawful Servant, because he is Party and Judge, for the Case doth admit of no other, unless he hath abridged his own Right by entering into a Society where other Rules are agreed upon, and a superior Judge constituted, there being none such between King and People: That People must needs be the Judge of things happening between Them and Him whom they did not constitute, that they might be Great, Glorious, and Rich; but that they might judge them, and fight their Battles; or otherwise do good unto them as they should direct. In this Sense, he that is *singulis Major*, and ought to be obliged by every Man, in his just and lawful Commands, tending to the Publick Good: And must be suffered to do nothing against it, nor in any respect more than the Law doth allow.

For this Reason *Bracton* saith, that the King hath Three Superiors, to wit, *Deum, Legem, & Parliament*; that is, the Power, Originally in the People of England, is delegated unto the Parliament. He is subject unto the Law of God as he is a Man, to the People that makes him a King, in as much as he is a King: The Law sets a measure unto that Subjection, and the Parliament judges of the particular Cases thereupon arising: He must be content to submit his Interest unto theirs, since he is no more than any one of them, in any other respect, than that He is, by the Consent of all, raised above any other.

If he doth not like this Condition, he may renounce the Crown; but if he receive it upon that Condition, (as all Magistrates do the Power they receive) and swear to perform it, He must expect that the Performance will be exacted, or Revenge taken by those that he hath betrayed.

If this be not so, I desire to know of our Author, how one or more Men can come to be guilty of Treason against the KING, As *Lex facit*

facit ut sit Rex. No Man can owe more unto him than unto any other; or he unto every other Man by any Rule but the Law; and if he must not be Judge in his own Case, neither he nor any other by Power received from him, would ever try any Man for an Offence against him, or the Law.

If the King, or such as he appoints, cannot judge him, he cannot be judged by the ways ordinarily known amongst us. If he, or other by Authority from him, may judge, he is Judge in his own Case, and we fall under that which he accounts the utmost of all Absurdities: If a Remedy be found for this, he must say that the King in his own Case may judge the People, but the People must not judge the King, because it is theirs; that is to say, the Servant entertained by the Master may judge him, but the Master must not judge the Servant, whom he took only for his own Use. The Magistrate is bound by no Oath or Contract to the People that created him, but the People is bound to its own Creature, the Magistrate.

This seems to be the ground of all our Author's Follies; he cannot comprehend that Magistrates are for or by the People, but makes this Conclusion, as if Nations were created by or for the Glory or Pleasure of Magistrates, and affect such a piece of Nonsense; it ought not to be thought strange, if he represent, as an absurd thing that the Headless Multitude may shake off the Yoke when they please. But I would know how the Multitude comes under the Yoke, it is a Badge of Slavery. He says, that the Power of Kings is for the Preservation of Liberty and Property. We may therefore change or take away Kings without breaking any Yoke, or that made a Yoke which ought not to be one; the Injury is therefore in Making or Imposing, and there can be none in breaking it.

That if there be not an Injury, there may perhaps be an Inconvenience; if the headless Multitude may shake off the Yoke, I know not why the Multitude should be concluded to be headless; it is not always so. *Moses* was Head of the Multitude that went out of *Egypt*, *Othniel* led them against the King of *Mesopotamia*, under the Conduct of *Phebidas*; they obtain'd a Victory against the *Moabites*, they had the like Success under *Shamger*, *Barac*, *Gideon*, *Jephtha*, *Samuel*, *Sampson*, and others against the *Canaanites*, *Midianites*, *Philistines* and others; the Multitude that opposed *Saul* and *Ishbosheth* had *David* for its Head; and the Ten Tribes that rejected *Reoboam* chose unto themselves *Reoboam*; the *Athenians* rising against the Thirty Tyrants had *Thrasylbulus*; those that drave — from *Thebes* were conducted by *Pelopidas*: When the *Romans* drave out the *Tarquins*, they chose *Brutus* and *Publicola*, and they destroyed the *Decemviri* under *Horatius* and *Valerius*. All the Multitudes that afterwards revolted from them under *Mauritius*, *Telerius*, *Spartan* and others, were not headless; and we know of none that were, but all either found Heads, or made them. The *Germans* set up *Arminius*; the *Britains*, and others in later Times, the *Cartinians*, that rose against *Peter the Cruel*, had the Lord *Detrahta Mara*.

The *French*, when they grew weary of the corrupted Races of *Pharamond* and *Pepin*, and the same *Pepin* and *Hugh Capet*: The *Scots*, when they slew *James III.*, had his Son to be their

Head; and when they deposed and imprisoned Queen *Mary*, the Earl of *Murray* and others supplied the want of Age that was in her Son: And in all the Revolutions we have had in *England*, the People have been headed by the Parliament, or the Nobility and Gentry that composed it; and when the Kings failed of their Duties; by their own Authority called it. The Multitude therefore is not ever headless, but doth either find or create Heads unto it self, as occasion doth require; and whether it be one Man, or a few or more, for a short or a longer time, we see nothing more regular than its Motions. But they may, saith our Author, shake off the Yoke; and why may they not, if it prove uneasy or hurtful unto them? Why should not the *Israelites* shake off the Yoke of *Pharaoh*, *Jabin*, *Sisera*, and others that oppressed them?

When Pride had changed *Nebuchadnezzar* into a Beast, what should persuade the *Assyrians* not to drive him out amongst Beasts, until God had restored unto him the Heart of a Man? When *Tarquin* had turned the Regal Monarchy of *Rome* into a most abominable Tyranny, why should they not abolish it? And when the Protestants of the *Low Countries* were so grievously oppressed by the Power of *Spain*, under the proud, cruel and savage Conduct of the Duke of *Alva*, why should they not make use of all the means that God had put into their Hands for their Deliverance? Let any Man who sees the present State of the Provinces that then united themselves, judge whether it is better for them to be as they are, or in the Condition unto which his Fury would have reduced them, unless they had, to please him, renounced God and their Religion: Our Author may say, they ought to have suffered: The King of *Spain* by their Resistance lost those Countries; and that they ought not to have been Judges in their own Case. To which I answer, That by resisting they laid the Foundation of many Churches, that have produced multitudes of Men, eminent in Gifts and Graces; and established a most glorious and happy Commonwealth, that hath been since its first beginning, the strongest Pillar of the Protestant Cause now in the World, and a Place or Refuge unto those who in all Parts of *Europe* have been oppressed for the Name of Christ: Whereas they had slavishly, and, I think I may say, wickedly as well as foolishly, suffered themselves to be butchered, if they had left those empty Provinces under the Power of Antichrist, where the Name of God is no otherwise known than to be blasphemed.

If the King of *Spain* desired to keep his Subjects, he should have governed them with more Justice and Mercy; when, contrary unto all Laws both Human and Divine, he seeks to destroy those he ought to have preserved, he can blame none but himself, if they deliver themselves from his Tyranny: And when the Matter is brought to that, That he must not reign, or they over whom he would reign, must perish; the Matter is easily decided, as if the question had been asked in the Time of *Nero* or *Domitian*, Whether they should be left at liberty to destroy the best part of the World, as they endeavoured to do, or it should be rescued by their Destruction? And as for the People's being Judges in their own Case, it is plain, they ought

ought to be the only Judges, because it is their own, and only concerns themselves.

Mr. At. Gen. The latter end, the last Sheet of all, §. 35.

L. C. J. The Argument runs through the Book, fixing the Power in the People.

Cl. of Cr. The general Revolt of a Nation from its own Magistrates, can never be called Rebellion.

Mr. At. Gen. §. 37.

Cl. of Cr. The Power of calling and dissolving Parliaments is not in the King.

Mr. At. Gen. So much we shall make use of; if the Colonel please to have any other part read to explain it, he may.

Then the Sheets were shewn to Col. Sidney.

Col. Sidney. I do not know what to make of it, I can read it.

L. C. J. Ay, no doubt of it, better than any Man here. Fix on any part you have a mind to have read.

Col. Sidney. I do not know what to say to it, to read it in pieces thus.

L. C. J. I perceive you have disposed them under certain Heads: To what Heads will you have read?

Col. Sidney. My Lord, Let him give an account of it that did it.

Mr. At. Gen. My Lord, We will not delay Col. Sidney from entering on his Defence, only we have this piece of Evidence to give further. One of his Complices was my Lord *Ruffel*, we will give in Evidence his Conviction. We will only ask my Lord *Howard*, Was your Lordship sworn as a Witness at the Tryal of my Lord *Ruffel*?

Lord *Howard*. Yes.

Mr. At. Gen. Whether or no, when you met, were there in those Debates any Reflections upon the King, that he had broken his Duty?

Lord *Howard*. Not that I remember.

Mr. At. Gen. Why would you rise?

Lord *Howard*. If you mean upon the Misgovernment, not personally upon the King?

Mr. At. Gen. Ay.

Lord *Howard*. Yes, and principally and chiefly that, which we thought was the general Disgust of the Nation, the imposing upon the City at that time.

Mr. *Just. Withins*. That was complained of at that time?

Lord *Howard*. Yes, my Lord, We took it all along to be the chief Grievance.

L. C. J. Have you any more Witnesses?

Mr. At. Gen. Only the Record.

Mr. Sol. Gen. I know there is no time mispent to make things clear. If the Jury have a mind to have the Words read again —

L. C. J. If they have a mind, let it.

Then Mr. Trinder was sworn, and testified it to be a true Copy of the Record, and said he examined it at Fishmongers-hall with Mr. Tanner.

Then the Record of the Conviction of the Lord Ruffel was read.

L. C. J. What will you go to next, Mr. Attorney.

Mr. Sol. Gen. We have done, unless the Jury desire to have the Words of the Libel read again. *[But they did not.]*

Col. Sidney. My Lord, I desire to know upon what Statute I am indicted.

Mr. At. Gen. My Lord, I will give as plain an Answer, You are Indicted upon the old Statute of 25 *Edw.* 3.

Col. Sidney. Then I desire to know upon what Branch of that Statute?

Mr. At. Gen. Why, I will acquaint you, 'Tis upon the first Branch of that Statute, for Conspiring and Compassing the Death of the King.

Col. Sidney. Then I conceive, what does not come within that, does not touch me.

Mr. At. Gen. Make what Inferences you please, Colonel, we will answer you.

Col. Sidney. I desire to know what the Witnesses have sworn against me upon that point?

Mr. At. Gen. Go on, You have heard the Witnesses as well as we.

L. C. J. He says, You are indicted upon the Statute of 25 *Edw.* 3. which Statute makes it High Treason to Conspire the Death of the King, and the Overt Act is sufficiently set forth in the Indictment; now the Question is, whether 'tis proved?

Col. Sidney. They have proved a Paper found in my Study of *Caligula* and *Nero*, that is Compassing the Death of the King, is it?

L. C. J. That I shall tell the Jury. The Point in Law you are to take from the Court, Gentlemen: Whether there be Fact sufficient, that is your Duty to consider.

Col. Sidney. I say, my Lord, that since I am indicted upon that Statute, I am not to take notice of any other. I am indicted for Conspiring the Death of the King, because such a Paper, is found in my House; Under favour, I think that can be nothing at all to me. For tho' Sir *Philip Lloyd* did ask me, whether I would put my Seal to it, he did not ask me till he had been in my Closet, and I knew not what he had put in, and so I told him I would not do it. Then come these Gentlemen upon Similitude of Hands. My Lord, We know what Similitude of Hands is in this Age. One told me within these two days, that one came to him, and offered to counterfeit any Hand he should shew him in half an hour. So then, my Lord, I have nothing to say to these Papers. Then for Point of Witness, I cannot be indicted, much less tryed or condemned on 25 *Edw.* 3. for by that Act there must be two Witnesses to that very Branch unto which the Treason does relate, which must be distinguished. For the Levying of War, and Conspiring the Death of the King, are two distinct things, distinct in Nature and Reason, and so distinguished in the Statute. And therefore the Conspiring the Death of the King is Treason, and the other not. 1 *Edw.* 6. 12. 5 *Edw.* 6. 11. does expressly say, there must be two Witnesses to either of these Acts. Now here is my Lord *Howard*, (I have enough to say of him by and by) 'Tis he only who speaks of six Men, whom he calls a select Council, and yet selected by no Man in the World. I desire to know who selected my Lord *Howard*? Who selected me? If they were selected by no body, 'tis a Bull to say they were a select Council. If they were not selected, but erected themselves into a Cabal, then they have

have either Confidence in one another, or find they are near equally able to assist in the Design. Here is nothing of all this, — These six Men were Strangers to one another. For my own Part, I never spake with the Duke of *Monmouth* above three times in my life, and one time was when my Lord *Howard* brought him to my House and cozened us both. He told the Duke I invited him, and he told me the Duke invited himself, and neither of them was true. Now that such Men as these are, not hardly knowing one another, should presently fall into a great and intimate friendship, and trust and management of such a Business as this is, is a thing utterly improbable, unless they were mad. Now I do find in my Lord *Howard's* Deposition against my Lord *Russel*, that they were in Prosecution of my Lord *Shaftsbury's* Design; and yet he acknowledges the Duke of *Monmouth* said he was mad, and he himself said so too. Now that they should join with four more in the Prosecution of the Design of a mad Man, they must be mad too. Now whether my Lord *Howard* would have you think he was mad, because a mad Man cannot be guilty of Treason, I cannot tell. My Lord *Howard* in his last Deposition at my Lord *Russel's* Tryal, fixes the two Meetings, one about the middle of *January*, the other ten Days after: Now he fixes one to be the latter end of *January*, the other the middle of *February*. Then he makes it to be the Prosecution of my Lord *Shaftsbury's* Design. I do not find that any one there had any thing to do with my Lord *Shaftsbury*, for my Part I had not. I had not seen his Face in two Years. Then, my Lord, that I go upon is, whatever my Lord *Howard* is, he is but one Witness. The Law of God, and the Law of Man, understood and taken by all Men, does require two Witnesses; *Moses* says so, so the Apostles the same after him, and Christ says the same, That every Matter is to be established by two Witnesses. There ought to be two Witnesses to the same Thing. Now for one to come and tell a Tale of a Tub, of an imaginary Council, and another of a Libel, a Paper written no body knows when, is such a Thing, you can never go over it. But if the Law of God be, that there must be two Witnesses to the same Fact, there is an end of this Matter. And under the Judicial Law, the Penalty would be in this Case, to put a Man to death. Now here there are but two Things, which if allowed of, no body will be safe for Perjury. The one is to suffer Men to give their Testimony, one to one thing, and another to another, that the Fraud cannot be discovered; and the other is to take away the Punishment. Now the Punishment is taken away in some measure: And do but take away the other Point, whereby the Fraud cannot be discovered; and then there is no Defence can be made. That both Witnesses should be to the same Point; see the Story of *Susanna*. Two Elders testified they saw her in the Act of Adultery: They were carrying of her to death; both of them said the same thing; until they were taken asunder and examined, the Fraud was not discovered; and then one said, she was under a Tree of the right hand, and the other, under the Tree on the left; and she escaped, and they were punished. But now if you apply it to several Facts, my Lord *Howard* may

say what he pleases, and if another shall come with a supplemental Proof, no Justice can be had. But, my Lord, I desire this, If there be two Witnesses to prove the Conspiracy, and in that there were those Matters done that are Treason, I must answer to it; but if there be not, I presume, I need say nothing to it. If you do not allow it me, I desire Counsel to argue it.

L. C. J. That is a Point of Fact; Whether there be two Witnesses? I tell you before-hand, one Witness is not sufficient.

Col. Sidney. Why then there is my Lord *Howard*, and never another.

L. C. J. Nay, do not make those Inferences; I will tell the Jury, if there be not two Witnesses as the Law requires in this Case, they ought to acquit you.

Col. Sidney. You confound me, I cannot stir. You talk of a Conspiracy; What is a Conspiracy to kill the King? Is there any more Witnesses than one for Levying of War?

L. C. J. Pray do not deceive your self; You must not think the Court and you intend to enter into a Dialogue. Answer to the Fact; if there be not sufficient Fact, the Jury will acquit you. Make what Answer you can to it.

Col. Sidney. Then I say, There being but one Witness, I am not to answer to it at all.

L. C. J. If you rely upon that, we will direct the Jury presently.

Col. Sidney. Then for Levying War, what does any one say? My Lord *Howard*, let him if he please, reconcile what he hath said now, with what he said at my Lord *Russel's* Tryal. There he said, he said all he could; and now he has got I do not know how many Things that were never spoken of there. I appeal to the Court, whether he did then speak one Word of that, that he now says of Mr. *Hambden*. He sets forth his Evidence very Rhetorically, but it does not become a Witness, for he is only to tell what is done and said, but he does not tell what was done and said. He says, they took upon them to consider, but does not say what one Man said, or what one Man resolved, much less what I did. My Lord, If these Things are not to be distinguished, but shall be jumbled all up together, I confess I do not know what to say.

L. C. J. Take what liberty you please. If you will make no Defence, then we will direct the Jury presently. We will direct them in the Law, and recollect Matter of Fact as well as we can.

Col. Sidney. Why then my Lord, I desire the Law may be reserved to me, I desire I may have Counsel to that Point of there being but one Witness.

L. C. J. That is a Point of Fact. If you can give any Testimony to disparage the Witness, do it.

Col. Sidney. I have a great deal to that.

L. C. J. Go on to it then.

Col. Sidney. Then, my Lord, was there a War levied? Or was it prevented? Why then, if it be prevented, 'tis not levied; if it be not levied, 'tis not within the Statute; so this is nothing to me.

L. C. J. The Court will have Patience to hear you; but at the same time I think it is my Duty to advertise you, That this is but mispending

ing of your Time. If you can answer the Fact, or if you have any Mind to put any Disparagement upon the Witnesses, that they are not Persons to be believed, do it, but do not ask us Questions this way or t'other.

Col. Sidney. I have this to say concerning my Lord Howard: He hath accused himself of divers Treasons, and I do not hear that he has his Pardon of any: He is under the Terror of those Treasons, and the Punishment for them: He hath shewn himself to be under that Terror: He hath said, That he could not get his Pardon, until he had done some other Jobbs, till he was past this Drudgery of Swearing: That is, my Lord, that he having incurred the Penalty of High-Treason, he would get his own Indemnity by destroying others. This by the Law of God and Man; I think, destroys a Man's Testimony. Besides, my Lord, he is my Debtor, he owes me a considerable Sum of Money I lent him in time of his great Necessity; he made some Covenants with me for the Payment of that Money, which he hath broken; and when his Mortgage was forfeited, and I should take the Advantage the Law gives me, he finds out a way to have me laid up in the Tower: He is a very subtle Man: At my Lord Russell's Tryal, he carried his Knife, he said, between the Paring and the Apple; and so this is a Point of great nicety and cunning, at one time to get his own Pardon, and at the same time to save his Money. Another thing, my Lord, is, when I was Prisoner, he comes to my House, and speaks with my Servant, and says, how sorry he was that I should be brought in Danger upon this Account of the Plot, and there he did in the Presence of God, with Hands and Eyes lifted up to Heaven, swear he did not believe any Plot, and that it was but a Sham; and that he was confident if I had known any thing, I would have told it him. He hath said somewhat of this before, I have several Witnesses to prove both. He was desirous to go further, and he would not only pay my Debt by his Testimony against me, but he would have got my Plate and other Goods in my Hands into his Hands, and he desired my Men, as a Place of Trust, to put them into his Hands. And the next News was, that there was a Warrant against my Lord Russell and me. But then, my Lord, he made other Affirmations in the same Presence of God, that I was innocent in his Opinion, and he was confident of it; for if he had known any thing of it, he would have told it. Now I know, in my Lord Russell's Case, there was Dr. Burnet said something like it. And when he came to answer it, he said he was to face it out, and make the best of it he could. Now he did face it out bravely against God, but he was very timorous of Man. So that my Lord, he does say at the same time, at my Lord Russell's Tryal, upon his Oath, That he did believe that the Religious Obligation of an Oath, did not consist in the formality of applying it to the Place, &c. but in calling God to witness. So that when he did call God to witness before Doctor Burnet and my Servant, and others, and this is not consistent with the Oath he has taken here, as the Gentleman said at my Lord Russell's Tryal, unless he has one Soul in Court, and had another at my House, these Things are inconsistent, and cannot be true; and if he swear both under the Religion of an Oath, he swears himself perjur-

red. Then my Lord, he talks of Aaron Smith, What have I to do with Aaron Smith? He says, I sent him; my Lord, there is no body else speaks a Word of it. Then by a strange kind of Construction and Imagination, they will have it, that some Papers here, which are said to be found in my Study, have relation to this Plot, as they call it; I know of none, nor am in none. Now, my Lord, I am not to give an account of these Papers, I do not think they are before you, for there is nothing but the similitude of Hands offered for Proof. There is the like Case of my Lady Carr some few Years ago: She was indicted of Perjury, and as Evidence against her, some Letters of hers were produced, that were contrary to what she swore in Chancery, and her Hand was proved; that is to say, it was like it: But my Lord Chief Justice Keeling directs the Jury, that though in Civil Causes it is a Proof, yet it is the smallest and least of Proofs; but in Criminal Cases it was none at all. So that my Lord Howard's Testimony is single; and what he talks of those two Businesses that he calls a Consult, and Aaron Smith, is destroyed by want of Proof. What could six Men do? Can my Lord Howard raise five Men by his Credit? By his Purse? Let him say as much for me, with all my Heart; for my Part I do not know where to raise five Men. That such Men as we are, that have no Followers, should undertake so vast a Design, is very unlikely: And this great Design that was carried on thus, it had neither Officers nor Soldiers, no Place, no Time, no Money for it. That which he said last time, which he forgot now, he talked of twenty five, or thirty thousand Pound, but no Man knew where it was to be had, but last time he said, it was spoken in jest. Now this is a pretty Cabal, that six Men should meet about a Business, and they neglect every one of the Points relating to the Thing they met about, make no step about the Business, and if any one did speak of it, it was but in jest. This is a very deep maintaining of the Plot. Then my Lord, as to these Papers, I do not think, I am to give any Account of them, I would say nothing to the disparagement of Sir Philip Lloyd, I never saw him till he came to my House, but yet I say he is the King's Officer, and when I am prosecuted at the King's Suit, I think he ought to be no Witness. The Government of France is violent and absolute, but yet a few Years ago, a Minister of State had his Papers taken from him, and abundance of them had dangerous Plots against the King in them; but because they were inventoried in his Officers presence, or those deputed by him, there was no use could be made of them, it was an irreparable Fault in the Process, and that saved him. The similitude of Hands is nothing: We know that Hands will be counterfeited, so that no Man shall know his own Hand. A Gentleman that is now dead, told me, that my Lord Arlington about five Years ago, desired him to write a Letter, and seal it as well as he could; he writ it with care, and sealed it with a Wafer and Wax upon it, and within a few Days, my Lord Arlington brought him five Letters, and he did not know which was his own. The Attorney shews these Papers to me, I do not know whether they are my own or no; but these very Papers, such as they are, do abhor as much as any one can, such a Design. Look upon them, you see they are all old Ink. These

Papers may be writ perhaps, these twenty Years, the Ink is so old. But my Lord, it is a polemical Discourse, it seems to be an Answer to *Filmar*, which is not calculated for any particular Government in the World: It goes only upon these general Principles, That according to the universal Law of God and Nature, there is but one Government in the World, and that is Intire and Absolute; and that the King can be bound by no Law, by no Oath, but he may make all Laws, and abolish them as he pleases: And this whether of Age or no, a Man, or a Child of Sense, or out of his Sense. Now, my Lord, what if any Man in his Cabinet should have written this Book? Then he has another Principle, he says, 'Tis the same thing whether a King come in by Election, by Donation, by Inheritance, or Usurpation, or any other way; than which, I think, never was a thing more desperately said. *Cromwell*, when one *White* a Priest wrote a Book, wherein he undertook to prove, *That Possession was the only Right to Power*, though he was a Tyrant, and a violent one, (you need not wonder I call him Tyrant, I did so every Day in his Life, and acted against him too) it would be so odious a Principle, he would not endure it, and he used him very slightly for it. Now this *Filmar*, that no Man must write against, is the Man that does assert it, That 'tis no matter how they come by their Power, and gives the same Power to the worst Usurpers, as they that most rightly come to the Crown. By the same Argument, if the errantest Rascal of *Israel* had killed *Moses*, *David*, &c. and seized upon the Power, he had been possessed of that Power, and been Father of the People. If this be Doctrine, my Lord, that is just and good, then I confess it may be dangerous for any thing to be found in a Man's House contrary to it; but if a Commoner of *England* write his present Thoughts, and another Man looking on his Book write his present Thoughts of it, what great hurt is there in it? And I ask Mr. Attorney how many Years ago that was written?

L. C. J. I don't know what the Book was in answer to. We are not to speak of any Book that Sir *Robert Filmar* wrote, but you are to make your Defence, touching a Book that was found in your Study, and spend not your time, and the Court's time, in that which serves to no other Purpose, than to gratify a luxuriant way of Talking that you have. We have nothing to do with his Book, you had as good tell me again, That there was a parcel of People rambling about, pretending to my Lord *Russell's* Ghost, and so we may answer all the Comedies in *England*. Answer to the Matter you are indicted for. Do you own that Paper?

Col. Sidney. No, my Lord.

L. C. J. Go on, then, it does not become us to be impatient to hear you, but we ought to advertise you, that you spend not your time to no Purpose, and do your self an Injury.

Col. Sidney. I say first, 'tis not proved upon me: And secondly, 'Tis not a Crime if it be proved —

L. C. J. You began very materially in one Thing; it is material for you to apply your self to take off the Credibility of my Lord *Howard* that is a Witness; call your Witnesses to that purpose, or if you have any other Point to take away the Credibility of any other Witness.

Col. Sidney. My Lord, I have seven or eight Points of Law.

L. C. J. I hear not one yet.

Col. Sidney. Why, my Lord, Conspiring to levy War is not Treason, and I desire to have Counsel upon that.

L. C. J. 'Tis not a Question. You had as good ask me, whether the first Chapter in *Littleton* be Law?

Col. Sidney. My Lord, I have neither made War, nor conspir'd to levy War.

L. C. J. You are still in a Mistake, you shall not think that we intend to dialogue with you, to let you know how far the Proof hath been given or not given, but when we come to direct the Jury, then we shall observe how far the Law requires there should be two Witnesses. But whether there be such a Proof, that must be left to the Jury.

Mr. Just. Wilmers. If you agree the Conspiracy, I will tell you my mind of it; I cannot give you my Opinion in Law, till the Fact be stated.

L. C. J. The Law always arises upon a Point of Fact; there can be no doubt in Point of Law, till there be a settlement in Point of Fact.

Mr. Just. Holloway. My Lord has put you in a right way: The Conspiracy is proved but by one Witness, if you have any thing to take off his Credibility, 'tis to the purpose.

Col. Sidney. Truly, my Lord, I do as little intend to mispend my own Spirit, and your Time, as ever any Man that came before you. Now, my Lord, if you will make a Concatenation of one thing, a Supposition upon Supposition, I would take all this asunder, and shew, if none of these Things are any thing in themselves, there can be nothing joined together.

L. C. J. Take your own Method, Mr. *Sidney*; but I say, if you are a Man of low Spirits and weak Body, 'tis a Duty incumbent upon the Court, to exhort you not to spend your time upon Things that are not material.

Col. Sidney. My Lord, I think 'tis very material, that a whimsical imagination of a Conspiracy, should not pass for a real Conspiracy of the Death of the King; besides, if these Papers were found in my House, 'tis a Crime created since my Imprisonment, and that cannot come in, for they were found since. My Lord, if these Papers are right, it mentions 200 and odd Sheets, and these show neither Beginning nor Ending; and will you my Lord, indict a Man for Treason for scraps of Paper found in his House, relating to an ancient Paper, intended as innocently as any thing in the World, and piece and patch this to my Lord *Howard's* Discourse, to make this a Contrivance to kill the King? Then my Lord, I think 'tis a Right of Mankind, and 'tis exercised by all studious Men, that they write in their own Closets what they please for their own Memory, and no Man can be answerable for it, unless they publish it.

L. C. J. Pray don't go away with that right of Mankind, that it is lawful for me to write what I will in my own Closet, unless I publish it; I have been told, Curse not the King, not in thy Thoughts, not in thy Bed-Chamber, the Birds of the Air will carry it. I took it to be the Duty of Mankind, to observe that.

Col. Sidney. I have lived under the Inquisition —

L. C. J. God be thanked we are governed by Law.

Col. Sid.

Col. Sidney. I have lived under the Inquisition, and there is no Man in Spain can be tried for Heresy——

Mr. *Just. Withins*. Draw no Presidents from the Inquisition, here, I beseech you, Sir.

L. C. J. We must not endure Men to talk, that by the right of Nature every Man may contrive Mischief in his own Chamber, and he is not to be punished, till he thinks fit to be called to it.

Col. Sidney. My Lord, if you will take Scripture by pieces, you will make all the Penmen of the Scripture blasphemous; you may accuse David of saying, There is no God; and accuse the Evangelists of saying, Christ was a Blasphemer and a Seducer; and the Apostles, That they were drunk.

L. C. J. Look you, Mr. Sidney, if there be any Part of it that explains the Sense of it, you shall have it read; indeed we are trifled with a little. 'Tis true, in Scripture 'tis said, there is no God, and you must not take that alone, but you must say, the Fool hath said in his Heart, there is no God. Now here is a thing imputed to you in the Libel; if you can say, there is any Part that is in excuse of it, call for it. As for the Purpose, whoever does publish, that the King may be put in Chains or deposed, is a Traytor; but whosoever says, that none but Traytors would put the King in Chains, or depose him, is an honest Man; therefore apply *ad idem*, but don't let us make Excursions.

Col. Sidney. If they will produce the whole, my Lord, then I can see whether one Part contradicts another.

L. C. J. Well, if you have any Witnesses call them.

Col. Sidney. The Earl of Anglesey.

L. C. J. Ay, in God's Name, stay till to Morrow in Things that are pertinent.

Col. Sidney. I desire to know of my Lord Anglesey, what my Lord Howard said to him concerning the Plot that was broken out.

Lord Anglesey. Concerning this Plot you are now questioned for?

Col. Sidney. The Plot for which my Lord Russell and I was in Prison.

Lord Anglesey. The Question I am asked, is, What my Lord Howard said before the Tryal of my Lord Russell, concerning the Plot; I suppose, this goes as a Branch of that he was accused for. I was then in the Countrey, when the Business was on foot, and used to come to Town a Day or two in the Week, living near in Hertfordshire, and I understanding the Affliction my Lord of Bedford was in, I went to give my Lord a Visit, we having been Acquaintance of above fifty Years standing, and bred together in Maudlin Colledge in Oxford. When I came to my Lord of Bedford, and had administered that Comfort that was fit for one Christian to give another in that Distress, I was ready to leave him, and my Lord Howard came in. It was upon the Friday before my Lord Howard was taken, he was taken (as I take it) upon Sunday or Monday, my Lord Howard fell into the same Christian Office that I had been just discharging, to compassionate my Lord's Affliction, to use Arguments to comfort and support him under it, and told him, he was not to be troubled, for he had a discreet, a wife, and a verruous Son, and he could not be in any such Plot (I think that was the Word he used at first, though he gave another name to it afterward) and his Lordship

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might therefore well expect a good Issue of that Business, and he might believe his Son secure, for he believed he was neither guilty, nor so much as to be suspected. My Lord proceeded further, and did say, that he knew of no such barbarous Design (I think he called it so in the second Place) and could not charge my Lord Russell with it, nor any body else. This was the effect of what my Lord Howard said at that Time, and I have nothing to say of my own Knowledge more than this; but to observe that I was present when the Jury did put my Lord Howard particularly to it; what have you to say to what my Lord Anglesey testifies against you? My Lord, I think, did in three several Places give a short Account of himself, and said it was very true, and gave them some further account why he said it, and said, he should be very glad it might have been advantageous to my Lord Russell.

Col. Sidney. My Lord of Clare, I desire to know of my Lord of Clare, what my Lord Howard said concerning this Plot and me.

Lord Clare. My Lord, A little after Colonel Sidney was taken, speaking of the Times, he said, That if ever he was question'd again, he would never plead, the quickest dispatch was the best, he was sure they would have his Life, though he was never so innocent, and discouraging of the late Primate of Armagh's Prophecy; for my Part, says he, I think the Persecution is begun, and I believe it will be very sharp, but I hope it will be short, and I said, I hoped so too.

Mr. At. Gen. What answer did your Lordship give to it?

Lord Clare. I have told you what I know, my Lord is too full of Discourse for me to answer all he says; but for Colonel Sidney, he did with great Asseverations assert, that he was as innocent as any Man breathing, and used great Encomiums in his Praise, and then he seemed to bemoan his Misfortune, which I thought real; for never was any Man more ingaged to another, than he was to Colonel Sidney, I believe. Then I told, they talked of Papers that were found, I am sure, says he, they can make nothing of any Papers of his.

Mr. At. Gen. When was this?

Lord Clare. This was at my House the beginning of July.

Mr. At. Gen. How long before my Lord Howard was taken?

Lord Clare. About a Week before.

Mr. At. Gen. I would ask you, my Lord, upon your Honour, would not any Man have said as much, that had been in the Plot?

Lord Clare. I can't tell, I know of no Plot.

Col. Sidney. Mr. Philip Howard.

Mr. Just. Withins. What do you ask him?

Col. Sidney. What you heard my Lord Howard say concerning this pretended Plot, or my being in it?

Mr. Phil. Howard. My Lord, when the Plot first brake out, I used to meet my Lord Howard very often at my Brother's House, and coming one Day from Whitehall, he asked me, what News? I told him, my Lord, says I, there are abundance of People that have confessed the horrid Design of murdering the King, and the Duke. How, says he, is such a thing possible? Says I, 'tis so, they have all confessed it. Says he, do you know any of their Names? Yes, says I, I have heard their Names. What are their

F f 2

Names?

Names? Says he, why; says I, Col. *Rumsey*, and Mr. *West*, and one *Walcot* and others, that are in the Proclamation (I can't tell whether *Walcot* was in Hold) says he, 'tis impossible such a thing can be; says he, there are in all Countries People that wish ill to the Government, and, says he, I believe there are some here; but, says he, for any Man of Honour, Interest or Estate to go about it, is wholly impossible. Says I, my Lord, so it is, and I believe it. Says I, my Lord, do you know any of these People? No, says he, none of them; only one day, says he, passing thro' the *Exchange*, a Man saluted me, with a Blemish upon his Eye, and he embraced me, and wished me all Happiness; says he, I could not call to mind who this Man was; but afterwards, I recollected my self that I met him at my Lord *Shaftsbury's*, and heard afterwards, and concluded his Name to be — his at whose House the King was to be assassinated —

Mr. At. Gen. *Rumbold*?

Mr. *Howard*. Ay, *Rumbold*. My Lord, May I ask if my Lord *Howard* be here?

L. C. J. He is there behind you.

Mr. *Howard*. Then he will hear me. My Lord, says I, what does your Lordship think of this Business? Says he, I am in a Maze; says I, if you will be ruled by me, you have a good opportunity to address to the King, and all the discontented Lords, as they are called; and to shew your Detestation and Abhorrence of this thing; for, says I, this will be a good means to reconcile all things. Says he, you have put one of the best Notions in my Head that ever was put. Says I, You are a very good Pen-man, draw up the first Address (and I believe I was the first that mentioned an Address, you have had many an one since, God send them good Success) Says he, I am sorry my Lord of *Essex* is out of Town, he should present it. But, says I, here is my Lord *Russel*, my Lord of *Bedford*, my Lord of *Clare*, all of you that are disaffected, and so accounted, go about this Business, and make the Nation happy, and King happy. Says he, Will you stay till I come back? Ay, says I, if you will come in any time; but he never came back while I was there. The next Day, I think, my Lord *Russel* was taken, and I came and found him at my Brother's House again (for there he was Day and Night) says he, Cousin, What News? Says I, my Lord *Russel* is sent to the Tower. We are all undone then, says he. Pray, says he, go to my Lord Privy-Seal, and see if you can find I am to be taken up; says he, I doubt 'tis a Sham-Plot, if it was a true Plot, I should fear nothing; says I, What do you put me to go to my Lord Privy Seal for? He is one of the King's Cabinet Council, do you think he will tell me? I won't go; but, says I, if you are not guilty, why would you have me go to inquire? Why, says he, because I fear 'tis not a true Plot, but a Plot made upon us, and therefore, says he, there is no Man free. My Lord, I can say no more as to that time, (and there is no Man that sits here, that wishes the King better than I do.) The next thing I come to, is this, I came the third Day, and he was mighty sad and melancholy, that was when Col. *Sidney* was taken; says I, Why are you melancholy, because Col. *Sidney* is taken? Says I, Col. *Sidney* was a Man talked of before, why were you not troubled for my

Lord *Russel*, that is of your Blood? Says he, I have that particular Obligation from Col. *Sidney*, that no one Man had from another. I have one thing to say farther, I pray I may be rightly understood in what I have said.

L. C. J. What, you would have us undertake for all the People that hear you? I think you have spoken very materially, and I will observe it by and by to the Jury.

Col. *Sidney*. Pray call Dr. *Burnet*.

Mr. *Just. Walcot*. What do you ask Dr. *Burnet*?

Col. *Sidney*. I have only to ask Dr. *Burnet*, whether after the News of this pretended Plot, my Lord *Howard* came to him? And what he said to him?

Dr. *Burnet*. My Lord, the Day after this Plot brake out, my Lord *Howard* came to see me, and upon some Discourse of the Plot, with Hands and Eyes lifted up to Heaven, he protested he knew nothing of any Plot, and believed nothing of it, and said, that he looked upon it as a ridiculous thing.

My Lord Paget was sent for at the Prisoner's Request, being in the Hall.

Col. *Sidney*. My Lord, I desire *Joseph Ducas* may be called, (who appeared, being a Frenchman.)

Col. *Sidney*. I desire to know, whether he was not in my House when my Lord *Howard* came thither; a little after I was made a Prisoner, and what he said upon it?

Ducas. Yes, my Lord, my Lord *Howard* came the day after the Colonel *Sidney* was taken, and he asked me, where was the Colonel *Sidney*? And I said, he was taken by an Order of the King; and he said, oh Lord! what is that for? I said, They have taken Papers; he said, Are some Papers left? Yes. Have they taken something more? No, well you must take all the things out of the House, and carry them to some you can trust: I dare trust no body, says he; I will lend my Coach and Coach man I said, if the Colonel *Sidney* will save his Goods; he save them, if not, 'tis no matter. A little after the Lord *Howard* came in the House of Col. *Sidney* about eleven a Clock at Night. When he was in, I told him, What is this? They talk of a Plot to kill the King and the Duke, and I told him, they spake of one general Insurrection; and I told him more, that I understood that Col. *Sidney* was sent into Scotland: When my Lord *Howard* understood that, he said, God knows, I know nothing of this, and I am sure if the Colonel *Sidney* was concerned in the matter, he would tell me something, but I know nothing. Well, my Lord, I told him, I believe you are not safe in this House, there is more Danger here than in another place. Says he, I have been a Prisoner, and I had rather do any thing in the World than be a Prisoner again.

Then my Lord Paget came into the Court.

Col. *Sidney*. Pray, my Lord, be pleased to tell the Court, if my Lord *Howard* has said any thing to you concerning this late pretended Plot, or my being any Party in it.

Lord *Paget*. My Lord, I was subpoena'd to come hither, and did not know upon what account, I am obliged to say, my Lord *Howard* was

was with me presently after the breaking out of this Plot, and before his appearing in that Part which he now acts, he came to me; and I told him, That I was glad to see him abroad, and that he was not concerned in this Disorder. He said, he had Joy from several concerning it, and he took it as an Injury to him, for that it looked as if he were Guilty. He said, he knew nothing of himself, nor any body else. And tho' he was free in Discourse, and free to go into any Company indifferently; yet he said, he had not seen any body that could say any thing of him, or give him occasion to say any thing of any body else.

Col. Sidney. Mr. Edward Howard.

Mr. Ed. Howard. Mr. Sidney, What have you to say to me?

Col. Sidney. My Lord, I desire you would ask Mr. Ed. Howard the same thing, what Discourse he had with my Lord Howard about this Plot?

L. C. J. Mr. Howard, Mr. Sidney desires you to tell what Discourse you had with my Lord Howard about this Plot.

Mr. Ed. Howard. My Lord, I have been for some time very intimate with my Lord, not only upon the account of our Alliance, but upon a strict Intimacy and Correspondence of Friendship, and I think I was as much his as he could expect from that Alliance. I did move him during this time, to serve the King upon the most honourable account I could, but that proved ineffectual: I pass that, and come to the Business here. As soon as the Plot brake out, my Lord having a great Intimacy with me, expressed a great Detestation and Surprizing in himself to hear of it, wherein my Lord Howard assured me under very great Asseverations, that he could neither accuse himself, nor no Man living. He told me moreover, That there were certain Persons of Quality, whom he was very much concerned for, that they should be so much reflected upon or troubled, and he condoled very much their Condition both before and after they were taken. My Lord, I believe in my Conscience, he did this without any Mental Reservation, or Equivocation, for he had no reason to do it with me. I add moreover, if I have any sense of my Lord's Disposition, I think if he had known any such thing, he would not have stood his being taken, or made his Application to the King in this manner, I am afraid not so suitable to his Quality.

L. C. J. No Reflections upon any body.

Mr. Howard. My Lord, I reflect upon no body, I understand where I am, and have a Respect for the Place; but since your Lordship has given me this occasion, I must needs say, That that Reproof that was accidentally given me at the Tryal of my Lord Russell, by reason of a weak Memory, made me omit some Particulars I will speak now, which are these, and I think they are material: My Lord, upon the Discourse of this Plot, did further assure me, that it was certainly a Sham, even to his Knowledge; how, my Lord, says I, do you mean a Sham? Why, says he, such an one, Cousin, as is too black for any Minister of publick Employment to have devised, but, says he, it was forged by People in the dark, such as Jesuits and Papists, and, says he, this is my Conscience; says I, my Lord, if you are sure of this thing, then pray, my Lord, do that ho-

nourable thing that becomes your Quality, that is, give the King satisfaction as becomes you: pray make an Address under your Hand to the King, whereby you express your Detestation and Abhorrence of this thing, says he, I thank you for your Counsel; to what Minister, says he, shall I apply my self? I pitched upon my Lord Hallifax, and I told him of my Lord's Desire, and I remember my Lord Howard named the Duke of Monmouth, my Lord of Bedford, the Earl of Clure, and he said he was sure they would do it; that he was sure of their Innocence, and would be glad of the Occasion: And I went to my Lord Hallifax, and told him that my Lord was willing to let it under his Hand, his Detestation of this Plot, and that there was no such thing to his Knowledge. My Lord Hallifax very worthily received me; says he, I will introduce it; but my Lord Russell being taken, this was laid aside, and my Lord gave this Reason. For, says he, there will be so many People taken, they will be hinder'd. I must needs add from my Conscience, and from my Heart before God and Man, that if my Lord had spoken before the King, sitting upon his Throne, abating for the Solemnity of the Presence I could not have more believed him, from that Assurance he had in me. And I am sure from what I have said, if I had the Honour to be of this Gentleman's Jury I would not believe him.

L. C. J. That must not be suffered.

Mr. At. Gen. You ought to be bound to your good Behaviour for that.

L. C. J. The Jury are bound by their Oaths to go according to their Evidence, they are not to go by Men's Conjectures.

Mr. Howard. May I go, my Lord?

Mr. At. Gen. My Lord Howard desires he may stay, we shall make use of him.

Col. Sidney. My Lord, I spake of a Mortgage that I had of my Lord Howard, I don't know whether it is needful to be proved; but it is so.

Lord Howard. I confess it.

Col. Sidney. Then, my Lord, here is the other Point, He is under the Fear, that he dare not but say what he thinks will conduce towards the gaining his Pardon; and that he hath expressed, that he could not have his Pardon, but he must first do this drudgery of Swearing. I need not say, that his Son should say, That he was sorry his Father could not get his Pardon unless he did swear against some others.

Col. Sidney. Call Mr. Blake. (Who appeared.) My Lord, I desire he may be asked, whether my Lord Howard did not tell him that he could not get his Pardon yet, and he could ascribe it to nothing, but that the drudgery of Swearing must be over first.

Then my Lord Chief Justice asked the Question.

Mr. Blake. My Lord, I am very sorry I should be called to give a publick Account of a private Conversation, how it comes about I don't know. My Lord sent for me about six Weeks ago, to come and see him. I went, and we talked of News, I told him I heard no body had their Pardon, but he that first discovered the Plot; he told me, no; but he had his Warrant for it. And, says he, I have their Word and Honour for it; but, says he, I will do nothing

thing in it till I have further Order, and, says he, I hear nothing of it, and I can ascribe it to no other Reason, but I must not have my Pardon till the drudgery of Swearing is over. These Words my Lord said, I believe my Lord won't deny it.

Then Col. Sidney called Mr. Hunt and Burroughs, but they did not appear.

Col. Sidney. 'Tis a hard Case they don't appear, One of them was to prove that my Lord Howard said he could not have his Pardon till he had done some other Jobs.

L. C. J. I can't help it, If you had come for Assistance from the Court, I would willingly have done what I could.

Then Col. Sidney mentioned the Duke of Buckingham, but he was informed he was not subpoena'd.

Col. Sidney. Call Grace Tracy and Elizabeth Penwick. (*Who appeared.*) I ask you only, what my Lord Howard said to you at my House concerning the Plot, and my being in it?

Tracy. Sir, He said, that he knew nothing of a Plot he protested, and he was sure Col. Sidney knew nothing of it. And he said, If you knew any thing of it, he must needs know of it, for he knew as much of your Concerns as any one in the World.

Col. Sidney. Did he take God to Witness upon it?

Tracy. Yes.

Col. Sidney. Did he desire my Plate at my House?

Tracy. I can't tell that, he said the Goods might be sent to his House.

Col. Sidney. Penwick, What did my Lord Howard say in your Hearing concerning the pretended Plot, or my Plate carrying away?

Penwick. When he came, he asked for your Honour; and they said your Honour was taken away by a Man to the Tower for the Plot, and then he took God to Witness he knew nothing of it, and believed your Honour did not neither. He said, he was in the Tower two Years ago, and your Honour, he believed, saved his Life.

Col. Sidney. Did he desire the Plate?

Penwick. Yes, and said it should be sent to his House to be secured. He said it was only Malice.

Mr. Wharton stood up.

Mr. Wharton. 'Tis only this I have to say, That if your Lordship pleases to shew me any of these Sheets of Paper, I will undertake to imitate them in a little time that you shan't know which is which. 'Tis the easiest Hand that ever I saw in my Life.

Mr. At. Gen. You did not write these, Mr. Wharton?

Mr. Wharton. No; but I will do this in a very little time, if you please.

L. C. J. Have you any more Witnesses?

Col. Sidney. No, my Lord.

L. C. J. Then apply your self to the Jury.

Col. Sidney. Then this is that I have to say. Here is a huge Complication of Crimes laid to my Charge: I did not know at first under what

Statute they were, now I find 'tis the Statute of 25 of *Edw. 3.* This Statute hath two Branches; one relating to War, the other to the Person of the King. That relating to the Person of the King, makes the Conspiring, Imagining, and Compassing his Death, criminal. That concerning War is not, unless it be Levied: Now, my Lord, I cannot imagine to which of these they refer my Crime, and I did desire your Lordship to explain it. For to say that a Man did meet to Conspire the King's Death, and he that gives you the account of the Business does not speak one Word of it, seems extravagant; for Conspiracies have ever their Denomination from that Point to which they tend; as a Conspiracy to make false Coin infers Instruments and the like. A Conspiracy to take away a Woman, to kill, or rob, are all directed to that end. So Conspiring to kill the King, must immediately aim at killing the King. The King hath two Capacities, Natural and Politick, that which is the Politick can't be within the Statute, in that Sense he never dies, and 'tis absurd to say it should be a Fault to kill the King that can't die: So then it must be the Natural Sense it must be understood in, which must be done by Sword, by Pistol, or any other way. Now if there be not one Word of this, then that is utterly at an end, tho' the Witness had been good. The next point is concerning Levying of War. Levying of War is made Treason there, so it be proved by Overt Act, but an Overt Act of that never was, or can be pretended here. If the War be not Levied, 'tis not within the Act; for Conspiring to Levy War is not in the Act. My Lord, There is no Man that thinks that I would kill the King that knows me, I am not a Man to have such a Design, perhaps I may say I have saved his Life once. So that it must be by Implication, that is, it is first imagined, that I intended to raise a War, and then 'tis imagined that War should tend to the Destruction of the King. Now I know that may follow, but that is not Natural or Necessary, and being not Natural or Necessary, it can't be so understood by the Law. That it is not is plain, for many Wars have been made, and the Death of the King has not followed. *David* made War upon *Saul*, yet no body will say he sought his Death, he had him under his Power and did not kill him, *David* made War upon *Ishbosheth*, yet did not design his Death; and so in *England* and *France* Kings have been taken Prisoners, but they did not kill them. King *Stephen* was taken Prisoner, but they did not kill him. So that 'tis two distinct things, to make War and to endeavour to kill the King. Now as there is no manner of pretence that I should endeavour to kill the King directly, so it can't be by Inference, because 'tis Treason under another species. I confess I am not fit to argue these Points, I think I ought to have Counsel, but if you won't allow it me, I can't help it; but these things are impossible to be jumbled up together. Now I say this, If I am not under the first Branch, if not directly, I can't be by Implication; tho' I did make War, I can't be said to Conspire the Death of the King, because 'tis a distinct species of Treason, and my Lord *Coke* says, 'Tis the Overthrow of all Justice to confound *Membra dividenda*; now if the making of War can't be understood to be a Conspiring the

the Death of the King, then I am not guilty of this Indictment, but here, my Lord, is neither Conspiring the Death of the King, nor making War, nor Conspiring to make War. Besides, I say, 'tis not the best Man's Evidence here would be good in this Case, because the Law requires two. The next thing is the Business of *Aaron Smith*, which my Lord tells so imperfectly, and so merely conjectural, that there is nothing in it, but his *Rhetorick* in setting it out. He tells you of a Letter sent with him, but he does not tell you by whom writ, what was in it, or whether it was delivered or no: So that I think we may lay that aside as the other, as things nothing in them at all. Then says Mr. Attorney, These *Scotch* Gentlemen are come to Town, I profess I never heard the Names of one of them till he named them to me in the Tower. I have not sent my self, nor writ a Letter into *Scotland* never since the Year 59, nor do I know one Man in *Scotland* to whom I can write, or from whom I ever received one. I returned into *England* in the Year 77, and since that time have not writ nor received a Letter from *Scotland*. Then some Gentlemen came hither, What is that to me? I never saw one of the *Campbells* in my Life, nor *Monro*; if any one can prove I have had Communication with them, I will be glad to suffer. Then here are Papers; If any thing is to be made of them you must produce the whole, for 'tis impossible to make any thing of a part of them. You ask me, What other Passage I would have read, I don't know a Passage in them, I can't tell whether it be good or bad. But if there are any Papers found ('tis a great doubt whether they were found in my Study or no, or whether they be not counterfeit; but tho' that be admitted that they were found in my House) the Hand is such, that it shews they have been writ very many Years. Then that which seems to be an account of the Sections and Chapters, that is but a scrap, and what if any body had, my Lord, either in my own Hand or another's, found Papers that are not well justifiable, Is this Treason? Does this imagine the Death of the King? Does this reach the Life of the King? If any Man can say I ever printed a Sheet in my Life, I will submit to any Punishment. Many others, my Lord, they write, and they write what comes into their Heads. I believe there is a Brother of mine here has forty Quires of Paper written by my Father, and never one Sheet of them was published, but he writ his own Mind to see what he could think of it another time, and blot it out again, may be. And I my self, I believe, have burned more Papers of my own writing than a Horse can carry. So that for these Papers I can't answer for them. There is nothing in it, and what Concatenation can this have with the other Design that is in it self nothing, with my Lord's Select Council selected by no body to pursue the Design of my Lord *Shaftsbury*? And this Council that he pretends to be set up for so great a Business, was to be adjusted with so much Fineness so as to bring things together, What was this Fineness to do? (taking it for granted, which I don't) This was nothing (if he was a credible Witness) but a few Men talking at large of what might be or not be, what was like to fall out without any

manner of Intention or doing any thing. They did not so much as inquire. Whether there were Men in the Country, Arms, or Ammunition. A War to be made by five or six Men, not knowing one another, not trusting one another. What said Dr. *Coxe* in his Evidence at my Lord *Ruffel's* Tryal, of my Lord *Ruffel's* trusting my Lord *Howard*? He might say the same of some others. So that, my Lord, I say, these Papers have no manner of Coherence, no Dependence upon any such Design. You must go upon Conjecture upon Conjecture; and after all, you find nothing but only Papers, never perfect, only scraps, written many Years ago, and that could not be calculated for the raising of the People. Now, pray what Imagination can be more vain than that? And what Man can be safe, if the King's Counsel may make such (whimsical I won't say, but) groundless Constructions? Mr. Attorney says, the Plot was broken to the *Scots* (God knows we were neither broken nor joined) and that the *Campbells* came to Town about that time I was taken, and in the mean time my Lord *Howard*, the great Contriver of all this Plot, who was most active; and advised the Business that consisted of so much Fineness; he goes there and agrees of nothing; and then goes into *Effex* upon great important Business, greater than the War of *England* and *Scotland*, to what purpose? To look after a little pimping Mannour, and what then? Why then it must be laid aside, and he must be idle five Weeks at the Bath, and there is no inquiring after it. Now, I desire your Lordship to consider, whether there be a possibility for any Men, that have the Sense of Porters and Grooms, to do such things as he would put upon us. I would only say this, If Mr. Attorney be in the right, there was a Combination with the *Scots*, and then this Paper was writ; for those that say I did it, say I was doing of it then, and by the Notes, there is work enough for four or five Years, to make out what is mentioned in those scraps of Paper, and this must be to kill the King. And I say this, my Lord, that, under favour, for all Constructive Treasons you are to make none, but to go according to plain Proof, and that these Constructive Treasons belong only to Parliament, and by the immediate Proviso in that Act. Now, my Lord, I leave it to your Lordship, to see whether there is in this any thing that you can say is an Overt Act of Treason mentioned in 25 *Edw. 3*. If it be not plainly under one of the two Branches, That I have endeavoured to Kill the King, or Levied War, then 'tis matter of Construction, and that belongs to no Court but the Parliament. Then, my Lord, this hath been adjudged already in *Throgmorton's* Case. There are twenty Judgments of Parliament, the Act of 13 *Eliz.* that says — I should have somebody to speak for me, my Lord.

L. C. J. We are of another Opinion.

Mr. Just. Wilkins. If you acknowledge the Matter of Fact, you say well.

Col. Sidney. I say there are several Judgments of Parliament, that do shew whatever is Constructive Treason does nor belong to any private Court, that of 1 *Mary*, 1 *Edw. 6.* 1 *Eliz.* 5 *Eliz.* 18. another 13 *Car.* shews this. Now, my Lord, I say that the Business concerning the Papers, 'tis only a Similitude of Hands, which is just nothing.

nothing. In my Lady Carr's Case, it was resolved to extend to no Criminal Cause, if not to any, then not to the greatest, the most Capital. So that I have only this to say, That I think 'tis impossible for the Jury to find this Matter, for the first Point you proved by my Lord Howard, that I think is no body, and the last concerning the Papers, is only Imagination from the similitude of Hands. If I had published it, I must have answered for it, or if the Thing had been whole and mine, I must have answered for it; but for these Scraps never shewed any body, that I think does not at all concern me. And I say, if the Jury should find it (which is impossible they can) I desire to have the Law reserved unto me.

Mr. Sol. Gen. My Lord, and you Gentlemen of the Jury. The Evidence hath been long; but I will endeavour to repeat it as faithfully as I can. The Crime the Prisoner stands accused for, is compassing and imagining the Death of the King. That which we go about to prove That Compassing and Imagining by, is by his meeting and consulting how to raise Arms against the King, and by plain matter in writing under his own Hand, where he does affirm, It is lawful to take away and destroy the King. Gentlemen, I will begin with the first Part of it, the Meeting and Consultation to raise Arms against the King. The Prisoner, Gentlemen, hath endeavoured to avoid the whole Force of this Evidence, by saying, that this in Point of Law can't affect him, if it were all proved; for this does not amount to a Proof of his compassing and imagining the Death of the King, and he is very long in interpreting the Act of Parliament to you of 25 Ed. 3. and dividing of it into several Members or Branches of Treason, and does insist upon it, that though this should be an Offence within one Branch of that Statute, yet that is not a Proof of the other, which is the Branch he is proceeded upon, that is the first Clause against the compassing and imagining the Death of the King. And, says he, conspiring to Levy War, is not so much as one Branch of that Statute, but it must be War actually levied. This is a Matter he is wholly mistaken in, in Point of Law. It hath been adjudged over and over again, That an Act which is in one Branch of that Statute, may be an Overt Act to prove a Man Guilty of another Branch of it. A levying War is an Overt Act to prove a Man Guilty of Conspiring the Death of the King. And this was adjudged in the Case of Sir Henry Vane, so is meeting and consulting to raise Arms. And Reason does plainly speak it to be so; for they that conspire to raise War against the King, can't be presumed to stop any where; till they have Dethroned or Murdered the King. Gentlemen, I won't be long in citing Authorities, it hath been settled lately by all the Judges of England, in the Case of my Lord Russel, who hath suffered for this Conspiracy. Therefore that Point of Law will be very plain against the Prisoner. He hath mentioned some other Things, as that there must be two Witnesses to every particular Fact, and one Witness to one Fact, and another to another, is not sufficient; it hath been very often objected, and as often over-ruled: It was over-ruled Solemnly in the Case of my Lord Stafford. Therefore if we have one Witness to one Overt Act, and a-

nother to another, they will be two Witnesses in Law to convict this Prisoner. In the first part of our Evidence, we give you an Account of the general Design of an Insurrection that was to have been, that this was contrived first, when my Lord Shaftsbury was in England, that after my Lord Shaftsbury was gone, the Business did not fall; but they thought fit to revive it again, and that they might carry it on the more steadily, they did contrive a Council among themselves of Six, whereof the Prisoner at the Bar was one. They were the Duke of Monmouth, my Lord of Essex, my Lord Howard, my Lord Russel, the Prisoner at the Bar, and Mr. Hambden. This Council they contrived to manage this Affair, and to carry on that Design, that seemed to fall by the Death of my Lord of Shaftsbury, and they met; this we give you an Account of, first by Witnesses, that gave you an account in general of it. And though they were not privy to it, yet they heard of this Council, and that Colonel Sidney was to be one of this Council. This, Gentlemen, if it had stood alone by it self, had been nothing to affect the Prisoner at all. But this will shew you, that it was discours'd among them that were in this Conspiracy. Then my Lord Howard gives you an Account, that first the Duke of Monmouth, and he, and Colonel Sidney met, and it was agreed to be necessary to have a Council, that should consist of six or seven, and they were to carry it on. That the Duke of Monmouth undertook to dispose my Lord Russel to it, and Colonel Sidney to dispose the Earl of Essex, and Mr. Hambden; that these Gentlemen did meet accordingly, and the Substance of their Discourse was, taking notice how the Design had fallen upon the Death of my Lord Shaftsbury, that it was fit to carry it on before Men's Inclinations were cool, for they found they were ready to it, and had great reason to believe it, because this being a Business communicated to so many, yet for all that it was kept very secret, and no body had made any mention of it, which they looked upon as a certain Argument that Men were ready to ingage in it. This encouraged them to go on in this Conspiracy. Then when the Six met at Mr. Hambden's House, they debated concerning the Place of Rising, and the Time, the Time they conceived must be suddenly, before Men's Minds were cool, for now they thought they were ready and very much disposed to it, and for Place, they had in Debate, whether they should rise first in the Town, or in the Countrey, or both together. And for the Persons, they thought it absolutely necessary for them to have the United Counsels of Scotland to join with them, and therefore they did refer this Matter to be better considered of another time, and they met afterwards at my Lord Russel's House in February, and there they had Discourse to the same purpose. But there they began to consider with themselves, being they were to destroy this Government, what they should set up in the room of it; to what purpose they ingaged. For they did very wisely consider, if this be only to serve a Turn, and to make one Man great, this will be a great hinderance in their Affair, therefore they thought it was necessary to ingage upon a publick account, and to resolve all into the Authority of a Parliament, which surely they either

ther thought to force the King to call, or otherwise that the People might call a Parliament, if the King refused, and so they to choose their own Heads. But still they were upon this Point, That it was necessary for their Friends in Scotland to have their Councils united with them, and in order to that, it was necessary to contrive some way to send a Messenger into Scotland, to bring some Men here to treat and consult about it, and Colonel Sidney is the Man that does engage to send this Messenger, and he had a Man very fit for his Turn, that is, *Aaron Smith*, whom he could confide in, and him he undertook to send into Scotland. This Messenger was to fetch my Lord Melvin, the two *Campbell's*, and Sir *John Cockram*; Colonel Sidney as he engaged to do this, so afterwards he did shew to my Lord Howard Money, which he affirmed was for that Business; he says it was a Sum of about sixty Guineas, and he believes he gave it him, for that Colonel Sidney told him, *Aaron Smith* was gone into Scotland, That the Pretence was not bare-faced to invite them over, to consult of a Rebellion, but to consult about the Business of Carolina, being a Plantation for the persecuted Brethren, as they pretended in Scotland. Gentlemen, these Scotchmen that were thus sent for over, they came accordingly, that is, the two *Campbells*, and Sir *John Cockram*, and the Discourse with Sir *Andrew Foster* was according to this Cant that was agreed on beforehand, concerning a Plantation in Carolina. This was that that was pretended for their coming hither; but the true Errand was, the Business of the Insurrection intended. Gentlemen, that they came upon such a Design, is evident from the Circumstances; they came about the Time the Business brake out, and in that time suspiciously changing their Lodging, they were taken making their escape, and this at a time before it was probable to be known Abroad that these Men were named as part of the Conspirators. These Things do very much verify the Evidence my Lord Howard hath given, and there is nothing has been said, does at all invalidate it. The sending of *Aaron Smith* into Scotland, and his going, and the coming of these Men, and their endeavouring to make their escape, are mighty concurrent Evidences with the whole Evidence my Lord Howard has given. Now, What Objections are made against this Evidence? Truly none at all. Here are Persons of great Quality have given their Testimony, and they do not impeach my Lord Howard in the least; but some do extremely confirm the Truth of my Lord Howard. My Lord Anglesey gives you an Account of a Discourse at my Lord of Bedford's, That my Lord Howard came in, and that my Lord Howard should there comfort my Lord of Bedford, and enlarge in the Commendations of his Son, and say he was confident he knew nothing of the Design, and he must be innocent. Gentlemen, This is the nature of the most part of the Evidence. My Lord of Clare, his Evidence is much the like, that is, his denying that he knew of any Plot. Now here is my Lord Howard under a Guilt of High-Treason; for he was one of those Conspirators not yet discovered, nor no Evidence of any Discourse leading to any thing that should give Occasion to him to protest his Innocency: And, says he, I know nothing of the Plot. You

would have wondered if he should have been talking in all Places his Knowledge, and declaring himself: His denying of it under the Guilt, when he was not accused, is nothing to his Confession when he comes to be apprehended, and taken for it. Here Mr. *Philip Howard* says, he had several Discourses with him about this Business, upon the breaking out of the Plot, and that he advised him to make an Address, and that this was a Thing that would be very acceptable, and very much for their Vindication; and my Lord Howard (he says) thanked him for his very good Advice, and said, he would follow it: And presently after when my Lord Russell was apprehended, Mr. Howard tells him the News, that my Lord Russell was apprehended; this was sudden to him. And what says he? We are all undone. When my Lord Russell that was one of this Council, that was a secret Council, and could not be traced but by some of themselves, when He is apprehended, then he falls out into this Expression, *We are all undone*. This is an Argument my Lord Howard had a Guilt upon him. For, why were they all undone, that my Lord Russell was apprehended, any more than upon the apprehending the rest? Yes, because my Lord was one of the Six, and now 'twas come to the knowing of that Part of the Conspiracy. It was traced to the Council of Six, which in all likelihood would break the Neck of the Design. Now though he put it off afterwards, saying, *I believe it is a Sham Plot*, yet this was but a trivial Put-off. And then, when Colonel Sidney is taken, the same Witness Mr. Howard tells you, my Lord was very sad and melancholy; for then he had greater reason to lie under an apprehension of being detected. Therefore, Gentlemen, this will rather confirm the Truth of the Evidence, than any way impeach it. Then (for I would repeat it all, though I think it had no great Weight in it) Doctor Burnet says, That after the Plot my Lord Howard pretended he knew of no Plot. This is no more than was testified by the other Lords before; and all it imports, is, that my Lord did not discover himself to Doctor Burnet. But I would fain know, if my Lord had told Doctor Burnet, had it not argued that he had great Confidence in him, that he thought him a Man fit to be intrusted with such a Secret? And unless the Doctor desires to be thought such a Man, himself must own, 'tis no Objection, That my Lord Howard did not tell him. *Ducas's* Testimony is no more neither, That he protested he was innocent, and believed Colonel Sidney was innocent; and this was before my Lord Howard discovered any thing of this Plot. Then Colonel Sidney objects, This is by Malice, my Lord Howard owes him Money, and seeks to pay his Debts by taking away his Life; and in further Prosecution of this Malice, would have seized upon his Goods. But the Evidence does not receive such Construction, for my Lord Howard only offered Colonel Sidney the Civility of his House to protect his Plate and Goods. Now, Gentlemen, there were two other Witnesses, my Lord Paget, and Mr. *Edward Howard*; but they say no more than the rest of them, that he did protest his Innocency, and Mr. Howard says, he advised him to make an Address to the King. This, Gentlemen, I repeat, not that it is material, but for no other reason, than because Co-

lonel *Sidney* had produced it; and so we are to think, he intended to make some use of it; but I can't see any Inference to be drawn from it. There is one Witness more, and that is Mr. *Blake*, to the Credit of my Lord *Howard*, who comes here, and says, that when he discoursed about a Pardon, my Lord should say, That he had a Warrant for his Pardon, but that he had not yet passed it, and could not yet; and he apprehended the Reason was, Because the drudgery of Swearing was not over. But this is but what my Lord *Howard* had conjectured: First, It does not appear, that there is any Promise of Pardon at all to my Lord *Howard*, on any Terms imposed on him. In the next place, Whatever Expectation he has of a Pardon, he can't reasonably hope for it without making a clear Discovery of all he knows: For to flile the Evidence he has given, is not a way to deserve a Pardon of his Prince. Therefore, Gentlemen, whatever Expressions were used, tho' he called it the drudgery of Swearing, however unwilling he is to come to it, and tho' he gives it very many hard Names, and might think it very harsh to come and own himself to be one of the Conspirators, it might be irksome, and very irksome; yet none of them tell you, That my Lord *Howard* should say, that what he had said was not true. Now he has come and given his Evidence, and you have heard all these Objections against it, and not one of them touch it in the least.

I come in the next place to the other part of the Evidence, The Papers found in Colonel *Sidney's* House. And in the first place he objects, They can't affect him; for, says he, there is no Proof they were found in my House, no Proof they were written by me; for Comparison of Hands, that is nothing; and if they were proved to be mine, 'tis nothing at all to the purpose; they are an Answer to a Polemical Discourse, wherewith he entertained himself privately in his Study. Why, you have observed, I know, that Sir *Philip Lloyd* in the first place swears, that by Warrant from the Secretary he searched his House, and he found the Papers lying upon Colonel *Sidney's* Table in his Study, when he came in there; and there is no ground nor colour for you to suspect otherwise than that they were there, and he found them there. For the surmise of the Prisoner at the Bar, that they might be laid there, 'tis so foreign and without ground, that by and by you will think there is nothing at all in it. In the next place, We prove Col. *Sidney's* Hand, and that by as much Proof as the thing is capable of; such a Proof as in all Cases hath been allowed; and that is, for Men to come that know and are acquainted with the Hand-writing, and swear they know his Hand-writing, and they believe this to be his Hand. You have heard from Mr. *Sheppard*, a Man that used to transact Business for him; pay Money for him; and Mr. *Cooke*, and Mr. *Cary*, Men of known Credit in the City of *London*, that have had the like Dealings with Col. *Sidney*, and they swear this is his Hand-writing, as they verily believe. So that, Gentlemen, this Proof to you of Colonel *Sidney's* Hand-writing does verify Sir *Philip Lloyd*, That these Papers must be found there, if Col. *Sidney* writ them; and then this being found that they were writ by him, the next

thing will be, How far this will be an Evidence to prove his Compassing and Imagining the Death of the King. Compassing and Imagining the Death of the King, is the Act of the Mind, and is Treason whilst it remains secret in the Heart, tho' no such Treason can be punish'd, because there is no way to prove it; but when once there is any Overt Act, that is, any thing that does manifest and declare such Intention, then the Law takes hold of it, and punishes it as High-Treason.

Now after this Evidence, I think no Man will doubt, whether it was in the Heart of the Prisoner at the Bar to destroy the King. But first he objects, That this is a part of a Book, and unless you take the whole, nothing can be made of it: As it is in wresting of Texts of Scripture, says he, you may as well say, That *David* says there is no God, because *David* hath said, *The fool hath said in his Heart, there is no God*. But, Gentlemen, the Application won't hold; for you see a long Discourse hath been read to you, a continued Thread of Argument; 'tis not one Proposition, but an whole Series of Argument: These are the Positions, " That the King derives all his Power from the People; " That 'tis originally in the People, and that " the measure of Subjection must be adjudged " by the Parliament; and if the King does fall " from doing his Duty, he must expect the Peo- " ple will exact it. And this he has laid down as no way prejudicial to him; for, says he, The King may refuse the Crown, if he does not like it upon these Terms. But, says he, if he does accept it, he must expect the Performance will be exacted, or Revenge taken by those he hath betray'd. Then next, he sets up an Objection, and then argues against it: Ay, but shall the People be Judge in their own Cause? And thus he answers it, It must be so; for is not the King a Judge in his own Cause? How can any Man else be Tryed, or Convicted of any Offence, if the King may not be Judge in his own Cause; for to a judge by a Man's self, or by his Deputy, is the same thing; and so a Crime against the King can't be punished? And then he takes notice of it as a very absurd Position, " That the King shall judge in " his own Cause, and not the People. That would be to say, The Servant entertained by the Master shall judge the Master, but the Master shall not judge the Servant. Gentlemen, after this sort of Argument he comes to this settled Position, " We may therefore, says he, " change, or take away Kings, (without break- " ing any Yoke, or that is made a Yoke;) the " Injury is therefore in imposing the Yoke, and " there can be none at all in breaking of it. But he goes on in his Book, and that is by way of Answer to an Objection, That if there be no Injury, yet there may be Inconvenience, if the headless Multitude should shake off the Yoke. But, says he, I would fain know how the Multitude comes to be headless; and there he gives you many Instances in Story, and from Foreign Nations he comes home to the *English*, and tells you how all Rebellions in later Ages have been headed; and tells you the Parliament is the Head, or the Nobility and Gentry that compose it; and when the King fails in his Duty, the People may call it. The Multitude therefore is never headless, but they either find or create

create an Head, so that here is a plain and avowed Principle of Rebellion Established upon the strongest Reason he has to back it. Gentlemen, This, with the other Evidence that has been given, will be sufficient to prove his Compassing the Death of the King. You see the Affirmations he makes; when Kings do break their Trust they may be called to Account by the People. This is the Doctrine he broaches and argues for: He says in his Book in another Part, that the Calling and Dissolving of Parliaments is not in the King's Power. Gentlemen, You all know how many Parliaments the King hath Called and Dissolved; if it be not in his Power, he hath done that that was not in his Power, and so contrary to his Trust. Gentlemen, At the Entrance into this Conspiracy, they were under an Apprehension that their Liberties were invaded, as you hear in the Evidence from my Lord *Howard*, that they were just making the Insurrection upon that Tumultuous Opposition of Electing of Sheriffs in *London*. They enter into a Consultation to raise Arms against the King; and it is proved by my Lord *Howard*, that the Prisoner at the Bar was one. Gentlemen, Words spoken upon a supposition will be High-Treason, as was held in King *James's* Time, in the Case of *Collins* in *Roll's Reports*, *The King being Excommunicate may be Deposed and Murdered*, without affirming he was Excommunicated; and this was enough to convict him of High-Treason. Now according to that Case, to say the King having broken his Trust may be Deposed by his People, would be High-Treason, but here he does as good as affirm the King had broke his Trust. When every one sees the King hath Dissolved Parliaments; this reduces it to an Affirmation. And tho' this Book be not brought to that Council to be perused, and there debated, yet it will be another, and more than two Witnesses against the Prisoner: For I would ask any Man, suppose a Man was in a Room, and there were two Men, and he talks with both apart, and he comes to one and endeavours to persuade him that it is lawful to Rise in Arms against the King, if so be he break his Trust; and he should go to another Man, and tell him the King hath broken his Trust, and we must seek some way to redress our selves, and persuade the People to Rise; these two Witnesses do so tack this Treason together, that they will be two Witnesses to prove him Guilty of High-Treason. And you have heard one Witness prove it positively to you, That he consulted to Rise in Arms against the King, and here is his own Book says, it is lawful for a Man to Rise in Arms against the King, if he break his Trust, and in effect he hath said, the King hath broken his Trust: Therefore this will be a sufficient Demonstration what the Imagination of the Heart of this Man was, that it was nothing but the Destruction of the King and the Government, and indeed of all Governments. There can be no such thing as Government if the People shall be Judge in the Case: For what so uncertain as the heady and giddy Multitude? Gentlemen, I think this will be a sufficient Evidence of his Consulting the Death of the King. You have here the Prisoner at the Bar that is very deep in it. Indeed some Men may by Passion be transported into such

an Offence, and tho' the Offence be never the less, whatever the Motives are, yet in some it is less dangerous, for those that venture upon Passion to raise Commotions and Rebellion, are not always so much upon their Guard, but that they may make some false Steps to intrap themselves. But this Gentleman proceeds upon a surer Foundation, it is his Reason, it is his Principle, it is the Guide of all his Actions, it is that by which he leads and directs the steady Course of his Life. A Man convinced of these Principles, and that walks accordingly, what won't he do to accomplish his Designs? How wary will he be in all his Actions? Still reasoning with himself, which way to bring it most securely about. Gentlemen, This is the more dangerous Conspiracy in this Man, by how much the more it is rooted in him; and how deep it is, you hear; when a Man shall write as his Principle, that it is lawful for to Depose Kings, they breaking their Trust, and that the Revolt of the whole Nation cannot be called Rebellion. It will be a very sad Case when People act this according to their Consciences, and do all this for the Good of the People, as they would have it thought; but this is the Principle of this Man. Gentlemen, We think we have plainly made it out to you, and proved it sufficiently, that it was the Imagination of his Heart to destroy the King, and made sufficient Proof of High-Treason.

Col. *Sidney*. Give me leave, my Lord, to say a very few Words. I desire Mr. Solicitor would not think it his Duty to take away Men's Lives any how: First, We have had a long Story —

L. C. J. *Nay*, Mr. *Sidney*, We must not have vying and revying, I asked you before what you had to say: the Course of Evidence is, after the King's Counsel have concluded, we never admit the Prisoner to say any thing.

Col. *Sidney*. My Lord, It was a wise Man said, There never could be too much Delay in the Life of a Man: I know the King's Counsel may conclude, if they please. Mr. Solicitor, I would not have him think that it is enough by one way or another to bring a Man to Death: My Lord, This Matter of Sir *Henry Vane* is utterly misrepresented. —

L. C. J. I must tell you, Gentlemen of the Jury, that what the Prisoner says that is not proved, and what the King's Counsel have said, of which there is no Proof to make it out, must not be taken into any Consideration.

Col. *Sidney*. Then, my Lord, here is a Place or two in Old *Hales*, (turning over my Lord *Hales* Book) for the Overt Act of one Treason, not being an Overt Act of another, your Lordship knows *Coke* and *Hales* were both against it. (He reads.) Compassing by bare Words is not an Overt Act, Conspiring to Levy War is no Overt Act.

Mr. *Sol. Gen.* I desire but one Word more for my own sake as well as the Prisoner's, and that is, that if I have said any thing that is not Law, or misrepeated, or misapplied the Evidence which hath been given, I do make it my humble Request to your Lordship to rectify those Mistakes as well in point of Fact as point of Law; for God forbid the Prisoner should suffer by any Mistake.

L. C. J. Gentlemen, The Evidence has been

been long, and it is a Cause of great Concernment, and it is far from the Thoughts of the King, or from the Thoughts, or Desire of any of his Judges here to be instrumental to take away the Life of any Man, that by Law his Life ought not to be taken away. For I had rather many guilty Men should escape, than one innocent Man suffer. The Question is, Whether upon all the Evidence you have heard against the Prisoner, and the Evidence on his behalf, there is Evidence sufficient to Convict the Prisoner of the High-Treason he stands charged with. And as you must not be moved by the Denial of the Prisoner further than as it is backed with Proof; so you are not to be inveigled by any Insinuations made against the Prisoner at the Bar, further or otherwise than as the Proof is made out to you. But it is usual, and it is a Duty incumbent on the King's Counsel, to urge against all such Criminals, whatsoever they observe in the Evidence against them, and likewise to endeavour to give Answers to the Objections that are made on their behalf. And, therefore, since we have been kept so long in this Cause, it won't be amiss for me (and my Brothers, as they shall think fit,) to help your Memory in the Fact, and discharge that Duty that is incumbent upon the Court as to the points of Law. This Indictment is for High-Treason, and is grounded upon the Statute of 25 *Edw. 3.* By which Statute, the Compassing and Imagining the Death of the King, and declaring the same by an Overt Act is made High-Treason. The reason of that Law was, because at Common Law there was great Doubt what was Treason; wherefore to reduce that High Crime to a Certainty was that Law made, that those that were guilty might know what to expect. And there are several Acts of Parliament made between the Time of *Edward III.* and that of 1 *M.* but by that Statute all Treasons that are not enumerated by After-Acts of Parliament remain as they were declared by that Statute of 25 *Edw. 3.* And so are Challenges and other Matters, insisted upon by the Prisoner, left as they were at the Time of that Act: I am also to tell you that in point of Law, it is not only the Opinion of us here, but the Opinion of them that sat before us, and the Opinion of all the Judges of *England*, and within the Memory of many of you, That tho' there be two Witnesses required to prove a Man guilty of High-Treason; yet it is not necessary there should be two Witnesses to the same thing at one time. But if two Witnesses prove two several Facts, that have a tendency to the same Treason, they are two Witnesses sufficient to Convict any Man of High-Treason. In the Case of my Lord *Stafford* in Parliament, all the Judges assisting, it is notoriously known, That one Witness to a Conspiracy in *England*, and another to a Conspiracy in *France*, were held two Witnesses sufficient to Convict him of High-Treason. In the next place, I am to tell you, That tho' some Judges have been of Opinion that Words of themselves were not an Overt Act; but my Lord *Hales*, nor my Lord *Coke*, nor any other of the Sages of the Law, ever questioned but that a Letter would be an Overt Act, sufficient to prove a Man guilty of High-Treason; For *scribere est agere*, Mr. *Sidney* says, The King is a Politick Per-

son; but you must destroy him in his Natural Capacity, or it is not Treason; but I must tell you, If any Man Compass to Imprison the King, it is High-Treason; So was the Case of my Lord *Cobham*. And my Lord *Coke*, when he says, If a Man do attempt to make the King do any thing by Force and Compulsion, otherwise than he ought to do, that it is High-Treason within that Act of 25 *Eliz. 3.* But if it were an Indictment only for the Levying of War, there must be an actual War Levied; but this is an Indictment for Compassing the Death of the King; and the other Treason, mentioned in that Act of Parliament for the Levying War, may be given in Evidence to prove the Conspiracy of the King's Death: For 'tis rightly told you by the King's Counsel, That the Imagination of a Man's Heart is not to be discerned; but if I declare such my Imagination by an Overt Act, which Overt Act does naturally evince, that the King must be Deposed, Destroyed, Imprisoned, or the like, it will be sufficient Evidence of Treason within that Act. In the next place, having told you what the Law is, for, Gentlemen, 'tis our Duty upon our Oaths, to declare the Law to you, and you are bound to receive our Declaration of the Law, and upon this Declaration, to inquire whether there be a Fact, sufficiently proved, to find the Prisoner guilty of the High-Treason of which he stands indicted: And for that, I must tell you, whatever happens to be hear-say from others, it is not to be applied immediately to the Prisoner; but however those Matters that are remote at first may serve for this purpose, To prove there was generally a Conspiracy to Destroy the King and Government: And for that matter, you all remember it was the constant Rule and Method observed about the Popish Plot, first to produce the Evidence of the Plot in general: This was done in that famous Case of my Lord *Stafford* in Parliament. Gentlemen, I am also to tell you, This alone does not at all affect the Prisoner at the Bar, but is made use of as a Circumstance to support the Credibility of the Witnesses; and is thus far applicable to the Business before you, That 'tis plain, by Persons that don't touch the Prisoner at the Bar, (and I am sorry any Man makes a Doubt of it at this time of day) that there was a Conspiracy to kill the King; for after so full a Proof in this Place, and in others, and the Execution and Confession of several of the Offenders, I am surprized to observe that the Prisoner at the Bar, and some others present, seem not to believe it.

But, Gentlemen, you hear the first Witness; I speak of *West*: He tells you he had the Honour to be acquainted with Mr. *Sidney*, and that he had Discourse with *Walcot*, a Person Convicted and Executed for this horrid Conspiracy. Why, says he, he told me at my Chamber, That they were not the only Persons concerned, but that there were other Persons of great Quality that had their Meetings for the carrying on the Business in other Places. And *Ferguson*, that was the Ring-leader in this Conspiracy, told him there was a Design of a general Insurrection; it was once laid down, but it is now taken up again. There are other Counsellors of great importance; and he names, among the rest, the Prisoner at the Bar. Mr. *West* goes a little further, and he tells you this:
Says

Says he, He did not only tell me so, but that there was a Design to conciliate a Correspondence with some Persons in *Scotland*, and they were to do it under the Cant of having Business in *Carolina*. There is Mr. *Keeling*, he tells you too, There was a Design for a general and publick Insurrection; That he was present with the *Goodenoughs*, one and t'other, and that they had taken upon them to divide, and did divide the City into such and such Districts: And what was the Business? It was, that there might be a general Insurrection; might be an Insurrection, not only to Destroy the King and the Duke, but to Destroy all the King's Loyal Subjects; and in taking away their Lives, to take away the Life of Monarchy it self, and to subvert the Religion Established by Law. Then comes in Col. *Rumsy*, and he gives you an account that he had heard of such things in Mr. *West's* Chamber; and tells you he had received such Intelligence. And all these give you an Account, that there was such a Design to kill the King: And this is the Substance of the general Evidence produced to prove the Conspiracy. Then to make this Matter come home to the Prisoner at the Bar, first my Lord *Howard* gives you an Account, and does directly swear, That about the middle or latter end of *January* last, he happened to meet with Colonel *Sidney*, the Prisoner at the Bar, and the Duke of *Monmouth* (they were the Persons first began to have Discourse about this Matter) and how they met with a Disappointment; the thing had slept a great while, and that it was fit it should be revived again; and that Persons of Quality were mentioned, who were to have an immediate Care in the carrying on of the Business, and that it should not be divulged to too many; accordingly there was my Lord *Russel*, my Lord of *Effex*, my Lord of *Salisbury*, and Mr. *Hambden* named. He tells you, the Prisoner at the Bar undertook for my Lord of *Effex*, and Mr. *Hambden*, and he tells you, the Duke of *Monmouth* undertook for my Lord *Russel*, and the rest; and that this was the Result of one Meeting: He goes yet further, That pursuant to this it was communicated to those Persons so to be engaged, and the Place and Time was appointed; the Place, Mr. *Hambden's* House; but is not so positive to the Time, but only to the Place and Persons. He says, all these Persons met, and he gives you an Account, That Mr. *Hambden* (because it was necessary for some Person to break Silence) gave some short Account of the Design of their Meeting, and made some Reflections upon the Mischiefs that attended the Government, and what Apprehensions many People had upon the late Choice of Sheriffs, and that there had been a Male-Administration of Publick Justice; That it was fit some means should be used to redress these Grievances. He can't tell you positively, what this Man, or that Man, said there; but says, that all did unanimously consent to what was then debated about an Insurrection; and in order to it, they discoursed about the Time, when it should be, and that they thought fit it should be done suddenly, while Men's Minds were wound up to that height, as they then were; and as the first Witness tells you, There was a Consideration, whether it should be at one Place, or at several Places together: He

says, then it was taken into Consideration, that this could not be carried on, but there must be Arms and Ammunition provided. The next Step is, about a necessary Concern, the Concern of Money, and therefore our Law calls Money, *The Sinews of War*. My Lord *Howard* tells you, That the Duke of *Monmouth* proposed 25 or 30000 *l.* That my Lord *Grey* was to advance 10000 *l.* out of his own Estate; but then they thought to make their Party more strong by the Assistance of a Discontented People in *Scotland*, my Lord of *Argyle*, and Sir *John Cockram*, and several other People there to joyn with them. That pursuant to this, they all after met at my Lord *Russel's*, and the same Debate is re-assumed, and among the rest, this particular thing of conciliating a Friendship with the *Scotch*; the *Campbells*, my Lord of *Argyle*, and my Lord *Melvin* were particularly mentioned. That Col. *Sidney* took upon himself to find out a Messenger, but it was my Lord *Russel's* Part to write the Letter; One of the Messengers named to convey the same, was *Aaron Smith*, he was known, says my Lord *Howard*, to some of us; and then we all agreed, that *Aaron Smith* was the most proper Man: Upon this they brake up that very Time. Afterwards comes my Lord *Howard* to Col. *Sidney* at some distance of time, and he comes to him, and shews him threescore Guineas, and told him, he was going into the City, and that they were to be given to *Aaron Smith*. He tells you after this, That he had some other Discourse about a Fortnight or three Weeks after, with Col. *Sidney*; and that Colonel *Sidney* did take notice, that he had sent him, and that he had an Account of him, as far as *Newcastle*. So that 'tis very plain, That it was not sudden and rash Thoughts, it is a little more than, according to the Language we meet with in some Pamphlets of late, more than Heats and Sairs. Gentlemen, Then I must tell you here are Circumstances proved in pursuance of this Design, for Sir *Andrew Foster* informs you, how that Sir *John Cockram* and the *Campbells*, and one *Monro*, as I take it, came to Town, and that he had Discourse with some of them about their Business of coming out of *Scotland*; and he says, they pretended it was about Business of some Trade to *Carolina*, which does still corroborate the Evidence. He tells you likewise, That there being a Noise of discovering the Plot, they begun to hide; Sir *John Cockram* began to hide, and sculk from place to place; they come first with that Cant in their Mouths, about *Carolina*; The Messenger *Atterbury* tells you, When they came to take these Men, how they shuffled from place to place. So, Gentlemen, I must tell you, That if in case there be but one Witness to prove a direct Treason, and another Witness to a Circumstance that contributes to that Treason, that will make two Witnesses to prove the Treason: Because I would explain my Mind, Not long ago all the Judges of *England* were commanded to meet together, and one that is the Senior of the King's Counsel was pleased to put this Case. If I buy a Knife of *J. S.* to kill the King, and it be proved by one Witness I bought a Knife for this purpose, and another comes and proves, I bought such a Knife of *J. S.* they are two Witnesses sufficient to prove a Man guilty of High-Treason; and so it was held by all

all the Judges of *England* then present, in the presence of all the King's Counsel. And therefore, Mr. *Sidney* is mightily mistaken in the Law : For in case of any Treason (except the Treason at the Bar) or in Treason for Clipping and Coining, one Witness is sufficient at this Day. Now, Gentlemen, Supposing all this should not be sufficient, here is a Libel, and it is a most Traiterous and Seditious Libel. If you believe, that that was Colonel *Sidney's* Book, writ by him, no Man can doubt, but it is a sufficient Evidence, that he is guilty of Compassing and Imagining the Death of the King ; and let us consider, what Proof can be greater, than what has been given of it. Mr. *Sheppard*, an intimate Acquaintance of his, that has seen him write, he looks upon the Hand, and says, He is extremely acquainted with the Hand, and says he, I believe in my Conscience, this Book is Colonel *Sidney's* Hand. Gentlemen, Do you expect Mr. *Sidney* would call a Witness to be by to see him write that Book ?

In the next Place, you have two Trades-men, *Coke* and *Cary*, and they tell you, one had seen him write once, the other had seen his Hand-writing, and they both believe it his Hand-writing, and they have good reason, for they have paid several Sums of Money, upon Notes which they took, as well as this, to be his Hand-writing. Gentlemen, Besides that, give me leave to tell you, here is another thing, that makes it more plain. This very Book is found in Colonel *Sidney's* House, on the Table in his Study, where he used to write, by a Gentleman, against whom Colonel *Sidney* can't make the least Objection ; and that there was that fairness offered by the Gentleman, *Pray Colonel put your Seal upon it, that you may see, that no Injury be done you ;* but Mr. *Sidney* would not do it. Therefore he seals them with his own Seal, and carries them to *White-Hall*, where they were broken open, and swears that those Papers were found in his Closet, whereof this was one. Another thing which I must take notice of to you in this Case, is, to mind you, how this Book contains all the Malice, and Revenge, and Treason, that Mankind can be guilty of : It fixes the sole Power in the Parliament and the People ; so that he carries on the Design still, for their Debates at their Meetings were to that purpose. And such Doctrines as these suit with their Debates ; for there, a general Insurrection was designed, and that was discoursed of in this Book, and encouraged : They must not give it an ill Name : It must not be called a Rebellion, it being the general Act of the People. The King, it says, is responsible to them, the King is but their Trustee ; That he had betrayed his Trust, he had misgoverned, and now he is to give it up, that they may be all Kings themselves. Gentlemen, I must tell you, I think I ought more than ordinarily to press this upon you, because I know the Misfortune of the late unhappy Rebellion, and the bringing the late blessed King to the Scaffold, was first begun by such kind of Principles : They cried, He had betrayed the Trust that was delegated to him from the People. Gentlemen, in the next Place, because he is afraid their Power alone won't do it, he endeavours to poison Men's Judgments ; and the way he makes use of, he colours it with Religion, and quotes Scripture for it

too ; and you know, how far that went in the late Times ; How we were for binding our King in Chains, and our Nobles in Fetters of Iron. Gentlemen, this is likewise made use of by him to stir up the People to Rebellion. Gentlemen, if in case the Prisoner did design the Deposing the King, the removing the King, and if in order thereunto he be guilty of Conspiring to Levy War ; or, as to the Letter writ by my Lord *Ruffel*, if he was privy to it, these will be Evidences against him. So that 'tis not upon two, but 'tis upon greater Evidence than 22, if you believe this Book was writ by him. Next I must tell you ; Gentlemen, upon, I think, a less Testimony, an Indictment was preferred against the late Lord *Ruffel*, and he was thereupon Convicted and Executed ; of which they have brought the Record. These are the Evidences for the King.

For the Prisoner, he hath made several Objections ; As that there was no War levied : For that, Gentlemen, at the beginning of the Cause, I told you, what I took the Law to be, and I take it to be so very plainly. But, Gentlemen, as to the Credibility of my Lord *Howard*, he offers you several Circumstances. First, He offers you a Noble Lord, my Lord *Anglesey*, who says, That he attending my Lord of *Bedford*, upon the Misfortune of the Imprisonment of his Son ; after he had done, my Lord *Howard* came to second that Part of a Christian's Office, which he had performed, and told him, he had a very good Son, and he knew no harm of him ; and as to the Plot, he knew nothing of it. Another Noble Lord, my Lord *Clare* tells you, That he had some Discourse with my Lord *Howard*, and he said, that if he were accused, he thought they would but tell Noses, and his Business was done. Then Mr. *Philip Howard*, he tells you, how he was not so intimate with him as others, but he often came to his Brother's ; and that he should say, he knew nothing of a Plot, nor did he believe any ; but at the same time, he said, he believed there was a Sham Plot ; and then he pressed him about the Business of the Address ; but that now my Lord of *Essex* was out of Town, and so it went off. Another Thing Mr. *Sidney* took notice of, says he 'tis an Act of Revenge in my Lord *Howard*, for he owes him a Debt, that he does (besides by his Allegation) does not appear.

Col. *Sidney*. My Lord, he hath confessed it.

L. C. J. Admit it ; yet in case Colonel *Sidney* should be Convicted of this Treason, the Debt accrues to the King, and he can't be a Farding the better for it. But how does it look like Revenge ? I find my Lord *Howard*, when he speaks of Colonel *Sidney*, says, he was more beholding to him than any body, and was more sorry for him ; so says my Lord *Clare*. Gentlemen, You have it likewise offered, that he came to Colonel *Sidney's* House, and there he was desirous to have the Plate and Goods removed to his House, and that he would assist them with his Coach and Coachman to carry them thither ; and did affirm, that he knew nothing of the Plot ; and did not believe Colonel *Sidney* knew any thing : And this is likewise proved by a couple of Maid-Servants, as well as the *Frenchman*. You have likewise something to the same purpose said by my Lord *Paget*, and this

is offered to take off the Credibility of my Lord Howard. Do you believe, because my Lord Howard did not tell them, I am in a Conspiracy to kill the King; therefore he knew nothing of it; he knew these Persons were Men of Honour, and would not be concerned in any such thing. But do you think, because a Man goes about and denies his being in a Plot, therefore he was not in it: Nay, it seems so far from being an Evidence of his Innocence, that it is an Evidence of his Guilt. What should provoke a Man to discourse after this manner, if he had not apprehensions of Guilt within himself? This is the Testimony offered against my Lord Howard, in disparagement of his Evidence. Ay, but further its objected, he is in expectation of a Pardon: And he did say, he thought he should not have the King's Pardon till such time as the drudgery of Swearing was over. Why, Gentlemen, I take notice, before this Discourse happened, he Swore the same Thing at my Lord Russell's Tryal. And I must tell you, though it is the Duty of every Man to discover all Treasons; yet I tell you, for a Man to come and Swear himself over and over Guilty, in the Face of a Court of Justice, may seem irksome, and provoke a Man to give it such an Epithet. 'Tis therefore for his Credit, that he is an unwilling Witness: But, Gentlemen, consider, if these things should have been allowed to take away the Credibility of a Witness, what would have become of the Testimonies that have been given of late Days? What would become of the Evidence of all those that have been so profligate in their Lives? Would you have the King's Counsel to call none but Men that were not concerned in this Plot, to prove that they were Plotting? Ay, but Gentlemen, it is further objected, This Hand looks like an old Hand, and it may not be the Prisoner's

Hand, but be Counterfeited; and for that there is a Gentleman, who tells you what a dexterous Man he is. He says, he believes he could Counterfeit any Hand in half an Hour; 'tis an ugly temptation, but I hope he hath more Honour than to make use of that Art, he so much glories in. But what time could there be for the Counterfeiting of this Book? Can you imagine that Sir Philip Lloyd through the Bag Sealed up did it? Or who else can you imagine should, or, does the Prisoner pretend, did write this Book? So that as on one Side, God forbid, but we should be careful of Men's Lives, so on the other Side, God forbid, that Flourishes and Varnish should come to indanger the Life of the King, and the Destruction of the Government. But, Gentlemen, We are not to anticipate you in Point of Fact, I have according to my Memory recapitulated the Matters given in Evidence. It remains purely in you now, whether you do believe upon the whole Matter, that the Prisoner is Guilty of the High-Treason whereof he is Indicted.

Mr. Just. Withins. Gentlemen, 'Tis fit you should have our Opinions; in all the Points of Law we concur with my Lord Chief Justice: Says Colonel Sidney, here is a mighty Conspiracy, but there is nothing comes of it, who must we thank for that? None but the Almighty Providence: One of themselves was troubled in Conscience, and comes and discovers it; had not Keeling discovered it, God knows whether we might have been alive at this Day.

Then the Jury withdrew, and in about half an Hour's time returned, and brought the Prisoner in, Guilty.

And the Lieutenant of the Tower took away his Prisoner.

Monday 26. Nov. 1683. Algernone Sidney Esquire was brought up to the Bar of the Court of King's-bench, to receive his Sentence.

L. C. J. **M**R. Attorney, will you move any thing?

Mr. At. Gen. My Lord, the Prisoner at the Bar is convicted of High Treason, I demand Judgment against him.

Cl. of Crown. *Algernone Sidney*, Hold up thy Hand (which he did) Thou hast been Indicted of High Treason, and thereupon arraigned, and thereunto pleaded not Guilty, and for thy Tryal, put thy self upon God and the Countrey, which Countrey has found thee Guilty, What can'st thou say for thy self, Why Judgment of Death should not be given against thee, and Execution awarded according to Law?

Col. Sidney. My Lord, I humbly conceive, I have had no Tryal, I was to be try'd by my Countrey, I do not find my Countrey in the Jury that did try me, There were some of them that were not Freeholders, I think, my Lord, there is neither Law nor President of any Man that has been tried by a Jury, upon an Indictment laid in a Countrey, that were not Free-

holders. So I do humbly conceive, That I have had no Tryal at all, and if I have had no Tryal, there can be no Judgment.

L. C. J. Mr. Sidney, You had the Opinion of the Court in that Matter before: We were unanimous in it, for it was the Opinion of all the Judges of England, in the Case next preceeding yours, though that was a Case relating to Corporations, but they were of Opinion, That by the Statute of Queen Mary, the Tryal of Treason was put as it was at Common-Law, and that there was no such Challenge at Common-Law.

Col. Sidney. Under favour, my Lord, I presume in such a Case as this, of Life, and for what I know concerns every Man in England, you will give me a Day and Counsel to argue it.

L. C. J. 'Tis not in the Power of the Court to do it.

Col. Sidney. My Lord, I desire the Indictment against me may be read.

L. C. J.

L. C. J. To what purpose ?

Col. Sidney. I have somewhat to say to it.

L. C. J. Well, read the Indictment.

Then the Clerk of the Crown read the Indictment.

Col. Sidney. Pray Sir, will you give me leave to see it, if it please you.

L. C. J. No, that we cannot do.

Col. Sidney. My Lord, there is one thing then that makes this absolutely void, it deprives the King of his Title, which is Treason by Law, *Defensor Fidei*. There is no such thing there, if I heard right.

L. C. J. In that you would deprive the King of his Life, that is in very full I think.

Col. Sidney. If no body would deprive the King no more than I, he would be in no danger. Under favour these are Things not to be over-ruled in Point of Life so easily.

L. C. J. Mr. Sidney, We very well understand our Duty, we don't need to be told by you what our Duty is, we tell you nothing but what is Law, and if you make Objections that are immaterial, we must overrule them. Don't think that we overrule in your Case that we would not over-rule in all Mens Cases in your Condition. The Treason is sufficiently lay'd.

Col. Sidney. My Lord I conceive this too, that those Words, that are said to be written in the Paper, that there is nothing of Treason in them; Besides, that there was nothing at all proved of them, only by similitude of hands, which upon the Case I alledge to your Lordship, was not to be admitted in a Criminal Case. Now 'tis easy to call a thing *Proditorie*; but yet let the nature of the things be examined, I put my self upon it, that there is no Treason in it.

L. C. J. There is not a Line in the Book scarce, but what is Treason.

Mr. *Just. Withins*. I believe you don't believe it Treason.

L. C. J. That is the worst part of your Case; When Men are riveted in Opinion, that Kings may be deposed, that they are accountable to their People, that a general Insurrection is no Rebellion, and justify it, 'tis high time, upon my Word, to call them to Account.

Col. Sidney. My Lord, the other Day I had a Book, wherein I had King *James's* Speech, upon which all that is there, is grounded in his own Speech to the Parliament in 1603. and there is nothing in these Papers, which is called a Book, though it never appeared, for if it were true, it was only Papers found in a private Man's Study, never shewed to any body; and Mr. *Attorney* takes this to bring it to a Crime, in order to some other Counsel, and this was to come out such a time, when the Insurrection brake out. My Lord, There is one Person I did not know where to find then, but every body knows where to find now, that is the Duke of *Monmouth*; if there had been any thing in Consultation, by this means to bring any thing about, he must have known of it, for it must be taken to be in Prosecution of those Designs of his: And if he will say there ever was any such thing, or knew any thing of it, I will acknowledge whatever you please.

L. C. J. That is over; you were Tried for

this Fact: We must not send for the Duke of *Monmouth*.

Col. Sidney. I humbly think I ought, and desire to be heard upon it.

L. C. J. Upon what?

Col. Sidney. If you will call it a Tryal—

L. C. J. I do. The Law calls it so.

Mr. *Just. Withins*. We must not hear such Discourses, after you have been Tried here, and the *Jury* have given their Verdict; as if you had not Justice done you.

Mr. *Just. Holloway*. I think it was a very fair Tryal.

Col. Sidney. My Lord, I desire, That you would hear my Reasons; why I should be brought to a new Tryal.

L. C. J. That can't be.

Col. Sidney. Be the Tryal what it will?

Cl. of Cr. Cryer, make an Oyes.

Col. Sidney. Can't I be heard, my Lord?

L. C. J. Yes, If you will speak that which is proper; 'tis a strange thing. You seem to appeal as if you had some great Hardship upon you. I am sure, I can as well appeal as you. I am sure you had all the Favour shewed you, that ever any Prisoner had. The Court heard you with Patience, when you spake what was proper; but if you begin to Arraign the Justice of the Nation, it concerns the Justice of the Nation to prevent you: We are bound by our Consciences and our Oaths to see Right done to you; and though we are Judges upon Earth, we are accountable to the Judge of Heaven and Earth; and we act according to our Consciences, though we don't act according to your Opinion.

Col. Sidney. My Lord, I say. In the first Place I was brought to *Westminster* by *Habeas Corpus*, the 7th of this Month, granted the Day before I was to be Arraigned, when yet no Bill was exhibited against me; and my Prosecutors could not know it would be found, unless they had a Correspondence with the Grand Jury, which under Favour ought not to have been had.

L. C. J. We know nothing of it; You had as good tell us of some bodies Ghost, as you did at the Tryal.

Col. Sidney. I told you of two infamous Persons that had acted my Lord *Russel's* Ghost.

L. C. J. Go on, if you have any thing else.

Col. Sidney. I prayed a Copy of the Indictment, making my Objections against it, and putting in a special Plea, which the Law I humbly conceive allowed me: The help of Counsel to frame it was denied.

L. C. J. For the Copy of the Indictment, it was denied in the Case you cited. This Favour shewed you to Day, was denied at any time to Sir *Henry Vane*, that is, to have the Indictment read in *Latin*. Don't say on the other Side, we refused your Plea. I told you, have a care of putting it in. If the Plea was such as Mr. *Attorney* did demur to it: I told you, you were answerable for the Consequences of it.

Mr. *Just. Withins*. We told you, you might put it in, but you must put it in at your Peril.

Col. Sidney. My Lord, I would have put it in.

L. C. J. I did advertise you: If you put in a Plea, upon your Peril be it. I told you, We are bound by Law to give you that fair Advertisement

vertisement of the great Danger you would fall under, if it were not a good Plea.

Col. Sidney. My Lord, my Plea was that could never hurt me.

L. C. J. We do not know that.

Col. Sidney. I desire, my Lord, this, that it may be considered, That, being brought here to my Tryal, I did desire a Copy of my Indictment, upon the Statute of 46 *Edw. 3.* which does allow it to all Men in all Cases.

L. C. J. I tell you the Law is otherwise, and told you so then, and tell you so now.

Col. Sidney. Your Lordship did not tell me, That was not a Law.

L. C. J. Unless there be a Law particular for Col. Sidney. If you have any more to say —

Col. Sidney. I am probably informed, and, if your Lordship will give me time, shall be able to prove it, That the Jury was not summoned, as it ought to be: My Lord, if this Jury was not summoned by the Bayliff, according to the ordinary way, but they were agreed upon by the Under-Sheriff, *Graham* and *Burton*, I desire to know whether that be a good Jury?

L. C. J. We can take notice of nothing, but what is upon the Record: Here is a Return by the Sheriff; if there had been any indirect means used with the Sheriff, or any else, you should have mentioned it before they were sworn.

Col. Sidney. Is there any thing in the World more irregular than that?

L. C. J. I know nothing of it. That time is past.

Col. Sidney. Now, my Lord, All Men are admitted on the Jury.

L. C. J. Why, You did not like Gentlemen, and now you don't like those that you had. In plain English, if any Jury had found you Guilty, it had been the same thing. It had been a good Summons, if they had acquitted you.

Col. Sidney. When the Jury, thus composed, was sworn, four Witnesses, of whom three were under the Terror of Death for Treasons, were produc'd against me. And they confessed themselves guilty of Crimes of which I had no Knowledge, and told Stories by hear-say. And your Lordship did promise in summing up the Evidence, that the Jury should be informed what did reach me, and what not, and I don't remember that was done.

L. C. J. I did it particularly, I think I was as careful of it as possible I could be.

Col. Sidney. My Lord *Howard* being the only Witness, that said any thing against me; Papers, which were said to be found in my House were produced as another Witness, and no other Testimony given concerning them, but that the Hand was like unto mine. No Man can say, I read them, or shew'd them to any Man. None knew when they were written; The Ink shewed, they had been done many, and perhaps 20 or 30, Years. Yea, some Passages were read out of them, without examining what went before and after, when I desired the whole might be read, it was refused, unless I specified the Passage, which I could not do, knowing not one Word in them. When I alledged, that in Criminal Cases Similitude of Hands could not be taken for Evidence, proposed my Points of Law concerning Constructive Treason, &c. And I did conceive, that no Court under the

Parliament could be Judges of it, and did desire the Statute, which did so enact it, might be read, it could not be obtained: And I cited many Judgments in Parliament.

L. C. J. Mr. Sidney, If you arraign the Justice of the Nation so, as tho' we had denied you the Methods of Justice, I must tell you, you do what does not become you, for we denied you nothing that ought to have been granted. If we had granted you less, I think we had done more our Duty. What Points of Law do you mean?

Col. Sidney. That of Constructive Treason, my Lord.

L. C. J. We do not go upon Constructive Treason, 'tis plain Treason within 25 *Edw. 3.*

Col. Sidney. Is Writing an Act?

L. C. J. Yes, 'tis agere.

Proclamation made for Silence.

Mr. *Barnfield*. Sir, I pray you to hear me one Word as *Amicus Curiae*, I humbly suppose that your Lordship will not give Judgment if there be a material Defect in the Indictment, as the Clerk did read it he left out *Defensor fidei*, which is part of the Style of His Majesty.

L. C. J. We have heard of it already, we thank you for your Friendship, and are satisfied. Mr. Sidney, there remains nothing for the Court, but to discharge their Duty, in pronouncing that Judgment the Law requires to be pronounced against all Persons Convicted of High-Treason; and, I must tell you, that tho' you seem to arraign the Justice of the Court, and the Proceeding —

Col. Sidney. I must appeal to God and the World, I am not heard.

L. C. J. Appeal to whom you will. I could wish with all my Heart, instead of Appealing to the World, as tho' you had received something extream hard in your Case, that you would Appeal to the Great God of Heaven, and consider the Guilt you have contracted by the great Offence you have committed. I wish with all my heart, you would consider your Condition, but if your own Ingenuity will not provoke you, nothing, I can say, will prevail with you to do it, if the King's General Pardon, in which you had so great a share of the King's Mercy, will not. I could wish, that, as a Gentleman and as a Christian, you would consider, under what particular Obligations you lye to that Gracious King, that hath done much more for you. I should have thought it would have wrought in you such a Temper of Mind, as to have turned the rest of your Life into a generous Acknowledgment of his Bounty and Mercy, and not into a State of constant Combining and Writing, not only to destroy Him, but to subvert the Government; and I am sorry to see you so earnest in the Justification of the Book, in which there is scarce a Line, but what contains the rankest Treason, such as Deposing the King: It not only encourages, but justifies all Rebellion. Mr. Sidney, you are a Gentleman of Quality, and need no Counsel from me: If I could give you any, my Charity to your Immortal Soul would provoke me to it. I pray God season this Affliction to you. There remains nothing with the Court, but to Pronounce that Judgment that is expect-

ed, and the Law requires, and therefore the Judgment of the Court is,

That you be carried hence to the Place from whence you came, and from thence you shall be drawn upon an Hurdle to the Place of Execution, where you shall be hanged by the Neck, and, being alive, cut down; your Privy Members shall be cut off, and burned before your Face, your Head severed from your Body, and your Body divided into four Quarters, and they to be disposed at the Pleasure of the King. And the God of infinite Mercy have mercy upon your Soul.

Col. Sidney. Then, O God, O God, I beseech thee to sanctify these Sufferings unto me, and

impute not my Blood to the Country, nor the City, thro' which I am to be drawn; Let no Inquisition be made for it, but if any, and the shedding of Blood that is innocent, must be revenged, Let the Weight of it fall only upon those, that maliciously persecute me for Righteousness sake.

L. C. J. I pray God work in you a Temper fit to go unto the other World, for I see you are not fit for this.

Col. Sidney. My Lord, feel my Pulse, (*holding out his Hand*) and see if I am disorder'd, I blest God, I never was in better Temper than I am now.

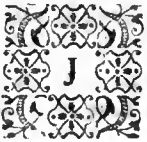
Then the Lieutenant of the Tower carried back his Prisoner.

His Attainder was Reversed in Parliament the 1st of W. and M.



The T R Y A L of John Hambden, Esq;

The 28th Day of November, 1683. Ann. 35 Car. 2. Reg. John Hambden, Esq; being brought up by Writ of Habeas Corpus, from the Tower of London, and there being an Indictment preferred against him for Misdemeanor, His Majesty's Attorney General prayed that he might be Arraigned upon it, which was done in this manner.

Cl. of Cr.  John Hambden, You stand here Indicted by the Name of John Hambden, late of the Parish of St. Giles in the Fields, in the County of Middlesex, Gent.

For that you being a pernicious and seditious Man, and a Person of a wicked Mind, and of an impious, unquiet, and turbulent Disposition, and contriving, practising, and falsly, unlawfully, unjustly, maliciously, turbulently, and seditiously intending the Peace of our Sovereign Lord King Charles that now is, and the common Tranquillity of this Kingdom of England to disquiet, molest, and disturb, and, as much as in you lay, Sedition within this Kingdom of England to incite, stir up, and procure, and the Government of our said Lord the King in this Kingdom of England into danger to bring: And that you the said John Hambden, your most impious, wicked, and seditious Intentions aforesaid to fulfil and perfect, and bring to effect, the last Day of June, in the Five and thirtieth Year of the Reign of our said Sovereign Lord the King that now is; and divers other Days and Times as well before as after, with Force and Arms, &c. At the Parish of St. Giles in the Fields, in the County of Middlesex, unlawfully, unjustly, maliciously, and seditiously did assemble your self, meet, Consult, Conspire, and Confederate with divers evil disposed Subjects of our said Lord the King to the Jurors unknown, and with the said Persons did treat

concerning your said most wicked and seditious Compassings, Imaginations, and Purposes aforesaid, to be executed, fulfilled, and brought to effect; and further that you the said John Hambden, your most wicked, impious, and seditious Contrivances, Practices and Intentions aforesaid to fulfil, perfect, and reduce to effect, then and there, viz. the last Day of June in the 35th Year aforesaid, and divers other Days and Times, as well before as after, at the Parish aforesaid, in the County aforesaid, with Force and Arms, &c. falsly, unlawfully, unjustly, maliciously, and seditiously did Consult, Consent, Conspire and Confederate of an Insurrection within this Kingdom of England to be made, and of procuring and providing Arms and Armed Men to be prepared in divers Places within this Kingdom of England your same most wicked, impious and seditious Intentions and Compassings aforesaid to fulfil and perfect: And that you the said John Hambden, your most wicked, impious, and seditious Intentions aforesaid to fulfil and perfect, and bring to effect afterwards, viz. the last Day of June, in the 35th Year aforesaid, at the Parish aforesaid, in the County aforesaid, with Force and Arms, &c. falsly, unlawfully, unjustly, wickedly, maliciously, and seditiously did Consult, Agree, and Consent that a certain Person to the Jurors aforesaid unknown, should be sent into Scotland to invite and incite divers evil disposed Subjects of our said Lord the King, of his Kingdom of Scotland, to come into this Kingdom of

of England to Advise and Consult with you the said John Hambden, and others the aforesaid evil disposed Subjects of our said Lord the King in this Kingdom of England, concerning Aid and Assistance to be expected and supplied out of the said Kingdom of Scotland, your said most wicked, impious, and seditious Intentions and Compassings aforesaid to fulfil, effect, and promote, in manifest Contempt of the Laws of this Kingdom of England, to the evil and most pernicious Example of all others in the like case offending, and against the Peace of our said Sovereign Lord the King, his Crown and Dignity.

Cl. of Cr. How say'st thou, Art thou Guilty of this High Misdemeanor whereof thou standest Indicted, and hast been now Arraigned, or not Guilty?

Mr. Hambden. Not Guilty.

Upon which Plea Issue was joined between His Majesty's Attorney General, on behalf of the King and Defendant, and Bail was then taken for the Defendant's Appearance the next Term.

Hillary Term 35 and 36 Car. 2di Reg. In the beginning of the Term, Sir Thomas Jenner, Knight, His Majesty's Serjeant at Law, and Recorder of the City of London, moved for a Tryal at the Bar, in the Case between the King and Mr. Hambden, which was by the Court appointed to be on Wednesday the 6th of February in the same Term.

Die Mercurii 6. Februarii, 1683. Anno Regni Regis Caroli Secundi 36.

Cl. of Cr. CALL the Defendant John Hambden. Mr. Williams. He appears.

Cl. of Cr. Gardez votrez Challenges. Call Sir Charles Gerard.

Cryer. You shall well and truly try the Issue between our Sovereign Lord the King, and John Hambden, Gent. and a true Verdict give according to your Evidence, So help you God.

Sir Charles Gerard, Jur'

Cl. of Cr. Roger Jennings, Esq; Jur'
Henry Hodges, Esq; Jur'
Joshua Galliard, Esq;

Mr. Williams. We challenge him for the Defendant.

Sir George Jefferies. L. C. J. What is your Cause of Challenge?

Mr. Williams. If your Lordship please to let him go through the Pannel, we will shew Cause if there be not enough left without him.

L. C. J. No, Shew your Cause now, it being against the King.

Mr. Williams. He has an Employment under the King, he has an Office in the Forest, and that we say is our Cause of Challenge.

L. C. J. What then if he have?

Mr. Williams. My Lord, We suppose then he is not an indifferent Person to try this Cause.

L. C. J. Ay, Let me hear that now proved and defended by any Gentleman of the long Robe, that That is a good Cause of Challenge. Shew me what Law there is for it.

Mr. Williams. To be of the King's Robe, or Pay; or Salary, is an Exception in any Case wherein the King is concerned.

L. C. J. Shew me any Law for that if you can, Mr. Williams, I know you are a Lawyer.

Mr. Wallop. It is the Opinion of my Lord Coke in his Institutes, that it is a good Cause of Challenge.

L. C. J. But there is the Opinion of all the Judges in Henry IV's Time against it.

Mr. Wallop. It is, my Lord, fol. 156.

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L. C. J. But I can cite you three or four Books, and you have them all together in Roll's Abridgment, Title Challenge, where he sets down four Books one after another, That it is no Cause of Challenge, even to be the King's Tenant, and there is a great deal of reason for it. For if that were a good Cause of Challenge; mark the Consequence, then all Persons that hold Lands in England hold them mediately or immediately of the King, and so the King could have no Freeholders to be Jury-men in his Cause.

Mr. Williams. This is a more special Cause of Challenge than that.

L. C. J. What can be greater than that of being the King's Tenant?

Mr. At. Gen. Especially when all the Land of England was held of the Crown, as originally it was.

Sir Robert Sawyer.

Mr. Trever. My Lord in 2d Rolls 646. Tit. Tryals, There is the express Opinion of my Lord Rolls, that to be of the Livery, or a menial Servant of the Crown, is a good Cause of Challenge.

L. C. J. And look you but in the 1st Case in the 1st Part of the Abridgment, Title Challenges, where he mentions three or four Books to the same purpose, and 'tis quite otherwise.

Mr. Williams. My Lord, In that of 1st Rolls, he only cites some Books, but the other is his own Opinion.

L. C. J. Well, make out your Fact if you have a mind to it; but it is well known, that neither Mr. Serjeant Rolls, nor my Lord Coke, when he delivered that Opinion, are to be reckoned such Authorities in Crown-matters.

Mr. Williams. We will ask him, my Lord, if you please, I suppose he will not deny it.

L. C. J. No, make out your Fact if you will have any Benefit by it, 'tis only a Challenge to the Favour, which ought not to be in the King's Case. I am very glad that we are now to debate this Matter with Men of the Robe, because we have had a strange sort of Notions and Reflections spread abroad of late, as tho'

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the Judges now-a-days gave strange sort of Opinions, and as tho' Persons that had been Blemishes at the Bar, were preferred to do strange things when they came upon the Bench; but truly I wonder to hear that it should be a Doubt, when at the same time that which we gave as our Opinion about one particular Challenge, that is as to Freeholders, it was the Judgment of all the Judges, that That was no Challenge, and all the Counsel that were concerned in that Case know it was the Opinion of all the Judges. But now if we meet with Lawyers, I shall be glad to have the Matter fairly argued and debated, and pray shew me what Law or Reason is for it.

Mr. Wallop. Certainly, my Lord, there is a great difference betwixt the general Allegiance of all Men, and so of a general Tenure, and the Dependance of any particular Person who is a menial Servant, and receives Wages of the King.

L. C. J. I would desire to know of you, Mr. Wallop, which is the greater Challenge, to say such a one is Tenant, or such a one is immediate Servant to J. S?

Mr. Wallop. There is a great difference, my Lord, I think, between an immediate Tenant, and the general Tenure of all Subjects.

L. C. J. But certainly the Law is thus, if he were an immediate or a mediate Tenant to any but the King, if his Lord were Party to the Suit it would be a good Challenge, but the being Tenant to the King is no good Challenge in the King's Case.

Mr. Williams. My Lord, I take it, the Act of Parliament that takes away the Court of Wards and Liveries hath altered the Law as to that Matter of Tenure; for now we hold in Socage, and that other Tenure is destroyed that was between the King and his Subjects.

L. C. J. But pray how comes it to be a Challenge now that was not one before? Does that Act of Parliament make it a good Cause of Challenge? If it does, shew it. I tell you the Old Books are against it.

Mr. Williams. I speak, my Lord, to the Tenure, that That is nothing at all now to be objected, because all is now in Socage.

L. C. J. I would not have Mr. Attorney insist upon a Jury man, but yet with-all I would not have it gone away with as Law, that it is a good Cause of Challenge.

Mr. Wallop. My Lord, We finding in some Cases that are in our Books, that it is held to be a good Cause of Challenge, lay it before the Court.

Mr. At. Gen. How many hundred Errors do you find in my Lord Coke, notwithstanding all his Learning?

L. C. J. I say, if I was Mr. Attorney, I would not contest for any particular Man to be a Jury-man, I speak that as my Advice, but I would not have it taken for Law, nor would I have it broached abroad, that tho' the Judges now were of one Opinion, yet the Law truly was of another.

Mr. Jones. If all that receive Salary, or Wages from the King, are not to be Jury-men in the King's Causes, then all the Deputy Lieutenants and Militia Officers, which generally are the most substantially Freeholders, are excluded from being Jury-men.

Mr. Just. Wubins. Who will say so, Mr. Jones? No Lawyer in England surely will say so.

Mr. Williams. Offices where there is no Profit, will not be the same Exception.

Mr. At. Gen. But he is no menial Servant of the King's.

Mr. Williams. What is he then?

Mr. Wallop. We hear that he is Keeper of one of the King's Forests, and has a Fee for it.

Mr. Williams. Well, we will ask him upon a *voyer dire*.

Mr. At. Gen. My Lord, The Fact is quite otherwise, and I desire they may make it out.

L. C. J. Truly, I think 'tis not *tanti* to insist upon any particular Man, but I find we are in an Age that is so full of Cavils, that if we act but according to the Precedents that went before us, we are thought to act as Originals, and to make new Laws, when we only follow the Rules that we have received from our Predecessors. And I say there was no such Challenge at Common Law, that ever I read of in any of our Books, nor is it any Challenge by the best Authorities extant.

Mr. Jones. I desire them to shew me any such Precedent, That any Man was challenged by one that was tried at the Suit of the King, for a Challenge to the Favour, but we must do unprecedented things, or else there will be no satisfying of some Men.

Mr. At. Gen. I would fain know, what one Opinion in a stragling Book is against the Current of all our Law?

Mr. Williams. Which do you call a stragling Book, Mr. Attorney? My Lord Coke's *Institutes*, or my Lord Roll's *Abridgment*?

L. C. J. I say the better Opinion of the Books is on the other side, and the greater number too.

Mr. At. Gen. First of all, I do know of my own Knowledge, he is no menial Servant.

L. C. J. Mr. Attorney, I do debate it for Learning sake, truly I know not the Man, nor whether he be the King's Servant, or not, but I speak against allowing the Challenge, that if he be set aside, it may not be taken as a Precedent, and so pass for Law that the King's Servants can't be Jury-men. I would have you quit the Man by Consent, but not as a Forceput, as tho' the Law were so, for the Law, I think, is otherwise.

Mr. At. Gen. He is none, my Lord, they mistake.

L. C. J. Nay, I know nothing of the Man, I tell you only what I think.

Mr. Wallop. He receives Wages, or a Fee from the King for his Office.

Mr. Just. Wubins. I would never, for my part, while I live, nor never did, while I was a Practiser, stand upon any particular Jury-man.

Mr. At. Gen. He may be a Jury-man by Law sure.

L. C. J. There is no doubt of it, Mr. Attorney.

Mr. At. Gen. My Lord, If your Lordships have given your Opinion, I desire he may stand by.

L. C. J. Well, Mr. Attorney waves him, Let him stand by.

Mr. At. Gen. But for no Reason that has been offered.

L. C. J. No, No, I don't hear any thing of Reason offered for it.

Cl. of Cr. Mr. Galliard. You may go down.

Thomas Harriott, Esq; Jur'

Thomas Earsby, Esq; Jur'

William Avery, Esq; Jur'

John Sharpe, Esq; Jur'

Richard Shoreditch.

Mr. Williams. We challenge him for the Defendant.

L. C. J. What is your Cause of Challenge?

Mr. Williams. There is the same Exception to him.

L. C. J. If Mr. Attorney will consent, with all my heart.

Mr. At. Gen. No, we humour'd you in one, we won't humour you any more.

Mr. Williams. Nay, here is something more clear for us, He is a Serjeant at Arms attending His Majesty.

Mr. Jus. Witsbys. You know our Opinions already, Mr. Williams, unless Mr. Attorney consent, we can't do it.

Mr. Williams. We only acquaint Mr. Attorney with it, we must submit to your Rule, he is certainly Serjeant at Arms, he came in the Place of *Dereham* that let my Lord Grey escape.

Mr. At. Gen. Pray prove it, I don't know it for my share.

Mr. Williams. Will you ask him the Question?

Mr. At. Gen. Pray prove it. Are we to gratify your Client? Pray, let him better instruct his Counsel.

L. C. J. If Mr. Attorney consent not, then he must be sworn.

Mr. At. Gen. If there be enough without him that do appear, let him stand by.

Cl. of Cr. Stand down, Mr. Shoreditch.

Charles Good, Esq; Jur'

Mr. At. Gen. That it may appear how fair things were carried, they would not strike out one of these Men when they came before the Protonotary, as they might have done.

Mr. Jus. Witsbys. Truly that was not well done, to trouble the Court when you might make your Exceptions there.

Mr. Williams. We did not know it then, now we do, we offer it to the Court.

Cl. of Cr.

Samuel Rouse, Esq; Jur'

Hugh Squire, Esq; Jur'

Nehemiah Arnold, Esq; Jur'

John Biseild, Esq; Jur'

Then the Jury were number'd, and the 12 sworn were these.

Sir Charles Gerard, Bar.

Roger Jennings, Esq;

Henry Hodges, Esq;

Thomas Harriott, Esq;

Thomas Earsby, Esq;

William Avery, Esq;

John Sharpe, Esq;

Charles Good, Esq;

Samuel Rouse, Esq;

Hugh Squire, Esq;

Nehemiah Arnold, Esq;

John Biseild, Esq;

Cl. of Cr. Gentlemen of the Jury, You that are sworn, hearken to your Charge. The Defendant *John Hambden* stands indicted by the Name of *John Hambden*, of the Parish of *St. Giles in the Fields*, in the County of *Middlesex*, Gent. (Prout in the Indictment, *mutatis mutandis*) — To this Indictment he has pleaded not Guilty, and for his Tryal puts himself up

on the Country, and the King's Attorney General likewise, which Country you are, your Charge is to inquire whether the Defendant be guilty of the great Misdemeanor whereof he stands indicted, or not guilty; if you find him guilty, you are to say so; and if you find him not guilty, you are to say so, and no more; and hear your Evidence.

Then Proclamation was made for Evidence in usual Form.

Mr. Holloway. May it please your Lordship, and Gentlemen, you that are sworn, I am of Counsel for the King upon this Indictment. Gentlemen, the Indictment sets forth, that the Defendant being a seditious, malicious, evil disposed Person, and seditiously and maliciously intending to disturb the Peace of the Kingdom, the last Day of *June*, in the 35th Year of his now Majesty's Reign, and divers other Days and Times, at the Parish of *St. Giles in the Fields*, in your County, did unlawfully assemble, and confederate himself with divers evil disposed Persons, Subjects of our Lord the King, and then and there, with those other Persons did falsly, maliciously, and seditiously Consult and Conspire to make an Insurrection in the Kingdom of *England*, and to provide Arms and Armed Men in divers Places of the said Kingdom. And the better to compleat his evil Intentions, the said last Day of *June*, did Consult and Agree to send certain Persons, to the Jurors unknown, into *Scotland*, to invite several evil disposed Persons there to joyn in this Conspiracy. This is the Substance of the Charge, and to this he says, He is not Guilty; If we prove him so, we do not question but you will find it.

Mr. At. Gen. May it please your Lordship, and you Gentlemen of this Jury, Mr. Hambden stands indicted of an High Misdemeanour, for Conspiring with several others, to raise Rebellion within the Kingdom, and to crave the Assistance of the Brotherhood of *Scotland*. Upon the Face of the Indictment, Gentlemen, it appears to be a very High Crime, and the Matter of this indeed has been formerly in Examination in other Tryals, and yet the Party you may observe do not acquiesce in those Tryals, but think the Persons accused lay under very great Hardships, and that to a very great degree, as not having the Advantage of Counsel, nor to have their Witnesses examined upon Oath; and therefore, Gentlemen, the King is pleased to go less in this Case than in the others, That this Gentleman, who is now before the Court, may clear his Innocence, if he has any Witnesses to do it. And if there be any Advantage that the having of Counsel can contribute to his Cause he has that allowed him too.

The Course of our Evidence, Gentlemen, will be this.

We shall prove to you that Mr. Hambden, with five other Persons (I shall name them) the Duke of *Monmouth*, my Lord *Russel*, Mr. *Sidney*, my Lord of *Essex*, and my Lord *Howard*, they met several times (the Particulars we shall give you an Account of) one was at Mr. Hambden's House, another was at my Lord *Russel*'s, where they did contrive together, and took upon them to be a Juncto, or a Council of Six, collected out of the wisest Men of the Kingdom, to consider how they

they might better the Affairs of the Nation, and how they might make a Stir: For they thought there was no way possible otherwise of doing it, but by their joint Counsels to carry on a Rising. And that they might do it the better, they resolved to crave the Assistance of *Scotland*. Gentlemen, We shall give you an Account of their Consults and Debates, and shall shew you, that at length they came to a Resolution, That the rising was to be carried on jointly in *London*, and the several Parts of the Kingdom, in several Countries at once. Then they came to think, and consider whether it were not best to send into *Scotland*, to draw them in too. And thereupon it was agreed by this Juncto, That they would send thither, and the Management of it was committed to Mr. *Sidney*, to send some fit Person into *Scotland*, to treat with the Male-Contents there; and the better to carry on this joint Design, some of them were to come up to *London*. And they were to have a Pretence to treat about going to *Carolina*, and the purchasing some Shares in the Plantation there, of which my Lord *Shaftsbury* was a chief Governour. We shall prove to you, Gentlemen, besides all that I have opened, That the Person to whom that Trust was committed, Mr. *Sidney*, according to the Duty that he had taken upon him, does employ one *Aaron Smith*, which all that know him, do know him to be a fit Engine for such Counsellors, and a fit Instrument for such a Conspiracy. We shall prove he actually was in *Scotland*, and that he went into *Scotland* upon this Errand. And then we shall prove, That those Gentlemen that were sent to, and were the Persons named in their Consults to be treated with, came here soon after to Town, and as soon as ever this Plot was discovered, they fled and absconded themselves. Gentlemen, If we shall prove all this Matter to you, I think it will be without any Question clear, that this Gentleman is notoriously Guilty of this High Misdemeanour. And indeed, if your observe it, one of the Persons has given Judgment against himself, the Earl of *Effix*. But the Party have been so diligent and officious as to sling that upon the Government; but that Matter we shall have before the Court in Judgment to morrow. For two of the others they have received the Judgment of the Law; for two more of them the King has been pleased to take them into his Mercy; the one is my Lord *Howard*, who is summon'd to appear here to Day; the other is the Duke of *Monmouth*, who has confessed all this Matter, and has taken his Pardon, and we have Summoned him also to be here this Day; that the World, if they will have their Eyes opened (I mean the discontented World) may see there is nothing sought, but the Peace and Quieting of the Kingdom.

Gentlemen, If we prove all this Matter to you, I shall be glad to hear the Defence of the Counsel, and the Defence made by Witnesses upon Oath.

Mr. *Sol. Gen.* My Lord, we will call our Witnesses, and first we begin with the Duke of *Monmouth*.

Mr. *At. Gen.* Call James Duke of *Monmouth*.

Crier. James Duke of *Monmouth*.

Mr. *At. Gen.* Call him again.

Crier. James Duke of *Monmouth*.

L. C. J. Was he served with a *Subpæna*?

Mr. *At. Gen.* My Lord, we will prove we have served him in all Places where he was like to be met with; That we left *Subpæna's* with his Servants, who promised to deliver them to him.

L. C. J. Prove it.

Mr. *At. Gen.* Where is Mr. *Atterbury*? Swear him (which was done.) Pray will you give the Court an Account, whether you did serve the Duke of *Monmouth* with any *Subpæna*? In what Places you were to serve him, and who you left it with?

Mr. *Atterbury*. My Lord, On *Friday* last was Seven-night, I was commanded by Mr. *Attorney General*, to carry a *Subpæna* to serve upon the Duke of *Monmouth*, and to go to his House at *Moor Parke*, where it was generally discoursed he was. I did go and take a *Subpæna* from Mr. *Burton*, by Mr. *Attorney's* Order, and went to the Duke's House at *Moor Parke*. When I came there, the outward Gate was locked, and I went to an House where the Keys are kept, and having got the Keys, I went down to the House, and I saw there one of his Servants fothering of Cattle; and coming up to him, I asked him if the Duke of *Monmouth* was in the House? He told me, he could not well tell, whether he was or not, but he thought he was gone to *London*, for he saw the Calash, and 5 or 6 Horsemen with it, and they said in the House, that it was the Duke that was gone to *London*. I asked if there were any Servants that were nearer to his Grace in the House, that I might speak with? They said, Yes, there was the House-keeper or Steward, one Mr. *Rawkins*, that attended upon the Duke. I desired to speak with him, and he came out to me; I asked him if the Duke was there? He seemed to be unwilling to give me an Answer. I asked him the second time; but he did not say he was, or he was not. I told him then, I had a *Subpæna*, which I brought with me by Mr. *Attorney General's* Order, to serve upon his Grace, which was to require him to attend here this Day, to testify his Knowledge, in a Case between the King and Mr. *Hambden*. He told me, Sir, said he, give me your *Subpæna*, and I will take care the Duke shall have it. He took it of me, and I came back to *London* presently. As soon as I came to Town, I had a second *Subpæna* given me to serve upon his Grace, with which I went to the Duke's House at the *Cockpit*.

When I came there, I spake with the Porter, I think his Name is *Johnson* (but the Porter he is, and I remember him a Servant there many Years) I asked him, if the Duke were there? He told me he did not lodge there. I told him I had a *Subpæna* to serve upon his Grace to appear as this Day, the same as I said at *Moor Park*. Says he, Mr. *Atterbury*, I will take care the Duke have it to Night, or to morrow Morning early.

L. C. J. When was this?

Mr. *Atterbury*. It was of the same Day, *Friday* was seven-night last. I was told afterwards by one that I met with, that the Duke did lodge at Mr. *Row's* House, who is a Servant to the Duke, one of his Gentleman. He lives in the *Pall-Mall*, 'tis either his House or his Lodging, but they call it his House. I had a third *Subpæna* given me to the same effect. And when I came there, I asked for the Duke, and a Woman came

to the Door, Mrs. Manley (I think they call her) she seemed to make little Answer to what I said. Said I, Pray will you give this *Subpœna* to the Duke, or to Mr. Row to give it the Duke. She took it of me, and said, she would give it Mr. Row certainly to give to the Duke. And yesterday, or the Day before, I met Mr. Row at *White-Hall*, and says he to me, Mr. Atterbury, you brought a *Subpœna* to my House a little while ago? Yes, Sir, said I, I did, had you it? Yes I had the *Subpœna*, says he. Then says I, I hope you gave the Duke it? To that he made me no answer, but nodded his Head, and smiled, and went away.

L. C. J. Now call his Grace again.

Cryer. James Duke of Monmouth. [But he did not appear.]

Mr. At. Gen. Call William Lord Howard. (Who was in the Court.) Pray swear my Lord Howard.

[Which was done.]

Mr. At. Gen. My Lord Howard, Pray will you be pleased to give the Court and the Jury an Account, what you know of any Meeting by the Gentleman that is now accused, and the Duke of Monmouth, my Lord Russel, your self and others, and when? Tell what you know?

Lord Howard. My Lord, in January last was 12 Month, about the midst of January I was called out by Colonel Sidney, being then in my Lodgings in Southampton street, and carried by him to Mr. Hambden's House, I do not know what they call the Street, but the same side of the way with the Fine House that is in Bloomesbury.

Mr. Jones. By my Lord Mountague's House that now is, you mean?

Lord Howard. Yes, of the same side of the way. When I came there, there was my Lord Russel, and the Duke of Monmouth, Colonel Sidney and I went together, Mr. Hambden was then in the Room where they were. Afterwards came in my Lord of Essex, this made up Six. When they were there, we fell into Discourses.

Mr. At. Gen. Pray my Lord, before you come to tell the particular Discourses, give an Account how, and upon what grounds you came to have this Juncto of Six?

L. C. J. If you please, my Lord, Pray give an Account of the Preliminary Passages.

Lord Howard. My Lord, After the Disappointment given to an Undertaking that was begun by my Lord Shaftsbury, which was in October or November before, in November he died. After that, truly I cannot say, but that Colonel Sidney and my self might be, and were the two first that did give the Rise to it. For being in Discourse, We said it was absolutely necessary that there should be some Council erected to give some steadiness to the Motions.

L. C. J. My Lord, I would not willingly interrupt you. But you seem to speak of a Disappointment given to an Undertaking by my Lord Shaftsbury. Pray what was that Undertaking?

Lord Howard. Your Lordship has heard of that before, and know it very well.

L. C. J. Though we know it, the Jury do not. They have not heard it Judicially at least.

Lord Howard. Because it has been in the printed Books, every body I suppose knows it.

L. C. J. But that they cannot Judicially take notice of.

Lord Howard. That is something a long History, my Lord.

L. C. J. Though it be, we must hear it.

Mr. At. Gen. Pray make it as short as you can, my Lord.

Lord Howard. So much as I can give account of is this. It was about the Day after Michael's Day that I came to my own House having been before in Essex, and that I think was Saturday. The Monday following Captain Walcot came to me and dined with me, and after Dinner told me, my Lord of Shaftsbury had left his House, and had betaken himself to a private Lodging, and had hid himself from the rest of his Friends; but had a great Kindness for me, (which Kindness truly I wish he had spared) and desired to see me, I took time to consider of it; but I bid him go back to my Lord Shaftsbury, and tell him, if he had any thing of an extraordinary Nature to acquaint me with, I would come and assist him all I could. He came the next Day again, and shewed me to my Lord Shaftsbury's Lodgings: He lodged then at one Watson's House, a Citizen, I know not what Street they call it; but it was in a little Street down by Woodstreet. And when I came to him, I found my Lord Shaftsbury very much differing from what he used to be, which was more cautious, and presently he fell to tell me, that he was forced to withdraw himself from his own House, for fear of being attacked again by Sham-Charges and Plots, and false Evidence, as he had before: For now he said, He saw they had the Possession of all Juries, by having those Sheriffs which were imposed upon the City, as he said, and he could not think his own Life or any Man's Life safe; for to be accused was sufficient to bring his Life into very great danger, and for that reason he had withdrawn himself to that private retirement; and being there he was resolved to make some speedy Push, for recovering of the Liberties of England, that there was Preparation made in the City of several Thousands of Men, that were all in readiness to Rise, and that for his part, he was resolved to be set on Horse-back; for get on Horse-back he could not; and that there were great numbers that were ready, when he did but hold up his Finger, to be drawn together at any time: That divers had been drawn out of the Countrey to join with them by insensible Parties of Horse, I think he named about Fourscore or an Hundred. Which since I found were to be headed by Colonel Rumsey, upon the Day of making and declaring the Sheriffs; but finding there was nothing done, he withdrew himself and his Man thither; but there was such a general Preparation in the City, that if some Lords did not unhand somely desert them, they should be in readiness for Action quickly. I asked him who he meant? He told me, the Duke of Monmouth and my Lord Russel had very unhand somely deserted him; for they had promised and undertaken to be in readiness with Men out of several Countries in which they had an Interest, he named Somersetshire, Devonshire, and Cheshire, I think, and that my Lord Grey should be disposed of into Essex to do the same there, and if they had held on this Resolution, it had been such a sure Game, that it could not have failed:

But

But says he, they are started, and say they cannot be in a readiness to do it. My Lord, I very much wonder that those Persons you named should engage in any Design, and fail of performing what they promised! Says he, I'll assure you 'tis so. And so he proceeded to speak several sharp Things of the Duke of *Monmouth*, upon the account of his Ambition, that he thought to have all under his Command: Which was a secret lurking Ambition in him, that he said, he always suspected the Duke to be guilty of. And now he found his Suspicions true. That unless he might command all, he would do nothing. But for his part, since he found the Matter so, he was resolved to go on alone, rather than fail in his Design. Said I, my Lord, I should be very forward to concur with you in any thing; but I wonder your Lordship should step into an Action of such Danger, thus divided from those that are most likely to assist you in it. I cannot help it, said he, I have left my House, and must go on. My Lord, said I, pray give me leave to go to the Duke of *Monmouth*, and expostulate the Matter with him, and I will come and give you an Account again. Says he, 'tis to no purpose, I dare say. Said I, my Lord, pray let me go and try, for I would not have you divided, but I will promise you this, I will not tell him I came from you, but as from my self discourse it with the Duke. Well, said he, if you will you may. This was upon *Tuesday*, I think the 3^d of *October*, the 3^d or 4th. So I went to the Duke of *Monmouth* the next Day, which was *Wednesday*, and finding him not at home at his House in *Soboe*, and being told he was at *Moor-Park*, I took an Occasion to go to *Moor-Park*, and I came there a little after Dinner, and took him aside, and told him all this that I now have spoken about my Lord of *Shaftsbury*. Says he, I think the Man is mad, What does he mean? We did undertake to do this, 'tis true; but not by that time he speaks of, and Things are not ready, I know not what his own Fears make him do; but he does act so preposterously that he will undo us all. Said I, my Lord, all that I shall desire is, that there may be an interview betwixt you, and discourse the Thing with one another, or else it may be a thing of very fatal Consequence for him to step into an Action of this Danger and Concern while you are thus divided. With all my Heart, says the Duke, I would have nothing more, I desire to speak with him. This made me recoil back again to my Lord of *Shaftsbury* the next Day, and I told him all this, and desired he would give a Meeting, says he, I see they are false then to say they did not engage, they were engaged, and that against this time too, the Confirmation and Swearing of the Sheriffs; and now for me to meet with them, I know I shall run out into Passion and Anger, and therefore 'tis better omitted. Said I, my Lord, I must positively insist upon it. I must have an interview between you, for 'tis a madness for you to go on thus divided in so great a Business. I could not prevail, he would not; but he told me, if I would I might go to them from him, and let them know I had been with him; (for before I pretended to have it from a third Hand, and not from my Lord himself,) and if they would be in a readiness with what they promised from the Countrey, he would ask nothing from the City, he would take that Place upon

himself, if they would perform their Engagement for other Parts; but he resolved to go on. So I went to the Duke of *Monmouth's* again, and told him, what he said, That I could not by any means get him to an interview. Says the Duke, he is a strange Man, I know not what to do with him, we will all be in a Readiness as soon as we can; but it is impossible to do it so soon. I went to my Lord of *Shaftsbury* again on the *Saturday*, and did then positively engage him that he would give a Meeting to me, and the Duke of *Monmouth*, and some others. And we appointed Time and Place, he appointed to come out in a Parson's Habit, and a black Perriwig to his own House, which he thought the safest Place, because he would not discover his Lodging to any of them, for fear it should come to be known. With these Instructions I came to the Duke of *Monmouth* to prepare to about it, and proffered him to be ready the next Day at Evening with my Lord *Russel* to go to him. All this while I had not spoken to my Lord *Russel*, but only to the Duke of *Monmouth*. And the next Day when I came from Church to my own House, there met me a Message from Colonel *Rumsey*, who I understood by my Servants had been there, and left his Name. With this Message, that he came to tell me, the Gentleman that was to meet could not meet. This was so confused a Matter, that I was impatient till I knew the meaning of it. I took my Coach and went directly to the Duke of *Monmouth's* again, and he told me, Colonel *Rumsey* had been with him, and told him, my Lord of *Shaftsbury* was apprehensive there were a great many Tories about his House, and he feared being discovered, and therefore had removed his Lodging, and so could not meet; but we should hear from him in two or three Days. So that was the last time that I saw my Lord of *Shaftsbury*, or indeed in a direct Line did hear from him; collaterally by *Walcot* I did afterwards hear; but by this means we were at a loss. After this the Duke of *Monmouth* did tell me (for he did not own to me that he saw him, but indeed swore to me he did not see him; but I find since he did.) That he would do what he could, to prevent an untimely dangerous Undertaking. But after this it seems they had a Meeting at Mr. *Shephard's* House, where my Lord *Shaftsbury* sent a Message to him and my Lord *Russel*; but the Duke of *Monmouth* only told me, that my Lord *Russel* had met with him, and seen him; but he never owned that he had met him himself or seen him. About four or five Days after, Captain *Walcot* came to me, and told me, such a Day was set for the Rising. Upon which being startled, I had nothing to do, but recoil back to the Duke of *Monmouth*, and endeavour to stop any rash Proceedings, and it was stopped as I thought, and so it continued for two or three Days, and at that time, which was in *October*, there was a Rumour up and down whispered, as if something would be attempted; but what it was we did not know, but thus it went on for two or three Days, and then it meeting with a Disappointment upon the Consultation at Mr. *Shephard's*, my Lord *Shaftsbury* took up his Resolution to be gone, and went away to *Holland*, and died in *Holland*. This is the Substance of that Account which I can give of those former Transactions.

Mr. At.

Mr. At. Gen. Now give an Account of what was subsequent to this.

Lord Howard. This was in November. After this there being frequent Conferences between Colonel Sidney and me; for Colonel Sidney by the way knew nothing of all this, and I was cautioned by my Lord Shaftsbury, that I should not tell my Friend Sidney any thing of it, and asking him the reason, why I should not? Says he, I can't well tell; but you will wonder when I tell you, that his own Friend Major Wildman has barred him and would not let him know it. The Gentleman is now dead; but I will assure you he did know nothing of this for a Month after: For he was gone into the Countrey; but after my Lord Shaftsbury was dead, I told him the History of all these Transactions, which he was before a Stranger to. After this, when I had acquainted him with what had been intended in London, and what Preparations had been made, and how what was intended had been suppressed, and in what Posture Affairs then stood. We then took up a Resolution to form a Council, that might for the time to come give such Directions as might regulate the Motions of this Affair. Thereupon we began to think of the Persons who they should be. He undertook to speak to my Lord of Essex and Mr. Hambden; and I was to bring the Duke of Monmouth to a right Understanding with him in it. So I went to the Duke of Monmouth, and told him Colonel Sidney did present his Service to him, and would willingly wait on him, but that he thought it would do him hurt, because he was a Person of such Note, and thereupon so obnoxious that it might prejudice him to have him seen to come to him; and therefore if his Grace would please to appoint any third Place, he should be very glad to kiss his Hand. Says the Duke, I do not know any where truly to appoint. Why then, said I, I will tell you a Place: Let us'en go to his House (having before prepared Colonel Sidney for it) and take him by Surprise and dine with him, and then there will be the less Suspicion. But, said I, you must not expect to be treated as the Duke of Monmouth, because he does not expect you; but take him as a Philosopher, and dine with him as he uses to dine at his own Table. Says the Duke of Monmouth, I care not for Entertainment; I will go with you: And there at that time did the Duke of Monmouth undertake to bring in my Lord Russel and my Lord of Salisbury. This was the only Discourse preparatory to it that ever I knew of. Within a Fortnight or three Weeks after; nay, I think it was less than Ten Days after, Colonel Sidney came to me, and told me, my Lord of Essex was very forward in it. The Duke of Monmouth would prepare my Lord Russel, and my Lord Salisbury; and he himself did not doubt, but Mr. Hambden was very willing to be in it too; and they had appointed a Meeting at Mr. Hambden's House, and he would carry me thither to the House; and this was the first Meeting that I knew of; and there we met all Six.

Mr. At. Gen. About what time was that?

Lord Howard. It was about the middle of January; and truly I think I could reduce it to a certain Day or two by the Persons where I lodged.

Mr. At. Gen. What was debated there?

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Lord Howard. When we came there every one discoursed what he would. There was a Discourse of the Time and Places where to rise; but among other Things it was resolved as a principal Point, that there should be a Preparation made for the Design, by a Treaty with those of Scotland, and an Understanding settled with Argyle, and a Messenger sent to my Lord Argyle and others. And before this was done, we could not be ripe for any Resolution: But this must be speedily done.

L. C. J. Pray, my Lord, give me your Favour, I would not interrupt you; but to make Things clear as we go, I desire to ask you, when you came first to Mr. Hambden's House, Who spake first, when you were all met together?

Lord Howard. Every body discoursed what they pleased.

L. C. J. But who gave an Account of the Reason of the Meeting? Will you please to recollect, and tell what you know, who began the Discourse?

Lord Howard. Something introductive to it was said by Mr. Hambden, we being at his House, as 'tis natural to conceive for any Gentleman at whose House People are met, to say, Pray let us sit down, and talk of our Business. Something leading and introductive was said by him.

L. C. J. Pray, my Lord, as near as you can remember, will you give an Account what was the thing he began to discourse of? Did he seem to take any Notice, or have any Knowledge of your Meeting, and other Things before?

Lord Howard. It was a general Hint and Intimation to us of the Ends of our Meeting, that we were there come to consult and advise one with another, how to put Things into a better Method, and Posture than formerly: And he desired that we would sit down and discourse of these Things. My Lord, I would not charge my self with Particulars positively.

Mr. At. Gen. Upon what Questions did you debate and consult, my Lord?

Lord Howard. Those were started severally. Some would speak of the Time when it should be, whether it were not convenient now, or when? Others offered something concerning the Places, whether it should be begun in the City or in the Countrey, or both together. Others took it into Consideration, what Persons were to be prepared in the several Countries to be assisting in it, that were probable to carry it on. And then some discoursed concerning the raising of Money, and then what Sum should be raised, and I think that was started by the Duke of Monmouth; but I am sure the Sum that he named was 20 or 30000*l*. The last Thing that was talked of, but which was concluded to be the Thing principally to be taken care of, was the settling such a Concurrence and Correspondence with Scotland, that they might chime in at the same time, that so we might give as many Diversions both from Home and Abroad, as could be at one and the same time.

Mr. At. Gen. My Lord Howard, Did Mr. Hambden discourse of this Matter?

Lord Howard. I cannot speak to the Discourse of any one in particular; for I cannot say it was put to the Vote as we formerly expressed it, but it may be said we were all consenting and concurring.

L. C. J. Did any of you dissent from the Raising?

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Lord

Lord Howard. No, no, my Lord.

Mr. At. Gen. Did any of you oppose it at all?

Lord Howard. No, no, That was discoursed of as a thing resolved.

L. C. J. I ask you this Question, my Lord Howard, Was there any sort of Complaint made of the Government, That it was uneasy and that occasioned you to enter into these Debates?

Lord Howard. There was, I cannot say a Complaint, because there was no Person to complain to; but it was spoken of as a Matter of great Grievance, that such a Force and Violence should be put upon the City in their Election of Officers, and the tendency of that as to all Juries, tho' I cannot distinctly remember the particular things.

L. C. J. You say you were talking of a Messenger to be sent into Scotland to my Lord of Argyle, and others, to chime in with you in this Matter as you say, pray did you come to any Resolution about that, and what did you resolve upon?

Lord Howard. That there should be one only at that time. And afterwards it was the matter of the Debate at the next Meeting, which was that Meeting at my Lord Russel's, which was about this time twelve-month in February some time.

Mr. At. Gen. How long after the first Meeting at Mr. Hambden's was that?

Lord Howard. My Lord, I think it was about a Fortnight.

Mr. At. Gen. Who was there?

Lord Howard. The same Persons that met before. But then there was little spoken of but the Business of Scotland.

L. C. J. Was Mr. Hambden there at the second Meeting?

Lord Howard. He was there.

L. C. J. At my Lord Russel's you say it was?

Lord Howard. Yes.

Mr. At. Gen. What Resolution did you come to then?

Lord Howard. Then we came to a Resolution that some body should be sent, and we began to discourse who was fit, and Col. Sidney he propounded Aaron Smith, to some of the Company he was known, to others not; but those that did know him did approve of him as a fit Person.

Mr. At. Gen. To whose Province was that committed of sending this Person into Scotland?

Lord Howard. Col. Sidney undertook it himself.

Mr. At. Gen. Did the rest consent to it?

Lord Howard. Yes, No body did oppose it, but left it to him.

L. C. J. Did you name the Person then that was to go?

Lord Howard. He was not so named as to be with any solemnity approved or disproved; but it was left to Col. Sidney to manage it, and he naming Smith as a fit Person (he told us that by the by not to put it to the Question for our Approbation) and some of us knew the Person, others did not. I was one that did know him, and did think him a very fit Man to send.

L. C. J. Pray, my Lord, who was the Person? Be pleased to tell the Jury so as they may know it.

Lord Howard. Aaron Smith.

Mr. Just. Withins. Had you any Discourse with Col. Sidney, my Lord, afterwards that he was sent?

Lord Howard. Yes, my Lord.

L. C. J. Pray give an account of that.

Lord Howard. About three or four Days after this Meeting at my Lord Russel's, I went to visit Col. Sidney at his House, and while I was there in the Room, he went to his Cabinet, and out of a Drawer where there were five or six hundred Pounds in Gold as I could guess, he took a good many Pieces, I do not know directly how many; but he took out so many as he said were threescore Guineas that he was going to carry to Aaron Smith, I went not in my own Coach, and therefore went away with him in his Coach, and he set me down at Southampton-street at my own Lodging. I went no further, but he did, and he told me afterwards it was conveyed to him, and that he did go.

L. C. J. How long was that after your Meeting at my Lord Russel's, where you say you intrusted Col. Sidney to send one into Scotland?

Lord Howard. I think it may be less than a Week, four or five Days, that I saw him carry the Money. After this he said, he had given him this Money, and was gone: And when he was dispatched, in a Week after I was making Enquiries after him, and Col. Sidney said, he had not heard of him since he went away; but about a Fortnight or three Weeks Col. Sidney said he had heard of him, That he was at Newcastle and staid there; but he wondered he could hear no more of him. I then went into Essex, and when I came back from thence, he told me, he was come, but I had never seen him, not to this Day, indeed I had once appointed a Meeting with him at Mr. West's Chamber; but something or other happened, we did not meet.

Mr. At. Gen. We have done with my Lord Howard; if they will ask him any Questions, they may.

L. C. J. They know their time, when the King's Attorney has done with any Witness, then they may examine him if they please. If they will not, call your other Witnesses.

Mr. At. Gen. Will you ask him any Questions?

Mr. Jones. No, no, by Advice they are to ask him nothing.

Mr. At. Gen. We shall give your Lordship and the Jury an account in the next place, that we have traced Aaron Smith into Scotland. And for that we shall call some Witnesses which indeed we did not produce before at any Tryal, because we had not then discovered so much. We shall bring you the Person at whose House he lay at Newcastle, and the very Messenger that was sent with him to conduct him a By-way into Scotland. Call Sheriffs and Bell.

L. C. J. Look ye, Gentlemen, You that are at the Bar there, you must let the Jury stand by themselves. I see there are a great many others intermingled with them, and you, Gentlemen of the Jury, if any Whisperer talk to you, we expect that you should tell us who they are; for we will suffer no Remarks to be made but what are openly made to the Court, and the Jury, by the Counsel of both sides.

Mr. At. Gen. Swear Sheriffs and Bell.

[Which was done.

Mr.

Mr. *Williams*. What is this Man's Name, Mr. Attorney? Friend, what is your Name?

Witness. My Name is *Sheriffe*.

Mr. *At. Gen.* Pray give my Lord and the Jury an account what you know of any Person that lay at your House some time since, and whether you have seen him since? My Lord, this Gentleman did not know *Aaron Smith* before, and therefore I desire Mr. *Atterbury* may be called and examined again. Mr. *Atterbury*, Do you know *Aaron Smith*?

Mr. *Atterbury*. Yes, I know him very well.

Mr. *At. Gen.* Had this Gentleman a View of *Aaron Smith*?

Mr. *Atterbury*. Yes, he had. He was brought where *Aaron Smith* was, and this other Person was by before him too, and I was by when they had a view of him.

Mr. *At. Gen.* Now pray give an account what you know of the Man you saw?

Mr. *Sol. Gen.* Where is *Aaron Smith*?

Mr. *Atterbury*. He is in the *King's-Bench* Prison, and he was brought by *Habeas Corpus* to *Whitehall* before the King, where these two Persons were brought likewise, and there this Man *Sheriffe* did own that *Aaron Smith* was the Man that was at his House; and the other *Bell* owned that he travelled towards *Scotland* with him, and that he was hired to shew him the way into *Scotland*.

Mr. *At. Gen.* Did *Aaron Smith* say any thing?

Mr. *Atterbury*. He would not answer any thing at all, nor say a Word.

Mr. *At. Gen.* Pray give an account, Mr. *Sheriffe*, who it was that lay at your House, and when it was, and what he said was his Business, and by what Name he went?

Mr. *Sheriffe*. Indeed his Business I did not know; but he was at our House about the middle of *February*, it was thereabouts.

L. C. J. When was it? What *February*?

Mr. *Sheriffe*. The last *February*.

Mr. *At. Gen.* You say he was at your House last *February*, pray tell the Court where that is?

Mr. *Sheriffe*. At *Newcastle*.

Mr. *At. Gen.* Do you keep any Inn there?

Mr. *Sheriffe*. Yes.

Mr. *At. Gen.* What Sign?

Mr. *Sheriffe*. The Sign of the *Black Spread Eagle*.

Mr. *At. Gen.* And what did he do there?

Mr. *Sheriffe*. He staid there one Night and went away, and returned again in twelve Days or thereabouts, and came to my House again.

Mr. *At. Gen.* Whither did he go from you?

Mr. *Sheriffe*. He went *Southward* as I suppose, I know no further.

Mr. *At. Gen.* But when he first came to your House, which way went he?

Mr. *Sheriffe*. He went *Northward* towards *Scotland*, as he himself said, and desired to have one to shew him the way: And I sent for this Man, and when he came to him he hired him to go with him, and I was by.

L. C. J. When he first came to your House about the middle of *February* was twelve-month, Whither was he bound then, *Northward* or *Southward*?

Mr. *Sheriffe*. He was going to *Scotland*, that is *Northward*.

L. C. J. And you say, after he came back again, and lay another Night at your House.

Mr. *Sheriffe*. Yes, ten or twelve Days after he did.

L. C. J. And which way went he then?

Mr. *Sheriffe*. Then he came *Southwards* towards *London*.

L. C. J. Did you take exact notice of the Man?

Mr. *Sheriffe*. Yes, I saw him before His Majesty and the Council.

L. C. J. And upon your Oath that same Man you saw there was the same Man that lodged at your House in *February* was twelve-month?

Mr. *Sheriffe*. Yes, it is.

Mr. *At. Gen.* What Name did he go by at your House?

Mr. *Sheriffe*. He went under the Name of Mr. *Clerke*, but what his Sirname was I can't tell.

L. C. J. Had he a Servant with him?

Mr. *Sheriffe*. He had a Man with him that staid at our House during the time of his going *Northward*?

Mr. *At. Gen.* What did he call his Name?

Mr. *Sheriffe*. *William Langston*.

Mr. *At. Gen.* Did he desire you to furnish him with a Guide?

Mr. *Sheriffe*. He told me his Servant did not know the way, and his Horse was a little lamish, and desired me to get a Guide for him. For after he had dined at our House it happened to be a rainy Day, and he could not go further that Night, and therefore desired me to get him a Man that knew that Country, and I sent for this same Man, and he hired him; and he went along with him next Morning, my Lord.

Mr. *At. Gen.* Whither was he to go?

Mr. *Sheriffe*. Truly I did not know; but he told me he did not know the way into *Scotland*, and I directed him to a Gentleman's House at *Jadbrough* in the way.

L. C. J. Is that the Road to *Scotland*?

Mr. *Sheriffe*. Yes, the high Road to one part of *Scotland*.

L. C. J. Did he tell you to what part or place of *Scotland* he was to go?

Mr. *Sheriffe*. He named the West of *Scotland*, I think he named *Douglas*, but I do not know what Place certainly he designed for.

Mr. *At. Gen.* Then where is *Bell*?

Bell. Here.

Mr. *At. Gen.* Had you a view of this Man they call *Aaron Smith*?

Bell. Yes, I had.

Mr. *At. Gen.* Give an account, whether you saw him in the North, and when and where.

Bell. This Man, Mr. *Sheriffe*, sent for me. I live at *Newcastle*, and there I keep Hackney Horses to serve any Gentlemen, or be a Guide to them as there is occasion, and Mr. *Sheriffe* sent for me, and when I came, he told me the Gentleman wanted a Guide into *Scotland*. We immediately agreed, it was upon Thursday Night before that we call *Easter-Eve*.

L. C. J. When was it, say you?

Bell. It was the Thursday before *Easter-Even*, so they call it with us, that is, *Shrove-Tuesday*.

L. C. J. Ay, they call it so in those Places, because 'tis the *Even* of the Fast of *Ash-Wednesday*, the beginning of Lent—— Well, go on.

Bell. We went away on Friday the next Morning on our Journey towards *Fadbrough*, and the 2d Day, which was Saturday in the Afternoon, my Horse tired, whereupon he left me with my Horse, and took the Man's Man of the House where he left me, to guide him, for my Horse would not ride up with him being tired, and he resolving to go on, and he bid me follow him on the Sunday Morning to *Fadbrough* Town, which I did, and we staid there all Sunday. And on Monday Morning I saw him take Horse and another Man that was his Guide, and away they went, as I think, he said towards *Douglas* he was going. And he paid me, and I returned again from him to *Newcastle* and left him.

L. C. J. Pray how far was this, you say you went with him to *Fadbrough*, how far distant is that from *Newcastle*?

Bell. To *Fadbrough*, my Lord?

L. C. J. Yes.

Bell. 'Tis Forty Miles, my Lord.

L. C. J. How near *Scotland* is it?

Bell. 'Tis within some six Miles of the English Border.

L. C. J. Did you see him at any time after that?

Bell. I saw him at his coming back again; being at *Sheriffe's* House, his Wife asked me, if I would go up and see the Gentleman that I went with towards *Scotland*: So I went up, and he made me eat and drink at the Table with him.

Mr. At. Gen. What Name did he go by?

Bell. He went by the Name of *Clerk*.

Mr. At. Gen. Was there any Servant with him?

Bell. There was a Man that came with him as a Servant there, and was all the time at *Newcastle*, that he was gone towards *Scotland*, till he came back again.

L. C. J. *Mr. Attorney*, Did this Man see *Smith* at the time the other saw him?

Bell. Yes, I did.

L. C. J. And is that the Man that went by the Name of *Clerk* at *Newcastle*, and that you went with towards *Scotland*?

Bell. Yes, It is.

Mr. Atterbury. And when they charged him with it, *Aaron Smith* did not deny it.

Mr. At. Gen. Did you go any By-road to get into *Scotland*?

Bell. No, 'tis the Road Gentlemen usually go to *Fadbrough*, and so on; because 'tis something the nearer way to that part of *Scotland*, as we judge it to be, therefore Gentlemen use it.

Mr. At. Gen. Is it an High Open Road?

Bell. Yes, 'tis the High Open Way to that part of the Country.

Mr. At. Gen. My Lord *Howard*, Pray were the Names of any of the *Scotch-men* mentioned at your Meeting that were to be sent for?

Lord Howard. Yes; There was my Lord *Melvin*, *Sir John Cockram*, and one *Campbel*.

Mr. At. Gen. Now, my Lord, We will give you an account, That as *Smith* went into *Scotland*, so these Persons soon after came into *England*.

Jury-man. My Lord, We desire that my Lord *Howard* would name those *Scotch-men* that were to come.

Lord Howard. There was my Lord *Melvin*, *Sir John Cockram*, and one *Campbel*, one that was

of my Lord *Argyle's* Name and Family; and there was another Name, but I can't remember what that Name was.

Mr. At. Gen. We shall give you an account, my Lord, That they came immediately after this to Town; and at the breaking out of the Plot they absconded.

L. C. J. *Mr. Attorney*, Has my Lord *Howard* his Pardon?

Mr. At. Gen. Yes, my Lord, he has.

L. C. J. Then your Lordship may be covered.

Lord Howard. I can't tell but they may ask me some Questions.

Mr. At. Gen. Then you may be uncovered when they ask them, in the mean time your Lordship may be covered. Swear *Sir Andrew Foster*. (Which was done.) Pray, Sir, will you tell my Lord and the Jury what you know about the *Campbels*, and *Sir John Cockram's* being in Town? or any other *Scotch men* that you know of?

Sir Andrew Foster. My Lord, I did see those Gentlemen in the beginning of last Summer. *Sir John Cockram*, and *Mr. Monroe*, and *Campbel* the Son, I did see; but the Father I did not, but I do know he was in Town, tho' I saw him not.

Mr. At. Gen. How do you know it?

Sir Andrew Foster. I had Messages from them.

L. C. J. *Sir Andrew*, You say, you saw *Sir John Cockram*, and *Monroe*.

Sir Andrew Foster. Yes.

L. C. J. Did you see any body else?

Sir Andrew Foster. I saw *Sir George Campbel* the Son.

Mr. At. Gen. What became of them upon the Discovery of the Plot?

Sir Andrew Foster. *Sir John Cockram* did abscond, and *Mr. Monroe* was taken into Custody.

Mr. At. Gen. What became of the others?

Sir Andrew Foster. The *Campbels* were both in Custody.

Mr. At. Gen. Did you see any Commission they had?

Sir Andrew Foster. I did see a Commission that *Sir John Cockram* had.

Mr. At. Gen. What was it for?

Sir Andrew Foster. To make a Purchase of some Plantations beyond Sea, I think it was *Carolina*.

L. C. J. Ay, where my Lord *Shaftsbury* had an Interest.

Sir Andrew Foster. It was some of the *West Indies*.

Lord Howard. I did omit that Passage, my Lord—

Mr. At. Gen. Pray, was it discoursed then, what should be the Blind for these Gentlemen that were notorious Dissenters, that they should come to Town from *Scotland* about?

Lord Howard. It was to carry on a Plantation in *Carolina*. The *Scotch* Gentlemen were personally known to my Lord *Russel* only; and my Lord *Russel* was to write the Letter to them, and, I suppose, did.

Mr. At. Gen. *Mr. Atterbury*, What do you know of these *Scotch-men* coming to Town; and what became of them afterwards?

Mr. Atterbury. My Lord, About the beginning of *July*, 4th, 5th, or 6th, or thereabouts, I had some Information, That there were some *Scotch* Gentlemen that had been shifting up and down, and

and at that time were about *Black-Fryars*, lodged there secretly. I immediately went with the King's Proclamation, and some Warrants that I had to apprehend some Traitors that were fled: And when I came, I found that Mr. *Common Serjeant* having notice of them, had beat up their Quarters, and they were endeavouring to escape by Water; but there they were caught. There was Sir *Hugh Campbel*, and *Bayley*, and Sir *George Campbel*, and some others, I know not the Names of them all; truly I can't tell whether *Monroe* was not another, but Sir *Hugh Campbel* I had in my Custody, and *Bayley* was immediately committed to the *Gate-house*; and the rest of the Gentlemen I afterwards took in a cunning Hole by *Moor-fields*, in a back House. And when I came there, I found them lying on the Bed in the middle of the Day; and had them Prisoners in my Custody two or three Months; and then they were all sent out of my hands into *Scotland* Prisoners. Six of them there were, my Lord, that I saw.

Mr. *At. Gen.* We have done, my Lord, only we desire that a Word of a Record may be read.

Mr. *Williams.* What Record is it, Sir?

Mr. *At. Gen.* Of Colonel *Sidney's* Attainder.

Mr. *Williams.* My Lord, We shall desire your Judgment, whether that Record ought to be read against Mr. *Hambden*; I perceive by Mr. Attorney, that 'tis a Record of the Conviction of Mr. *Sidney*, which ought not to be given in Evidence against Mr. *Hambden* upon this Indictment.

Mr. *At. Gen.* We make use of it, to shew how upon former Tryals, upon this Evidence, Verdicts have gone.

Mr. *Williams.* We are in your Judgment, my Lord, if by Law it may be given in Evidence against Mr. *Hambden*, who is neither Party nor privy to it, nor indicted for the same Offence.

Mr. *At. Gen.* Let it alone then.

L. C. J. Well, Mr. Attorney does not press it. What say you to it, Gentlemen, for the Defendant?

Mr. *Williams.* May it please your Lordship, and you Gentlemen of the Jury, I am of Counsel for Mr. *Hambden* the Defendant upon this Indictment here before you. This Indictment is a severe Indictment: It is a very high Crime of which my Client is accused. How far the Evidence tends to reach it, you have heard; and I shall, with the patience of the Court, particularly observe it to you. But I shall first speak to the Indictment itself: It says, that Mr. *Hambden* being a Person of a turbulent Disposition, and seditiously intending to disturb and disquiet the King's Peace, and to stir Sedition, and to bring the Government into Danger, did Conspire, &c. As to this Matter, Gentlemen, there is no manner of Proof of what the Indictment charges, as to the Disposition of the Person accused; nor that he had any other Design, than what my Lord *Howard* hath now sworn. Then it says further, that Mr. *Hambden* did Consult and Conspire with divers Persons to execute these Purposes; and particularly for the making and raising of an Insurrection in the Kingdom. This is laid as the particular Fact: And for this purpose he did further Conspire with several Persons, to provide Arms and Armed Men: And for their

fulfilling of this, he did further Consult with several Persons, that some Persons should be sent into *Scotland* to stir up the King's Subjects in *Scotland*, to a Concurrence and Conjunction with some People in *England*, about this his evil Design. How far this Indictment is proved upon the Defendant, Gentlemen, is the Question before you. He has pleaded not Guilty, and hopes to satisfy you he is not. Gentlemen, as to what Evidence has been given you so far as 'tis Positive and Affirmative, I mean the Testimony of my Lord *Howard*; in that part, it is impossible for us that are of Counsel for the Defendant directly to contradict him with Proof, or to give a direct positive Proof in answer to it: I say, 'tis impossible for us to contradict him, who gives such a positive Evidence of Fact. By the Evidence of my Lord *Howard* he tells us there were six Persons in this Council, as he is pleased to call them. By his Evidence, three of the six are dead, my Lord *Russel*, Col. *Sidney*, and the Earl of *Essex*; He himself is the Fourth, the Defendant is the Fifth, who cannot give Evidence for himself; and the Duke of *Monmouth*, who is the Sixth, being away, there is not any Person in Being, that should contradict my Lord *Howard's* Affirmative in this part of his Evidence but the Duke of *Monmouth*: Whom we cannot have here, since it appears by the Evidence, Mr. Attorney General could not prevail to have him at this Tryal; therefore Proof of that nature cannot be reasonably expected from my Client to acquit himself by a positive Contradiction of what my Lord *Howard* has sworn. Then in this Case we must, as in all Cases where a Person does swear directly against a Defendant, endeavour to satisfy and persuade your Lordship and the Jury, upon Circumstances arising out of this Fact, and further Circumstances attending the Fact, and by probable Arguments and reasonable Inductions out of the Evidence, that this Gentleman, the Defendant, is not guilty of what he is charged with.

In the first place, We shall observe upon the Testimony of my Lord *Howard*, that as to some things he is very positive, and particular: He has an incomparable Memory, and speaks particularly to Persons, particularly to Places, particularly to Times. But, Gentlemen, as to that which is the principal Part of his Evidence, and which most affects the Defendant, and wherein it concerns us to contradict or disprove him, he is wanting as to that Circumstance of Time. He that is so exact in his Memory as to other Circumstances, is not positive; nor any thing like positive, as to the Times of the Meeting. For they would imagine, that the first Meeting the Defendant was concerned in, was at his own House. He describes the House and the Place very exactly; but as for the Time, he only says it was about the middle of *January*: He carries other things in his Memory positively; and whether it might not be expected in a Case so remarkable as this, and which so nearly and highly concerned himself, that he should be as particular in the Time, as he is in other things, you may rationally judge. His Lordship sometimes is very particular as to Time: He tells you in his Relation about my Lord *Shaftsbury*, that his going to him was on the Saturday after *Michaelmas-day*; and then

he pursues it to the Second and Third of *October*. He is positive to many several Days; upon which I would observe, that he being particular to a Day, as to other Things, may well be expected to be ready (if it be true) to be as particular as to the Time of this Meeting: But therein he is to seek; he is doubtful as to that. And you must give us leave, Gentlemen, to make this Observation, That since he will not be particular to that Time, we do apprehend that he gives himself a little Loose, that we may not meet with him to contradict him in that Circumstance: For if he should be positive therein, as he is in the other Matters that concern not the Defendant, we might perhaps by clear pregnant Circumstances contradict, if not disprove his Lordship, that it is not probable (if possible) it should be true what he affirms. But Gentlemen, we must answer it as well as we can; and since he is so cautious, we must meet him by Arguments in another way. Another Thing we should observe upon my Lord's Evidence, is this; That my Lord, though he be particular as to many Facts and Things relating to my Lord *Shaftsbury*, where he names other particular Persons, I think *Coll. Rumsey* and *Walcot*, and names the particular Discourses, particularly instancing in them, between him and my Lord of *Shaftsbury*, between him and *Walcot*, and between him and other Persons; yet he has not made use of any one Circumstance of Fact in this Case of the Defendant's now before you, that does justify what he has said, save only that of *Aaron Smith*; not any one Circumstance of Fact. So that there is no more than the bare Saying of what my Lord *Howard* is pleased to deliver no more than his Oath, nay, no more than his Observation, and Inference of much of what passed in the Company of several Persons, without any concurring Circumstances in Fact to justify or confirm his Testimony. It might have been an easy Matter, if all that my Lord *Howard* says was true, that there was such a Meeting at Mr. *Hambden's* House by such and such Persons, to prove that such Persons, or some of them met there. But that there should be no Person to prove, that these Gentlemen, or any of them, were there; nor any other Fact or Circumstance in the World, to go along with my Lord *Howard* to justify his Affeclaration, is very wonderful, and may well make it doubtful that it should not be true: And the rather, Gentlemen, (if it be true, as my Lord *Howard* would have it) because there was a second Meeting of all these Persons at my Lord *Russell's*, which was so publick and open a Place, and yet no Man to concur or go along with my Lord *Howard* in any one thing; no particular Fact assigned to justify his Testimony as to this Meeting, is strange, if it be true.

So then, Gentlemen, there is no more than what my Lord *Howard* has Sworn, without any one Circumstance to back it, to prove the Defendant Guilty. My Lord, taking this upon the main of my Lord *Howard's* Evidence, it will be pretty hard too upon the nature of the Fact, that he is pleased to prove against this Gentleman, to make an Answer to it: And truly, I think as hard for you to believe it. Gentlemen, He would imagine, That there should be Men raised, Men armed, a Discourse of Money, and this done, as he would have it, a-

bout the middle of *January*; and yet nothing at all done, though there appears no manner of Discovery of this very evil Contrivance, till about *July*. Neither is there any thing done in order to the raising of Men, the arming of Men, or the levying of Money all this while. So that there is no one Fact of any kind whatsoever, that goes along with what my Lord *Howard* has said.

My Lord, and Gentlemen, Another Thing we would desire to observe, is this, and here we shall begin with what we have to say, as to our own Arguments and Circumstances, that we have to take off from the Testimony of my Lord *Howard* in this Case: In the first Place, it appears by the Evidence of my Lord *Howard*, That he was very deep in a Conspiracy against the Government, and to make a Disturbance in the Kingdom long before this, that he now speaks of against the Defendant, that is plain enough; for he tells you, That my Lord *Shaftsbury* and He at *Michaelmas*, were contriving of Projects to overturn the Government, and raise a Rebellion. It appears plainly by his Evidence, That my Lord *Shaftsbury*, when he left his House, was resolved upon it, and my Lord *Howard* was very Sollicitous to carry on the same Design; nay, he was so active in it, that he tells you, That he did create Messages between my Lord of *Shaftsbury*, and the Duke of *Monmouth*, and would needs go by a false Insinuation of his own, to draw in the Duke of *Monmouth*, by telling his Grace, his Information he had from *Walcot*, and not saying he came from my Lord *Shaftsbury*, with whom he says he had been discoursing; but he would put it under some sort of Disguise, the better to prevail. So that it appears my Lord was very Criminal, and Guilty, in this Case. Why then, Gentlemen, my Lord being so highly Criminal, and there being a Discovery of this Conspiracy by *Keeling*, and *Rumsey*, and *West*, having made a more manifest Discovery, and this happening in *July*; Then it was high time my Lord *Howard* might conceive for him to secure himself, and save one, he being thus Guilty, as he declares: It is but reasonable to conjecture, he then began to place his Security in a Pardon; and that there were no other means to save his Life; and that the way to it, must be by some further Discovery of a Conspiracy against His Majesty and the Government: And having since obtained a Pardon, it is agreeable, That whatsoever my Lord *Howard* has done in this Case, he has done for his own Sake, to purchase his own Pardon for a Treason he was so deep in, and to out-do all the Witnesses that went before him, by fresh Testimony against the Defendant and others: This might incline him to go an Inch or two, or more, beyond the Discovery of *Keeling*, *West*, and *Rumsey*; to have but said the same thing that was proved by three or four Witnesses before him, might not perhaps have availed him: May not the indifferent believe it in this Case, to be the Interest and Security of my Lord *Howard*, by these means to merit his Pardon? May it not be believable, that what he hath said, he hath said only for his own Sake, and that he has, by exposing this Gentleman, and the Blood of others, procured himself a Pardon?

L. C. J. What do you mean by that, Mr. Williams?

Mr. Williams. By being a Witness against the Defendant and others, he has procured his own Pardon.

L. C. J. That is a little harsh Expression—

Mr. Williams. My Lord, I explain my self thus—

L. C. J. 'Tis an harsh Word, and too roundly expressed; You had need to explain your self; 'Tis a little too rank, as though the King's Pardon were to be procured by Blood.

Mr. Williams. My Lord, I intend nothing of hardship, or amiss, but to speak according to my Instructions, and to make the best Observations I can, out of the Evidence for my Client: I will express my self as well as I can, That my Lord Howard being a Witness against Men in a Case of this high Nature; and there being other Witnesses before, and besides himself, to the Discovery of the late Conspiracy against the Government, it concerned him to give an home Evidence in the Case, or else he could not have any expectation of his Pardon: For if he had done no more than what others had done before him, when there were three Witnesses besides, and they had got the start in the Discovery, his Discovery had been in vain; and therefore he was concerned perhaps to strain, that he might make such a Discovery as might answer his end; and this will arise naturally, I suppose, out of what has happened in this Case: For it seems, though it was something long before he got his Pardon, now he has it. My Lord, another thing is this, How far my Lord Howard will be credited in this Matter, we shall leave his Credit to you, Gentlemen, upon what we shall prove. For we shall make it out by Persons of great Honour, and Persons of great Integrity, That upon Discourse concerning this Conspiracy, my Lord Howard did declare, That he knew of no Persons that were guilty of having any Hand in it; he declared it upon his Honour, he declared it upon his Religion, and he used all the Asseverations that were possible for a Man to offer, to make himself believed.

My Lord, It may be objected, as it has been some times, that That was to out-face the Conspiracy, and so stop the Prosecution of that he knew himself to be so guilty of: But however, thus far we may make use of it for the Defendant, That if my Lord Howard would, in the Face of Heaven, pawn his Honour, his Trust, his Conscience, and his Religion, to assert that which was not true, and under all those Vows and Engagements affirm an Untruth; a Man that would deal so, and speak an Untruth with that Solemnity, I think is not a Person of the same Credit, as a Person of certain known Truth and Veracity. For if a Man will say one thing one time, and that with solemn Vows and Asseverations, and swear another Thing the quite contrary another time, he does not stand so fair for Credit, I think, as he that always maintains, and avows the Truth. So far we may make use of it very safely, I think, as to my Lord's Credit.

My Lord, Another Matter that we have to urge, is, That since the Tryal of my Lord Russell, and since the Tryal of Colonel Sidney, my Lord Howard has in Discourse owned, that my Lord Russell died Innocent. If that be true, it

will have a great Weight sure with you, Gentlemen, to discredit my Lord's Testimony: For then he hath contradicted what he hath sworn. For if my Lord swore, that my Lord Russell was Guilty, as all the World knows he did; and afterwards Soberly, and Publickly, shall have said he died Innocent, he has contradicted his own Evidence, and his own Oath; and sure is not to be believed as to what he swears now against the Defendant. My Lord, it did not rest there; but since the Tryal of Colonel Sidney, it will be proved by Witnesses, that my Lord Howard did declare, That Colonel Sidney had hard Measure. This will be proved by Witnesses; and 'tis rather to be presumed, He meant hard Measure as to his own Testimony, which he was best knowing of, than of any thing else as to his Tryal. Now, how this Person of great Honour can solve this, and how it can stand with his Oath, and his Honour; I will leave it to you, Gentlemen, to judge of it. My Lord, I have another Matter to say, That with me seems to have very great Weight: My Lord Howard, upon some Occasions has said; being in Discourse with a very great Intimate of his, and the Man being speaking of the World to come, speaking of Eternity, speaking of the Immortality of the Soul, speaking of the Rewards and Punishments of another Life; my Lord Howard should say to him, *How long wilt thou persist in this Folly? How long wilt thou be so foolishly prevailed upon, as to believe the World was ever Made, or will ever have an End?* My Lord, if a Person be of that Opinion, and a Man's Judgment in such Things will discover it self in his Words; How far the Testimony of a Man of that Perswasion shall influence a Jury when he stands single, when there is no Fact to justify him, in Point of probable Circumstance, will be easily observable, and I must leave it to the Gentlemen of the Jury to consider.

My Lord, We have another saying of my Lord Howard's, which we shall give you an Account of in the Proofs, and that was in relation to his Pardon. Being free in Discourse, as my Lord is a Man very liberal that way; and his Friend inquiring whether he had his Pardon: No, says he; *Nor I cannot have it, till the Drudgery of Swearing be over.* Truly 'tis a very odd Thing, that a Man should call that Drudgery, that is his Duty. To testify the Truth, is as much the Duty of every honest Man, as any thing else. Men have died for the Truth, and we look upon those as Martyrs, and the best of Martyrs that die for the Truth. Now, that this Noble Lord, or that any Man should call this a Drudgery, which is so manifest a Duty, by giving a true Testimony to preserve the King's Life, and support the Government against the Contrivance, and Conspiracies of evil Men, is but an odd Insinuation; and truly I think is rather to be taken in this Sense, as to my Lord, That he did strain a little to make his Discovery the more profitable to him; and so did say more (so far I may safely go) than any one else did say. And my Lord, This is That that I would observe upon the first Part of the Evidence.

As for that part that concerns Aaron Smith, the Evidence given by Sheriffe and Bell, I submit that to your Lordship, how far that can any way affect Mr. Hambden the Defendant. It

is introduced to fortify the Testimony of my Lord *Howard*, and it is introduced by himself thus : That at their Meeting at Mr. *Hambden's* House, there was a Discourse of some Assistance to be had from *Scotland* ; but says he, at the second Meeting at my Lord *Russel's*, then it came to a further Discourse, and Colonel *Sidney* did undertake to name a Person to send thither ; and a Person was named ; he does not say Mr. *Hambden* was concerned in it, or that Mr. *Hambden* named the Man, or any thing particular as to Mr. *Hambden*, more than that he was in the Company. Mr. *Hambden* had no Hand in the Undertaking, or sending him into *Scotland* ; that was altogether the Part of Mr. *Sidney* ; save this, that he says my Lord *Russel* writ the Letter that was to go by him. It does not appear Mr. *Hambden* was at all concerned in it, but only was there.

L. C. J. And consented to it.

Mr. *Williams*. I would not strain any thing my Lord, further than the Evidence is.

L. C. J. Nor do not Misrepeat it neither.

Mr. *Williams*. I design not any such Thing, my Lord.

L. C. J. But you do though ; for he swears it, Every one of them consented.

Mr. *Williams*. By Silence it must be then. For he does not say, That he said any Thing. He swears only Colonel *Sidney* undertook to manage it, to send a Person ; and my Lord *Russel* to write the Letter.

L. C. J. And all the rest consented to it.

Mr. *Williams*. What is meant by Consent, when nothing was said, I must leave to the Jury. I must agree, the Lord *Howard* did swear, that my Client was in their Company, but how far he did, or did not consent, does not at all appear ; and how far this will charge my Client, I must leave to you, Gentlemen. But the Proof, as to this Matter, stands thus ; that *Aaron Smith* was at *New-Castle* in *February* last, that he went publickly. Now, my Lord *Howard* says, that he went to agitate a Confederacy between the Malecontents of *Scotland*, and those in *England*. Now it is strange, that a Man that was to agitate such a Concern, should go publickly with a Servant to *New-Castle* ; so publickly as to be known again ; and of his own accord tell them he was going to such a Place in *Scotland*. And be it so in Fact, will any Man apply this to any thing was done before (as my Lord *Howard* says about a Consultation to join in Rebellion ?) Will any Man think, that he should talk at that kind of rate, if that were his Employment, and tell whither he were going ? But I rely upon this, in Point of Evidence. 'Tis not proved yet, that *Aaron Smith* was in *Scotland*. That he came within six Miles of the Borders of *Scotland*, is proved ; but it is not proved he was in *Scotland*, or did agitate any Conspiracy there ; or did any thing more than go within six Miles of the Borders of *Scotland*. But then they would press it further, and they say, that there were some *Scotch* Gentlemen, that in the Summer came here into *England*, and that they hid themselves, when the Plot was discovered. It does not appear my Client had any Conversation with these *Scotch* Gentlemen, or any of them, or was ever in their Company. 'Tis a very remote Inference to bring any thing of this to affect my Client in this high Charge.

My Lord, We shall add one thing more to disprove that Part of the Indictment, that lays the Imputation of Turbulency and Sedition to the Charge of Mr. *Hambden* ; and which also will shew the Improbability of his being concerned in any thing of this nature. We shall prove him to be a Person of a sober Conversation, of a retired Life, and studious Disposition ; and as an Evidence for the Defendant, we shall prove, that he, in *October* 1680. left *England* for his Health's sake, and went into *France* for the Recovery of his Health. He continued there till about *Michaelmas* was Twelve month, then he returned. 'Tis true, he continued in *England* from *Michaelmas* to the time they speak of ; but we shall make it plain, that in *February*, my Client, and my Lord *Mountague* had adjusted Matters between themselves, to go the beginning of Summer again into *France*, there to continue and abide some time for their Healths. Here is a strange kind of Imagination, that this Contrivance between my Lord *Howard* and my Lord *Shaftsbury*, that was going on before this time, and that was disappointed, and my Lord *Shaftsbury* went away, and afterwards died in *Holland*, was taken up by my Client, and those other Persons when my Client, as we shall prove, never intended to stay in *England*. My Lord, he was a Parliament man in both the last Parliaments, but appeared in neither of them, being all the while in *France*, for the Recovery of his Health. We shall prove him to be one Studiously inclined, that he lived a retired Life, and kept very little or no Company ; and you will hear from Persons of very great Honour and Quality, what he is, as to his Person, and as to his Opinion ; and then we shall submit it to you Gentlemen of the Jury, Whether you can believe him Guilty of this he is charged with, which is your Issue. You are to try, whether he be Guilty, or Not Guilty of the Crime charged in the Indictment.

Mr. *Wallop*. My Lord, and Gentlemen of the Jury, I desire to make one Observation, before we call our Witnesses.

L. C. J. Pray do not take up our time altogether in Speeches, but go on to your Evidence.

Mr. *Wallop*. I desire to observe but one Thing, my Lord.

L. C. J. Make your Observations at last, but spend not our Time in Speeches. I know you will expect to be heard at last, and so you shall whatever you will say.

Mr. *Williams*. Call the Earl of *Anglesey*, the Lord of *Clare*, and Lord *Paget*. Mr. *Ducas* (Who appearing was sworn.) Now we have him here we must begin with him, my Lord. Mr. *Ducas*, Pray what did you hear my Lord *Howard* say at any time concerning this Conspiracy, and who were concerned in it, and who were not ?

Mr. *Ducas*. My Lord *Howard* came once to the House of Colonel *Sidney*, I believe it was about 8 Days after the Imprisonment of Colonel *Sidney*, and when he was in the House, I asked him, What is the Matter my Lord ? He did answer me, he was told there was a Plot against the King and the Duke, and one general Insurrection to be made, and that Colonel *Sidney* sent a Man into *Scotland*, to which Thing my Lord *Howard* sware, laying his Hand on his Breast, saying, God knows all Things, and God knows I know nothing of that ; and I am sure if

Colonel Sidney had known any thing, he would tell me; and I said, what is the Matter, my Lord? Are you afraid? And he made Answer to me, No honest Man is safe in his own House, I pray you lend me a Bed to lie in. And he asked me about the Goods of Colonel Sidney, because of the Plot and such Things, and he desired to have them removed to his House; and he said, rather than go to the Tower he would do any thing.

Mr. Williams. Speak again to the Jury that did not hear you, what said my Lord Howard to you?

Mr. Ducas. He said, rather than to be a Prisoner again he would do any thing.

Mr. Williams. Who to be a Prisoner again?

Mr. Ducas. My Lord Howard.

Mr. At. Gen. What Things were spoken of?

Mr. Ducas. He said he would do any thing.

Mr. Williams. Were you speaking of the Conspiracy? Of the Plot?

Mr. Ducas. He spake of the Plot, and said he knew nothing of it.

Mr. Williams. What did he say, Sir?

Mr. Ducas. He said to me and swore, he knew nothing of it, and called God to witness.

Mr. Williams. Pray did he than say he would do any Thing rather than go to the Tower, when you were talking of the Plot and Conspiracy?

Mr. Ducas. Yes, he would do any thing rather than be a Prisoner again.

Mr. At. Gen. Pray what did he say?

Mr. Ducas. He raised up his Hands on high, and said, he knew nothing of the Plot, or of the Infurrection, or that Colonel Sidney had sent any Man into Scotland.

Mr. Williams. When was this?

Mr. Ducas. I believe it was 8 or 9 Days after the Imprisonment of Colonel Sidney.

Mr. At. Gen. What Day of the Month, and what Month was it?

Mr. Ducas. He was Imprisoned about the end of June.

Lord Howard. My Lord, It would be necessary that I should make an Answer to this, and I know not whether I should make a particular Answer to every one; for here is a whole Set of Witnesses, I see.

L. C. J. No, let them alone. You must not interrupt them, they must go on with their Evidence; and when 'tis a fit time for you to answer them, the Counsel for the King will call you.

Mr. Williams. Pray swear Mr. Howard (Which was done.) Pray, Sir, will you please to acquaint my Lord and the Jury what you know, of what my Lord Howard has said of the Plot, and who were concerned in it?

Mr. Howard. My Lord, what I have said is in the Paper of Mr. Sidney's Tryal, and truly I can say no more than what I said there.

Mr. Williams. Pray speak out, Sir, and tell it again to this Jury.

Mr. Howard. I was told I spake it very loud then.

L. C. J. Pray, Sir, speak as you please, We don't direct you in what Key you shall speak. Speak in what Key you will.

Mr. Howard. Then if you will have me speak it, I will speak it as loud again. My Lord, is Mr. Hambden here?

L. C. J. Yes, there he is.

Mr. Howard. In the first Place I do not know

Mr. Hambden, my Lord, I cannot promise to speak the very Words that I spake the last time, I cannot make them so fit as one Tally fits another.

Mr. At. Gen. Consider, Sir, you were not Sworn then, you are Sworn now, That is the Difference, and therefore pray consider of it.

Mr. Howard. My Lord, As near as I can, I will repeat the same Words again, I had little Acquaintance with my Lord Howard; but meeting him often at my Brother's House (and being he was extraordinary pleasant Company, I must needs say that he was so, and a Man of great Wit) and I coming from White-Hall, he asked me what News of the Plot? I told him there were some People that were in the Proclamation, or would be, and I named their Names. Says he, I know none of them except Rumbald, I think; and by chance I met him passing through the Old-Exchange, and he saluted me very kindly. After this my Lord Russel was taken, and when my Lord Howard heard that, says he, then we are all undone. And I very much fear it is a Sham Plot, since they have seized upon my Lord, and I doubt he is a lost Man. After that, I think, as near as I can remember——The next Thing was this——If you look upon the Book, you will see what I said there.

L. C. J. We are not to look upon the Book, Man. You must give your Evidence your self. Mr. Howard, I hope you do not Swear by Book? Let the Truth come out in God's Name, whatever it be.

Mr. Williams. Ay, my Lord, We desire to have Truth come out.

L. C. J. Ay, whether it be of one Side, or the other, God forbid but Truth should be spoken. Mr. Howard, go on.

Mr. Howard. Then my Lord, Colonel Sidney was taken, and says my Lord, I am extremely troubled for Colonel Sidney, for he is my very good Friend, said I, Why are not you concerned for my Lord Russel? He is of your Blood, says he, he is a Man without Exceptions. There is no Man of such Honour as he, but I am concerned for Colonel Sidney, as that particular Man that has obliged me above all the World, but I never heard my Lord Howard name Mr. Hambden in all my Life,

Lord Howard. I'll give you a Reason for it, my Lord, if you please, why I said so.

L. C. J. My Lord, This is Evidence for the Defendant. If the King's Counsel will call you afterwards to make Answer to any of these Things, then is your time to speak. We will not let them interrupt you when you come to speak, nor must you interrupt them now. We are bound to hear both Sides, and so by the Grace of God we will do.

Lord Howard. My Lord, I desire both he and his Brother may stay in Court, for I have something to say to them.

Mr. Williams. Pray what did you hear, my Lord Howard say concerning the Plot?

Mr. Howard. He did deny it positively, and said, they acted nothing but what was Legal, and he said it 500 times over.

Mr. Williams. Did he deny it?

Mr. Howard. Yes, he did.

L. C. J. But when he said they acted nothing but legally, what did he mean? Was this Plot legal?

Mr. Howard. I had former Discourses with my Lord Howard at other times, and I asked him; My Lord, what rends all this to? Your going up into the City and making these Meetings? Says he, we intend nothing but what is legal. There is not one Man in the Company that I know of, intends any thing else.

Mr. Williams. What was my Lord's Opinion of the Plot in June or July, or August?

Mr. Howard. He said he knew nothing of it, nor could he believe there was any such thing. When those Persons were named that were to kill the King, Lord bless me, said he, *can there be such a thing in Nature, That any Men should be so wicked, but that there is one Man of Honour or Estate, or Conscience, that ever had any such Thought, it can never enter into my Head, I can never believe it.*

Mr. Williams. When was this?

Mr. Howard. When Rumbald and those other People were put into the Proclamation.

Mr. At. Gen. Mr. Howard, Then I will ask you your Opinion, whether, in your Judgment, every Man that was in the Plot could not have said so much?

Mr. Howard. I suppose every Man in the Plot would have defended himself as well as he could, but I cannot tell what way.

Mr. Thompson. Sir, Did he barely affirm it, or with Affirmations and Imprecations?

Mr. Howard. My Lord was not put upon his Oath before me.

Mr. At. Gen. Mr. Howard, Don't you believe a great many that were concerned in this Plot would deny it?

Mr. Howard. I am to give my Opinion only for my self, not for other People.

L. C. J. Have you done with him?

Mr. Williams. Yes, my Lord.

L. C. J. Then go over, Sir.

Mr. Howard. My Lord, I am troubled with Fumes, and cannot well endure a Crowd, therefore I desire I may have leave to be gone.

L. C. J. You may go, if you please.

Mr. Williams. Call Mr. Edward Howard. (*But he did not appear.*) Then swear my Lord of Clare and my Lord Paget. *[Which was done.]*

L. C. J. Well, What do you ask my Lord of Clare?

Mr. Williams. My Lord of Clare, Will your Lordship please to acquaint the Court and the Jury, what you heard my Lord Howard say concerning the late Conspiracy?

Earl of Clare. My Lord, Some Indisposition I have had of late, together with the great Rigour of the Season, has confined me to my House these six Weeks, so that I should not come here but upon this Summons of a *Sub-pœna*, which I thought I ought not to refuse. I suppose I need not repeat much of what was said at Col. Sidney's Tryal.

L. C. J. My Lord, You must give what Evidence you have to give now.

Mr. Williams. My Lord, The Gentlemen of this Jury have not heard it, therefore you must say it all over again to them.

Earl of Clare. Sometime after Mr. Sidney was taken, my Lord Howard came to see me, and complaining of the Times, said, That all things were very sad and dangerous, and if ever he was questioned again, he would not Plead, but desire them only to count Noses, for the quick-

est Dispatch he thought was best: I replied, Sure his Lordship was in jest. He said, No, he was in earnest, for he was confident if he came to Tryal, they would have his Life, let him appear never so innocent. I said, I hoped not so, it was only his Lordship's Fear, and because of that, I thought it might be presumed he would venture much, rather than be Tryed. And discoursing of the late Primate of Armagh's Prophecy; He said, for his part, he thought the Persecution was already begun, and he did believe it would be very sharp, but withal, he hoped it would be but short; and then he began to wish himself beyond Sea till the Troubles were over; and in compliance with his Lordship I did wish so too. But as to Sidney, He did with great Affirmations very much assert his Innocency. He said, he thought he was not guilty of any of the things laid to his Charge; and spake with large Encomiums in his Praise, as he had Obligation to do, and seemed to bemoan his Misfortunes; which I said I had then reason to believe he was real in, for I believe never any Man was more engaged to another than he to Colonel Sidney. I told him there was a Discourse of some Writings of Mr. Sidney's that were taken; he said he was confident they could make nothing of any Writing of his; I told him, I supposed he meant, legally they could not do it. This was the most he said; as to Mr. Hamden, he mentioned nothing that I know of.

Mr. Williams. Did he seem to declare any Opinion about the Plot or Conspiracy in general, That there was any such thing or not?

Earl of Clare. I do not remember it.

Mr. At. Gen. My Lord of Clare, Did you never hear my Lord Howard before this complain of the Government that it was amiss, and was to be rectified?

Earl of Clare. Yes, he often did complain. Every body knows my Lord's way of Discourse.

Lord Howard. Pray, will you ask him, if my Lord of Clare used to fall out with me upon those Discourses.

Earl of Clare. My Lord was always good Company.

Mr. At. Gen. You mean *à propos*, my Lord.

Earl of Clare. I understand what you mean by *à propos*, you are a learned Man, I know.

Mr. Sol. Gen. My Lord of Clare, if I apprehend your Lordship aright, my Lord Howard was discoursing of the Primate of Armagh's Prophecy, and said he thought the Persecution was already begun, and would be sharp, tho' he hoped it would be short, and he wished himself beyond Sea till the Troubles were over, and your Lordship wished your self so too?

Earl of Clare. No; I said in compliance with his Lordship, since he wished himself beyond Sea till the Troubles were over, I wished he were there too.

L. C. J. But I perceive all these Discourses concerning the Government are reckoned but Jest and Matter of Laughter, but 'tis a very rank way of jesting, I assure you.

Mr. Williams. My Lord, We call our Witnesses seriously, they are the King's Counsel that jest.

Mr. At. Gen. Was this before my Lord Howard was taken?

Earl

Earl of Clare. Yes, but after Mr. Sidney was taken.

L. C. J. Well, who do you call next?

Mr. Williams. My Lord Paget, Pray what have you heard my Lord Howard say concerning the Plot, and when?

Lord Paget. My Lord sits there, and I believe he may remember it was about the 7th of July, the Saturday before my Lord went into the Country, to the best of my Memory, which was, I take it, the 9th of July. Upon Saturday the 7th at Night my Lord came to see me, I told him I was glad to see him abroad, and not concerned in the Disorders that were then so general; my Lord told me he had been wished joy by several, and he took it ill, because it looked as if he were guilty. 'Tis true, my Lord was a Man of great fineness and readiness in Discourse, and came easily into all Company, my Lord said that was true, but he had so carefully behaved himself, that he was sure they could not touch him with any thing, nor did he know any thing of any body else that he could charge them withal.

Mr. Williams. When was this my Lord?

Lord Paget. This was the 7th of July.

Mr. At. Gen. Pray, good my Lord, Why did you joy my Lord Howard? Had you any reason to mistrust my Lord?

Lord Paget. No other reason, than because I knew he was a Man of great Freedom in Discourse, and might be concerned upon that account.

Mr. At. Gen. And he would frequently discourse against the Government, I suppose?

Lord Paget. No, I never heard my Lord discourse against the Government in my life.

Mr. Williams. Sware Dr. Burnet. (Which was done.) Pray will you, Doctor, acquaint the Court, what you have my Lord Howard say concerning the late Plot, and when?

Dr. Burnet. My Lord Howard came to see me the Day after the Discourse of the Plot broke out, Thursday I think it was, on Wednesday it began to be talked of. The thing was little understood then, but in general a Plot was discovered, and my Lord with a great many Protestations, lifting up his Hands and Eyes to Heaven, protested he knew of none, and believed there was none, and spake of the whole thing as a Contrivance.

Mr. Williams. This was the Day after the Discovery broke out?

Dr. Burnet. Yes, the Day after that I first heard of it.

Mr. Williams. Had you any other Discourse with my Lord about it?

Dr. Burnet. I had not seen my Lord before of some Months. And then he spake a great deal to me. He told me he had been in Essex, and after that he went to the Bath, and went so early and came away before the Company came, because he would avoid all Danger. And he expressed great Apprehensions of Fear of Sham-Plots, and spake of False Witnesses and former Designs of that nature. The Truth of it was, one had possessed me much with a Belief of the thing, it being then but a Secret, but he strove to dispossess me of that Belief, and his whole Discourse ran upon that for an whole Hour, and expressed, as I said, great Fear of some Sham-Contrivance, and spake much of False Wit-

nesses, wishing that he were beyond Sea.

L. C. J. What, he spake as if there were like to be great Heats and Stirs, I suppose?

Dr. Burnet. No, the Talk was about the Discovery, which he said he believed was a Contrivance.

Mr. Williams. Did my Lord Howard use to come to you sometimes?

Dr. Burnet. Yes, he used to come frequently to see me.

Mr. At. Gen. Dr. Burnet, Pray let me ask you one Question, you spake of solemn Declarations and Protestations made by my Lord Howard, what gave the occasion to such a Solemnity?

Dr. Burnet. I will tell you the occasion truly, tho' it was never asked me before. It was thus, I being possessed with the Belief of the thing by one that assured me it was true, and would soon appear to be so, I argued upon that Belief to convince my Lord Howard, that it was true; and he argued a great deal to dispossess me of that Belief. And I said, if there be any such thing, I pray God forgive them that are concerned, but certainly it is one of the most trouflest ill things that ever was done; for hereby they have done all that could be done to ruin the Protestant Religion. He was smoaking a Pipe of Tobacco, and he laid down his Pipe, and lifted up his Hands and Eyes to Heaven, and protested to me, he neither knew of any such thing, nor believed it, but it was all a Contrivance.

Mr. At. Gen. By his Discourse, you possibly might understand what he meant, did he mean being privy to the Murder of the King, or the Raising of Rebellion?

Dr. Burnet. There was not a word then of the Assassination, but it was all of the Plot in general.

Mr. At. Gen. Did he make no distinction?

Dr. Burnet. We talked of nothing but Plot in general. For the Particulars were not then known. It was only about the general Notion of a Plot.

Mr. At. Gen. Pray, What was the reason you had to believe it?

Dr. Burnet. There was a Gentleman from Whitehall that came to see me, and he did assure me it was true, as being one that had it from a Privy-Counsellor. This was on the Wednesday, when the Council sat long about it; and nothing of Particulars was then let out, but only a Discourse in general of such a thing, and he said it would be found to be a certain Truth.

Mr. At. Gen. But, Doctor, did not you a little wonder at the Carriage of my Lord Howard? That a Man that was not accused, that you heard of, should make such solemn Protestations?

Dr. Burnet. My Lord, He said just in this manner as I have told you, when I said, Pray God forgive them, if any have been concerned in such a thing, he laid down his Pipe, and lift up his Hands and Eyes. Whether he thought I suspected him or no, I can't tell, he best knows his own Thoughts.

Mr. At. Gen. Did he say a Word of Mr. Hambden?

Dr. Burnet. No, There was not any particular Person named.

Mr. Recorder. Doctor, He would not make you his Confessor.

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Dr. Bur-

Dr. Burnet. His whole Hour's Discourse was to dispossess me of the Opinion and Belief I had entertained of the Plot.

Mr. Just. Holloway. This was about July, you say?

Dr. Burnet. I cannot remember the very Day of the Month, I believe it was the latter end of June, but I am sure it was before any body was committed, that we heard of.

Mr. Recorder. Dr. Burnet, You say you did believe there was a Plot then?

Dr. Burnet. Yes, I did so, and he labour'd to dispossess me of that Belief.

Mr. Recorder. Pray, do you believe it now?

Mr. Williams. What a Question is that, Mr. Serjeant?

Dr. Burnet. I make no doubt of it, Sir, as to the Assassination.

Mr. At. Gen. My Lord Newport, Why do you lift up your Hands? You don't do well; for it is a very proper Question.

L. C. J. Well, call your next Witness, Gentlemen?

Mr. Thompson. Swear Mr. Gisborne.

[Which was done.]

Mr. Williams. Pray, Sir, Will you acquaint the Court and the Jury, what you have heard my Lord Howard say about the late Conspiracy?

Mr. Gisborne. My Lord only said he knew nothing of the Plot; that is all I can say.

Mr. Williams. When was this?

Mr. Gisborne. The Saturday before he was taken into Custody; then it was that your Honour did say so, my Lord.

Mr. At. Gen. Ay, and 100 more I believe would say so, that might be concerned in it for all that.

Mr. Williams. Swear Mr. Blake. (Which was done.) Pray acquaint my Lord and the Jury, what Discourse you had with my Lord Howard about his Pardon, and what he said to you?

Mr. Blake. My Lord, About the Month of October last my Lord Howard sent to me to know how I did, and desired me to come and make him a Visit. The next Day I went and waited upon my Lord at his Lodging at Whitehall, and after the Complements passed, my Lord began a Discourse of the Plot, and I told him, That I heard none of the Witnesses had their Pardons, but only Keiling the first Discoverer. My Lord told me no, but he had a Warrant for his Pardon, and with that he pluck'd it out and shewed it me, and I read it. And then I told him I thought it was of no avail without he had his Pardon actually under Seal. He said no, but he had their Word and Honour; But, said he, when I first received the Warrant, they said I should not meddle in it till I heard from them again; which I have not yet, and I ascribe it to no other reason but only this, That I must not have it till the Drudgery of Swearing is over.

Mr. Williams. When was this?

Mr. Blake. In October last some time. So I then took my leave of my Lord, and my Lord desired me to come and see him at Night about 6 a Clock in the Evening, for he had a great many came to him, but then he should be at leisure, and had many things to say to me.

Mr. At. Gen. At that time did my Lord express himself as discontented, and that it was irksome to him to be brought as a Witness?

Mr. Blake. He only said those Words that I have told you, and looked up and turned up his Eyes towards Heaven when he said so.

Mr. Williams. Pray, where is Mr. Benjamin Mercer? Sware him. [Who was sworn.]

L. C. J. What do you ask him?

Mr. Williams. We bring him to prove that my Lord Anglesey was served with a Subpœna, but is so ill of the Gout he can't come.

L. C. J. If that be all, there is no question of it, but that he was subpœna'd.

Mr. Williams. If your Lordship please, we will prove in what Condition my Lord Anglesey is, and then we hope your Lordship will give us leave to prove what my Lord has said concerning my Lord Howard's Discourses with him.

L. C. J. No certainly, Mr. Williams, and I am sure you ask it not as expecting it should be granted.

Mr. Williams. I lay it before your Lordship and the Court.

L. C. J. Ay, You lay it before us, but you are a Lawyer, do you your self think fit it should be done?

Mr. Williams. My Lord, I must submit it to you.

L. C. J. Come, Will you consent, that what the Duke of Monmouth has said, shall be given in Evidence, and then I presume the King's Counsel will consent to your Request?

Mr. Williams. I consent? Here is my Client, my Lord, in Court, I can consent to nothing.

L. C. J. But if so be there be leave given on one side to tell what another Person has said, why should not it be consented to on the other side, that it be proved what a third Person that is absent has said for them?

Mr. Recorder. Ay, Will you consent that we prove what the Duke of Monmouth has said?

Mr. Williams. We don't know what the Duke of Monmouth has said.

L. C. J. But you do know 'tis not Evidence, nor fit to be granted what you ask.

Mr. Jones. You know that 'tis not for your purpose what he has said.

Mr. Williams. My Lord, We must go according to our Instructions.

L. C. J. But you know the Law, why should you offer any such thing? Your offering it will make the Lay gens that know not the Law, think that the Court put Hardships upon People, in denying things which you that understand the Law know can't be granted.

Mr. Williams. I do not press it, my Lord, but leave it with you.

L. C. J. Why do you spend our time in urging things that are nothing to the purpose, and cannot be allowed?

Mr. Williams. Now, my Lord, We will go on to another part of our Defence, and that is, to call Witnesses to the Reputation of Mr. Hambden, and his Behaviour, to satisfy you, that he cannot be such a Person as the Indictment says, and as he must be if it be true what this Gentleman my Lord Howard has sworn.

Mr. Thompson. We will first examine my Lord Paget. [Who stood up.]

Mr. Williams. My Lord, We ask you to that Question. Have you known this Gentleman Mr. Hambden, and what a sort of a Man is he?

Lord Paget. I have good reason to know him. I have known him a great while, and have always

always believed him an honest and a prudent Man, a Man of Honour and Virtue, and Integrity, my Lord; and I have had no reason to have other Opinion of him. I know he has been always ever since he came abroad into the World a Man that hath loved his Study, and Books and a contemplative Life. And therefore I should not be apt to believe, That he could apply himself to a thing so contrary to his own Nature, and to that way that he delighted in, and had always hitherto applied himself unto, I mean, to engage in a Design of so much Malice and Wickedness.

Mr. Williams. My Lord, You have had a long Conversation with the Knowledge of Mr. Hambden, you say. What say you as to his Disposition; Because this Indictment says he is a Person of a turbulent, factious, seditious Spirit?

Lord Paget. I have always known him a quiet peaceable Man, not meddling in Business, very friendly, free from all Turbulency, not of much Acquaintance, nor desirous to make much.

Mr. At. Gen. Pray, my Lord Paget, upon the same Oath you have taken, have you not at any time heard him express Dissatisfaction as to the Male-administration of the Government?

Lord Paget. No, never to me in the least.

Mr. At. Gen. Not at the time of the last Westminster Parliament?

Lord Paget. No, I never heard him then, nor at any time else.

Mr. Williams. Mr. Hambden was then in France, and not in that Parliament, tho' he was a Member. Where is Mr. Pelham?

L. C. J. Here he is. He sits down here. (Pointing to the Table.) What would you ask him?

[He was sworn.]

Mr. Williams. Sir, Will you please to acquaint the Court, what Acquaintance you have had with Mr. Hambden, and how long? And what you know of him?

L. C. J. You hear the Question, Sir, How long have you been acquainted with Mr. Hambden?

Mr. Pelham. I have been acquainted with Mr. Hambden about five or six Years living near him, and all that I could observe from him was, that he was a Man much addicted to his Studies, kept much at home, and I never observed that he had much Acquaintance; but as to the Business before you, I know nothing of it, nor ever heard him speak any thing relating to it.

Mr. Williams. As to his Spirit and Disposition, Is he a turbulent Man?

Mr. Pelham. No, I never found him any thing like it. We never talked together of Matters of that nature.

Mr. At. Gen. Were you ever in his Company at any time when he discoursed about Government?

Mr. Pelham. No, I was never with him at any time when he discoursed of any such thing.

Mr. Williams. Sir Henry Hobart.

Mr. At. Gen. My Lord, We oppose his being a Witness. He is one of his Bail.

Mr. Williams. That was upon the Habeas Corpus Act, not upon this Indictment.

Mr. At. Gen. If he be Bail for the Defendant, my Lord, he cannot be a Witness.

Mr. Williams. I appeal to the Rule of Court, whether he was not Bail upon the Habeas Corpus Act only?

Mr. At. Gen. Appeal where you will, the Bail cannot be a Witness.

Mr. Williams. We moved for an Habeas Corpus the beginning of last Term upon the late Act for Habeas Corpus's. And then at the last Day of the Term upon Habeas Corpus he was brought up thither, and was Bailed upon that Writ.

Mr. At. Gen. Are not you one of the Bail, Sir Henry Hobart?

Sir Henry Hobart. I was one of his Bail, I think it was for his Appearance.

L. C. J. If he be one of his Bail that he shall appear in this Court the first Day of this Term, and so from Day to Day till he shall be discharged, and remains under that Recognizance, then in any Case against him he cannot be a Witness for him.

Mr. At. Gen. But they mistake the Matter, He was then charged with this Indictment: He then Pleaded to it, and was Bailed to answer the Indictment; and surely in that Case he can never be a Witness.

L. C. J. That is certainly very true, and you know the Law so well Mr. Williams that I wonder you will insist of it; in every ordinary Case it is every Day's Practice to deny the Bail to be Witnesses.

Mr. At. Gen. Here is the Person Principal, will they render him in Custody?

L. C. J. Ay, What say you, will you render him in Custody? Then we will discharge the Bail.

Mr. Williams. My Lord, I will tell you what we will do.

L. C. J. Tell me what you will do! Answer my Question, Will you render him in Custody?

Mr. Williams. We will change the Bail, my Lord, and find some other sufficient Person to stand in Sir Henry Hobart's Place, rather than lose our Witness.

L. C. J. With all my heart.

Mr. Williams. Here is Mr. Ashhurst, my Lord, a Gentleman of very good Value.

L. C. J. But you must render him first, and change the whole Bail. They must enter into new Recognizances.

Mr. Williams. I can't tell whether we can do that so very well, because the others I am afraid are not all here. He is a mighty material Witness, I am sure.

Mr. At. Gen. My Lord, Mr. Williams says he is a material Witness, let him be sworn, I am so fair, I'll consent to it: Let us hear what he can say.

[Which was done.]

Mr. Williams. We thank you, Mr. Attorney. I am afraid you won't live long, you are so good-natured.

L. C. J. But you are like to live for your good Nature, Mr. Williams.

Mr. Thompson. Sir Henry Hobart, How long have you been acquainted with this Gentleman Mr. Hambden?

Sir H. Hobart. I have known him any time these ten Years.

Mr. Williams. How has he been, Sir, as to his Disposition and Spirit? Did you ever find him to be of a turbulent Temper?

Sir H. Hobart. Very far from it always.

Mr. Williams. Have you had any intimate Conversation with him?

Sir H. Hobart. I have known him all along, I say, these ten Years, but of late I have had more Con-

Converse with him some few Years in Travel.

Mr. Williams. Had you much Conversation, Sir?

Sir H. Hobart. I was with him continually at Paris, and Abroad.

Mr. Williams. What say you as to his Loyalty and Principles? Was he a Factious, Seditious Person?

Sir H. Hobart. Sir, He always expressed a great Esteem for the Government, and great Respect and Duty to the King.

Mr. Williams. Pray Sir, when went Mr. Hambden Abroad to go into France?

Sir H. Hobart. He went into France for his Health about November, (80.) I think it was.

Mr. Williams. How long did he continue Abroad, Sir Henry?

Sir H. Hobart. I found him in Paris the May after.

Mr. Williams. How long did you tarry there, Sir, your self?

Sir H. Hobart. I went from Paris in June, and came back again to Paris about October, or November the same Year, and I found him in France still.

Mr. Williams. And when do you take it he returned into England.

Sir H. Hobart. I was with him till he came over, which was about September, (82.) I think.

Mr. Thompson. What do you know, Sir, of his Intentions to go again beyond Sea?

Sir H. Hobart. When, Sir, do you mean?

Mr. Thompson. Since that time he came over, you say in September, (82.)

Sir H. Hobart. He told me of it often, I think it was about March, more particularly once at his own House.

Mr. Thompson. What March, Sir?

Sir H. Hobart. March (83.)

Mr. Thompson. That is last March.

Sir H. Hobart. Yes, last March, he talked of it several times, particularly once I went about some Business of my own, and then he discoursed a great deal of his going over with my Lord Mountague that now is; for he told me his Health was not yet established, for he came over out of an hot Countrey in Autumn, and had been all the Winter in this colder Countrey, and the Air he found had impaired his Health again. And it was not only what he told me, but I had a Letter from a Friend of mine in France, to whom I had sent to desire him to come over; but he writ me Word, no, Mr. Hambden was coming over again, and he would not come back yet.

Mr. At. Gen. Did he tell you when he intended to go over, Sir Henry?

Sir H. Hobart. As soon as Mr. Mountague, my Lord Mountague that now is, could get ready, who was to carry his Lady over with him.

Mr. Williams. Sir, Do you know of any Preparation made by Mr. Hambden for it?

Sir H. Hobart. He had resolved to take his Lady with him, because Mr. Mountague's Lady went, and so I believe did prepare accordingly.

Mr. At. Gen. Did Mr. Mountague go over?

Sir H. Hobart. He did not go then, but since he is gone.

Mr. At. Gen. Were you in France then at this Time?

Sir H. Hobart. This was in England at his own House.

Mr. Williams. Pray Sir, what is his Disposition?

Sir H. Hobart. He was always inclined to a studious Life, and kept very little Company.

Mr. At. Gen. Was this in March, 83?

Sir H. Hobart. Yes, he came over in September before. I always observed him to be of a retired Temper.

Mr. At. Gen. You say, in 1680. he went into France, and in (82.) he came over again?

Sir H. Hobart. Yes.

Mr. At. Gen. Pray, Sir Henry, since you conversed so much with him; Have you heard him since the last Parliament at Westminster, or at any time have you been by when he hath discours'd his Opinion about Government?

Sir H. Hobart. Truly, Sir, I don't take my self to be capable of discoursing with him about any such Matters.

Mr. At. Gen. Have you heard him at any time complain of the Male-Administration of the Government?

Sir H. Hobart. No, Sir.

Mr. At. Gen. Have you never heard any such Thing from him?

Sir H. Hobart. No, never.

Mr. Williams. Swear Dr. Lupé — My Lord, We must desire an Interpreter, for the Dr. speaks French only.

L. C. J. Swear an Interpreter.

Mr. Williams. Dr. Burnet, or if he be gone, call Sir Henry Hobart again. We must beg the Favour of you, Sir Henry to be an Interpreter, you understand the French Tongue very well.

Sir H. Hobart. I will do it with all my Heart, Sir, as well as I can.

L. C. J. Swear him.

Then the Dr. was sworn, and the Oath repeated to him by Sir Henry Hobart in French.

Cryer. You shall well and truly interpret between the Court and the Witness, and the Witness and the Court, according to the best of your Skill and Knowledge: So help you God.

Mr. Thompson. Sir Henry, Will you please to repeat what Questions we shall ask, and what Answers he makes?

Sir H. Hobart. Yes, Sir, as well as I can, I will.

Mr. Williams. Pray, Sir, ask the Doctor this Question; If he be acquainted with Mr. Hambden?

Sir H. Hobart. Yes, he says very well. He lived near two Years with him.

Mr. Thompson. How long is it since?

Sir H. Hobart. Four Years since, he says.

Mr. Williams. Pray in that time, What was his Disposition? Was he a seditious and turbulent Man? Or was he a studious retired Man, or what?

Sir H. Hobart. He says the two Years he lived with Mr. Hambden, he kept him Company in his Studies, and all that time he found he had no other Inclinations but for Study and Knowledge, and his Inclinations were very Vertuous. He always observed in his Discourse a great submission and respect that he had for the Laws of his Nation, and his Prince, and to that degree he was a faithful Subject to the King, that once he told him in discoursing with him of the late Popish Plot, that he was ready to sacrifice

sacrifice his Life and Fortune for the King's Service.

Mr. *Thompson*. Ask him what Discourse he had with him of the Plot since it brake out?

L. C. J. Will that be any Evidence do you think, Mr. *Thompson*? Will Mr. *Hambden's* Declaration be any Evidence, he being a Person accused? Do you think he would tell the Doctor, or any body else that he was Guilty, when he was like to be questioned? That would have been a wise Business indeed. You say, he was a very studious Man, and a learned Man, truly if he had done that, he had bestowed his Time in Learning to very good Purpose.

Mr. *Williams*. My Lord, That that we would ask him is this; This Person the Doctor being discoursing with Mr. *Hambden* upon the Discovery of the late Conspiracy, and of the dangerousness of the Time, he would have advised Mr. *Hambden* to have gone; no, he said, he would not, for he was an innocent Man, and would not stir.

L. C. J. Well, ask him what you will, but his Declaration of his own Innocence cannot be taken for Evidence.

Sir H. *Hobart*. He says, since this Plot was discovered, he was going one Day to visit Mr. *Hambden*, and going through *Long-Acre*, he met a French Minister; a Savoyard Minister — But, my Lord, he speaks so fast, and goes on with so much at a time, that I cannot remember it all.

Mr. *Williams*. Well, what said that Minister to him?

Sir H. *Hobart*. He says, this Minister asked him, if Mr. *Hambden* was not concerned in the Plot, and upon that he went and told him what the Minister had said to him — He says, he told Mr. *Hambden*, that the Duke of *Monmouth*, and my Lord *Grey* were hid — He says, upon that, Mr. *Hambden* said to him, I will never fly, nor conceal my self, for my Conscience reproaches me in nothing.

L. C. J. Ask him why does he think the French Minister, the Savoyard as he calls him, should ask whether Mr. *Hambden* were in the Plot?

Sir H. *Hobart*. He says, Mr. *Hambden* said he would rather die innocent than fly with the imputation of Guilt upon him.

L. C. J. But ask him the Question I put, Why should that Savoyard Parson say so? What reason had he to think Mr. *Hambden* was in the Plot?

Sir H. *Hobart*. He says the Minister did ask him, but he can't tell what Reason he had to think so.

Mr. *At. Gen.* Pray, Sir *Henry*, ask him this Question; How long ago it was since he left him?

Sir H. *Hobart*. Four Years, he says.

Mr. *At. Gen.* Where was it, in England, or France?

Sir H. *Hobart*. Whilst he lived in *Bloomsbury*, he says.

Mr. *Williams*. Call Dr. *Needham* and Monsieur *Justell* (who appeared) and Monsieur *Justell* was sworn. Pray Sir *Henry Hobart*, will you ask Monsieur *Justell* who speaks French too, if he know any thing of Mr. *Hambden's* Resolution to Travel with Mr. *Mountague* into France?

Sir H. *Hobart*. He says, Yes. He did tell him he was going into France, and he offered to carry some Books for him along with him.

Mr. *Williams*. What Company was he to go in, and what time?

Sir H. *Hobart*. He says, Sir, he can't be exact to the Month when Mr. *Hambden* spake of going over, but he says, it was a great while before this Plot came to be discovered.

Mr. *Williams*. Was it some Months before?

Sir H. *Hobart*. It was a Month before it was known, he says.

Mr. *Williams*. In what Company was he to go?

Sir H. *Hobart*. He said he was to go with Mr. *Mountague*.

Mr. *Conyers*. Pray, Sir, Will you ask him, was he employ'd to get any French Servants to be with him?

Sir H. *Hobart*. Yes, he says.

L. C. J. Ay, but what was the Question; for there is such a crowd of People before the Counsel, that the Court cannot hear Mr. *Conyer's* Question.

Mr. *Conyers*. My Lord, I asked him, Whether he was employed to get any French Servants to be with Mr. *Hambden*.

Sir H. *Hobart*. Yes, he says.

L. C. J. Well there is Dr. *Needham*, What do you ask him?

Then Doctor Needham was sworn.

Mr. *Williams*. We call Dr. *Needham* for this Purpose my Lord, to prove that these Gentlemen that are accused, Mr. *Hambden*, and my Lord of *Essex*, and the others, had very little Esteem, and mean Opinion of my Lord *Howard*. And how one, they so little esteemed, should be let into so great a Secret, will be very strange to imagine. Dr. *Needham*, Pray, what can you say of any of these Gentlemen's Opinions of my Lord *Howard*? What Opinion had my Lord of *Essex* of him?

L. C. J. Is my Lord of *Essex* now before us? What is that to this Case, Mr. *Williams*? Let my Lord of *Essex* have what Opinion he would of him; How does that concern the Defendant?

Mr. *Williams*. I tell you why, I offer it to my Lord —

L. C. J. But pray, offer what is Evidence, and keep to the Business before you.

Mr. *Williams*. *Falsus in uno, falsus in omnibus*. If we can prove that what he hath said of my Lord of *Essex* is false, he is not to be believed against the Defendant.

Mr. *At. Gen.* Ay, but upon the Evidence of my Lord *Howard*, all the rest were convicted.

Mr. *Williams*. I offer it only upon what is here to Day before you. He says, my Client, and my Lord of *Essex* were confederate with him upon such a Design. Now if my Lord of *Essex* was not there, then he is false in that, and that he was not, we offer this as Evidence —

L. C. J. But 'tis not a proper Evidence in this Case.

Mr. *Williams*. 'Tis a sort of Evidence —

L. C. J. Ay, 'tis a sort of Evidence, but 'tis not to be allowed. If you will prove Mr. *Hambden's* Opinion, you may, but you must not for him bring Proof of what my Lord of *Essex*, a third Person, thought of my Lord *Howard*.

Mr. *Williams*. I only offer it thus —

L. C. J.

L. C. J. Offer what is Evidence, Man! You are a Practiser, and know what is Evidence, but you have offered two or three Things to Day, that I know you do at the same time know is not Evidence, and I speak it that it may not be thought we deny you, or your Client any thing that is according to the course of Law. You that know the Law, know 'tis so as we say. Mr. Attorney has gratified you in waving three or four Things already, but nothing will satisfy, unless we break the course of other Tryals.

Mr. Williams. My Lord, What I take not to be Evidence I do not offer, and where the Court over-rules me, I have not insisted upon it.

L. C. J. No!

Mr. Williams. No, my Lord.

L. C. J. But you would have insisted upon it, if Mr. Attorney would have been so easy as to consent, and the Court would have let you. Pray keep to the Business, and the Methods of Law; you know the Law very well.

Mr. Williams. My Lord, I humbly apprehend this may be Evidence, and I lay it before you. My Lord Howard has proved that my Lord of Essex, and Five more, of which Mr. Hambden was one, met and consulted about such Matters. We may, I hope, be admitted to prove, That my Lord of Essex was not there; for if we can take off his positive Proof, as to any one of the Circumstances, we take off from the Truth of the Fact. If all the Persons were not there; then my Lord Howard is mistaken in that, and accordingly must not be believed in the rest; therefore my Lord, I press it no otherwise: He hath proved these six Persons were there. I offer this as some Evidence, That it is unlikely it should be so, because my Lord of Essex had so little Opinion of my Lord Howard, that he would never consult with him about any matter.

L. C. J. Then certainly my Lord Howard is to be believed, to all Intents and Purposes, for here is a Record of the Conviction of my Lord Russel, and of Colonel Sidney, and all upon the Testimony of this Gentleman, my Lord Howard, and is not that more to support his Credit, than a flying Report of a third Person's Opinion of him. And yet after all we say, 'tis no Evidence against Mr. Hambden, and has been waved by Mr. Attorney.

Mr. Williams. Then I will not press it, my Lord.

Mr. Just. Withins. It is no Evidence, certainly, Mr. Williams.

L. C. J. It seems my Lord Essex had such an Opinion of my Lord Howard's Evidence, That he thought fit to cut his own Throat, rather than abide the Tryal.

Mr. Williams. Call Mr. Murray.

L. C. J. Suppose my Lord of Essex had said, That he was out of the Plot, and Mr. Hambden was in, would that have been good Evidence against Mr. Hambden, do you think? Pray mind what is the Business before you?

Mr. Williams. Swear Mr. Murray. [Which was done.]

L. C. J. Well, what do you ask this Man?

Mr. Williams. My Lord, we call him as to what I opened of my Lord Howard's Opinion of the World to come, and Rewards and Punishments there.

L. C. J. Mr. Williams. Pray take notice of this, private Discourses that People can't come to make Answer unto, because they can't imagine to have them objected, are a very odd sort of Evidence.

Mr. Williams. Therefore I opened it warily and tenderly, my Lord, the Witness will tell you the Story better than I.

L. C. J. I cannot tell what Mr. Williams has said, or I have said in heat of Talk or Vanity. God knows how often all of us have taken the great Name of God in vain: Or have said more than becomes us, and talked of Things that we should not do.

Mr. At. Gen. My Lord, how can my Lord Howard be prepared to give any Answer to this?

Lord Howard. My Lord, This presses hard upon my Reputation, my Lord. I profess before God I do not know this Fellow, I never saw him in my Life before as I know: But a Company of impudent Fellows take the liberty of saying what they please.

L. C. J. To rake into the whole course of a Man's Life is very hard.

Lord Howard. I would fain have these Fellows dare to say this any where else of me.

Mr. Williams. Well, my Lord, we will wave it.

L. C. J. They do not think it a fit Thing to press it.

Lord Howard. But my Lord, it concerns me in my Reputation; who is this Rascal they bring here? God's life, who is he?

L. C. J. We must be tender of Men's Reputation, and not let every thing come as Evidence when 'tis not fit to be Evidence, to put Slurs and Scandals upon Men that they can't be prepared to wipe off. Is he convicted of any Crime? If he is, you say something, shew the Record of it.

Mr. Just. Withins. Mr. Williams. You know the Case adjudged lately in this Court, a Person was indicted of Forgery, we would not let them give Evidence of any other Forgeries, but that for which he was indicted, because we would not suffer any raking into Men's course of Life, to pick up Evidence that they can't be prepared to answer to.

Mr. Williams. We have that respect for my Lord's Honour too, as not to press it, only we had it in our Briefs, and we must go according to our Instructions.

Lord Howard. I desire to know who that Rascal is; What is he? Where does he live? I will make him an Example.

L. C. J. Pray compose your self, my Lord, There is nothing of this pressed.

Lord Howard. To say, I am an Atheist, my Lord! What can be a greater Reflection?

L. C. J. He has not told us any such thing as yet. And we will take care that nothing shall be offered but what is fitting.

Lord Howard. I vow to God, my Lord, I do not know the Man.

L. C. J. My Lord, Do you think that every thing that a Man speaks at the Bar for his Client, and his Fee, is therefore to be believed, because he said it? No, the Jury are to take nothing here for Evidence to guide them of what the Counsel say, but what is approved. They are to judge *secundum allegata & probata*, that is their Duty.

Lord

Lord Howard. Does that Fellow look like a Man of that Figure, that I should say any thing, or have any Conversation with him?

L. C. J. My Lord, I don't know what he is. Go on, Gentlemen.

Mr. Williams. My Lord, We have done with our Evidence. If Mr. Attorney will leave it here, we will.

Mr. At. Gen. My Lord, we won't mistrust the Evidence, nor the Court.

Mr. Hambden. My Lord, I desire to speak a Word my self, if you please.

L. C. J. Ay, in God's Name. You, or your Counsel, I will hear all you will say, and as long as you will speak, provided you speak within the Bounds of Decency.

Mr. Williams. My Lord, I think it best to leave it to the Court: We hope we have made it clear that our Client is innocent.

L. C. J. Would to God you were Innocent, that is the worst Wish I wish you, but we will either hear him or you speak, speak as long as you will.

Mr. Wallop. My Lord, I desire to make but one Observation.

L. C. J. Ay, in God's Name make what Observations you will, Mr. Wallop, I hindered you from making your Observations at first, because I knew it would be desired after the Evidence was over.

Mr. At. Gen. Then my Lord, I expect to be heard too. If Mr. Hambden makes a Speech, I will reply, or if his Counsel do it, I expect the last Word, for I will have neither the Party, nor the Counsel to speak after I have summ'd up the Evidence for the King. Mr. Hambden, and his Counsel are all one.

Mr. Wallop. I have but one short Observation to make.

L. C. J. Go on then, Mr. Wallop, and say what you will.

Mr. Just. Withins. I think 'tis very fit, you should do it of both Sides; 'tis a Cause of great concernment.

Mr. Williams. My Lord, We will leave it here I think.

L. C. J. Take your own Course, Do not say we hinder you of saying what you will for your Client.

Mr. At. Gen. Let them do what they will.

L. C. J. I'll sit still, make Speeches every one of you as long as you will.

Mr. Just. Walcot. 'Tis fit they should speak what they can for the Advantage of their Client.

Mr. Williams. My Lord, We leave it to the Court.

L. C. J. Gentlemen of the Jury, the Evidence has been something long, and the Counsel both for the King, and for Mr. Hambden against whom this Indictment has already been found by the Grand Jury, having left it to the Court to Sum up all, I shall do it as well as I can: And the Question before you, Gentlemen, is, Whether the Defendant be guilty of the Offence charged in the Indictment, or not Guilty, and there having been so long an Evidence on the one Side, and on the other, it will be fit for me according to the best of my remembrance to help your Memories, by recollecting what has been said on both Sides, which I shall do as near as I can, and if my Brethren will please to sup-

ply any thing that shall be omitted by me, nay, if the Counsel for the King, or for the Prisoner, will put us in mind of any thing that has been spoken, and proved either against, or for the Party indicted, in God's Name let them have liberty to speak it: For it is fit the Question should be left before you with all fairness, and according to the best of my Observation and Memory, thus it stands.

The first Thing, Gentlemen, that is considerable to you, is, That there is such an Indictment, as has been already opened unto you, that is preferred against Mr. Hambden, that does set forth, That Mr. Hambden is a seditious Person, and a Man, according to the Language of the Indictment (which are Words of course and form in an Indictment of this Nature) of an evil Disposition, designing to disturb and distract the Government, and that he with several other Persons, did conspire to bring in Troubles, and Perplexities upon the Government; and in order to that, that there were some Meetings between him and several other Persons, and that there was a Design to conciliate some Persons of another Nation to go along with them in their Design, particularly some in the Kingdom of Scotland. This is the Purport in the Indictment, to which the Defendant has pleaded not Guilty.

Gentlemen, The Evidence for the King has been of this Sort, They did at the beginning, which yet I must tell you by the way, is not any thing of Evidence, but the King's Counsel would make some Overtures to press on their Side, as the Defendant, and those that are of Counsel for Mr. Hambden, have made some little Hints to press on their Side, that some Witnesses the one and the others would have had here, were *subpana'd* but could not be here. It seems by the Proof, here was a Meeting, as it was between Six several Persons, and they name them, the Duke of Monmouth was one, the Lord Howard another, the Lord Russel a Third, the Earl of Essex a Fourth, Algernone Sidney a Fifth, and Mr. Hambden the Sixth. As for my Lord of Essex he is gone to his long Home, my Lord Russel, and Mr. Sidney have received Sentence, and been executed. So there remains Three Surviving, and say they that are for the King: We produce my Lord Howard, and we have taken care to Summon the Duke of Monmouth, by leaving *Subpana's*, where it could be thought he was to be met with, with Promises of his Servants to deliver them to him in order to have the Duke to be a Witness for the King this Day. I presume the meaning is, They would infer from that, that they would give an Account of the fairness of this Proceeding, though it has been a Matter that has obtained a Sort of Belief in the World, as though the Duke of Monmouth had denied, that there was any such thing as this Confederacy and Conspiracy: And that has given People occasion to be of very different Opinions, and Persuasions about the Matter; but say they, so shew we are not afraid to have the Truth come out, we have done as much as in us lay to get this Person hither: Therefore we have left *Subpana's* at his Houses, at his Lodging with his Servants, and they have promised to take care they should be delivered to him, and he is not come. Against this on the other Side, say they, for the Defendant, We have taken all the care we could to bring my Lord Anglesey,

Who was to have been a Witness for the Advantage of the Person indicted, but my Lord *Anglesey* is at present afflicted with a Fit of the Gout, and for that very reason we can't have him here. And so they shew, that they have been very zealous to get Witnesses on their side to vindicate their Reputation, but they did not meet with that effect that they desired. These two things, Gentlemen, are Matters that are used both against him one way, and for him another.

But now to come home to the Evidence upon which this Matter is to turn, and here you are to consider, that whatsoever has been said or offered by the King's Counsel on the one side, or the Counsel for the Defendant on the other side, (I call him so, for 'tis but a Trespass tho' a great one) You must not take into your Consideration at all any further than as their Allegations are supported by the Testimony that has been given: And whatsoever the Witnesses have said either for or against him, and out of that Testimony as near as I can remember I will give you the Objections, and their Answers with the Observations that have been made, or do naturally arise out of the Facts in Proof.

My Lord *Howard*, in the first place, gives an account of this Matter, and, Gentlemen, the Times will be wonderful material, and therefore I beg you would take a Pen and Ink, and mark these material Circumstances as you go. For in all Matters of Fact positively proved, which also have their Credit supported by Circumstances which do accompany them, the Testimonies given of such Facts are to be valued according as those Circumstances keep touch with, and humour, as I may so say, the Fact that they are to evidence the Truth of.

My Lord *Howard* does therefore in the first place acquaint you, that about *Michaelmas* there was a Discourse between him and my Lord of *Shaftsbury*, and that was concerning a Rising intended to be had, and he tells you how that my Lord *Shaftsbury* was fully resolved upon it; That things at length came to that pass, That he was forced to go from his own House, as he said, being disappointed by the Duke of *Monmouth* and others who had promised to joyn with him, and was retired to the House of one *Watson* in or near *Woodstreet*. But he understanding where he was, my Lord *Howard* went to him, (I think he says my Lord *Shaftsbury* sent to him) when he came, my Lord *Shaftsbury* told him, That altho' there had been such a Disappointment by those Persons he named, yet that did not take off his Edge, but he was resolved to go on himself, nay, tho' his Body was infirm, yet he would be set on Horse-back, tho' he was lifted up to appear in the Head of a Party that he had prepared, and were ready when he would call them. And he began then to reflect upon the Disappointment of the Duke of *Monmouth*, and as tho' the Duke of *Monmouth* had only a Prospect to advance himself, and had only an Eye upon his own particular Interest. That he so managed Matters as if he design'd to have the sole Disposition of all things whatsoever, and began to be uneasy with the Duke of *Monmouth*. My Lord *Howard* did endeavour to have prevailed with my Lord of *Shaftsbury* for a Reconciliation between the

Duke of *Monmouth* and him, it being a Matter that required so much Safety and Security, and did desire him that he would have some Intercourse with the Duke of *Monmouth* in order to conciliate a Friendship between them, that they might go hand in hand. You find he was under some Difficulties about this Matter, he was not able to bring the Thing about; for after he had spake with the Duke of *Monmouth*, and prevailed with him, my Lord of *Shaftsbury* was peevish, and talked at a distance, and when he had appointed a Meeting one time, it was prevented, my Lord *Shaftsbury* went away into *Holland*, and there died in *Holland*. This is the Substance of what my Lord *Howard* says as to that Matter.

But, Gentlemen, this is material, and I'll tell you why I think it material; because the Counsel for the Defendant have made it an Objection particularly to my Lord *Howard*'s Testimony, That my Lord *Howard* is particular as to the Day after *Michaelmas-day*, but he is not so particular when he comes to speak of other times upon which the true Question before you depends. For now he speaks more generally as to the Meetings at the Defendant's, and my Lord *Russel*'s, that they were about the middle of *January* and the beginning of *February*, and is not particular as to the Day. I speak of this because that has been made use of as an Objection against my Lord *Howard*'s Testimony. And I will tell you as near as I can all the Objections that have been made against this Testimony after such time as I have settled it and laid before you what the whole of it amounts to.

Then comes my Lord *Howard* and says, that Meeting with the Duke of *Monmouth* some time after this they began to talk together, and they thought that tho' the Business had failed in the Managery of my Lord of *Shaftsbury*, yet it was fit there should be a re-assuming of the Business again, but in order to settle Matters that things might not go inconsiderately on, it was thought fit that they should resolve themselves into a certain Number that were confident one of another, in order to steer and transact these Matters the better among themselves. And they must be Persons fit to be trusted and for whom there should be an Undertaking among them for their Faithfulness and Integrity; for all Persons are not fit to be trusted, but only such as they agreed upon. The Duke of *Monmouth* he undertook for my Lord of *Effex* and my Lord *Russel*, those were the Persons for whom he would engage, as likewise for my Lord *Salisbury*. And then they began to talk of some more, particularly of Mr. *Sidney*, but he was a Cynical Man, and a Philosopher, and they were first to come to him, and to treat with him in another manner than the rest. He was not to appear as the Duke of *Monmouth*, but to take him in his Retirement and Privacies, and then they might be the better able to break the Matter to him. And he says accordingly there was a time designed on purpose; and at that same time the Duke of *Monmouth* and my Lord *Howard* did go and attack Mr. *Sidney*, they found him on a private Day, and dined with him; and upon that Dinner the whole Matter was broke up, and put into some Method; Then was the whole Design contrived as to the Persons

sons that were to be engaged in this Matter ; and he says, They agreed upon Six. The Duke of *Monmouth* undertook for my Lord of *Effex*, and my Lord *Ruffel* and Col. *Sidney* undertook for Mr. *Hambden*. He speaks of my Lord of *Salisbury*, but my Lord of *Salisbury* was never there among them, and so I put him out of the Case, I quit him from being of their Number, because there were but Six in all, my Lord of *Effex*, and my Lord *Ruffel*, who were undertaken for by the Duke of *Monmouth*, Mr. *Hambden* undertaken for by Mr. *Sidney*, and my Lord *Howard* ; for by that time Mr. *Hambden* was come into the Matter upon Col. *Sidney*'s Undertaking.

Now we are got, Gentlemen, by these Steps till we come about the middle of *January* ; but, says my Lord *Howard*, I cannot positively say, it was this Day, or that Day of the Month ; but being about the middle of *January*, I conjecture it was about the 14th, but he is not positive to the Day. He says, accordingly they went to Mr. *Hambden*'s House, which was the Place first design'd for them to meet in. He says, there accordingly they did all Six meet ; and that it being Mr. *Hambden*'s House, they thought it most proper for him who was Master of the House, who usually bids his Guests welcome, to break Silence, and to impart the Business of the Design they met about. He says, accordingly Mr. *Hambden*, after the first Complements of Entertainment, did give an account of the Business they were come about, and that it was in order to have a Rising. This, he says, was proposed by Mr. *Hambden*. He tells you, then they fell into Debate about the Time when, concerning Men, and Arms, and Money ; and likewise concerning the Places. He tells you the Places wherein the Rising was design'd to be, were *Devonshire*, *Cheeshire*, *Somersetshire*, and other Places, that is, as to the Circumstance of the Place. Then he tells you concerning the Time ; it was debated, Whether it should be all at one time, or at several times ? Whether they should only begin here, and the Country fall in, or all at once ? That likewise they had in Consideration the Business of Money, and that his Grace the Duke of *Monmouth* did speak of 30 or 35 Thousand Pounds, or some such Sum at that time. But then, as was natural for Men of Deliberation and Consideration to consult about, they took into Debate that they might not go headlong, to endeavour to conciliate another Party to chime in, as he says, along with them, in the Business they were going about, and accordingly it was thought fit and proposed, That there should be an Endeavour to conciliate a Friendship with some Persons in *Scotland*, to fall in with them ; and then he tells you, who the Persons were that were named : Some of the Names he remembers, and others he has forgot ; he speaks particularly of the *Campbells*, Sir *John Cockram*, and my Lord *Melvin* : And he says, other Persons were mentioned, but he can't remember their Names ; and my Lord *Ruffel* knew some of these Persons, and the Duke of *Monmouth* knew some others of them, because of his near Relation to the Earl of *Argyle*, the Person that you know was proscrib'd for Treason in the Kingdom of *Scotland*. He says, that so far the Debate of this Matter went, that they thought

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fit a Messenger should be provided, a trusty Man to be sent into *Scotland* to treat with these Gentlemen about this Matter ; and my Lord *Ruffel*, I think he says, undertook to write a Letter to be carried by this Messenger to these *Scotch* Gentlemen.

He says, pursuant to this Consultation at Mr. *Hambden*'s, a Fortnight after, or thereabouts, which brings it up to the beginning of *February*, then was the Meeting at my Lord *Ruffel*'s House, and there they debated these Matters over again, and the whole Managery of sending a Messenger into *Scotland*, was left to the Discretion of Col. *Sidney*, and he undertook that Work, that was his Post that he was to manage ; and he does say, That he does very well remember, That *Aaron Smith* was the Person proposed then ; and tho' he was unknown to some of the Company, yet he was well known to others ; and by reason of that Knowledge that others had of him, they looked upon him as a Person very fit, and every way qualify'd for it.

So that, Gentlemen, here is proved a Consultation in order to the Raising of Men to infect the Government ; a Discourse concerning Money and Arms for this End, and the Places where, and the time when ; and of conciliating a Friendship with some discontented Persons in *Scotland*, to joyn, and chime in with these Conspirators in *England*.

And then there is yet another Circumstance very remarkable, Because tho' my Lord spake it not at the same time that he delivered his Testimony ; yet upon the Question asked, he gives you a plain Account of it ; and it has a plain Dependance upon what went before. Said they among themselves, 'Tis proper for us, as near as we can, to shut the Door against any Exceptions about these Men's coming to Treat with us ; but how shall we get them hither without suspicion ? We must have some Shams, or Cant or other, to be a Pretence for these People to come into *England* ; and that was agreed to be about some Plantation in *Carolina*.

This, he says, was the Result of that Meeting ; and that when the Meeting was broke up, about three or four Days afterwards (mind the Circumstance of Time, Gentlemen, for 'tis very material) Col. *Sidney* and he met together, they went to Col. *Sidney*'s House, and there he saw him take Money out of a Till, where there were several hundreds of Guineas, or Pieces of Gold ; and as he believes, he says, he took threescore Guineas, or some such Sum ; and told him, it was to give to *Aaron Smith* in order to his Journey into *Scotland* : That he went out with him in his Coach, but Mr. *Sidney* set him down by the way, and he himself went into *London*, telling him, he went to that purpose, to give *Aaron Smith* the Money. Some time after, about a Week, or a Fortnight, or ten Days after that, he says, he met with Mr. *Sidney* again ; and he says, Mr. *Sidney* gave him an account, That he had heard *Aaron Smith* had been at *Newcastle*, but he had not heard of him since that time, and that is another Circumstance in point of Time, Gentlemen ; so that you have here a positive Oath made by my Lord *Howard*, that Mr. *Hambden* was privy, and consenting to all these Debates, as to the Raising of Men, and the Levying of Money, and

about the conciliating a Friendship with these Men of *Scotland*, and about sending a Messenger into *Scotland* to that purpose. And if my Lord *Howard* do swear true, no Man living can doubt but that Mr. *Hambden* is guilty of this Indictment. The first Meeting was at his House, and there he did take notice of what had been formerly done, and proposed the things, breaking the Silence, and entering into the Debate; which shews that he had been discoursing about it before, and had it in his Thoughts before, or else he could not have propounded it as the End of their Meeting.

Now this, Gentlemen, Here is a positive Fact; and, as Mr. *Williams* says true, no Man living can give any Answer to a positive Fact, but by some other things that may be Circumstances to oppose that Fact. Now he says, there are no Circumstances that have been proved, that will give any Credibility to what has been depofed, besides the positive Oath of my Lord *Howard*. So that, says he, your Fact, tho' it be positively sworn, is not supported by any Circumstances of the Fact, that may give Credibility to it. And he objects very materially; for if it be not supported by credible Circumstances, then indeed it would be less material; yet I cannot say, it would not be at all material; it is material, and you are to determine, whether you have sufficient Evidence given you, to induce you to believe, That my Lord *Howard* is at this time Guilty of wilful and malicious Perjury; for it is Perjury, and that in the highest degree, if it be not true that he says; and God deliver all Mankind from being Guilty of any such thing. I leave that to your Consciences, Gentlemen, who are the Judges of it.

But says the King's Counsel, Here are Circumstances that do support our Fact, and the Credibility of it. For, 1st, here is the Circumstance of *Aaron Smith*, who was sent into *Scotland* by Mr. *Sidney* in pursuance of this Design, and this Circumstance my Lord *Howard* does subjoin to what he has positively affirmed against the Defendant. And this Circumstance is a thing that may be helped by other Proof; and what is this Circumstance? Say they, That *Aaron Smith* was sent into *Scotland*; and in order to prove that, they have called one *Sheriffe*, who is a Man that keeps an Inn at the Post-house in *Newcastle*, from whence Col. *Sidney* told my Lord *Howard* he had notice of his Arrival at *Newcastle*, but had heard no more of him after that. And this *Sheriffe* swears directly, I saw that Man they call *Aaron Smith*, when he was shewn to me before the King and the Council; and Mr. *Atterbury* swears he shew'd *Aaron Smith* to him, and then *Sheriffe* swears, That Man you shew'd to me, was the Man I saw at my House at *Newcastle*, that chimes in with the Circumstance of Fact that Mr. *Sidney* heard from him at *Newcastle*. And then there is the Circumstance of Time when he saw him there; Says he, I saw him the *Friday* before *Shrove-Tuesday*, which they in the North call *Easter's-Even*. He came to my House on *Thursday* Night, and went away the next Day, *Friday*; and he went with his Guide, the other Man; *Northward*, in order to his Journey into *Scotland*, as he himself said. Says he, I remember the time very particularly, it was the *Friday* before *Shrove-Tuesday* last, this *February* was Twelve-

month; and he went yet further; says he, I did not only see him when he went away, but when he came back again, for he left his Man at my House all the time, and he tells you what his Name was; for he says, *Smith* went under the disguised Name of one *Clerke*, and he did then talk of going to the Western Parts of *Scotland*, he named *Douglas* as he thinks, tho' he is not positive in that, but he is in the Person, that was the Man. And says he, I sent for this Person, the other Fellow *Bell*, and he was the Guide he had along with him. And upon *Bell's* Examination, What says he? Says he, I remember that Man came thither at that time to the other Man's House; I take it upon my Oath that is the Man, and he went by the Name of *Clerke*, he hired me to be his Guide; I went out with him on *Friday* Morning, and I went along with him all that Day; but upon *Saturday*, which was the next Day, going *Northward* with him, my Horse tired, and failed me. Thereupon I was forced to be left behind, but I overtook him on *Sunday* Night following; I overtook him at such a Place, and saw him within six Miles of the Borders of *Scotland*. I take it upon my Oath, this is the Man that was there under the Name of *Clerke*; and at his returning back again, I took notice of him, I went up to him, I drank with him, and we had Discourse of our Journey. He told me at first, he was to go to the *West* of *Scotland*, and so he went *Northward*. After that, which was about ten or twelve Days, he came back again, and so went *Southward* towards *London*. This he doth swear directly to be at that time.

Now Gentlemen, The Time is wonderful material in that Case, because that very time twelve-month that they talk of, is the beginning of *February*. If you look upon your Old Almanack of the last Year (I happen to have one in my Pocket, and look upon it, when the Men gave their Testimony) and there you will find, that the *Monday* before *Shrove-Tuesday*, when he says, he left him within six Miles of the Borders of *Scotland*, falls out to be the 19th of *February*; I will look upon it again, lest I should mistake; 'tis just so, and that humours the Time that my Lord *Howard* speaks of, which was about the middle of *February*, a few Days after, that he says the Money was given by Mr. *Sidney*; and then for the Time for *Aaron Smith* to get to *Newcastle*, there is a fit space of Time, for it falls out that the *Thursday* that he arrived at *Newcastle*, is the 15th Day of *February*, and so it falls in well with my Lord *Howard's* Testimony, and so the *Monday* that he parted with him at the Borders of *Scotland* was the 19th, which also just humours the time that he speaks of. So that here is a Circumstance of Fact to confirm his Testimony, both as to the sending the Messenger, and the Circumstance of Time: That he is the same Man is proved by these two Witnesses, who agree in this, That he was there about such a time; and it does likewise humour that other Circumstance of Place, that Mr. *Sidney* said he had heard from him from *Newcastle*, but not since; and then there is the other Circumstance which backs and confirms all, There was not only a sending for these Persons, but there is notice taken that these *Campbells*, who were to be assisting in this Matter,

ter, were to come about the Sham, and under the Disguise of purchasing Plantations in *Carolina*. About the beginning of *June* they come to Town, the Two *Campbells*, Sir *John Cockram*, and Mr. *Monroe*. Sir *Andrew Foster* he tells you, he met with some of the Men, and they told him, They came about the Business of *Carolina*; and so the Cant of *Carolina* is made good in this Circumstance that way; but when the Plot brake out, these Men sculk, one flies one way, another another; some were taken as they were escaping away by Water; others of them were taken upon the Bed at Noon-day in *Moorfields*: Had the Business they came over into *England* about, been a fair, and a lawful, and honest Business, why should they hide themselves? Why should any Man sneak and sculk, and be ashamed to own an honest and lawful Business? But this does humour and touch the thing exactly, as to that Circumstance, That *Carolina* was only a Cant for to disguise their coming over. These are the only Two Circumstances that seem to be pretty strong for them, to prove and support the Credibility of what their Witness has sworn.

For, Gentlemen, What a wonderful sort of Expectation would it be, That we shall never Convict a Man of High-Treason, unless you can bring a Man to be a Witness that is not concern'd? For then all these Persons must have been acquitted, for they intrusted none, it seems, but these Six, they took care they would keep it amongst themselves. Do you think they called their Servants to be Witnesses of what they were about? That is a vain and idle Imagination. In the *Popish Plot*, what Witnesses of it had you there? Were they Strangers to the Plot? No, you cannot expect any Witnesses but such as the nature of the Case will bear.

This is the Meaning of the Evidence that has been given for the King, and it carries a great weight in it. But they have made an Objection, which indeed is not remote, but may concern the Question very much. Say they, If we prove my Lord of *Essex* was not there, or such an one was not there, would it not discredit the Evidence of my Lord *Howard*? Yes, certainly, it would wholly discredit it, and he were not to be believed at all; Nay, which is yet nearer to the Question, If Mr. *Hambden*, that had notice all along of the Times fixed wherein this Transaction was, to wit, about the middle of *January*, and beginning of *February*. For because they talk of the Prints, Mr. *Hambden* had from them sufficient Notice and Intimation of the Time. If Mr. *Hambden*, that hath had all this Notice, could have proved before you, That he was in *France*, or any other Place at that time, That had been wonderful material. But all the Circumstances that are any way significant to support the Credit of this Matter, are very well proved; and so the Testimony of my Lord *Howard* is, by these concurrent Circumstances of Fact, sufficiently supported.

Now, Gentlemen, I must tell you, This being the Substance of the Evidence for the King; I will now, as near as I can, give you an account of the Evidence for the Defendant; It was opened by Mr. *Williams* very ingeniously for the Advantage of his Client, as every Man is bound to say what he can for his Client. He

made a great many Objections against my Lord *Howard*; so if he could but shake the Testimony of my Lord *Howard*, then he might easily bring off his Client; and if you, upon any thing that has been offered, either in Evidence; or by way of Observation fairly made from the Evidence, do believe my Lord *Howard* has forsworn himself, you must find Mr. *Hambden*, the Defendant, Not Guilty; but if you believe he has not forsworn himself, you must find him Guilty. So all our Matter is reduced into a very narrow Compass; and therefore I must repeat it again what I said at the beginning, If my Memory do not serve me to recollect all right, the Counsel for the Defendant shall have free liberty to inform the Court of what has been omitted.

First, says Mr. *Williams*, My Lord *Howard* was a Man very deep in a Conspiracy with my Lord *Shaftsbury*, by his own Acknowledgment, endeavouring to conciliate a Friendship between the Duke of *Monmouth* and my Lord *Shaftsbury*; and so he had a great Hand in the Plot; and what he might do on purpose to get himself out of danger from that Plot, and procure his Pardon, is not known.

It is a very strange thing, that it should be an Objection before he had his Pardon, That he did it for Fear, and to get his Pardon; and when he has it, now the Objection is, Because he has his Pardon; and he got it, say they, by this means. It seems, whether he had his Pardon or no, it must be an Objection against him: Before he had it, he was under the Fear of not obtaining it till the Drudgery of Swearing was over; but now he has his Pardon, What now? Why he does it on purpose to accuse other People. Why, he says no more now, than what he has said before he was pardoned; and if after he is pardoned, when he is under no Dread or Fear because of his Guilt, he says the same things that he did when he might be in Fear, How can that be an Objection to him? It cannot be thought he does it to save his own Life, for that is as safe now by his Pardon, as it can any way be; and 'tis, and must be a great Satisfaction to his Mind, and will be so to any other reasonable Man's Mind: and is a plain Answer to the Objection of his Fear, (for 'tis a capricious Age we live in, that will make some specious Objection or other, tho' it be not of any great weight.) But how can it be thought a Man would come and swear too much, or too far, for fear he should not save himself; or, as they call it, swear himself into a Pardon, when he has his Pardon? It might be an Objection before; but as long as he is under no such Terrors now, but stands right, both by the Laws of God and Man to be heard as a Witness, I think it would be hard for any one to come, and say, *This Man would forswear himself*. What should provoke him to come and forswear himself, when he is under no danger as to his own Particular? There might be an Umbrage, I say, of an Objection before he had his Pardon, tho' it was, indeed, no Objection before; not a rational weighty one, to set aside his Testimony. But no body knows which way in the World to satisfy the Minds of some sort of People.

In the next Place, Gentlemen, says Mr. *Williams*, You are not positive as to the Time; You say,

say, It was about the middle of *January*, and the beginning of *February*, and that is too general and wide ; but you remember particularly to a Day the Business between you and my Lord of *Shaftsbury*, That that was the Day after *Michaelmas* Day : How can you be so particular as to the one, and not as particular as to the other ?

Why, I will undertake that Mr. *Williams*, when he made the Objection, must needs think of the Answer that would be given to it. It is notoriously known, that the Pressures these Gentlemen thought they lay under, were what my Lord of *Shaftsbury* said, *Now they have got the Juries into their own Power, and no Man is safe ; They will find me or any Man Guilty, as they please ;* Why, how came they to get Juries into their own Hands, but by having the Sheriffs as they would have them ? Now the Sheriffs that are to return Juries, are, as all Men know that know any thing, Sworn the Day before *Michaelmas* Day ; therefore he might very well, and had good reason to remember that Day ; When such a notorious Thing happens to fall out at such a notorious Time, 'tis easier for a Man to remember that Time, than to speak to the particular time of an Action, done about the middle of a Month, where there is not such a notorious Circumstance. Why, I can tell you very well where I was upon the Day before *Michaelmas* Day ; upon that Day, and the Day after ; for that very reason, because it was a notorious Day about the swearing of Sheriffs in *London*. But if you ask me, where I was the middle of *January*, or the middle of *February*, I cannot so well remember that. But there is Credit to be given to a Man that speaks to a notorious Circumstance, and thereby proves the Probability of what he says, though he should not be so particular in a Thing that admits not of such a notorious Circumstance.

Gentlemen, I make the Objections as they are stated on the one Side, and on the other Side ; and the Answers that naturally flow to prove the Matters before you one way or other ; and you are to judge, you are to weigh them ; and which has the greater Credit with you, you are to take notice of.

He does say, in the next Place, Here was a Discourse of Arms and armed Men, and a great Sum of Money spoken of, but there breaks out nothing of this Matter till *July* following ; but this Debate was in *January*, and *February* before. For that Matter, the Answer that is given, and it seems to be a plain one, is, That they were to conciliate a Correspondence with People that were Abroad, and that they could not go on till they had effected that, and till these People came to join with them, which could not be without some time. And you hear the *Cockrams* and the *Campbells* came not to the Town, till *June* or *July* ; so that it was not probable it should break out till then, because it was to be agitated upon their coming here. And so that Objection is answered, they did not apprehend any such necessity for present engaging in it. For, my Lord *Howard*, because he thought it would be a Work of Time to settle the Correspondence, and get these People to Town, went down to his Countrey-house in *Essex*, and from thence to the *Bath*, for he did apprehend some considerable time must be spent ere these People could come ; and therefore he thought it

convenient to take his Retirement in the mean time.

Ay, but 'tis strange, says Mr. *Williams*, and he makes that another Objection ; he would have my Lord *Howard* to draw in this Accusation of Mr. *Hambden*, to procure his Pardon, by going further than the other Discoverers had gone. It seems, say they, Mr. *Hambden* was not thought of at first ; but because *West* and *Keeling* had discovered a Plot, my Lord *Howard*, to secure himself, must go a step further than they, and (as the Defendant's Counsel would have it) than the Truth ; and that is the Stress of the Objection. But the weight of the Proof is quite different ; for all Men know, in the Plot there were several Parts. There was the Business of *Keeling* and *West*, and that was the Assassination of the King and the Duke ; but the Duke of *Monmouth*, my Lord *Howard*, and those other Gentlemen, were for the Business of the Rising, though that might be in order to that other purpose ; but they kept not Company with those that were engaged in that Part of the Design. They were the Underlings, the Scoundrel Plotters, that were concerned in the Assassination. But these Gentlemen looked upon themselves to be Privy Counsellors, not to be the Executioners ; they were to be only Advisers, what was to be done after the other Business was over ; and their Consultations were for raising of Men for an Insurrection ; not the Business of the Assassination of the King, that was not their Province. Can it be an Objection against my Lord *Howard*, because he gives a Testimony *West* and *Keeling* could not give ? Could they go further than the killing of the King, which was their Business ? If any Man should have asked my Lord *Howard* about that Matter, he would have made Answer, it was not for that Purpose that we met together at Mr. *Hambden's*, and my Lord *Russell's* ; no, that was upon a particular Business, and to a particular End and Purpose.

Then he says too, That though my Lord *Howard* comes here upon his Oath, and declares these several Matters that he hath deposed ; yet he has given a different Account of Things elsewhere, and he has called several Witnesses to that purpose. To whom my Lord *Howard* several times upon his Honour, upon his Word, with Eyes lifted up, and Hands elevated to Heaven, and many extraordinary Protestations, declared, That he knew nothing of the Plot ; and say they, If a Man will at one time pawn his Honour, and his Reputation, for the Truth of a Thing, and after that, will come again to swear against all that Matter, that is an Argument that does sink the Credit and Reputation of that Witness ; and thereupon they call you several Witnesses, some whereof are Persons of great Honour and Quality. I think they begin first with *Ducas*, Servant to Colonel *Sidney*, and he tells you, after his Master was taken, my Lord *Howard* came thither, and desired he might lie there ; and desired the Use of some Plate and Goods of Colonel *Sidney's* ; and then asked, what was become of his Master ? And when *Ducas* told him what he heard of the Plot, that something was talked of, about the Assassination of the King and the Duke, my Lord *Howard* lifted up his Eyes, and his Hands to Heaven, and declared he knew nothing of it,

it, but he believed Colonel *Sidney* was a very honest Man, and knew nothing at all of any such Matter; and as for himself, rather than he would be taken or confined again, he would do any thing. This was the Evidence they gave as to him. Then they come with Mr. *Howard* their 2d Witness; for I would take them in order as they were produced, and he gives you an Account, That he met with my Lord *Howard*, and my Lord *Howard* told him, he knew nothing at all of any Plot, and did believe that Colonel *Sidney* was innocent, and he did believe likewise that my Lord *Ruffel* was innocent, and for his Part he knew nothing of any such thing as a Plot, but he says, when he began to talk to him, why did he make such a Bustle, and go so often into the City and concern himself about the making of Sheriffs? He answered, I do nothing but what is in a legal way, and he justified all that was done to be only in a legal way.

When once People come to believe, that the raising of Tumults, and making Seditions, Stirs and Noises, is a legal way to obtain their Ends, as we know 'tis the Tenet and Principle of a great many People, what will they not do under that Pretence, that all they do is according to Law? They think it is lawful by the Religion they profess, to resist and oppose the Government, and the *Old Cause* is a good Cause to this Day in some Men's Opinion, and they can die in it, and thank God for being concerned in it. And there are some People that say, the raising of Arms by the King's Authority against his Person is lawful by the Religion they profess, and they call themselves *Protestants* (how justly you may imagine) and if Men will make Insurrections to difficult the Government, it is Rebellion, and no Man can justify it, let him pretend Conscience or what he will, 'tis rank Treason. It is not saying, I am thus persuaded in my Conscience, that will excuse the Man; if I steer my self by the Dictates of a good and regular Conscience, it can never be thought that I shall commit Treason, but it is the effect of evil Principles.

Was it not under the Shape of Religion, that that blessed Martyr King *Charles I.* of ever blessed Memory came to the Block? Nay, and I have heard of some Men in the late Times that were engaged on that Side, who finding that the King did prevail at the beginning of the War, because he had Gentlemen of Quality and Spirit to appear for him, were at a loss to know which way in the World they should put a Spirit into the common People to oppose the King; and some among them bid them be sure to put Religion to be but the Pretence, and that would make them run headlong to what they would have them. Whose Opinion that was is not strange to any that know any thing of the History of those Times. So that when once People take it to be the Principle of their Religion to oppose and resist all that are not of their Persuasion, and for Religion sake to resist Authority, then they think all is lawful they can do to preserve their Religion as long as they are wound up to that Opinion.

Their next Witness, Gentlemen, is my Lord of *Clare*, and he gives you an Account of his Discourse with my Lord *Howard*. And by the way I must observe, what I am very sorry for with all my Heart, to hear, that among Gentlemen of Quality and Honour, Discourses of the Go-

vernment, and the Male-Administration of it as they think, should be only Matter of Jest fit for their Recreation, and Laughter, only merry Table-talk, as though Government so sacred a Thing, were as mean as any trivial Concern whatsoever. I am sorry to hear and see, that Persons of great Honour and Quality should esteem it so. And I must be pardoned, if I take notice of it: For Matters of Government, and yielding Obedience to Superiours, is a Matter of Religion, 'tis a serious Matter, and every Man ought to make Conscience of it. To talk of Government with Reverence, as well as pay Duty and Obedience to it. And when I find it made a Jest, I must be permitted to say that is not so well done, and whoever it is that makes it so, ought very much to be blamed.

My Lord of *Clare* comes and testifies, That my Lord *Howard* told him, He did not believe my Lord *Ruffel* was guilty of what he was accused of, much less did he believe it of Colonel *Sidney*, and when he began to talk about Writings found in *Sidney's* Closet, he said, there can be nothing of his Writings found, that can do him or any Man else any hurt. This is the Substance of what that Noble Lord has said.

Then there is my Lord *Paget*, and he likewise gives an Account, That he had some Discourse with my Lord *Howard* about the Plot; and he told him too, That he did not believe any thing of this Plot, or that my Lord *Ruffel* and others accused had any Hand in it. But I would observe this one thing upon my Lord *Paget's* Testimony, That still my Lord *Howard* was wished Joy by every body, and I am glad to see your Heels at liberty, and the like. So that there was some jealousy of his being concerned; some thing or other there was in it. Says my Lord *Howard*, I look upon my self as affronted, that any body should talk so of me. He was concerned that they should suspect him. But something there was at the bottom. Says my Lord *Paget*, I am glad to hear you are out of it. For he began to imagine there must be some Fire for all this Smoak. That, Gentlemen, was the Discourse he had with him. But he says, That with my Lord *Paget* there were Discourses of his going beyond Sea, but he did not go.

Then comes Dr. *Burnet*, and he tells you, That there were Protestations made to him, and he has got the same Words as the *Frenchman* had, That he did it with lifted up Eyes and Hands, he professed solemnly he was altogether a Stranger to any such Thing. The Dr. says, He had heard there was a Plot, and was persuaded of the Truth of it, but he was a little shaken by what my Lord *Howard* said to him. But now he is sufficiently satisfied there is a Plot, and I am glad he is, for I think it scarce does remain a Doubt, with any Men that have any Value for the Religion and Government we live under. And I know not how they could be better satisfied, than by the Evidence that has been given of it, a main Part of which was given by my Lord *Howard*. All this before my Lord *Howard* was taken.

Then comes in one Mr. *Gisborne*, and he tells you the same Story, That a great while ago my Lord *Howard* told him he knew nothing of the Plot.

The next to him is Mr. *Blake*, and he tells you, That after such time as the Plot was discovered, and after my Lord *Ruffel* was tried, and after my Lord *Howard* had given Evidence at the *Old Bailey*, he shewed him the Warrant for his Pardon, and *Blake* telling him that was not sufficient without an actual Pardon; he replied, I think in my Conscience I shall not have a Pardon till the Drudgery of Swearing is over. But is that any Argument? Here is a Man under the Drudgery of Swearing; therefore he did not know any such thing as he swears. It carries thus much along with it, That it was uneasy to him, and there is a kind of a force put upon him to swear, as they say, in order to his Pardon.

But now, Gentlemen, that will admit of this Answer, and a plain one certainly it is, When a Man comes over and over again to tell the World such a Story, and give such an Account of himself, it must a little grate upon him, though it be his Duty to tell the Truth, and though as Mr. *Williams*, says, he is the best Martyr that is a Martyr for Truth; even so say I on the other Side, he is the best Penitent that is a Penitent for Truth, and he is the best Witness that is a Witness for Truth's sake, and he gives the best Testimony of his Repentance, that by his Testimony declares the Truth, though it be harsh and uneasy to him; for if I have any Ingenuity, and have lived in good Credit in the World, it must be a drudgery and irksome Thing to call my self a Traytor so often in a Court of Justice. It is true, he might have given it a more moderate Term, and yet withall upon these Circumstances, he might have reason to call it in some Sense a Drudgery. But now, Gentlemen, as he did swear it, before he had his Pardon from time to time upon all Occasions when he was called as a Witness: So now the Pardon is come, which they would have to be the Reason of the continuance of his Drudgery, he swears the same thing. He has his Pardon under the King's Seal, and though it might be thought they would keep him within the compass of his Tether till he had done his Evidence; now he has got that he desired, he swears the same Thing. And now his Pardon does not at all influence his Testimony, he is not under any fear, but is as free as any Subject the King has, and now he is upon his Oath, he gives you the Account you have had, and he did say all the same Things, before such time as Colonel *Sidney*, and my Lord *Ruffel* were tried, that he says now.

Then, Gentlemen, you have in the next Place Witnesses called, several of them to give you an Account of the Conversation and Disposition of Mr. *Hambden*; for says Mr. *Williams*, for a Man to be guilty of a Crime of this nature, there must be some kind of evil Disposition to it, and so Mr. *Williams* would argue and make this Inference. You see he is not a Man of a turbulent, seditious and factious Spirit and Temper, he is a studious Person, very retired, that has been beyond Sea much, and came not Home till such a time. And if there were Interlocutions between my Lord *Howard* and my Lord *Shaftsbury* it was before he came into England, and so he was not concerned in them. He says, That *March* last he was to go again, he had a mind to return again to France for his Health,

and what reason have we to imagine he should concern himself in the Plot? When he was so studious a Man, lived so retired a Life, and intended to go Abroad so suddenly. And for this you have my Lord *Paget*, Mr. *Pelham*, Sir *Henry Hobart*, Dr. *Lupée*, Monsieur *Justel*, and one *Murray*.

Mr. *Williams*. *Murray*, my Lord, we did not examine.

L. C. J. 'Tis true, I beg your Pardon. Well then, These others tell you, They have been Persons very intimately conversant with him, they never knew he concerned himself with any thing about Government, but was of a quiet peaceable Demeanor, and was so far from that which the Indictment talks of Turbulency and Sedition, that they never had any Discourse with him about any such Thing at all, save what Dr. *Lupée* says, who it seems lived with him about two Years, and kept him Company in his Studies, and that once having some Discourse about the *Papish Plot*, He said he would venture his Life, and any thing he had to preserve the King and Government against that Plot; He did very well, and if he had since declared, he would have ventured his Life to have secured the King and Government against this Plot, I should have been glad to find him of that Mind, I pray God you may find him to be so. But from the Evidence even of that *Frenchman*, it seems there was some Jealousy in the World, and that he lay under hard Censures as well as other People. For speaking of the Plot, the Advice given him was this. My Lord *Grey* is gone, and the Duke of *Monmouth* is gone, why won't you go? Why should that Advice be given, if there were no Suspicion of his being concerned? That he said, *I will not go*, and so they would make his staying here to be an Instance and Proof of his Innocence; Why, Gentlemen, if that should be so, then there was the same Innocency in my Lord *Ruffel*, and Colonel *Sidney*, and all of them: For all the Council of Six every one of them stay'd, except the Duke of *Monmouth*, and he indeed did abscond. And the same Evidence that made the Duke of *Monmouth* fly, and my Lord *Essex* cut his own Throat, convicted my Lord *Ruffel* and Colonel *Sidney*, and is now brought against the Defendant, and has from time to time been given against the rest. We know no reason that they had to stay more than *West* or *Rumsey* had to stay and be taken, and yet that is not used by them as an Argument of their Innocency.

These are the Evidences that have been given on the Defendant's Part; and I tell you as I go along what Answers are given to it on the Part of the King. As to what is spoken of his intention to go again into France, if he designed to go, why did he not go before all this Mischiefe broke out? He came here at *Michaelmas*, and I may say he came, it may be at an unlucky Time, when the City and its Neighbourhood was in a Distemper, and some Men were blown with Fears and Jealousies. These might animate him, and inspire him as they did other People, and put them into a Ferment; but you find him attending in Town constantly here till the Matter was discovered, whatsoever his Intentions were, 'tis much he did not put them into Action, 'tis strange he did not go all this while, it had been much for his Advantage that he had ne-

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ver came out of *France*, or that he had returned thither much sooner.

Against all this that has been urged for the Defendant about my Lord *Howard*, I will tell you what is the Answer to it; and truly first I say, I am apt to believe my Lord *Howard* did tell these Gentlemen what they here testify; but was it ever thought, That any Man that was guilty of High Treason would presently proclaim his own Guilt? Is it reasonable to imagine, my Lord *Howard* would tell Dr. *Burnet* I am in a Plot, and Colonel *Sidney* is in a Plot, and Mr. *Hambden* is in a Plot, and make it his common Talk? Nay, it is so far from being an Argument of his Innocency, that more naturally it may be turned upon them as an Argument of his Guilt. For if a Man had not been concerned in the Business at all, but were an honest Man, and free from Suspicion, what need I talk or concern my self to proclaim my own Innocency not being accused? Why must I tell Colonel *Sidney's* Footman, This Man, the other Man, That I know nothing of the Plot, and neither I nor any other Man I am sure is concerned in it? But that shews there was a dread and apprehension upon him of something that he was conscious of, and that lying within must have some vent, and this over-caution is an intimation that there was something more than ordinary in the Matter. We take notice of it as a great Evidence against a Man that is accused for an High-way Man, if he comes to such an Ale-house or Inn, and bids the People take notice I am here at such a time of the Day, and that is a Circumstance of Time that will serve to answer a Proof, it may be, that may be brought against him of a Robbery done such a time; but we always look upon that Industry of theirs, as a Piece of Artifice designed to patch up a Testimony to evade a Proof. So that the Argument will turn the other way; and 'tis more for the Advantage of these worthy Gentlemen, that it should be turned the other way, for otherwise they would be thought to be Persons ill affected to the Government; that is, Dr. *Burnet*, my Lord *Paget*, my Lord *Clare*, and the rest. And if they have a mind to be thought otherwise, they must let the Argument run that way as I say, and in Charity we ought to believe the best of all Mankind, till we find otherwise by them. We say then in Charity, we suppose he thought it not fit to intrust you with his Confessions; for you are all Loyal Men, I know 'tis the best Answer that can be given, and that which they ought to value themselves upon for their own Credit and Reputation, and not to make it an Argument against my Lord *Howard*, or against the Credibility of his Testimony in the Matter.

I don't know, truly, Gentlemen, That I have omitted any one Thing that is material, on the one Side or on the other, of which there hath been any Proof, but I must only repeat to you this, Here is a Matter of great Concern and Consequence, a Matter wherein the Peace of the Government and the Kingdom is concerned in a very high degree, a Matter, that if there were another Witness as positive against the Defendant as my Lord *Howard*, would amount to no less than High Treason. But as

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there is but one Witness, backed with these Circumstances to corroborate his Testimony, 'tis but only a Trespass, but I tell you it treads very nigh upon High Treason, and the Tendency of it was to bring us all into Confusion; and what would be the Consequence of that, but to lay us open to the same Mischiefs that we were under in the Times of the late Rebellion? For though Men pretend never so fair, and veil it under the Names of the *Security of the Government and the Protestant Religion*; yet they would have done well to have carried till they had a legal Authority to call them to consult of these high Matters that they pretend to secure; that had been well. What had these Gentlemen to do to take upon themselves this Power without Authority?

Gentlemen, You have heard the Evidence, and you see what it is. And I must say, in the late Evidences you have had concerning another Business of this nature, I wish that might be said to preserve and support the Credit of some Persons, upon whose Testimonies Lives have been taken away, as has been said, and is evident for the Advantage of my Lord *Howard*. I do not find that he has been guilty of Perjury, as being concerned in taking Oaths one way, and then giving Evidence another. I mean, first taking Oaths of Secrecy and then revealing; not but that notwithstanding all this, they may be believed, and God forbid but they should be believed according to Truth. But I say, if Objections of this nature are to prevail, we must never expect any great Crime to be punished, because we must stay till Persons that are Strangers to the Guilt of the Fact come to give Evidence of it, which is impossible to be done.

Therefore, Gentlemen, I must resolve it all into one Head; You have the Case of a Gentleman of Quality on the one Side, and the Peace and Preservation of the Government on the other Side. You hear what is proved against him, the Evidence given on his Behalf, the Objections that have been made by the Counsel, which all of them as near as I can remember, I have repeated to you, and I ask your Pardon and theirs if I have omitted any thing, and I desire to be minded of it. You hear the Answers that have been given. And because the Counsel were unwilling to give the Court trouble or themselves to make long Speeches and Observations, Therefore I have been necessitated to do it as well as I can.

Upon the whole Matter, my Lord *Howard* has thus positively sworn the Matter of Fact charged in the Indictment against the Defendant; he has been supported by the Witnesses that confirm the Circumstances of *Smith's* going into *Scotland*, the *Scotchmen's* being here in *June*, and the *Sham* and *Cant* of *Carolina*. All which you have heard, and I make no question observed, and is not contradicted by any thing I hear that carries any Probability of an Answer. Therefore, Gentlemen, I leave it to you, whether upon this Evidence you will take it upon your Consciences and Oaths, that my Lord *Howard* is Guilty of wilful and corrupt Perjury, Then you must find the Defendant not Guilty; But if you think he has proved the Matter fully, and his Testimony is supported by those

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four Witnesses, *Atterbury*, Sir *Andrew Foster*, *Sherriffe*, and *Bell*, then, Gentlemen, you must find the Defendant Guilty.

Fury-man. My Lord, We desire to ask one Question. At the Meeting at Mr. *Hambden's* House, I think my Lord *Howard* says they went to Dinner.

Mr. *Just. Holloway*. No, it was at Col. *Sidney's* they went to Dinner.

L. C. J. I know not whether you have taken notice of it, but I have, it was at Col. *Sidney's* they dined, not at Mr. *Hambden's*.

Then the Fury withdrew from the Bar, and within half an hour the Fury returned, and

being called over answered to their Names, and gave in their Verdict thus.

Cl. of Cr. Are you all agreed of your Verdict?

Omnes. Yes.

Cl. of Cr. Who shall say for you?

Omnes. Foreman.

Cl. of Cr. How say you? Is the Defendant Guilty of the Trespass and Misdemeanor whereof he is impeached, or Not Guilty?

Foreman. Guilty.

Which Verdict being Recorded, the Court rose.

Martis 12. Februarii, An. 1683. B. R.

L. C. J. MR. Attorney, Have you any thing to move?

Mr. At. Gen. I pray your Judgment against Mr. *Hambden*, my Lord, who was Convicted the other Day of a great Misdemeanor.

L. C. J. Let Mr. *Hambden* come into the Court then. *[Which he did.]*

Mr. At. Gen. My Lord, I need not aggravate the Heinousness of the Offence; for it appears both by the Information, and upon the Evidence to be beyond all Aggravation, wherefore I shall only pray your Judgment for the King, That you would please to set a good Fine upon him, and that he find Sureties for his good Behaviour during his Life.

Mr. *Williams*. May it please your Lordship, I am of Counsel for Mr. *Hambden*.

L. C. J. Are the Rules out in this Cause?

Mr. *Williams*. Yes, my Lord, they are out.

L. C. J. Well then, what say you for Mr. *Hambden*?

Mr. *Williams*. Mr. *Hambden* does attend here according to the Condition of his Recognizance, and since Mr. Attorney hath prayed your Judgment, I shall not stir any thing as to the Indictment or the Verdict, but all I have to say for him is this, Mr. *Hambden* is but Heir apparent, his Father is alive; and so tho' he has the Prospect of a good Estate, yet he has but little at present in Possession; Your Lordship knows what *Magna Charta* says, That there should be a *Salvo Contentemento* in all Fines, and how far that may be an Ingredient into your Lordship's Judgment, I leave to your Consideration.

L. C. J. For that matter I cannot tell what his Estate is, I have no Knowledge of him, nor of his Estate whether it be great or small, but Mr. *Williams* knows very well, That the Crime, in Conscience as well as Law in case it had been proved by two Witnesses, would not only have wrought a Forfeiture of all his Estate, but a Forfeiture of his Life too; and all his Reputation, would have bastardized his Children, would have attainted and corrupted his Blood. So that there is no sort of Imagination but that the Crime was High enough of Conscience; and certainly deserves, if we can impose it adequate to its Desert, a very great Punishment. Mr. *Hambden* nor his Counsel can deny but that they had a fair and a full Hearing, They had the liberty to say and prove all that they could, and you cannot but say, Mr. Attorney

was very fair in making several Concessions that he might very lawfully and rightfully have insisted upon. So that there can be no Exception of that kind. I am sorry, that Mr. *Hambden*, a Gentleman of good Quality as he is by Birth, tho' he be a Person I never saw before he came here the last Day of the last Term upon his *Habeas Corpus*, that I know of. I say, I am sorry one of his Quality and Education, a studious Person, as it seems, by his own natural Inclination, and a learned Man, should be so unhappily engaged in a Design of this horridly evil nature. But on the one side as well as we must take care of the Subject, so on the other we must take care of the Government. Here was a Design of destroying the King, and subverting the Government and bringing all into Confusion. Of this Design the Defendant is Convicted, and we must take care to proportion the Punishment, and according to our Consciences and Oaths, and as we ought to have regard to the Offender, so also we are to have regard to the Government that he has offended.

Mr. *Just. Withins*. Mr. *Williams*, It was Amendments that were spoken of there in *Magna Charta*.

L. C. J. Ay, It was never meant of Fines for great Offences.

Then the Judges consulted together.

Mr. *Just. Withins*. Mr. *Hambden*, You know you are convicted of a very great Offence, as great an Offence as can be I think committed, unless it were High Treason. For the Matter of it would have made you Guilty, if there had been two Witnesses. It was for Conspiring to levy War against His Majesty, and for Conspiring to raise an Insurrection and Rebellion within the Kingdom, a Conspiracy of which some other Persons being lawfully Convicted, they have suffered Death for it. You are a Person of an extraordinary good Family, and I am sorry one of your Family that has flourished so long and through so many Generations in great Honour and Reputation, and great Prosperity under the Monarchy of England, should come to Conspire to deprive that King of his Government, whose Ancestors have protected and defended your Family, and to spoil that Monarchy that has been the Fountain of so much Prosperity and Honour to it. I am sorry

sorry it comes to my turn to pronounce the Sentence of the Court upon you, Mr. *Hambden*. I have not any personal Knowledge of you, but I have heard of you, and heard heretofore very well of you. You have had a good Education and the Report of a learned and ingenious Person, which makes me yet wonder the more that you should engage in such a horrid Design as this was. Indeed, Mr. *Hambden*, I am satisfied no Fine can be too great, if any can be great enough for such an Offence. We cannot take Cognizance what your Estate is, 'tis reported there is a great Estate in your Family, it has been always represented to be so.

Mr. *Hambden*. I have nothing but for Life, and that is but little neither.

Mr. *Just. Withins*. I know not what it is truly, Sir. But it was always reported to me to be a very great Estate, but whatsoever it is, we are to look after the proportioning the Punishment as near as we can to the Offence. My Lord, and the Court have considered of the Matter, and they think fit to give this Judgment upon you.

They set the Fine of Forty Thousand Pounds upon you, to be paid to the King, and you must be committed till you pay it.

L. C. J. And that you find Sureties for your good Behaviour during your Life.

Mr. *At. Gen*. I pray he may be committed for his Fine.

L. C. J. Let it be so. Mr. *Hambden*, If you will apply your self to the King, you may, and there perhaps you may find Mercy; we

must, according to the Duty of our Places and Oaths, give such Judgment as the Law requires.

Mr. *Just. Withins*. Ay, in God's Name: You are in the King's Hands, and he may do what he pleases in it.

L. C. J. If a Crime of this nature should have a little Punishment, it might encourage Offenders, and if we were to judge according to some Verdicts that have been given here for less Offences, where Gentlemen have given very much greater Damages than this Fine amounts to, this would be thought a moderate Fine. I am sorry any Man should bring himself into these Circumstances: The King as he is the Fountain of Justice, so he is also of Mercy, and you and all the rest of his Subjects have cause to bless God that you live under a Monarch that is very merciful. No doubt, if you give a good account of your Contrition and Sorrow for your great Offence, and decently apply your self to the King, he will think of shewing Mercy to you; but Justice is our Work that are Judges; and according to the Methods of Justice we think we cannot inflict less than we have done.

Mr. *Williams*. My Lord, I pray his Bail may be discharged.

L. C. J. Ay, His Bail is discharged, he being committed.

Mr. *Williams*. And for the High-Treason, he is discharged by the *Habeas Corpus Act*.

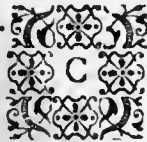
L. C. J. Yes, he is so, for there is no Prosecution.


Then Mr. Hambden was carried by the Marshal away Prisoner.



The TRYAL of Laurence Braddon and Hugh Speke, Gent.

On Thursday the 7th of February, Anno Dom. 1683. Annoq; Reg. Caroli Secundi 36. A Tryal was had at the King's-Bench Bar, in a Cause between our Sovereign Lord the King, and Laurence Braddon and Hugh Speke, Gentlemen; upon an Information exhibited against them the last Term, by His Majesty's Attorney General, for an High Misdemeanor; and to which they the same Term pleaded Not Guilty, and the Tryal proceeded in this manner.

Cl. of Cr.  Ryer, Call the Defendants, Laurence Braddon and Hugh Speke.

 Cryer. Laurence Braddon and Hugh Speke, come forth, or else this Inquest shall be taken by your Default.

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Mr. *Wallop*. They appear.

Cl. of Cr. Gardez votrez Challenges. Swear Sir Hugh Middleton. (Which was done.) And there being no Challenges, the Twelve Gentlemen sworn to try this Cause, were these.

Sir Hugh Middleton	} Jur.	Samuel Rouse
Thomas Harriott		Hugh Squire
Thomas Earsby		Nebemiah Arnold
Joshua Galliard		John Bifield
Richard Shoreditch		William Wait and
Charles Good		James Supple.

Who being counted, Proclamation was made in usual Form for Information.

Cl. of Cr. Gentlemen, you of the Jury hearken to the Record. His Majesty's Attorney General in this Court has exhibited an Information against the Defendants by the Names of Laurence Braddon of the Middle Temple, Gentleman, and Hugh Speke of Lincolns-Inn, Gentleman.

And the Information sets forth,

That whereas Arthur Earl of Essex, the 12th of July, in the 35th Year of the Reign of our Sovereign Lord Charles II, by the Grace of God, of England, Scotland, France and Ireland, King, Defender of the Faith, &c. was committed to the Prison of our Lord the King, in the Tower of London, for certain High-Treasons by him supposed to be committed. And the said Arthur Earl of Essex being a Prisoner in the Tower of London aforesaid, for the High-Treason aforesaid, the 12th Day of July, in the aforesaid 35th Year of the Reign of our said Sovereign Lord the King, that now is; not having the Fear of God before his Eyes, but being moved and seduced by the Instigation of the Devil at the Tower of London aforesaid, in the County of Middlesex aforesaid, himself feloniously, and as a Felon of himself, did kill and murder, as by an Inquisition taken at the Tower of London aforesaid, in the County of Middlesex aforesaid, the 14th Day of July, in the Year aforesaid, before Edward Fernham, Esq; then Coroner of our Lord the King, of the Liberty of the Tower of London aforesaid, upon the View of the Body of the said Arthur Earl of Essex; and now in this Court remaining of Record more plainly does appear. They the said Laurence Braddon and Hugh Speke not being ignorant of the Premises, but contriving, and maliciously and seditiously intending the Government of our said Lord the King of this Kingdom of England, into Hatred, Disgrace and Contempt to bring, the 15th Day of August, in the aforesaid 35th Year of the Reign of our said Sovereign Lord the King that now is, and divers other Days and Times as well before as after, at the Parish of St. Clement Danes in the County of Middlesex, with Force and Arms, &c. falsely, unlawfully, maliciously and seditiously did Conspire; and endeavour to make the Subjects of our said Lord the King of this Kingdom of England, to believe that the Inquisition aforesaid was unduly taken, and that the said Arthur Earl of Essex by certain Persons unknown, in whose Custody he was, was killed and murdered. And to perfect and bring to effect their malicious and seditious Contrivances aforesaid; they the said Laurence Braddon and Hugh Speke at the Parish of St. Clement Danes in the County of Middlesex aforesaid, the 15th Day of August, in the 35th Year aforesaid, falsely, unlawfully, unjustly, maliciously and seditiously did Conspire to procure certain false Witnesses to prove, That the said Arthur Earl of Essex, was not a Felon of himself, but that the said Earl of Essex by the said Persons unknown was killed and murdered: And to perswade other Subjects of our said Lord the King to believe this to be true, they the said Laurence Braddon and Hugh

Speke, falsely, maliciously, and seditiously, then and there in Writing did declare and cause to be declared, the said Laurence Braddon to be a Person that would prosecute the Murther of the said Earl of Essex; to the great Scandal and Contempt of the Government of our Lord the King of his Kingdom of England, to the evil Example of all other in the like case offending, and against the Peace of our Sovereign Lord the King, his Crown and Dignity. To this Information the Defendants have severally pleaded Not Guilty, and for their Tryal have put themselves upon the Country; and His Majesty's Attorney General likewise, which Country you are: Your Charge is to inquire, whether the Defendants, or either of them, are Guilty of this great Misdemeanour whereof they are impeached, or Not Guilty? If you find them or either of them Guilty, you are to say so; if you find them or either of them Not Guilty, you are to say so, and no more, and bear your Evidence.

Then Proclamation was made for Evidence.

Mr. Dolben. May it please your Lordship, and you Gentlemen that are sworn: This is an Information preferred by Mr. Attorney General, against the Defendants Laurence Braddon and Hugh Speke, and the Information does set forth, That whereas Arthur late Earl of Essex the 12th of July last was committed to the Tower of London for certain Treasons supposed to have been by him done: And the said Earl being so committed Prisoner to the Tower for Treason, not having the Fear of God before his Eyes, feloniously and as a Felon did kill and murder himself, as by an Inquisition taken before the Coroner of the Tower Liberty may more fully appear; yet the Defendants Laurence Braddon and Hugh Speke not being ignorant of the Premises, but designing to bring the Government into Hatred and Contempt, the 15th Day of August last, at the Parish of St. Clement Danes in this County, with Force and Arms falsely, unlawfully, maliciously and seditiously did Conspire together to make the King's Subjects believe, That the Inquisition aforesaid was unduly taken, and that the said Earl of Essex did not murder himself, but was by certain Persons unknown, in whose Custody he was, murdered. And it further sets forth, that these Defendants, Laurence Braddon and Hugh Speke, designing to disturb and disquiet the Minds of the King's Subjects, and to spread false Reports, did Conspire to procure certain false Witnesses to prove, that the said Earl of Essex was not a Felon of himself, but was by some Persons unknown, killed and murdered: And to perswade other Subjects of our Sovereign Lord the King to believe the said Report, they did falsely, maliciously, unlawfully and seditiously cause to be declared in Writing, That the said Laurence Braddon was the Person that did prosecute the said Earl's Murther. And this was to the great Scandal of the Government, to the evil Example of all Persons in like case offending, and against the Peace of the King, his Crown and Dignity. To this the Defendants have pleaded Not Guilty; if we prove it upon them, we make no question you will find it.

Mr. At. Gen. May it please your Lordship, and you Gentlemen of this Jury, Mr. Speke and Mr. Braddon, these two Gentlemen, are accused of as High Conspiracy as ever has or could well happen in

Sir Robert
Smyer.

in our Days, of throwing the Murther of a Person that killed himself, upon the Government. And I must acquaint you, their Design was of an higher nature than barely that ; for this Gentleman, my Lord of *Essex*, was committed to the Tower for the late Plot, and being so committed, when he had killed himself there, that was more than a thousand Witnesses to open the Eyes of the People, and confirm the Belief of the Conspiracy : And one would have thought, after that there had been an end of the Design, that these Protestant Gentlemen, as they call themselves, were carrying on ; when the Earl of *Essex*, a Person of that Quality and Worth, should go to murder himself upon the sense of what he was Guilty of. So that the Design, Gentlemen, was to stifle the Plot, and at the same time they must throw this ill thing that the Earl had committed upon himself, upon the Government : That, Gentlemen, was the main Disgrace in order to stifle that great Evidence of the Plot. And Mr. *Braddon* must of his own Head, not being put on by any of the Friends of the Earl of *Essex*, who were all very sensible the Earl had done this Fact, committed this Murther upon himself ; but I say, he, out of a true Principle to manage the Protestant Cause as they call it, but indeed it was the Plot, he becomes the Prosecutor of this Business, and you will find him by the Proofs in the Case, a Man of many like Projects. For you will find him value himself upon these Titles, That he is the Prosecutor of the Earl of *Essex*'s Murther, and the Inventor of the Protestant Flails, an Instrument, I suppose Gentlemen you have all heard of.

Now, Gentlemen, To make this appear to the World, Letters are sent into all Parts of *England* of this Bruit and Report. He himself goes about to find Evidence ; for it was so great a Truth, and there was such a plain Proof that the Earl of *Essex* had killed himself, that he must labour it to get Evidence. And he goes about it accordingly, and at length he meets with a little Child of twelve Years of Age, and he prepares for him all with his own Hand-writing, a Deposition, which is a feigned Story all of it, and in every part of it will appear to be false, and there he mightily solicits this young Boy to sign it. He comes to his Father's House, carries him in a Coach, forces him away, and forces him to sign this Paper that he had thus prepared for him, all of his own Invention and Writing ; and with the like Confidence as he appears here, (for so he does appear with very great Confidence, as you may observe,) he attests it himself. And, Gentlemen, we shall shew you, that here up and down the Town he makes it his common Discourse, what he was in hand with, and makes his boast of himself to be the Prosecutor of the Earl of *Essex*'s Murther, and he had as good a Confederate as himself, Mr. *Speke*, and he having an Interest in the Country, whither the News must be sent all abroad, and Mr. *Braddon* must go to pick up Evidence, I know not where a great way off, of a Murther committed in the Tower. We shall prove to you, he had Letters Missive and Recommendatory from Mr. *Speke* to a Gentleman with whom Mr. *Braddon* was to advise ; for they looked upon it to

be as dangerous an Enterprize almost as the Plot it self, as indeed it was ; therefore they must be wary, and Mr. *Braddon* is advised to go by a wrong Name, so this Mr. *Speke* and *Braddon* were to carry on and make up this Tragi-Comedy, for I can call it nothing else, for the Ridiculousness as well as the Dangerousness of the Design. The Report was to be, that this Murther of the Earl of *Essex* was committed by the Officers that attended my Lord, and to fall out in time when His Majesty was in the Tower, as if the King himself had a hand in it. We shall trace it in all the Parts of it by several Witnesses, and hope you will make them an Example, first by finding them Guilty, and the Court afterwards by a severe Punishment for such a villainous Practice, to scandalize the Government with the Murther of a Noble Peer. We shall begin with shewing you the Inquisition, or rather first with the Convictment of the Earl of *Essex* for High-Treason, because that is said in the Record by way of Inducement. Call Mr. *Reynolds*. (*Who was sworn.*) Have you the Warrant of Commitment of my Lord of *Essex* ?

Mr. *Reynolds*. Yes.

Mr. *At. Gen.* Shew it the Court. Let the Clerk read it.

Mr. *Reynolds*. This is the Commitment that was delivered the Lieutenant of the Tower, together with my Lord of *Essex*.

Cl. of Cr. This is directed to *Thomas Check*, Esq; Lieutenant of His Majesty's Tower of London. Subscribed *Leolin Jenkins*, and dated ———

Sir *Leolin Jenkins* Knight, of His Majesty's most Honourable Privy Council, and Principal Secretary of State.

These are in His Majesty's Name to will and require you to receive into your Custody the Person of Arthur Earl of *Essex* herewith sent you, being committed for High-Treason, in Compassing the Death of the King (whom God preserve) and Conspiring to Levy War against His Majesty. And him the said Earl of *Essex* to keep in safe Custody, until he shall be delivered by due Course of Law. And for so doing this shall be your Warrant. Given under my Hand and Seal at Whitehall the 10th Day of July, 1683.

To *Thomas Check*, Esquire
Lieutenant of His Majesty's Tower of London.

L. Jenkins.

Mr. *At. Gen.* My Lord, We will then read the Inquisition, that the Earl, being thus in the Tower, killed himself.

Mr. *Sol. Gen.* Shew the Inquisition.

Where is Mr. *Farnham* ?

Mr. *Finch*.

Mr. *Farnham*. Here I am. The Inquisition is returned here, and is upon Record.

Cl. of Cr. Here it is, Number 11.

[*He reads.*]

London ff. An Inquisition indented, taken at the Tower of London aforesaid, in the County of Middlesex, the 14th Day of July, in the Year of the Reign of our Sovereign Lord Charles II, by the Grace of God of England, Scotland, France and Ireland, King, Defender of the Faith, &c. the 35th ; before
Edward

Edward Farnham, Esquire, Coroner of our said Lord the King, of the Liberty of the Tower of London, aforesaid, upon view of the Body of Arthur Earl of of Essex, then and there lying dead; by the Oaths of Samuel Colwel, Esq; William Fisher, Thomas Godsel, Esq; Thomas Hunt, Nathaniel Mountney, Esq; Thomas Potter, William How, Robert Burgoine, Eleazer Wickins, Thomas Hogsflesh, Henry Cripps, Richard Rudder, William Knipes, John Hudson, John Kettlebeter, Lancelot Coleson, Morgan Cowarn, Thomas Bryan, William Thackston, Richard Cliffe, Zebediah Pritchard, William Baford and Theophilus Carter, good and lawful Men of the Liberty of the Tower of London aforesaid, who being charged and Sworn to enquire for our said Lord the King, when, by what means and how, the said Arthur Earl of Essex, came to his Death, upon their Oaths do say, that the said Arthur Earl of Essex, the 13th Day of July, in the Thirty Fifth Year of the Reign of our said Sovereign Lord the King aforesaid, at the Tower of London aforesaid, in the County of Middlesex aforesaid, about the Hour of Nine in the Forenoon of the same Day, not having the Fear of God before his Eyes, but being seduced and moved by the Instigation of the Devil, of his Malice aforesaid, at the Tower of London aforesaid, in the County aforesaid, then and there being alone in his Chamber, with a Razor of the Value of one Shilling, voluntarily and feloniously did cut his Throat, giving unto himself one Mortal Wound, cut from one Jugular to the other, and by the Aspera Arteria, and the Wind-Pipe, to the Vertebres of the Neck, both the Jugulars being thoroughly divided, of which said mortal Wound the said Arthur Earl of Essex instantly died; And so the Jurors aforesaid, say upon their Oaths, that the said Arthur Earl of Essex, in manner and form aforesaid, then and there, voluntarily and feloniously as a Felon of himself, did kill and murder himself, against the Peace of our Sovereign Lord the King, his Crown and Dignity. In Witness whereof, as well I the Coroner aforesaid, as the Jurors aforesaid, to this Inquisition, have interchangeably put our Seals, the Day and Year abovesaid.

Mr. At. Gen. Call Mr. Evans and Mr. Edwards. After this, my Lord, we shall shew you, that Mr. Braddon went about the Town, and declared the Earl was murdered, and he was the Prosecutor. There is Mr. Evans, Swear him, [Which was done.

Pray will you give an Account to my Lord and the Jury, what you know of Mr. Braddon's going about and declaring he was the Prosecutor of my Lord of Essex's Murder?

Mr. Evans. My Lord, All that I know of this Matter, is this. About the 17th of July last—

Sir George Jefferies.

L. C. J. When is the Inquisition?

Ch. of Cr. It is the 14th of July.

L. C. J. Well, go on.

Mr. Evans. The 17th of July last, I was at the Custom-House Key, shipping off some Lead, and the Person that brought me the Warrant, I told him I could not Execute it without one of the Commissioners Officers; and I bid him go to Mr. Edwards, who was the next Officer adjoining to the Key, and he went to his House, and told him I was at the Water-side, and had a Warrant, which I desired him to be present while I executed it, Mr. Braddon it seems, was then present in the Place with Mr. Edward, when this was told him, and hearing my Name, Mr.

Braddon came down with Mr. Edwards, and found me then at Smith's Coffee-House, and Mr. Edwards told me, Mr. Braddon had been with him examining his Son, in relation to a Matter of a Razor that was thrown out of my Lord of Essex's Window, and I presently replied, I desired they would not speak of any such Matter to me, for I had seen the Coroner's Inquisition upon Oath, where it was declared, the Thing was so and so, and two Persons had Sworn what seemed to be contrary to this; and therefore I desired they would forbear any such Discourse to me.

L. C. J. Who they?

Mr. Evans. Braddon and he were together.

L. C. J. Who, he? Man.

Mr. Evans. Mr. Edwards. And withall I made my Application to Mr. Braddon, and I desired him he would not meddle with such a Matter, for I thought it might be prejudicial to him and Mr. Edwards too. Mr. Braddon made me no Answer, but went directly out of the Room.

L. C. J. What do you mean by so and so, and a Razor thrown out of a Window? We do not understand your so and so.

Mr. Evans. Relating to a Matter of a Razor.

L. C. J. Prithce, we don't know what that Matter of a Razor is.

Mr. Evans. A Razor that was said to be thrown out of my Lord of Essex's Window.

L. C. J. Tell us what the Story was, Man.

Mr. Evans. Mr. Edwards told me, That Mr. Braddon was with him, to examine his Son, relating to a Matter of throwing a Razor out of my Lord of Essex's Window: This is that he said to the best of my remembrance.

Mr. Sol. Gen. Was Braddon present there?

Mr. Evans. Yes, Mr. Braddon and Mr. Edwards were both present.

L. C. J. Well, What was the Discourse between you? Tell us plainly.

Mr. Evans. Says Mr. Edwards to me, Mr. Braddon has been to examine my Son about such a matter, so I desired he would not discourse any thing of that matter to me, and I told him, I advise you not to proceed, for I told him, it would be prejudicial both to him, and Mr. Edwards too.

L. C. J. What is meant by this Matter? He examined my Son about a Matter, and I desired him he would not discourse of this Matter, What is all that Matter?

Mr. Just. Holloway. What did you apprehend by it?

Mr. Evans. I apprehended that Mr. Braddon had been to examine Mr. Edwards's Son about such a Matter.

L. C. J. What Matter, Man?

Mr. Evans. His dispersing of any such Report.

L. C. J. What Report?

Mr. Evans. A Report of throwing a Razor out of my Lord of Essex's Window.

L. C. J. Here is a Razor thrown out of a Window, and a Matter of I know not what.

Mr. Just. Withins. Suppose a Man should throw a Razor out of a Window, what signifies that?

L. C. J. Where heard he of that Matter?

Mr. Evans. This is all I heard, my Lord, I am upon my Oath.

L. C. J. But I wish thou wouldst let us know what it is thou didst hear.

Mr.

Mr. Jones. Was there no Talk of a bloody Razor?

Mr. Evans. No, not a Word of it.

L. C. J. How came you to be frightened then, and to be unwilling to hear of that Matter, and to tell him, you thought it might be prejudicial to him and Mr. Edwards?

Mr. Evans. I told him I had seen the Coroner's Inquest, where it was proved, that the Razor lay in such a Place; therefore I desired they would not speak to me of any such Matter, and I desired Mr. Braddon not to proceed in it, for you may do your self and Mr. Edwards too, some Prejudice.

Mr. At. Gen. Look you, Mr. Evans, what did you understand by the throwing the Razor out of the Window, and giving him Caution not to proceed? The Razor might be found there, what was the meaning of it?

Mr. Evans. May it please your Lordship, There was a Report at the Custom House, that very Morning the Earl of Essex cut his Throat, that there was a Razor thrown out of the Window.

Mr. Jones. You did advise Braddon, you say, not to proceed in it?

Mr. Evans. Yes.

Mr. Jones. How came you to advise him so?

Mr. Evans. Because it might be prejudicial to him, and Mr. Edwards too.

Mr. At. Gen. Was there no Talk between Mr. Edwards, Mr. Braddon, and you, That Mr. Braddon would be a Prosecutor of the Murder of the Earl of Essex, upon your Oath?

Mr. Evans. Not one Word or Syllable. For Mr. Braddon spake not one Word, good or bad: I gave an Account to Secretary Jenkins, of every Word that passed.

Mr. At. Gen. Did not you advise him not to prosecute the Business?

Mr. Evans. I did advise him not to disperse such a Report.

L. C. J. What Report?

Mr. Evans. Of a Razor being thrown out of my Lord of Essex's Window.

Mr. At. Gen. Why, suppose there had been a Razor thrown out of the Window, what then?

Mr. Evans. Then it was contrary to the Information and Evidence given before the Coroner.

L. C. J. Why so? Why might it not be thrown out after it was found in the Place where the Inquisition says? Thou art a wonderful cautious Man, where is the danger of the Report of a Razor being thrown out of a Window? There must be something more in it, if we could but get it out of him.

Mr. Evans. Will your Lordship be pleased to hear me.

L. C. J. Ay, I do hear thee, but I do not understand thee.

Mr. Evans. May it please your Lordship, I will read the Words *verbatim* that I gave to the Secretary.

L. C. J. Why, I believe you can read, and I make no doubt you can write too, or you are not fit to be a Custom-House Officer.

Mr. Evans. I put in this Paper to the Secretary, and will repeat what I said then, as near as I can upon my Oath.

L. C. J. I care not a Farthing what you de-

livered to the Secretary, tell us what thou hast to say plainly.

Mr. Evans. May it please your Lordship, I will read it what it is.

Mr. Sol. Gen. You may look upon your Paper to refresh your Memory, but you must not read it here.

Mr. Evans. If it please you, I will tell you the Reason and Occasion I had to go to the Secretary.

L. C. J. I know not what Occasion thou hadst to go to the Secretary, nor do I care what thou didst when thou camest there, it may be thou madest three Legs, it may be never a one; what is that to us? What canst thou say to the Matter here before us?

Mr. Evans. That is all I can say, my Lord. It was an Accident that they came into my Company. And tell you the manner and the occasion. That Person that brought me the Warrant, saying to Mr. Edwards that I was below, Mr. Braddon hearing my Name named, comes down with Mr. Edwards, for he had told Mr. Edwards, I was related to him, and they both came to the Coffee-House, and there they began to discourse about this Matter.

Mr. Just. Wilkins. Who began to discourse?

Mr. Evans. Mr. Edwards.

L. C. J. Well, What was it he said to thee?

Mr. Evans. Mr. Edwards began thus. Says he, Mr. Evans, this Gentleman has been at my House to examine my Son concerning a Report that is spread Abroad concerning a Razor that was thrown out of the Window of the Earl of Essex's Lodgings, that Morning he cut his Throat. I hearing of that, said I, Gentlemen, I have read the Coroner's Inquest that is in Print, and it is otherwise declared there: And therefore let there be no Discourse of any such Matter, for I believe no such Thing. And said I to that Gentleman, Mr. Braddon, Pray forbear meddling in any such Thing, for Mr. Edwards is a poor Man, and has divers Children, he may be ruined, and you likewise may be ruined your self, if you proceed any further in it.

Mr. At. Gen. We shall interpret this matter by our other Witnesses.

L. C. J. Ay, so you had need, for there is nothing to be made of this Fellow's Evidence.

Mr. North. Pray, by the Oath you have taken, when you gave that Advice, did Mr. Braddon make you no Answer?

Mr. Evans. No, none at all.

Mr. Braddon. [*Lifting up his Hands in an unusual manner.*]

Mr. Evans, Pray will you answer one Thing?

L. C. J. Pray, Sir, let us have no elevation of Hands. Your Confidence 'does not so well become you in a Court of Justice, this is not a Cause wherein you need use so much Confidence.

Mr. Braddon. Sir, pray answer, did not I——

L. C. J. What is it you would ask him?

Mr. Braddon. My Lord, I desire he may be asked, Whether I, with a Brother of his, did not come to his Country-house, on the Monday immediately after my Lord of Essex's Death, and whether at his Table there was not a Report then of a Razor being seen to be thrown out of my Lord of Essex's Window?

L. C. J. Pray ask by your Counsel, they are most proper to ask Questions for you. Tell them

them what you would have asked, and don't make long Stories your self.

Mr. Wallop. Were you not in company with Mr. Braddon, the Monday after my Lord of *Effex's* Death?

Mr. Freke. What was the Report, Sir, at your Table, upon the Monday next after my Lord of *Effex's* Death?

Mr. Evans. My Lord, if your Lordship please—

L. C. J. Pray Sir, make a short and plain Answer to what Questions are asked you, and let us have none of your Circumlocutions, and your Discourses of the Matter; but let us understand what you say.

Mr. Evans. I will, my Lord.

L. C. J. What is your Question?

Mr. Braddon. Whether I was not upon the Monday after the Earl of *Effex's* Death at his Table, where there was a Discourse of a Report that a Razor was thrown out of the Window, before Murther was cried out, and concerning a Boy which went to take it up?

L. C. J. What a Story is here! Pray ask him a fair and a short Question, if he can remember what was said at his House? We are got quite to the Custom-house and the Coffee-house again, and I know not where.

Mr. Freke. What Discourse was there at your Table, Sir, the immediate Monday after the Earl of *Effex's* Death, concerning a Razor thrown out of a Window?

Mr. Evans. My Lord, This, to the best of my remembrance, is what I have to say, and remember of the thing, that a Gentleman being with him—

L. C. J. Who?

Mr. Evans. Mr. Braddon.

Mr. Wallop. Where was this?

Mr. Evans. In the Country.

Mr. Wallop. Where, in what Country?

Mr. Evans. In *Effex*.

Mr. Wallop. What was the Place's Name?

Mr. Evans. At *Wansted*, my Lord; and being there, and he plucking out a Paper.

L. C. J. He, who?

Mr. Evans. A Brother of mine, that that Gentleman came down with to see me.

L. C. J. What is his Name?

Mr. Evans. His Name is Mr. *William Hatfell*.

L. C. J. With whom did he come?

Mr. Evans. With this Person.

L. C. J. With this Person, who is this Person?

Mr. Evans. Mr. Braddon.

L. C. J. Why can't thou not name him, without this wire-drawing? Thou art a most exact Custom-house Officer, I'll warrant thee, thou can't not make a plain Answer to a plain Question.

Mr. Evans. My Lord, I beg your Pardon, I do not know the Methods of the Court.

L. C. J. Pritchee, I care not for thy Methods, nor thy Matter, but deal plainly with us.

Mr. Evans. My Brother Mr. *Hatfell*, came down along with Mr. Braddon to my House at *Wansted* in *Effex*, on the Monday after my Lord of *Effex's* Death, and coming down, my Brother Mr. *Hatfell* pulled out the Coroner's Inquest upon Oath that was printed, and shewing of it to me, I read it, and as soon as ever I had read it, said I, Mr. *Edwards*, that was at the

Custom-house that very Morning when the Earl of *Effex's* Throat was cut, did declare to me upon the Custom-house Key, That his Son did declare that the Razor was thrown out of the Window, which seems to contradict this Paper, that says, it was found lying by him.

Mr. Freke. Was this before Mr. Braddon was with Mr. *Edwards*?

Mr. Evans. I can't tell that.

Mr. Freke. Was it before Mr. Braddon and Mr. *Edwards* came to you to the Coffee-house?

Mr. Evans. Yes, I believe it was.

Mr. At. Gen. You say Mr. Braddon came with Mr. *Hatfell* to your House at *Wansted*?

Mr. Evans. Yes.

Mr. At. Gen. Who was the Person that told this Story?

Mr. Evans. He brought down the printed Paper with him, and upon plucking out that Paper and reading of it, the Story was told.

Mr. At. Gen. Pray who was the Person that told him it was so reported at the Custom-house?

Mr. Evans. I made that Answer my self immediately upon reading the Paper; for I observed what the Coroner's Inquest had returned, and upon that I made this Observation, That it seemed to contradict what was declared at the Custom-house that Morning my Lord of *Effex* cut his Throat.

Mr. At. Gen. Pray who declared there that the Razor was thrown out of the Window?

Mr. Evans. It was Mr. *Edwards* told me.

L. C. J. Why consider with your self now, You say first of all *Edwards* and Braddon came to me to the Coffee-house.

Mr. Evans. That was at another Day.

L. C. J. I am sure you swore so at first.

Mr. Evans. With your Lordship's Favour—

L. C. J. And with your Favour too, Sir. Pray will you hear me, I have heard you a great while I am sure to no purpose. But consider with your self, and pray be pleased to reconcile what you say now with what you said at first, if you can. You say first of all *Edwards* and Braddon came to me to the Custom-house, and found me out at the Coffee-house, and that *Edwards* should say, Some body had been with his Son, in order to examine him about a Razor that was thrown out of my Lord of *Effex's* Window, and that you immediately cried out, Have a care of that, for that contradicts the Inquisition that I have seen in Print, which declares as tho' the Razor was found in the Room. And after that you say, it was that you saw the Inquisition when *Hatfell* came down with Braddon, and you told him of the Report at the Custom-house. How came you, if you had not seen the Inquisition till then, to give out such Words at the Custom-house: Have a care of meddling with that, because that contradicts the Inquisition?

Mr. Evans. My Lord, This was several Days before that.

Mr. At. Gen. Yes, my Lord, This Discourse at *Wansted* was before that at the Custom-house.

Mr. Wallop. This that he now speaks of is an Answer to Mr. Braddon's Question, which was about a Discourse that passed before this other at the Custom-house. This that he speaks of, the Discourse at a Coffee-house, was afterward, but indeed he first spake of it; but these were two

two distinct Matters at several times. This last of the Custom-house was, when he had made the Examination of the Boy, as that Witness says.

L. C. J. Therefore I think it was fit to explain it, for it looked very inconsistent before, what thou said'st at first, and what thou say'st now; but if thou tellest me thy *Essex*-matter was before thy Coffee-house-matter, it is well, otherwise the Matter, I assure you, looked very ill.

Mr. Evans. This is the truth, my Lord, and I can tell no more.

Mr. At. Gen. Take the Times, my Lord, and you will see he does speak very notably. The 13th of July my Lord of *Essex* murder'd himself, the 14th of July the Inquisition was taken before the Coroner, pray what was the Day that *Hatsel* and this Gentleman came down to you to *Essex*?

Mr. Evans. I can't tell that, Sir, truly; but it was before this Matter of the Examination of the Boy.

L. C. J. But pray let me ask you one Question, if your Matter about the Inquisition in the Country was before the Matter of your cautious Discourse at the Custom-house, how came you to tell them, I heard this Report of a Razor thrown out of the Window, that Morning the Earl of *Essex* cut his own Throat?

Mr. Evans. Mr. *Edwards* reported this same thing that very same Morning to me and several others at the Custom-house Key.

L. C. J. Why did you not tell us this before?

Mr. Evans. I beg your Pardon, my Lord, I do not understand the Methods of the Court.

Mr. Wallop. Mr. *Hatsel* gave the occasion by pulling out the Inquisition.

L. C. J. Pray, Sir, make your Observations anon, let the King's Counsel go on with their Evidence.

Mr. At. Gen. What Discourse had Mr. *Braddon* with you then at that time, when *Hatsel* came down with him to your House you say, and pulling out the Inquisition you read it, and made Answer, You heard at the Custom-house Key such a Report that very Morning the Earl murdered himself.

Mr. Evans. Mr. *Braddon* was walking up and down the Room, I did not speak it to him, but I spake it to Mr. *Hatsel*, but I believe *Braddon* over-heard and took notice of it.

Mr. Just. Withins. Did he concern himself about it?

Mr. Evans. No, not much, I did not hear him say any thing, but he walked up and down the Room.

L. C. J. Now after all this Discourse of the Matter, for ought I can understand, the Matter is but this: He says, *Edwards* before the Meetings either at his House in *Essex*, or at the Coffee-house by the Custom-house, reported to him, as tho' the Earl of *Essex* had not murdered himself, but some body else had done it for him. And this was reported at the Custom-house that Morning the Earl of *Essex* cut his own Throat, and he hearing this Report at the Custom-house at that time, afterwards comes *Braddon* and *Hatsel* to his House into *Essex*, and after *Hatsel* had shew'd him the Paper of the Inquisition in Print, he said, I heard some

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Discourse from Mr. *Edwards* at the Custom-house of a quite other nature, and then he says, *Braddon* and *Edwards* came to the Coffee-house, and there it was he desired them not to talk of that Matter, for, said he, that contradicts the Inquisition I saw before. This is the Substance of what he said.

Mr. At. Gen. And hereby it does appear, that *Braddon*, and *Evans*, and *Edwards*, and *Hatsel*, are all of a Gang.

L. C. J. Have you the Information he gave in to the Secretary, Mr. Attorney General, that that was given before the Council?

Mr. At. Gen. Yes, 'tis much the same with what he hath said now.

Mr. Evans. Yes, my Lord, 'tis *verbatim* as I have declared now.

Mr. At. Gen. Only this other part of *Hatsel* and the Meeting in *Essex* was spoken of since, that was not declared before.

Mr. Evans. No, my Lord, that I did not speak of, because I was not examined about it.

Mr. At. Gen. That was part of the Secret.

Mr. Evans. No, it was common Discourse with me. And I did not think any thing of it, what Mr. *Edwards* said at the Custom-house, was spoken to a great many others as well as me, and the People seemed to be surprized with an account of the thing at the first News of my Lord of *Essex*'s Death. And if I had thought it material, I could have brought a great many that were by then; but Mr. *Edwards* is here brought himself, I suppose he will not deny it.

Mr. Sol. Gen. Look you, Sir, you say that very Morning my Lord of *Essex* killed himself, Mr. *Edwards* discoursed, and made this Report to you at the Custom-house, pray tell what the Discourse was; what he said to you; and then tell us what time of Day it was.

Mr. Evans. To the best of my remembrance it was about eleven a Clock; there were several Persons standing together, among the rest Captain *Goodland*, and some of the Searchers, and Mr. *Edwards* was there, and said he, I am informed from home, That my Boy has been at home, and given an account to my Wife, that being in the Tower, he saw a Hand throw a Razor out of a Window, and he named my Lord of *Essex*'s Window; and this Mr. *Edwards* did not only tell me, but to a whole Coffee-house of People, this Matter of Fact.

Mr. Just. Holloway. Did not Mr. *Edwards* tell you, That some body had been examining his Boy about that Report?

Mr. Evans. That was the second time, when Mr. *Braddon* and Mr. *Edwards* came together.

Mr. Just. Holloway. Who was it had been examining his Boy did he say?

Mr. Evans. Mr. *Braddon*, he said, had been to examine his Son.

Mr. Just. Holloway. That was after the Discourse at *Essex* that *Braddon* came to examine his Son concerning the Razor.

Mr. Wallop. Yes, it was after the Discourse at *Essex*, where *Hatsel* plucking out the Paper, *Evans* told Mr. *Braddon* first of this Razor.

L. C. J. Well, Make your Defence by and by, Mr. *Wallop*: Do not make your Remarks now.

Mr. At. Gen. Come, Mr. *Edwards*. Cryer swear him.

[Which was done.

N n

L. C. J.

L. C. J. What do you ask him, Mr. Attorney?

Mr. At. Gen. Mr. Edwards, Pray will you give the Court an account of this Business; for I don't know whether you heard what that Gentleman that went out last said, he says, you raised this Story, Pray give an account what you know of it.

Mr. Sol. Gen. Pray tell what you know of Mr. Braddon's coming to your Son, and what Discourse he or you had about the Murder of the Earl of Essex.

Mr. Edwards. The Report that Mr. Braddon came to enquire after, was with us some three Days before; it was in our Family three Days before, and upon the 17th of July——

L. C. J. What was the Report, Mr. Edwards, before Mr. Braddon came to you?

Mr. Edwards. The Report I have already declared before the Council.

L. C. J. But you must tell us too what it was.

Mr. Edwards. The Report of the Boy the 12th of July about 10 a Clock, as I was informed by my Family, and by the Boy afterwards by Word of Mouth, was this, He comes in about 10 a Clock, says he, I have been at the Tower (to one of his Sisters,) and have seen His Majesty and the Duke of York, and the Earl of Essex has cut his Throat, and I see an Hand throw a Razor out of the Window, and one came out of the House, a Maid, or a Woman in a white Hood and a Stuff Coat and took it up, and went in again, and then I heard a Noise as of Murder cryed out. This was the Boy's Report, and more than as his Report I can't speak to it.

L. C. J. This was your Son, was it not?

Mr. Edwards. Yes, the younger of them. The two Boys were that Morning going to Merchant-Taylor's School together as they used to do, and by the way hearing the King was in the Tower, this younger Boy that was well acquainted with the Tower, gave his elder Brother the slip and went into the Tower, and rambled about from place to place.

Mr. At. Gen. Did not you examine him?

Mr. Edwards. Ay, I did examine him.

Mr. At. Gen. Did not you find that he denied it again?

Mr. Edwards. No, I did examine him, and I found no denial of any thing at all that he had reported till Mr. Braddon came to make enquiry. Assoon as he came to make the enquiry, and I understood what Mr. Braddon's Business was, I begged of him that he would not insist upon it by no means; I begged of him as if I had begged for my life, but he was so zealous in the Business, that nothing would satisfy him. And after I had told Mr. Braddon that which I could not deny, which was the Boy's Report, I left him and went down to the Custom-house, and some of my Family discoursed the Boy at that rate that he began to deny it, and in less than half an hour's time recollected himself and began to own it again, and so the Boy was off and on till the time he was before the Council; and to this Day he seems to stand in the Denial, whether he will do it now or no I can't tell.

Mr. At. Gen. Did you acquaint Mr. Braddon, That you had found this Boy to be a lying Boy, and detected him in Lyes several times?

Mr. Edwards. Nay it please you, Sir, I acquainted him with thus much: Said I, Mr. Braddon, As I have dealt ingenuously with you, to let you know what the Boy's Report was, so I must likewise tell you, that I cannot nor will undertake to assert the truth of it, and presently upon that my Daughters told me, the Boy had many times excused his playing Truant by false Stories.

Mr. At. Gen. Did you acquaint Mr. Braddon, that your Boy was a lying Boy at that time?

Mr. Edwards. I think I did not at that instant of time.

L. C. J. How old is this Boy you talk of?

Mr. Edwards. About 13 Years of Age, my Lord.

Mr. At. Gen. What do you know of Mr. Braddon's forcing your Boy to sign any thing that he had prepared after this?

Mr. Sol. Gen. When you told him your Boy had deny'd it, what did he say? Was he pleased and satisfied?

Mr. Edwards. He was not told it by me, but some of my Family.

Mr. Sol. Gen. How did he behave himself?

Mr. Edwards. At the same time they told him he denied it, at the same time they told him he owned it again.

Mr. Sol. Gen. How did Mr. Braddon behave himself?

Mr. Edwards. Like a civil Gentleman. I saw nothing else by him, but that he was very zealous in the Business, that is the truth of it, nothing could perswade him to desist.

Mr. Just. Holloway. Pray did you ask Mr. Braddon, or did he tell you, what was the reason that he was so inquisitive about this Razor, and the Report of the Boy?

Mr. Edwards. As to that he told me, he would let me know the reason of it, which was, out of Conscience.

Mr. Jones. Did not Mr. Braddon carry your Son before several Justices of Peace?

Mr. Edwards. Before none as I know of, not one truly to my knowledge.

Mr. At. Gen. Did you understand he had taken your Boy from your House in a Coach?

Mr. Edwards. Never till he carried him into His Majesty's Presence before the Council, and I knew not that till the Boy came home.

Mr. Thompson. Mr. Attorney, Have you done with him? May I ask him a Question?

Mr. At. Gen. Ay, ask him what you will.

Mr. Thompson. If I understand you right, Sir, this Report of the Boys was that Morning that the Earl of Essex was murdered——

L. C. J. Was murdered, murdered himself, Man.

Mr. Thompson. My Lord, I mean the Day of his Death. Now I would ask you, Sir, when that was?

Mr. Edwards. The Boy's Report was this, Sir,——

Mr. Thompson. I ask you not what his Report was, but when? What Day it was?

Mr. Edwards. The 12th of July. That Day the Earl of Essex cut his Throat.

Mr. Thompson. How many Days after that was it when Mr. Braddon came to you?

Mr. Edwards. It was not till the 17th of July.

Mr. Thompson. Had you discoursed of the Report of your Boy at the Custom-house, or any where else, that same Day he came to you?

Mr. Ed-

Mr. *Edwards*. I cannot say that.

Mr. *Thompson*. Had you discoursed it before Mr. *Braddon* spake to you, upon your Oath?

Mr. *Edwards*. Yes, I believe I had.

Mr. *Sol. Gen.* Had you discoursed it before your Boy told you?

Mr. *Edwards*. I should then indeed have been the Contriver of the Story.

Mr. *At. Gen.* So it is like enough you were.

Mr. *Sol. Gen.* Had you discoursed it to any body before you went home to your own House, upon your Oath, Sir?

Mr. *Edwards*. Upon my Oath then I discoursed nothing of that nature, not a tittle of it, nor knew nothing of it, till I had it from my own Family.

Mr. *Sol. Gen.* Did you not discourse of it before you went home?

Mr. *Edwards*. No, when I came home they told me of it.

L. C. J. I ask you again, Sir, Did not you tell it before you came home?

Mr. *Edwards*. About 10 a Clock, I having heard the News of the Earl of *Essex's* cutting his Throat, at the Custom-house, I stepped home, being very near to my own House, and as soon as I came in at the Door, the Family began to give me an account what News the Boy brought in.

L. C. J. That was the first time you heard of it?

Mr. *Edwards*. Yes, that was the first time I heard of it.

L. C. J. And did not you discourse of it till after that?

Mr. *Edwards*. No.

L. C. J. Call Mr. *Evans*. Let him come in again then.

Mr. *At. Gen.* Let Mr. *Evans* come in again.

L. C. J. Mr. *Evans*, I would ask you this Question, There were three times that you say, I think, that you had Discourse with *Edwards* about the Matter, as you call it, once at *Essex*, and twice at the Custom-house?

Mr. *Sol. Gen.* No, not in *Essex*, it was *Hatsel* and *Braddon*, my Lord, that came to him there, *Edwards* was not there.

L. C. J. When you first had a Discourse with *Edwards* about this Matter, what was it that *Edwards* did say to you?

Mr. *Evans*. Being upon Custom-house Key, and Captain *Goodland* and several others standing upon the Key, that very Morning my Lord of *Essex's* Throat was cut, about 11 a Clock Mr. *Edwards* came to us, being standing upon the Key, and told us, That he was informed his Boy had been at the Tower, and came home and told his Mother, he saw a Hand throw a Razor out of a Window, and that he went to take it up, and a Maid or a Woman came and took it up, and went in again.

L. C. J. *Evans*, Did he tell you this as if he had been at home?

Mr. *Evans*. No, I think it was that he had it from home by some Hand or other.

Mr. *Edwards*. I was at home.

Mr. *Evans*. My Lord, At two a Clock in the Afternoon, when he came again to the Custom-house, he did tell us, he had been at home, and his Boy had told him the same Story.

L. C. J. But when he had told you before he had dined, did he say, he had been at home?

Mr. *Edwards*. My Family can testify I was at home between 10 and 11 a Clock.

Mr. *Evans*. To the best of my remembrance he told me he heard so from home.

L. C. J. Before he went home, you say, he told you of this, and that was 10 a Clock in the Morning; and about 2 a Clock in the Afternoon, he said, he had been at home, and it was true.

Mr. *Evans*. Yes, my Lord.

Mr. *Edwards*. My Lord, I was at home.

L. C. J. Mr. *Edwards*, Did you tell him so, or did you not?

Mr. *Edwards*. It is like I might say so about 10 a Clock, but not before I had received the Report at home.

Mr. *Evans*. I understood it so, my Lord, That he had heard from home.

L. C. J. I ask you this upon your Oath, mind the Question, and answer me plainly, Did you speak to him, that you had such a Report from home, or did you not?

Mr. *Edwards*. When I told it him; I had it from home, for I brought it from home.

L. C. J. Nay, Did you tell him you had such a Report from home at 10 a Clock, or no?

Mr. *Edwards*. I told him that I had met with such a Report.

L. C. J. From whom?

Mr. *Edwards*. From my Family at home, for the Boy came not to me to tell it.

L. C. J. Then did you see Mr. *Evans* about 2 a Clock that Afternoon?

Mr. *Edwards*. 'Tis probable I did.

L. C. J. Did you, or did you not?

Mr. *Edwards*. Yes, I believe I might. I beseech your Lordship give me leave to speak. Mr. *Evans* and I am conversant Forenoon and Afternoon every Day, we have Business together.

Mr. *Evans*. We have Business, my Lord, about shipping off Goods.

Mr. *Edwards*. But, my Lord, if you please, I will tell you, that is the Occasion of our being together.

L. C. J. Answer me my Question, Did you, or did you not tell him so?

Mr. *Edwards*. I did not acquaint him with it before I had been at Home, and received it from my own Family.

L. C. J. Look you, Sir, Don't you go about to evade the Question, nor trifle with the Court, you must answer me my Question directly, and upon your Oath, Did you tell him you had notice from Home of such a Report, or no?

Mr. *Edwards*. I did not receive notice from Home, but I brought it from Home.

L. C. J. Did you tell him you had it from Home?

Mr. *Edwards*. I told him I had it from my Family, who told me the Boy had made such a Report.

L. C. J. Did you tell him you had it from your Boy, or received notice from Home about it?

Mr. *Edwards*. I did not tell him any thing before I had been at Home.

L. C. J. Well, then, answer me this Question. Did you tell him in the Afternoon at two a Clock; Now I have been at Home and examined my Boy, and find it so as I told you?

Mr. *Edwards*. I examined my Boy at Dinner, and I found the Boy agreed with the Report of my Daughter, and confirmed it.

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L. C. J. I ask you what you told Mr. *Evans*, not what your Boy or your Daughter told you?

Mr. Edwards. It is probable I might tell Mr. *Evans* the same Story after Dinner at Two a Clock, that I did before.

L. C. J. Now tell us the Passage again, Mr. *Evans*, as you heard it.

Mr. Evans. To the best of my remembrance, at Two a Clock in the Afternoon, Mr. *Edwards* came and told us, he had examined the Boy, and says he, the Boy has confirmed all that I told you.

L. C. J. But before that in the Morning, what did he say?

Mr. Evans. I cannot say exactly the Time, but I think it was about Ten a Clock. There were four or five more besides my self, standing at Custom-House Key, and Mr. *Edwards* came to us, and told us, says he, I am informed from Home, as I understood it, not that he had been at Home, but that he heard it from Home, that his Boy had been at the Tower, had seen an Hand throw a Razor out of a Window.

L. C. J. What said he at Two of the Clock?

Mr. Evans. He said he had examined his Boy, and he said the same thing, that he told us he had heard in the Morning.

Mr. At. Gen. My Lord, we are now but upon the Entrance of our Evidence, to shew upon what slender Grounds, how slight a Foundation there was for this Gentleman to undertake this Prosecution.

Mr. Sol. Gen. Mr. *Edwards*, Pray let me ask you a Question, Did Mr. *Braddon* tender any Paper to your Son to sign?

Mr. Edwards. I was informed he did do it afterwards, but I saw him not do any such Thing.

Mr. Sol. Gen. Did you never say that Mr. *Braddon* had tendered a Paper to your Son to sign?

Mr. Edwards. I do not believe I ever did say so, I do not remember any such Thing.

Mr. Sol. Gen. Pray recollect your Memory, and tell us, whether you did, or did not.

Mr. Edwards. I thank God, Sir, that he has given me my Memory and my Understanding, I bless him for it.

Mr. At. Gen. But it were well if thou hadst any Honesty too.

Mr. Edwards. And Honesty too, Sir: I have not lived these 39 Years at the Custom-House without Honesty. I never had my Honesty questioned to this Day. I am sure no body can tax me with Dishonesty.

Mr. Sol. Gen. Pray Mr. *Edwards* let your Anger alone for a while, and answer the Question that I shall ask you: Did your Son refuse to sign that Paper?

Mr. Edwards. He did sign it at last.

Mr. Sol. Gen. Did he refuse to sign it?

Mr. Edwards. I do not know whether he refused it or no.

Mr. Just. Withins. Did you hear that your Son refused it?

Mr. Edwards. I did hear that he had signed it.

Mr. Just. Withins. But did you hear that he refused to sign it?

Mr. Edwards. The Boy did not tell me he had refused to sign it. I did not hear him refuse it.

L. C. J. Thou dost prevaricate very strangely,

I must tell thee, that notwithstanding thy Reputation of 39 Years of Honesty: Prithce, answer plainly, Did you hear at any time, that your Son had refused to sign it?

Mr. Edwards. No, my Lord, I did not, to the best of my remembrance.

L. C. J. That is a plain Answer, Man, but thou dost so shuffle up and down, one cannot tell what to make of what thou sayest.

Mr. Thompson. Sir, I desire to ask you one Question, Whether ever Mr. *Braddon* and you had any former Acquaintance?

Mr. Sol. Gen. Pray, stay, Sir, and if you please, spare your Question a little, for we have not yet done with Mr. *Edwards*. Mr. *Edwards*, pray answer me, Did Mr. *Braddon* ever tell you, that he had other Informations to confirm this Report of your Son from others?

Mr. Edwards. Truly I do not remember he said any such Thing.

Mr. Sol. Gen. Did you ever say he told you so? Consider of it, and remember your former Examination.

Mr. Edwards. 'Tis like since he may have said so, but not at his first coming.

Mr. Sol. Gen. At his first coming did your Son sign his Paper then?

Mr. Edwards. No, he did not, as I am informed, I saw it not.

Mr. Sol. Gen. But afterwards you say, Mr. *Braddon* did tell you, he had other Evidence to confirm it.

Mr. Edwards. It may be he might, I can't say it positively.

Mr. At. Gen. You say he did not sign the Paper at his first coming?

Mr. Edwards. No, I am informed he did not.

Mr. Sol. Gen. How do you know he did sign it at last?

Mr. Edwards. My Wife and Daughters Information.

L. C. J. But how then can you say, That you never heard he did refuse it?

Mr. Edwards. My Lord, he did not tender a Paper to him to sign, till he had been two or three times there, as I have heard, it was not tender'd the first time he came.

L. C. J. I wonder how thou hast escaped 39 Years with such a Reputation.

Mr. Edwards. My Lord, I never was thought otherwise, nor I hope never gave any Occasion for such a Thought.

L. C. J. I'll assure thee, I do not, nor can take thee for one.

Mr. Edwards. I hope I have done nothing to make your Lordship think the contrary.

L. C. J. Yes, thou hast. Thou didst nothing but shuffle up and down, thou art to consider thou art upon thy Oath, and must answer Questions plainly.

Mr. Edwards. My Lord, I do answer as truly as I can.

Mr. At. Gen. Hark you then, Mr. *Edwards*, answer me.

L. C. J. Speak the Truth, and nothing but the Truth, that is all that is required of thee; no Court of Justice ought to be afraid to hear Truth. Let Truth come out of God's Name.

Mr. At. Gen. Did Mr. *Braddon* ever tell you, That he had other Evidence besides your Son?

Mr. Edwards. I do not remember he said any such thing at his first coming.

L. C. J.

L. C. J. How thou dost shuffle again. Answer plainly.

Mr. At. Gen. I ask you, Whether ever he did say it?

Mr. Edwards. Yes, he did say so afterwards.

Mr. Sol. Gen. I must ask you one Question more (for I see 'tis very difficult to get it out of you) Pray did he tell you, that he had other Evidence besides your Son, before he signed the Paper, or after?

Mr. Edwards. It was before, as I take it. I speak to the best of my Knowledge, my Lord, I can say no more.

L. C. J. If thou hast a mind to continue the Reputation thou hast got, as thou sayest, the way is to answer Questions, and speak the Truth plainly, let it concern whom it will.

Mr. Edwards. I labour to do it, my Lord, to the best of my Understanding and Capacity.

L. C. J. I would not have thee say a Tittle more than the Truth, but let the Truth come out.

Mr. Freke. Now, Sir, I would ask you, if they have done with you, Did you ever know Mr. Braddon before the 17th of July? Or did you ever see him before?

Mr. Edwards. No, I never had any Knowledge of him, nor ever heard a Word of him.

Mr. Wallop. Mr. Edwards, The Question was asked of you, Whether Mr. Braddon did say, There was other Evidence besides your Son; pray when was that?

Mr. Edwards. He did not at the first time, but afterwards he did.

Mr. Wallop. That was a good while after, he had been with the Boy first.

L. C. J. Make your Observations by and by, Mr. Wallop. This is not a Time for them.

Mr. At. Gen. Then where is Edwards, the Boy?

[Who was brought forthwith into Court.]

Mr. Edwards. I charge you in the Presence of Almighty God, speak Truth, Child.

Mr. Sol. Gen. And so should you too.

Mr. Edwards. Be sure to say nothing but the Truth.

L. C. J. And Child, turn about, and say, Father, be sure you say nothing but the Truth.

Mr. At. Gen. My Lord, This is the Boy, he is very little and very young, will your Lordship have him sworn? What Age are you of?

William Edwards. I am 13, my Lord.

Mr. At. Gen. Do you know what an Oath is?

William Edwards. No.

L. C. J. Suppose you should tell a Lye, do you know who is the Father of Lyars?

William Edwards. Yes.

L. C. J. Who is it?

William Edwards. The Devil.

L. C. J. And if you should tell a Lie, do you know what would become of you?

William Edwards. Yes.

L. C. J. What if you should swear to a Lie? If you should call God to witness to a Lie, what would become of you then?

William Edwards. I should go to Hell-fire.

L. C. J. That is a terrible Thing. And therefore, Child, if you take an Oath, be sure you say nothing but what is Truth, for no Party, nor Side, nor any Thing in the World, for that God that you say will call you to an Account,

and cast you into Hell-fire, if you tell a Lie, and witness to a Falshood, knows and sees all you do, therefore have a care, the Truth you must say, and nothing but the Truth.

Cryer. Pull off your Gloye, and hearken to your Oath.

[Then he was sworn.]

Mr. Sol. Gen. And now remember you call God to witness to the Truth of what you say.

Mr. At. Gen. Young Man, look upon that Paper, is that your Hand?

William Edwards. Yes.

Mr. At. Gen. Did you sign that?

William Edwards. Yes.

Mr. At. Gen. Prithce tell the Court, how thou camest to sign it?

L. C. J. Ay, Child, be not afraid. Tell the Truth, for if thou tellest the Truth, thou needest not be afraid, but if thou tellest a Lie, thou hast need to be afraid; let no body, whatever has been said to thee, affright thee from telling the Truth.

Mr. Sol. Gen. Don't be afraid of thy Father, or any body, but tell plainly what thou knowest, and speak only the Truth.

Mr. At. Gen. How came you to sign that Paper?

William Edwards. Mr. Braddon bid me sign it when he had writ it.

L. C. J. Hearn thee, Child, Did he take it from thee what he writ, or did he write it from himself? Come hither, Child, be not afraid, no body here will do thee any hurt.

Then the Boy was lifted up upon the Table before the Judges.

L. C. J. Look upon that Paper, didst thou put thy Name to that Paper, Child?

William Edwards. Yes.

L. C. J. Whose Hand-writing is that Paper, besides thy Name?

William Edwards. Mr. Braddon's.

L. C. J. Did he bring it ready written?

William Edwards. He writ it in our Parlour.

L. C. J. How came he to write it?

William Edwards. He said it was for the Earl of Essex, to give to his Wife.

L. C. J. And what did he ask thee before he writ that?

William Edwards. He asked me, whether I saw any Thing at the Tower, and so I told him, yes.

L. C. J. Ay, tell us what you told him, and be not afraid, Child, but tell the Truth.

William Edwards. I told him, I was in the Tower, and saw a Razor thrown out of a Window.

L. C. J. You told him so, and then what said he to you?

William Edwards. He bid me speak the Truth.

L. C. J. Was that all the Words you had?

William Edwards. I afterwards went with my Brother into the Tower, and I shewed my Brother the Place, and then afterwards Mr. Braddon writ this, and he said, it was to give to the Countess of Essex.

Mr. Just. Holloway. Did he read it to you after he had writ it?

William Edwards. Yes.

Mr. Just. Holloway. And did he ask thee, whether it were true?

William Edwards. Yes.

L. C. J. And didst thou tell him it was true?

William Edwards. Yes.

L. C. J.

L. C. J. And didst thou tell him all that was in that Paper was true ?

William Edwards. Yes.

L. C. J. Did you tell him all that was writ in that Paper before he writ it down.

William Edwards. Yes.

L. C. J. Prithee mind the Question, and speak truth, Didst thou tell him all that was in that Paper before he writ it down ?

Will. Edwards. Yes, I told him, and so he writ it down.

Mr. *Just. Holloway.* You heard it all read to you, you say ?

Will. Edwards. Yes.

L. C. J. Then I ask you again, Did you tell him all that was in that Paper was read to you, before he writ it down ?

Will. Edwards. Yes.

L. C. J. And after you had told him, he writ it down ?

Will. Edwards. I told him as he writ it down.

L. C. J. And after such time as he had writ it down, did he read it to you ?

Will. Edwards. Yes.

L. C. J. And then you put your Name to it ?

Will. Edwards. Yes.

Mr. *At. Gen.* I pray, my Lord, he may be asked this Question, Whether or no, when he first brought it in, the Boy did not deny to sign it ?

L. C. J. Did he bring the Paper thither before thou signed'st it ?

Will. Edwards. It was upon the Table.

L. C. J. Didst not thou refuse to put thy Name to it ?

William Edwards. Yes.

L. C. J. Why ?

William Edwards. I was afraid.

L. C. J. Why ?

William Edwards. For fear of coming into Danger.

L. C. J. Why, what Danger could there be ? There was no Danger if it was Truth.

William Edwards. That was not the Truth.

L. C. J. Which was not the Truth ? Was not the Paper that he had written Truth ?

William Edwards. No.

L. C. J. How so, Child ? Was not that thou toldest him the Truth ?

William Edwards. No.

L. C. J. Tell the Truth now then.

William Edwards. So I do.

Mr. *Sol. Gen.* Then he offered it first to you, and bid you sign it, and you denied to put your Hand to it, because it was not true ?

William Edwards. Yes.

L. C. J. And how long after did he offer it to you again ?

William Edwards. A little while after.

L. C. J. But did you tell Mr. Braddon it was not true, when you refused to sign it ?

William Edwards. No, I did not.

L. C. J. Why didst thou refuse to sign it, then ?

William Edwards. I was afraid because it was not true.

L. C. J. Didst not thou tell Mr. Braddon it was not true ?

William Edwards. I did not tell Mr. Braddon it was not true.

L. C. J. Why then, wast thou afraid to sign it because it was not true at one time, and yet didst sign it, though it was not true at another time ?

Mr. *Sol. Gen.* Child, Didst thou give Mr. Brad-

don any Reason, why thou didst not sign it at that time ?

William Edwards. No, Sir.

Mr. *Sol. Gen.* How didst thou come to sign it ? Did any any body speak to thee between that first Time thou refusedst to sign it, and the second time thou didst sign it ?

William Edwards. He would fain have got my Aunt to have signed it.

L. C. J. Thou sayest, thou didst first refuse it, because it was not true ?

William Edwards. Yes.

L. C. J. And then afterwards thou didst sign it ?

William Edwards. Yes.

L. C. J. Then I ask thee, who perswaded thee to sign it after that time that thou still refusedst it ?

William Edwards. My Mother was afraid to have me sign it.

L. C. J. Who perswaded you to sign it ?

William Edwards. Mr. Braddon said, there was no Harm in it, so I did it.

L. C. J. Did Mr. Braddon then perswade you to sign it ?

William Edwards. He said there was no Harm in it, that was all.

L. C. J. Did you do it at his Desire ?

William Edwards. Yes.

L. C. J. And you refused it at first when he desired it ?

William Edwards. Yes.

L. C. J. What, because it was false ?

William Edwards. Yes.

L. C. J. Why then would'st thou sign it afterwards, if some body did not perswade thee to it ?

William Edwards. He told me there was nothing of Harm in it.

Mr. *At. Gen.* Hadst thou any Money offered thee by Mr. Braddon ?

William Edwards. No.

Mr. *At. Gen.* Hadst thou any Money promised thee ?

William Edwards. No.

Mr. *At. Gen.* Hadst thou any thing else offered or promised thee ?

William Edwards. No, nothing at all.

L. C. J. You have heard what he has said, Gentlemen ?

Jury. No, my Lord, we have not heard a Word.

L. C. J. Then I will tell you what he has said exactly. He says, that Mr. Braddon writ it from him ; that he writ it in the Room while he was there ; that after such time as he had writ it, Mr. Braddon read it to him : He says, that he had carried his Brother to shew him the Place where he assigned that the Razor was found in the Tower, he says, that after such time as the Writing was finished, Mr. Braddon offered it him to sign, and he refused to sign it, and I asked him the Reason why, and he says, because it was false ; he says, some short time afterwards Mr. Braddon came to him again.

William Edwards. No, Sir, it was the same time.

L. C. J. Well, the same time Braddon was at him again, and told him there was no Harm in it, and therefore desired him to sign it, and because he would not, he would have had his Aunt to have signed it ; and he says, that Braddon telling him there was no Harm in it, he did sign it.

Mr. *Sol. Gen.* But withall he says, that it is false.

L. C. J.

L. C. J. Ay, he swears now 'tis all false.

Mr. Freke. Did you tell *Mr. Braddon* it was false?

L. C. J. No, he says he did not.

Mr. Freke. Did your Sister at all discourse with you after you had dictated to *Mr. Braddon*? Pray what Discourse had you with her after *Mr. Braddon* writ that Paper, before you refused to sign it?

L. C. J. Do not ask any leading Question, Sir, but propose a fair plain Question.

Mr. Freke. Did you discourse with your Sister at all, after *Mr. Braddon* had been at your House?

William Edwards. Yes, I had been at School, and when I came Home, they said that a Gentleman that came from the Earl of *Essex's* Brother, had been to enquire of the Truth of the Report I had raised.

Mr. Freke. What did your Sister say to you?

William Edwards. That was all.

Mr. Sol. Gen. Did she name the Gentleman, and did you see him afterwards?

William Edwards. Yes.

Mr. Sol. Gen. Who was it?

William Edwards. That Gentleman, *Mr. Braddon*.

Jury. My Lord, We don't hear a Word he says.

L. C. J. He says, he had been at School, and when he came Home, they told him a Gentleman came from the Earl's Brother, to inquire of the Truth of what he had reported: It was asked him who the Gentleman was, and he says, it was that Gentleman, *Mr. Braddon*.

Mr. Thompson. Before such time as *Mr. Braddon* came to you, what did you tell your Father about this Razor, and when?

William Edwards. Sir, I told him the King and Duke of *York* were at the *Tower*, and while I was there, I said, I saw a Hand cast out a bloody Razor, and a Maid come out and take it up, and go in again.

Mr. Thompson. Did you see any such thing as a bloody Razor cast out?

William Edwards. No.

L. C. J. What a Dust has such a trivial Report made in the World! Admit the Boy had said any such thing, what an Age do we live in, that the Report of every Child shall blow us up after this rate? It would make a body tremble, to think, what sort of People we live among: To what an Heat does Zeal transport some People, beyond all Reason and Sobriety? If such a little Boy had said so, 'tis not an Half-penny matter, but presently all the Government is to be libelled for a Boy, which whether he speaks true or false, is of no great Weight, and he swears 'tis all false.

Mr. Sol. Gen. My Lord, We shall next call *Dr. Hawkin's* Son of the *Tower*. Where is *Thomas Hawkins*?

[Who was sworn.

Mr. At. Gen. My Lord, Agreeable to what the Boy has now said, to shew you that what *Mr. Braddon* got him to sign was all false, here is the young Man that truanted with him the same Morning, that was with him all the Time, the whole Morning, that says, there was no such Thing, and he saw no such Thing; and how could it enter into the Boy's Head such a malicious Lie, if it had not been dictated? Pray *Mr. Hawkins*, will you acquaint my Lord, and

the Jury, whether you play'd Truant that Morning with this other Boy, and where you were.

L. C. J. Ay, Tell the Truth in God's name, young Man, be it one way or t'other, let the Truth come out.

Hawkins. In the Morning, Sir, I met with him at the *Tower*, going round with the King, and we walked round the *Tower* as long as the King walked, and then the King going into the Constable's House, we and some more Boys were playing——

L. C. J. Pristhee speak out, as tho' thou wert at play at Chuck-Farthing.

Hawkins. After we had been at play, I went Home, and after I had been there a little while, News was brought to my Father, that the Earl of *Essex* had killed himself. My Father went down, and I followed him, and after I had been there a little while, *William Edwards* came Home, and there we stood looking up at the Window an Hour or two at least, and after we had tarried there a great while, I went out of the *Tower* Gate a little after Eleven.

Mr. At. Gen. Was there no Razor thrown out of the Window?

Hawkins. No, there was no Razor thrown out.

L. C. J. Didst not thou see a Razor thrown out of the Window? And a Maid come and take it up?

Hawkins. No, there was no such Thing.

L. C. J. Were you there before *Edwards* came?

Hawkins. Yes.

L. C. J. And you went out with him?

Hawkins. Yes.

L. C. J. Did you and *Edwards* go away together?

Hawkins. Yes.

Mr. Thompson. Did he tell you of any such Thing?

Hawkins. No.

Mr. Sol. Gen. What time of the Day was it that you went out of the *Tower*?

Hawkins. Almost Eleven a Clock.

Mr. Wallop. The Boy does say, he did tell his Father and Mother, and all the Family of it. And 'tis plain by the Father, that it was known in the Family by Ten of the Clock.

Mr. Sol. Gen. Was this young Man with you, all the Time that you was there, *Edwards*?

William Edwards. Yes.

Mr. At. Gen. Did not you tell your Father of this Story when you came from the *Tower*?

William Edwards. Yes.

Mr. At. Gen. And that was the same time you came out of the *Tower* with *Hawkins*?

William Edwards. Yes.

Mr. At. Gen. And you *Hawkins*, was this young Man with you all the time you were at my Lord *Essex's* Window?

Hawkins. He came thither while I stood there.

Mr. At. Gen. My Lord, This is but the beginning of our Evidence, your Lordship sees what a fine Case it is, and how all this Noise and Bustle has come to be made in the World. The Rumour did first arise in a Fanatick Family, and was propagated by that Party.

Mr. Jones. Ay, 'tis easily known whence it came.

L. C. J. Gentlemen, Pray will you go on with your Evidence, and make no Descants.

Mr.

Mr. Freke. You, *Hawkins*, when you came from your Father's House, did you find that Boy in the Tower?

Hawkins. Yes, Sir, a going round with the King.

L. C. J. That was before this Thing happened.

Mr. Freke. Were you with him all the while he was in the Tower?

Hawkins. Just before my Lord *Essex* cut his Throat I went home.

Mr. Freke. Were you with him all the time or no? And how long were you with him?

Hawkins. I went with him round the Tower with the King. And after we were at play, and then I went Home, and then when I had been at Home a little time, the Rumour and Noise came, that the Earl of *Essex* had killed himself, so I went with my Father, and stood before the Window, and I tarried there a while before he came Home, and I stayed with him looking at the Window a great while, and we went out of the Tower together.

Mr. Freke. You little Boy, *Edwards*, was this Mr. *Hawkins* with you all the Time that you were in the Tower?

William Edwards. Yes, but only a little while that I was at the Mills.

Mr. At. Gen. My Lord, We had not laid so much Weight upon Mr. *Braddon* for this Matter, but that he could not be quiet, but must inform the King of it, and this Matter was all examined before the King, the Boy was sent for, and before his Face the Boy declared it was a Lie. And after he knew this, and after the Boy had twice in the Presence of the King denied it, yet notwithstanding all this, then was the Project between him and *Speke*. We shall first prove the Examination of this Matter before the Council, and how he was acquainted with it. Pray call Mr. *Blathwaite* and Mr. *Monstevens*.

Mr. Blathwaite was Sworn.

Mr. At. Gen. Pray Mr. *Blathwaite* will you give an Account whether you were present at the Council, when Mr. *Braddon* brought this Information, and how the Matter was Examined there, and what was done.

Mr. *Blathwaite*. My Lord, It was on the 20th of July, that Mr. *Braddon* came to *White-Hall*, he may remember I was there, for he could not but see me attending on the King. This little Boy was brought before his Majesty, and was asked what Information he had given Mr. *Braddon*? And whether the Matter of the Information was true? The Boy said it was a Lie, and that upon his Faith it was not true. Mr. *Braddon* knew all this, for he was called in and informed of it; and I believe Mr. *Braddon* will remember, that he heard the Boy deny it. The whole Examination could not but shew that it was an Invention of his, as he said, it was to excuse himself for having play'd Truant that Day, and that because he was afraid to go Home, he invented that Lie. After this Mr. *Braddon*, as it appears, did nevertheless pursue this Business.

L. C. J. Pray only tell what you know of your own Knowledge, both before, and after.

Mr. *Blathwaite*. I know, my Lord, that Mr. *Braddon* (having been in the Countrey) came afterwards before the King, and was again Examined upon this Matter, by which it appear'd,

that he did continue in his Pursuit, though he was always informed of the Denial the Boy made, and that it was understood to be a Lie by the whole Family of the *Edwards's*, as well as from the Denial of the little Boy; for they did confess, that the Boy used to tell Lies, and one of the Sisters said he had denied it at first, but afterwards was brought to say it. And if I remember right, the Words of one of the Sisters were, **BRADDON COMPELLED THE BOY TO SIGN IT.** Those are the Words in the Minutes that I took at the Examination, therefore I believe it was so, that the Boy had denied before to sign it. But this I only mention, as what the Sister said.

L. C. J. Have you any more Questions to ask Mr. *Blathwaite*, Gentlemen?

Mr. North. Because we will not trouble Mr. *Blathwaite* to call him again; pray produce the Letter.

Mr. At. Gen. Pray, Sir, will you look upon that Letter, and tell the Court what you know of it, and whose Hand it is.

Mr. *Blathwaite*. My Lord, This is a Letter that was produced before the King, when Mr. *Speke* attended there. It was then put into my Hands; and I do well remember, and likewise I have written upon it, That Mr. *Speke* owned it to be his Letter.

L. C. J. Did he own it to be his Letter, Sir?

Mr. *Blathwaite*. Yes, he did own it to be his Letter.

Mr. At. Gen. That is all we have to trouble you with at present, Sir: We will now call Mr. *Monstevens*. [*Who standing up by the Cryer was Sworn.*]

And we call him to prove, That Mr. *Braddon* had notice the Boy had disowned this Matter.

Mr. Sol. Gen. You hear the Question, Sir, pray acquaint my Lord and the Jury, what you know of this Boy's Examination before the Council, and this Gentleman's having notice the Boy disowned the Thing.

Mr. *Monstevens*. My Lord, About 5 or 6 Days after my Lord of *Essex* had murdered himself in the Tower, I saw Mr. *Braddon* at the Secretary's Lodgings, my Lord *Sunderland's* Lodgings at *Whitehall*, with a young Woman, and a Boy about 12 or 13 Years old. The Boy was just now in Court, I saw him there. He came to me, and told me, he had earnest Business to speak with my Lord *Sunderland*, That he came from Sir *Henry Capel*, and he told me, he came with an Information, that the Boy had given relating to the Earl of *Essex's* Death. (The Information I believe is in Court.) He gave me the Information, and I read it, and I remember there was something in the Information of a Razor thrown out of a Window, a bloody Razor thrown out of my Lord *Essex's* Window, and after I had read the Information, I told Mr. *Braddon*, I wonder Sir *Henry Capel* had not appeared himself in a Matter of that moment, wherein the Reputation of his Family was so much concerned, and I took the liberty to tell him, That I believed if Sir *Henry Capel* had thought that to be true, that was contained in that Paper, he would doubtless have come to my Lord *Sunderland* himself. Thereupon he told me, That Sir *Henry Capel* had not been well, and

and did not stir abroad. Then I told Mr. *Braddon* again, as I very well remember, That I was confident he had been abroad lately, and had been to wait upon the King, since the Death of my Lord of *Essex*. Then, my Lord, he had little or nothing to say to that, but he said, what he did he was obliged to do in Conscience, and out of the Duty he owed to the Memory of my Lord of *Essex*. Upon that, my Lord *Sunderland* came by, and I went with him to my Lord *Sunderland*, and he gave him that Paper, as I suppose, which I read, and my Lord *Sunderland* took the Information, and afterwards Mr. *Braddon* was committed in Custody, and then the thing was brought before the King, and the Lords of the Council, which Mr. *Blaitbwaite* has given you an account of.

Mr. *At. Gen.* My Lord, I pray that a Word of the Information may be read, we will first prove the Information taken by him, and then call Sir *Henry Capell*, who will prove that he never had any Order from him, as he said he had, but it was only his own busy Inclinations.

Cl. of Cr. This is subscribed, *William Edwards*.

L. C. J. Call the Boy in again.

Mr. *Braddon*. May I ask Mr. *Monstevens* a Question, my Lord?

L. C. J. Ay, ask him what you will.

Mr. *Braddon*. Sir, Did not I come to you the Thursday Evening, and waited at the Dutcheffs of *Portsmouth's* Lodgings, before I brought the Boy and the Girl to *Whitehall*?

Mr. *Monstevens*. No, I did not see you there.

Mr. *Braddon*. You are positive in that, Sir?

Mr. *Monstevens*. Yes, I will take my Oath again of it, if you will.

Mr. *Braddon*. Then I will prove I was, and that I saw you at ten of the Clock that Morning.

Mr. *Monstevens*. I remember, my Lord, very well, That I was surprized to see him at the Lodgings at *Whitehall*. I never saw him, to the best of my remembrance, but once in my Life.

Mr. *Braddon*. What time was it, pray, you first saw me?

Mr. *Monstevens*. It was in the Afternoon, as I remember.

L. C. J. Hark you, young Man, do you know my Lord *Gerard*?

William Edwards. Yes.

L. C. J. Which Lord *Gerard* do you know?

William Edwards. My Lord *Brandon Gerard*.

L. C. J. How came you to know him?

William Edwards. By sight I know him.

L. C. J. Do you know where he lodged in the Tower?

William Edwards. Yes.

L. C. J. Where?

William Edwards. At one Mr. *Sam's*.

L. C. J. Was you ever in his Lodging?

William Edwards. No.

L. C. J. Never at all?

William Edwards. No.

L. C. J. Did you never tell any body you were in my Lord *Brandon Gerard's* Lodgings?

William Edwards. Never in my life.

L. C. J. Did you never tell *Braddon*, that you went to see his Lodgings?

William Edwards. Into the House I never went.

L. C. J. Did you never tell *Braddon*, That you went to see my Lord *Brandon Gerard's* Lodgings? Never in your life?

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William Edwards. No, Sir.

L. C. J. Now read it.

Cl. of Cr. [Reads.] — The Information of *William Edwards*, second Son to *Thomas Edwards*, of the Parish of *All-ballows Barkin, London*, taken the 18th Day of *July*, in the 35th Year of the Reign of our Sovereign Lord King *Charles II.* Anno 1683. says: That this Informant on Friday the 13th of this instant *July*, as he was going to School, with his Brother *Edward*, he heard that His Majesty, and His Royal Highness the Duke of *York*, were going to the Tower. Whereupon this Informant left his Brother, and went to the Tower to see His Majesty, and His Royal Highness. And when this Informant had seen His Majesty and His Royal Highness, this Informant about 9 of the Clock in the Morning of the same Day, went to see my Lord *Brandon Gerard's* Lodgings; and as this Informant was standing almost over against my Lord *Gerard's* Lodgings, between the Lord *Gerard's* and the late Lord of *Essex's* Lodgings, this Informant saw a Hand cast out a bloody Razor out of the said Earl of *Essex's* Lodgings. And this Informant was going to take up the said Razor, which he saw on the Ground to be bloody, but before this Informant came to the Razor, there came a Maid running out of Captain *Hawley's* House, where the said Lord of *Essex* lodged, and took up the said Razor, which she carried into the said Captain *Hawley's* House. And this Informant believes that it was the said Maid, who he first heard cry out Murder. And this Informant further saith, That he heard the said Maid say to some which were about the Door after the Murder was cryed, That she did hear the said Lord of *Essex* to groan three times that Morning. The Father, three Sisters and Brother will swear, That the said *William Edwards* did declare the Substance of this Information to them on Friday the 13th instant, and never in the least denied it till Tuesday after, when being chid and threatened by the elder Sister, he did deny it, but soon after confessed it, and signed it in the Presence of five or six Witnesses.

Mr. *Just. Withins*. Thus you see, he perswaded him to tell a fine Story, of going to see my Lord *Brandon Gerard's* Lodgings, but the Boy never told any such thing.

L. C. J. No, he never told him a Word of it, he swears.

Mr. *At. Gen.* My Lord, Your Lordship has heard from Mr. *Monstevens*; That this Gentleman Mr. *Braddon* made use of the Name of an honourable Person Sir *Henry Capell*, and so at the Secretary's and at *Edwards's* House, made use of the Name of my Lady *Essex*. We shall now call Sir *Henry Capell*. (Who was sworn.) Sir *Henry Capell*, Will you please to give an account, Whether ever you employed this Gentleman Mr. *Braddon* about any such Business as he has here undertaken?

Sir *H. Capell*. I hope you will give me as short a Dispatch as you can, Sir, for 'tis very uneasy for me to be here in this Crowd.

Mr. *Sol. Gen.* We give you some trouble, Sir *Henry*, but indeed 'tis not we, but this Gentleman, that has been pleased to use your Name, has necessitated it.

Mr. *At. Gen.* We ask you a short Question, Whether you employed Mr. *Braddon* to go to Mr. *Edwards's* House or to the Secretary's, or any

any where else to prosecute this Matter of your Brother's Death?

Sir *H. Capell*. My Lord, I know very little of Mr. *Braddon*. He was to speak with me twice. The first time he took me in very great Disorder, both as to the Circumstance of Time and Place, which are so tender with me, that truly I cannot express, nor do I very well know what I did say, or what he said to me, but the second time he came to me, I do very well remember what I did say. And that which I did say the second time is the most material thing I have to say in the Matter. He came to me and spake of such a Business as the Court is well apprized of already (I hope you will pardon me if I do not repeat it) I made Answer to him, Mr. *Braddon*, I am under great Grief and under a great Burthen of Business in my private Family, whatsoever you have to say in the Matter, I desire you would go to a Secretary of State and acquaint him with it. This is the most material thing that was said that I remember.

Mr. *At. Gen.* But you never employed him to go about to prosecute any such thing?

Mr. *Just. Withins.* Sir Henry, Pray answer me, Did you desire him to go to *Edwards's* House and ask him any Questions about it?

Sir *H. Capell*. I know nothing of *Edwards*, nor his House at all.

Mr. *Braddon*. Sir *Henry Capell*, Will you please to let me ask you one Question? Do you not remember I came to *Essex* House on the Monday Night, and that I came and told you of such a Report, and that I had not been with the Father of the Boy as yet, but if you would then send one with me I would go, and in his Presence examine the Boy, and you, Sir, promised me that you would, and whether you did not appoint me to tarry at such a Place where you promised to send one to go along with me?

Sir *H. Capell*. My Lord, I have a gross Idea of that which he speaks of concerning his having one to meet him, and that I told him such an one should meet him, and the Person did desire to be excused, and I did excuse him, and so he did not go, upon which this Gentleman Mr. *Braddon* came to me the second time, which was after Dinner, and I directed him to go to a Secretary of State and acquaint him with what he had to say in the Business.

Mr. *Braddon*. Did not you promise, Sir, to send one to me to go with me, and desired me to meet at such a Place?

Sir *H. Capell*. I remember no more but what I have said.

Mr. *Braddon*. Upon the Oath you have taken, Sir *Henry Capell*, I desire you would recollect your Memory, whether you did not promise me in the Morning to meet at such a Place, and was not I twice with you that Day?

Sir *H. Capell*. Sir, I know no more.

Mr. *Just. Withins.* Do you think, Sir *Henry Capell* would forswear himself, Mr. *Braddon*?

Mr. *Braddon*. My Lord, I only desire him to recollect his Memory.

Sir *H. Capell*. Only I do farther remember, He seemed to be very willing to go to the Secretary of State.

Mr. *At. Gen.* And if he had acquiesced there he had done very well, and there had been no farther Trouble.

Mr. *Jones*. But that was not the way he intended, that would not do his Work.

Mr. *Sol. Gen.* Pray, Mr. *Blaithwaite*, do you give my Lord and the Jury an account, whether this Information was ever carried before any Justice of Peace in order to have it sworn before him, and the Circumstance of it.

Mr. *Blaithwaite*. My Lord, I do very well remember, when this Information was before the King, and was shew'd to Mr. *Braddon*, he there confess'd, That he had gone about to find some Justice of Peace to take it upon Oath. He named Sir *Robert Clayton*, and Sir *John Lawrence*. And I do very well remember, and 'tis upon my Minutes, That he confessed that Sir *Robert Clayton*, being asked by him to take the Information in private alone without Company, being by Sir *Robert Clayton* refused to take it unless he might take it more publickly, and Sir *Robert Clayton* refusing to take it alone, in private, he would not let him take it all, but went away with it. I remember this for Sir *Robert Clayton*, and it may be Mr. *Braddon* may remember the same of Sir *John Lawrence*, but I can't tell that.

Mr. *At. Gen.* My Lord, Now we are come to the 20th of July, when this Business was heard before His Majesty, and the Boy declared it was a Lye, and then he had full notice it was a Lye. But after this Mr. *Speke* and he consult together, and he must be sent as an Emissary into the Country to pick up Informations and Evidences, and with this, and some other Informations in his Pocket, to possess the People, that the Government had murdered my Lord of *Essex*. And he must be sent I know not how far, as if the further he went from London the better Intelligence he was like to have of a thing done at the Tower. The Justice of Peace that took him was summoned, but is since dead. But we will call the Persons that were present when he was taken, where is Mr. *Beech*? (He was sworn.) Mr. *Beech*, Will you acquaint the Court and the Jury with the manner of apprehending this Gentleman, and what Papers were found about him?

Mr. *Beech*. My Lord, I was present when Mr. *Braddon* was apprehended in *Wiltshire*, and several Papers were found upon him, and upon Examination he was committed to the County Goal, and from thence removed by *Habeas Corpus* hither up to London. I have Copies of all the Papers that were taken about him, which I examined with the Originals. The one was the Copy of a Letter sent by one *Speke* to Sir *Robert Atkins*, and there were other Papers in the nature of Informations, another was a Letter to one *Cumpton*, Post-Master at *Frome*. Mr. *Braddon* upon his Examination said, his Business was to enquire after the Murder of the Earl of *Essex*, and that one Mr. *Burgis* had sent him a Letter to this purpose, That it was reported at *Frome* that very Day the Earl of *Essex* cut his own Throat, that he had so done, the News of which could not so soon come down thither.

Mr. *At. Gen.* Pray speak out, Sir, Tell us what his Business he said, was, and as to the Letters he had about him, tell us what he said.

Mr. *Beech*. He told me, that he had a Letter from one Mr. *Burgis* of *Marleborough*, to go to one *Cumpton* at *Frome*, who is Post-master there,

to inquire about a Report, that it was said was reported in *Frome*, the 13th Day of *July*, the same Day the Earl of *Essex* murdered himself, that he was murdered. Mr. Braddon had that Letter about him. I went afterwards to that *Compton* at *Frome*, he said, he never heard any thing of it, or that there was any noise of the Earl of *Essex*'s Murder, untill the Sunday following, which was two or three Days after. From thence I went to my Lord *Weymouth*, a Person of Quality that lives near *Frome*, and acquainted his Lordship with it, and he then said that he had an account on the Sunday of my Lord of *Essex*'s Murder, and he believed that was one of the first Letters of it that was in the Country.

Mr. Sol. Gen. Are these the Papers you found about him, Sir?

Mr. Beech. I examined these Copies with the Originals, and they were true Copies.

Mr. At. Gen. Well, put them in.

Mr. Beech. Truly, Mr. Braddon gave a very ill account of his Journey to those that did examine him.

Mr. At. Gen. Pray look upon those Papers that are the Originals.

Mr. Beech. One Colonel *Airs* was the Justice of Peace, before whom Mr. Braddon was examined, and by whom he was Committed, he is since dead, but I do believe this was the Original Letter that was taken about Mr. Braddon.

L. C. J. Do you believe that was the Original?

Mr. Beech. I do, I have a true Copy of it.

Mr. At. Gen. Besides, We will prove it otherwise to be Mr. Speke's Hand. It was proved by Mr. Blathwaite that Mr. Speke upon his Examination did own it, what say you Mr. Blathwaite?

Mr. Blathwaite. He did own it, and said in these Words, as I remember, he believed it to be his Hand.

Mr. At. Gen. What, that Paper?

Mr. Blathwaite. Yes, and I have put my Hand upon it, That it was owned by him.

L. C. J. Read it.

Cl. of Cr. This is subscribed by *Hugh Speke*, and dated *London* *Lincoln's-Inn*, *August* 15th, 1683. *Wednesday* Night 10 a Clock, and directed, For the Ever-Honoured Sir *Robert Atkyns*, Knight of the Bath, at his House at *Netherwell* near *Stow* on the Old in *Gloucestershire*.

Honoured Sir,

THE Bearer hereof is one Mr. Braddon, a very honest Gentleman, whose Father has at least Eight Hundred per Ann. in *Cornwall*; It seems it is his Fate to be the only Person that follows, and Prosecutes the Murder of the Earl of *Essex*, and he has made a very considerable Discovery already of it, notwithstanding the hard Stream he rows against, as things stand and are carried on at present. But indeed I think it could never have fallen on so fit a Man, for he has been a very hard Student, and is a Person of a very good Reputation, Life and Conversation, and has a great deal of Prudence, and has as much Courage as any one living whatsoever. He went away on a sudden hence. Post towards *Marleborough* to make some farther Discovery, and what he has discovered he will give you a full Account, and of all the Transactions hitherto

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about it. I lent him my Man to go with him for fear he should come to any Mischief, for most here fear he will either be stabbed or knock'd on the head, if he do not take great care of himself; seeing he came into these Parts, I thought it not amiss to go and advise with you how he had best to proceed in it, and I did charge him not to let any body know who he was, that it might not be known that he had been with you; for I would not for the whole World that you should come to any Prejudice in the least for your Kindness towards us. For we labour under many Difficulties as the Tide runs at present.

Pray call Mr. Braddon by the Name of *Johnson* when he is with you, I have given him the same Item. We hope we can bring on the Earl of *Essex*'s Murder on the Stage, before they can any of those in the Tower to a Tryal. He being in great haste, I have not time to write more, but to assure that Mr. Braddon is a Person of that Integrity and Courage that no body needs fear to trust him. I was very willing that he should take your Advice in this Case which is of so great a moment, seeing he came within twenty or thirty Miles or thereabouts of your House. He will give you a full and clear Relation of every thing in that Affair, and how hard they have been upon him. Sir *Henry Capell* told him, that it was a thing too great for him, &c. All which Mr. Braddon (that you are to call *Johnson* whilst he is with you at your House) will give you a true Relation of. Mr. Braddon hath been at a great Trouble and Charge already about it; I know few that would have ventured to have undertaken this Affair besides himself, as Times go. I received yours this Day, with the great pains you took, and the Letter to the Lady *Russel*, which finding unsealed I sealed, without looking into it, and carried it my self; She returns you ten thousand thanks, and says, she knows not what Return to make you for your most extraordinary Kindness. I have not time to write any more at present by reason that Mr. Braddon alias *Johnson* stays only for this my Letter. I am, Sir,

Your most obliged Friend
and most humble Servant,

Hugh Speke.

I am writing a Letter to send to you by the Carrier.

Mr. At. Gen. This Gentleman brings in Mr. Speke to be the Author of all this Contrivance. But we shall prove to you, That at the same time this Letter was taken about him, this Gentleman had others that were likewise taken. These Examinations which I desire may be likewise read.

Mr. — My Lord, I came lately from Sir *Robert Atkyns*, He is an utter Stranger to all this, he is now in the Country and knows nothing of it.

L. C. J. If they will use his Name, I can't help it.

Mr. — My Lord, I would not have any Reflection upon him, for he knows nothing at all of this Matter.

Mr. Sol. Gen. The Letter was never received by Sir *Robert Atkyns*, but taken before it came to him.

Mr. At. Gen. All the matter is, 'tis an unhappy thing to be thought well of by such sort of People.

L. C. J. I see nothing of Sir Robert Atkins in the Case, but only his Name is used, and notice is taken of the great Obligations some People have to him, for his great Kindness to his Friends.

Cl. of Cr. Here is an Information.

L. C. J. Was this found about him too?

Mr. Beech. Yes, I believe that is the very Paper, I have no Copy of that Paper, but I well remember the Contents of it.

Mr. At. Gen. Did you sign it or mark it?

L. C. J. He may believe it to be without signing.

Mr. Beech. I presume Mr. Braddon will own it.

Cl. of Cr. The Information of Mrs. Edwards, Wife to Thomas Edwards, saith, That about 10 of the Clock in the Morning on Friday the 13th of this Instant July, this Informant's youngest Son William Edwards, aged about 13 Years, came trembling to this Informant, and in great Amazement and Horror told this Informant, that the Lord of Essex had cut his Throat in the Tower, and further said, That he the said William Edwards in the Morning about 9 of the Clock, did see a Hand cast out a Razor out of the said Lord of Essex's Lodging Window, which Razor he saw on the Ground to be bloody. And the said William Edwards was going to take up the said Razor, but before he came to it, there came a Maid running out of Captain Hawley's House where the said Earl of Essex lodged, and took up the Razor, which she the said Maid forthwith carried into the said Captain Hawley's House, and soon after he the said William Edwards heard her, as he the said William Edwards did believe, cry out Murder. And this Informant further saith, That the Substance of which the said William Edwards hath sworn in this Information, he the said William Edwards on Friday last did declare to this Informant and her whole Family, several times attesting it to be true, and several times since.

Cl. of Cr. Here is the Information of William Edwards second Son of Thomas Edwards.

Mr. At. Gen. That is the same with what was read already.

L. C. J. Ay, That is the Boy's Information.

Cl. of Cr. Here is another, 'tis dated August the 8th, 1683. The Information of Jane Lodeman, aged about 13 Years, did in the Presence of these, whose Names are here under-written, declare as followeth, That the said Jane Lodeman was in the Tower on Friday Morning, the 13th of July last, and standing almost over-against the late Earl of Essex's Lodging Window, she saw a Hand cast out a Razor out of my Lord's Window, and immediately upon that she heard Shrieks, and that there was a Soldier by my Lord's Door, which cried out to those within the House, that somebody should come and take up a Razor which was thrown out of the Window, whereupon there came a Maid with a white Hood out of the House, but who took up the Razor she can't tell.

This is subscribed

John Boom, and
William Smith.

Cl. of Cr. Here is another Paper August the 8th, 83. Mr. William Glasbrooke does declare, That one Jane Lodeman, aged about 13 Years, inhabiting in the same House where he the said William Glasbrooke lodged, did on Friday the 13th

of July last past between the Hours of 10 and 11 in the Morning, in the Presence and Hearing of him the said William Glasbrooke declare to her Aunt, That the Earl of Essex had cut his Throat, upon which her Aunt was very angry with her, whereupon she the said Girl did declare, that she was sure of it, for she saw him throw the Razor out of the Window, and that the Razor was bloody, and that she heard two Groans or Shrieks (which of the two Words she used, he the said William Glasbrooke is not certain) of this he the said William Glasbrooke is ready to make Oath.

This is subscribed

William Glasbrooke,
Margaret Smith.

Mr. At. Gen. He carried his Stuff about him, it seems, wherever he went.

L. C. J. 'Tis Stuff indeed. Good God, what an Age do we live in!

Mr. At. Gen. It is not taken upon Oath before any Magistrate, but cooked up to amuse the Country, as if they were formal Informations. Here is another Letter, Mr. Beech, was this Letter found about him?

Mr. Beech. Yes, This Letter was found about him.

Mr. At. Gen. It is from one Burgis, a Man of the same Kidney.

Cl. of Cr. This is directed for Mr. Cumpen at the Dolphin at Frome, and 'tis subscribed Jeremiah Burgis, and dated Marleb. Oct. 21.

Mr. Cumpen,

My kind Love to you. These are to desire you to call to mind, that I was in Frome the 6th of July being Friday, where I heard the Report that the Earl of Essex had cut his own Throat, I would desire you to inquire into it, to know who first reported it, and give this Gentleman the truth of it. And in so doing you will oblige me who am

Your Friend,

Jeremiah Burgis.

Mr. Beech. Under favour, my Lord, This Letter talks of a Report that was the 13th Day, the very Day the Earl of Essex murdered himself, I went directly to Frome and spake with this Cumpen, and he told me, he did not speak with Burgis nor see him, nor was there any such Report before the Sunday Morning. From thence I went to my Lord Weymouth's as I told you.

Mr. At. Gen. My Lord, We have gone through our Evidence for the present, to shew how this Man has endeavoured to spread this Matter to the Scandal of the Government. We shall end here at present to see how he has improved his Confidence, by what Defence he will make to all this Proof. Afterwards, if there be occasion, We shall give an account of the Earl's Death, how he murdered himself. And for that we have a Cloud of Witnesses, tho' this Gentleman has taken upon him so much Confidence as to contest it.

L. C. J. That would be very fit, Mr. Attorney, because they have raised a Doubt in some People's Minds about it.

Mr. At. Gen. I thought it best to reserve it till after I see what Defence he will make.

L. C. J. Take your time.

Mr. Wallop.

Mr. Wallop. May it please your Lordship, and you Gentlemen of the Jury, I am of Counsel for Mr. Braddon and Mr. Speke, the Defendants here. You see what the Issue is before you, Mr. Speke and Mr. Braddon, they are in the Information charged, That they did Conspire together to make the People believe, That whereas the E. of *Essex* murdered himself, and so it was found by the Inquisition, yet they would have the People believe, that that Inquisition was taken unduly, and that they did Conspire to procure false Witnesses to make these Things out. Now, Gentlemen, the only Point that you are to inquire of, is this, Whether these two Gentlemen did maliciously, factiously, and seditiously set these Things on Foot. This Report that the Earl was murdered, or whether there were such Intimations offered to them accidentally and casually, without officiousness, or any of their own seeking, that might induce a good Man, or a wise Man to follow the Business upon such Information given. For our Parts that are for the Defendants, we say this for our Clients, we are not so much to make any Men guilty of this Murder, that is not our Business, but to prove our own innocency and fair dealing in this Matter. Now, Gentlemen, if these two Persons had no inducement to lead them on to this, but did it of their own heads, that is Criminal in them, but if they had that which might induce a wise and good Man, though they were much mistaken, yet they are not to be found Guilty of this Offence that is charged on them. I shall leave it Gentlemen, to you, who I question not have observed the Evidence that has been given, and whose proper Work it is to make your Judgment upon it. But in our Defence, the Steps we go are these, and we desire you would please to observe them. First, we say, That the Report of this Murder was the Day before, two or three Days before, and that very Day, so many Miles distant from *London*, that hearing of such a Report, we might very easily be induced to make some inquiry after it; and of this four Instances we shall give in the Course of our Evidence, that this was a great many Miles off *London*, talked of at the Day, and immediately after the Day, before the News could reach those Places, after the Fact committed. Then we shall proceed to those Passages concerning the Boy, and produce Evidence to set forth the true State of that Matter, That this Boy, as he says himself, did tell the Family this Story, that very Day that my Lord murdered himself, immediately upon his coming Home. Now this Original Story is impossible to be contrived by Mr. Braddon, be it true, or be it false. Then Mr. Braddon coming into *Essex*, to Mr. Evans's House at *Wanstead*, there what was said by the Boy was spoken of. Then Mr. Braddon finding this Information of the Boy, which he had given merely of himself, and which contradicted the Inquisition, and put him upon this Enquiry. Now how far this Intimation has weight, and may be an inducement to a good and a wise Man, as I say, that we must leave to you. But besides that, there is a Girl a Stranger to the Boy, that at the same time upon the Matter, and to this same Effect and Substance, delivered such an Evidence, as might very well serve to confirm us in our Enquiry, and this is the Course of our Evidence, in the Substance of it. And

we shall apply our selves to your Lordship and the Jury after the Evidence given, and make our Observations upon it, and submit it to you, Gentlemen.

Mr. Williams. Will your Lordship please to spare me one Word that is an Objection that we would make from the Record it self. The Information that does recite, That the Earl of *Essex* was imprisoned in the *Tower*, and during his Imprisonment there, cut his own Throat, and became *Felo de se*. And that there was an Inquisition taken before such an one, before *Edw. Farnham* Coroner of the Liberty of the *Tower*: My Lord, I was not here when the Inquisition was read, if I had I should have made the Objection then, but this is that I say, If we can falsifie that part of the Record, if there be a mistake there, that is, if *Farnham* was not Coroner, then they fail in their Proof, and we must be found not Guilty, for so it is in the Information:

L. C. J. It is said to be before him as Coroner of the Liberty.

Mr. Williams. Yes, my Lord, They recite that he is Coroner, and that the Inquisition was taken before him as Coroner, and Mr. Braddon knowing of it, did thus, and thus.

L. C. J. Why, Is he not Coroner?

Mr. Williams. My Lord, I desire the Inquisition may be looked into; I cannot go to contradict the Inquisition, but my Instructions only are that he is Deputy Coroner, and if it be so they are mistaken in their Information.

Cl. of Cr. It is *Coram Edwardo Farnham Coronatore*.

Mr. Williams. Then we can't help it. But there are these Things, that we say to it, one Part of the Information is, That we should go about to perswade the People, that this Inquisition was not duly taken, another Part is, That we did procure false Witnesses to prove it; now what Proof is offered as to the matter of perswading the People, I must submit to you, whether it be such as comes up to the Charge in the Information. There is some kind of Proof, but what it is, you see. Then for the other Matter, which is the procuring of false Witnesses, that under Favour I think I may affirm, That there is no Proof at all of, that Mr. Braddon or Mr. Speke did procure false Witnesses. Gentlemen, we shall endeavour to acquit our selves of all, if we cannot of all, yet of Part, especially that Part which seems to be the most Criminal. And I must needs say, I have not heard any Proof of procuring false Witnesses, by either of the Defendants. Then there is a Third Thing charged, and indeed in the Evidence there is something that looks towards it, That he should go about by Papers, and otherwise to publish it, That he was a Person employed to prosecute the Murder of the Earl of *Essex*. Now as to this Matter, all I shall say for Mr. Braddon is this, If he have done something more, it may be by a transport of Zeal, than became him, that must be submitted how far it is Criminal. If he did what did not become a mighty wise and discreet Man; yet if he did what became a rational Man of ordinary Capacity to do, if he had this Information, and so many other Informations, and he did search innocently a little into it, if he did not do it Seditiously and Factiously with an ill Mind, we hope there is no such great Harm done. And indeed, Gentlemen, his Mind is to be

be try'd in this Matter. And 'tis an hard Matter to try a Man's Mind, *quo animo* a Man did such an Action ; that he did it, there is some Sort of Evidence, but if he did it not out of an ill Principle, and with an evil Intention, then, under Favour, we take it he is not Guilty of this Information. And we shall endeavour to make it out thus, This Gentleman hearing of this Report of the Boy, makes his Application first to Sir Henry Capell, who was a Person well known, to be nearly related to this unfortunate Lord, the Earl of *Essex*, and he tells him what Information he had received. Sir Henry Capell puts him into an excellent Course, and desires him to go and inform the Secretary of State, and he did so, and if he had gone only this way, all that he had done had been innocent. Then the Matter is only this ; He has gone a little out of the way, and has taken some Informations and Examinations in Writing : Why, though he has gone a Step or two awry, yet if it was with a Design to prepare the Matter the better for the Secretary, by laying these Papers before him, we hope there is no Crime ; if we did it not Seditiously, but only with an Intention, That Mr. Secretary might receive a more clear and full Information ; I hope the Jury will acquit us.

L. C. J. You say well. Come prove your Matter.

Mr. Thompson. Call Mr. Fielder and Mrs. Mewx, and Mr. Lewes.

Lewes appeared.

Cryer. Lay your Hand on the Book.

Lewes. My Lord, I desire my Charges may be paid, before I Swear.

L. C. J. Prithee, what have I to do with thy Charges ? I won't make Bargains between you, If you have any Evidence to give, and will give it, do, if not, let it alone.

Lewes. My Lord, I shall not give any Evidence 'till I have my Charges.

L. C. J. Mr. Braddon, If you will have your Witnesses swear, you must pay them their Charges.

Mr. Braddon. My Lord, I am ready to pay it, I never refused it, but what shall I give him ?

L. C. J. Nay, I am not to make Bargains between you, agree as you can.

Mr. Thompson. My Lord, We are willing to do what is reasonable. You, Lewes, What do you demand ?

Lewes. He can't give me less than Six Shillings a Day.

L. C. J. Why, where dost thou live ?

Lewes. At *Marleborough*.

L. C. J. Why, canst thou earn 6 s. a Day by thy own Labour at *Marleborough* ?

Lewes. My Lord, I am at 40 s. or 3 l. a Week Charge with my Family and Servants.

L. C. J. What Trade art thou ?

Lewes. A Stapler.

L. C. J. And does your Trade stand still while you are here in Town ?

Lewes. Yes, to be sure it can't go well on.

L. C. J. Well, I say that for you, you value your Labour high enough, I know not what your Evidence may be ; but Mr. Braddon you must pay your Witness if you will have him.

Mr. Braddon. I will, my Lord, very readily,

what will you have ? I have paid you something already.

Lewes. Give me Twenty Shillings more then. You can't give me less.

Then Mr. Braddon paid him Twenty Shillings, and he was Sworn.

L. C. J. Well, what do you ask him, Mr. Thompson ?

Mr. Thompson, We ask him, What Report he heard of the Earl of *Essex's* Death, and when ?

L. C. J. What is your Name, Friend ?

Lewes. Lewes.

L. C. J. Well, what is it you say ?

Lewes. My Lord, as I was riding up *Husband*, within three or four Miles of *Andover*.

Mr. Wallop. How many Miles is that off of London ?

Lewes. Fifty two.

Mr. Wallop. Well, go on.

Lewes. Between the Hours of Three and Five, but it is so long ago, that I cannot exactly tell the certain time, a Man asked me what News I heard in the Country, I told him, I heard none. Says he, I hear the Earl of *Essex* has cut his Throat : It was upon a *Friday* in the Summer, I forget the Day of the Month, I can't tell what Month it was certainly.

Mr. Thompson. What Day of the Week was it ?

Lewes. I remember it was upon a *Friday*.

Mr. Thompson. Can't you tell what Month it was ?

Lewes. I can't tell what Month it was, it was in the Summer I know.

Mr. Braddon. My Lord, I desire to ask him a Question.

L. C. J. Do if you will : Ask him what you will.

Mr. Braddon. Did not you go to *Marleborough* on the *Saturday* ?

Lewes. I did go to *Marleborough* the next Day, which was *Saturday*.

Mr. Braddon. I desire to know of him, whether he did meet with the News of it there then ?

Lewes. My Lord, as to that, when I came Home, my Neighbours asked me if I had heard any News ? I told them, says I, I hear the Earl of *Essex* hath cut his Throat. Why when did you hear it, say they ? I heard it yesterday, said I. Said they, it was done but yesterday, how could you hear it so soon ? That is all I have to say, my Lord.

Mr. Williams. By the best Conjecture you can make, was it that very Day the Earl of *Essex* cut his Throat ?

Lewes. I do not know that ever any such Man cut his Throat, but this I heard, and I tell you the Time as well as I can.

Mr. Williams. Then pray let us have our Money again.

L. C. J. Thou art well paid, I will say that for thee.

Mr. Williams. Where is Mr. Fielder ? Swear him.

[Which was done.] Pray, Sir, what did you hear, and when, of the Earl of *Essex's* Death ?

Mr. Fielder. The *Wednesday* and the *Thursday* of the same Week that the Earl of *Essex* cut his Throat, it was reported in our Town of *Andover*, that he had so done. The Women as they came

came in and out of the Town talked of it one to another.

L. C. J. What was talked of that *Wednesday* and *Thursday*?

Mr. Fielder. That my Lord of *Essex* cut his Throat in the Tower.

Mr. Just. Withins. What, before he had cut his Throat?

Mr. Fielder. Yes.

Mr. Just. Withins. That is very strange indeed.

L. C. J. Lord, what a Story is here!

Mr. Williams. My Lord, if you please, I will tell you what Use we would make of it—

L. C. J. I know what Use you would make of it, the Use is just the same, as you make use of all Sorts of ridiculous and shamming Stories, to set us together by the Ears, and rake into all the Dunghills that can be, to pick up Matter to put us into Confusion.

Mr. Williams. But my Lord, if there was such a Report so long before—

L. C. J. Mr. Williams, you were here in Town at that time, I am sure.

Mr. Williams. My Lord, I heard it at Eleven a Clock that Day, that is the soonest I heard it.

L. C. J. What an Age do we live in? What Stuff is here picked up, on purpose to kindle the Fire, and set us all into a Flame!

Mr. At. Gen. What Day of the Month was it, Fielder, upon your Oath?

Mr. Fielder. I did not mind the Day of the Month, I can't tell that.

Mr. Sol. Gen. How do you know it was that Week?

Mr. Fielder. Because on the *Saturday* night that Week, we had the certain News of it.

Mr. Sol. Gen. You say somebody told you then of it on *Saturday*?

Mr. Fielder. Yes, on *Saturday* we had certain News of it.

Mr. Sol. Gen. Who gave you the certain Intelligence?

Mr. Fielder. Some Clothiers.

Mr. Williams. Was *Gadbury* your Countryman?

L. C. J. Ay, Prichce ask him that, whether *Gadbury* told it him, or *Erra Pater*, if you will?

Mr. At. Gen. From what Market-people was it reported?

Mr. Fielder. Some Women.

Mr. At. Gen. It was only Women's Stories then?

Mr. Fielder. Yes, they talked of it among themselves.

Mr. At. Gen. Was it the Forenoon or the Afternoon?

Mr. Fielder. The *Wednesday* and *Thursday* both, it was the common Talk of the Town all Day long.

Mr. Just. Withins. Name one that spake it to you.

Mr. At. Gen. Ay, name one of any Credit, if you can.

Mr. Fielder. I cannot, it was the Women as they came in and out of my Shop, and as they went up and down the Town.

Mr. Wallop. My Lord, we leave it with your Lordship and the Jury. He swears he then heard such a Report.

Mr. Just. Withins. Do you believe this, Mr. Wallop, your self? You are a Man of Ingenuity, I appeal to you.

Mr. Wallop. I believe that Mr. Braddon in his Prosecution of this Matter, went upon the ground of this Report, for he had heard the like Evidence was given in my Lord *Stafford's* Tryal, about the News of Sir *Edmondbury Godfrey's* being killed, before it was known here what was become of him, and that perhaps misled him, if he be mislead.

Mr. Just. Withins. Do you believe, that this Man can speak Truth, when he says it was reported all about their Town, for two Days before it was done, and yet can't name one Person that spake it?

Mr. Fielder. I keep a publick Shop, and don't take notice of every one that comes in and out, to remember particularly.

Mr. Just. Withins. You heard it up and down the Town you say, surely you might remember somebody.

Mr. Wallop. He might hear it, and not take notice of one, but it was the common Fame at *Andover*.

Mr. Williams. Let it go as it will. Your Lordship and the Jury hear what he says—

L. C. J. But under Favour, Mr. Williams, it ought not to pass so easily, 'tis a contrivance to deceive the King's Subjects, and shews a Design to pick up Evidence to amule the unwary, and fill their Heads with Fears and Jealousies of I know not what.

Mr. Wallop. My Lord, I would excuse my Client from Malice as well as ever I can, and therefore we produce these Witnesses, to shew what grounds he had for what he did.

Mr. Williams. We will next call some Women that live near the Tower, that might give him some Occasion for his concerning himself in this Business, *Jane Lodeman*, and *Margaret Smith*. This Voice and Rumour in the Country, made him to go into the Country, but it shews he was no Contriver of the Report.

Mr. At. Gen. I would feign know of Fielder, when he told Mr. Braddon of this.

Mr. Braddon. My Lord, I desire the Family of the *Edwards's* may be called.

L. C. J. Name them, Who are they? How can we tell who your Witnesses are?

Mr. Braddon. Cryer call them, Mrs. *Edwards*, and her Daughter. Will your Lordship give me leave to make my own Defence?

L. C. J. Ay, if you will, but then take notice your Counsel are discharged from making any Defence for you.

Mr. Braddon. May it please your Lordship, and you, Gentlemen of the Jury, These were the Inducements following, that put me upon engaging in this Matter.

Mr. At. Gen. Call your Witnesses first, and then speak.

Mr. Braddon. Mr. *Edwards*, and Mrs. *Edwards*.
[Who came into Court.]

Mr. Just. Withins. Pray, Mr. Braddon, answer me this one Question. What was the Matter that encouraged you to proceed after you knew the Boy had denied it, and said it was all a Lie?

Mr. Braddon. I was bound to answer to an Information after I had been examined at the Council; I had not otherwise stirred in it again.

L. C. J. Well, What do you ask *Edwards*?

Mr. Braddon. What Day was the first Day I saw

saw you, and had Discourse with you, and what was the Discourse I had with you?

Mr. Edwards. It was the seventeenth of July.

Mr. Braddon. What did you tell me then that your Boy reported?

Mr. Edwards. I told you what I acquainted the Court withall before, that the Boy had brought Home such a Report.

Mr. Braddon. Had the Boy ever denied it before I saw you?

Mr. Edwards. That Day you came to speak with me about it, as I was informed by my Wife and my Daughter, the Boy did deny it.

Mr. Braddon. Was it before I came, or after I came that he denied it?

Mr. Edwards. It was after you came.

Mr. Braddon. What were the Inducements that made him to deny it?

L. C. J. He tells you himself, because it was false.

Mr. Braddon. I desire the elder Sister *Sarah Edwards* may be called.

Mr. Wallop. It is apparent the Boy did affirm it—

L. C. J. I thought Mr. Braddon would have made his Defence himself, Mr. Wallop, but you will be breaking in upon him with your Remarks. Make your Remarks by and by, this is a Time for Evidence.

Mr. Wallop. My Lord, I only say this, 'Tis apparent the Boy did first affirm it, and we shall shew how he came to deny it.

L. C. J. 'Tis not proper for you to make Remarks, when you are examining your Witnesses; but when you sum up, You may take what Notes you will, and reserve them till that time, but do not break in upon the Evidence.

Crier. Here is *Sarah Edwards* now. [Who was Sworn.

Mr. At. Gen. This is not the Sister, this is the Mother of the Boy.

L. C. J. Well, what do you ask her?

Mr. Braddon. What Discourse had you with your Boy about Ten of the Clock that Friday Morning I met you?

Mrs. Edwards. I had no Discourse, but what my Child told me.

Mr. Braddon. What did your Child tell you?

Mrs. Edwards. I gave an Account to my Lord Keeper, he had it in Writing; I gave him an Account in Writing.

Mr. Braddon. But you are now called upon your Oath; and are to speak the Truth, and must give an Account to his Lordship and the Jury upon your Oath, what it was the Boy told you.

Mrs. Edwards. What was it Sir he came and told me? Why the Boy told me, Mother, says he, I have been at the Tower, and seen the King's Majesty, and his Royal Highness, and says he, the Earl of *Essex* has cut his Throat; and Lord Mother, says he, and wept. Lord Child, said I, I am afraid, you are going to make some Excuse to me, that I should not bear you, being you have play'd Truant; no Mother says he, I did not. He continued in this for a little while, and then afterwards did deny it.

Mr. Braddon. What did he deny?

Mrs. Edwards. What he had said to me.

Mr. Braddon. Did he deny that he had been at the Tower? Or that the Earl of *Essex* had cut his Throat?

Mrs. Edwards. No, he denied what he said he saw.

Mr. Braddon. What was that?

Mrs. Edwards. He said, he saw an Hand out of a Window, and a Razor fell down, and he went to take it up, and there came out a Woman, or a Maid, a short fat Woman came out, and took it up, and went in again.

Mr. Wallop. And he said this crying and weeping you say?

Mrs. Edwards. Yes, he did so.

Mr. Braddon. Did he deny it before such time as I had been there?

Mrs. Edwards. No, you was once at my House before, and spake to my Husband, and then you came the same Day again.

Mr. Braddon. Pray, what was the Discourse your eldest Daughter had with the Boy between the time of my first coming, and the time of my second coming?

L. C. J. 'Tis impossible for her to answer any such Question, what Discourse two other People had.

Mr. At. Gen. Bring the Daughter her self, and let her tell.

L. C. J. Hark you, Mrs. Edwards, before you go. The Boy denied it, it seems, in two or three Days after he had given out such a Report?

Mrs. Edwards. Yes, my Lord, he did.

L. C. J. How came he to deny it?

Mrs. Edwards. I will tell you how, When this Gentleman came and acquainted my Husband with his Business, it put us all into a great Damp; and my Husband said, now both my Boys were gone to School, and says he, after the Gentleman was gone, to my Daughter *Sarah*, Don't you say anything to your Brother when he comes in, but let him alone, and we will talk to him. So with that She was so grievously affrighted, and so amazed, that as soon as he came in, she said, prithee, *Billy*, deal truly, and don't you tell any Lie to save your Breech, for here has been a Gentleman to inquire something about what you said; why, Sister, says he, will any thing of Harm come? Truly Child, says she, I don't know, and upon that he did deny it.

L. C. J. Did you tell Mr. Braddon he had denied it?

Mrs. Edwards. He was told he had denied it.

L. C. J. Did you tell Mr. Braddon, before the Paper was signed, that he did deny it?

Mrs. Edwards. Yes, my Lord, he knew that before the Paper was signed.

Mr. Braddon. Mrs. Edwards, Did not the Boy come to you, and cry out, he should be hang'd, and then did deny it?

Mrs. Edwards. Yes, that he did.

Mr. Braddon. From whence did he come, that he was in such in a Fright?

Mrs. Edwards. I can't tell that, Sir.

Mr. Braddon. Did not your eldest Daughter chide him and threaten him?

Mrs. Edwards. Yes, she did bid him speak the Truth.

Mr. At. Gen. And then he denied it?

Mrs. Edwards. Yes.

L. C. J. Ay, says she to him, *Billy*, do not to save thy Breech, tell a Lie, but speak the Truth, why then says he, the Truth of it, there was no such Thing.

Mr. Braddon. My Lord, she says it was after his Sister had chid and threatened him.

Mr. Sol. Gen. You are a little too fierce upon the Woman, Mr. Braddon, you do not observe what she says.

L. C. J.

L. C. J. Yes, he is wonderful zealous flourishing his Hands. —

Mr. Sol. Gen. She says, the Daughter did tell the Son that he must speak the Truth, and not tell a Lye to save his Breech, for there had been a Gentleman to inquire about it, why, says the Boy, will there come any harm of it; I don't know, says his Sister, why then, says he, I tell you the Truth, there was no such thing.

L. C. J. Ay, when she engaged him to tell the Truth, and not tell a Lye to save his Breech, then the Truth comes out.

Mr. Braddon. Pray call *Sarah Edwards* the Daughter. My Lord, They told me in the House that she had frighted him into a Denial.

L. C. J. Pray, good Sir, how came you to be a Justice of Peace, and to turn Examiner? You live in the Temple, or belong to the Temple, how come you to take Examinations here in London, but that some People are so very zealous and officious in Matters that concern them not, on purpose to raise a Dust?

Then Sarah Edwards the younger was sworn.

Mr. Braddon. Did not your Brother deny what he had said by your means?

L. C. J. Pray ask a fair Question.

Mr. Braddon. Mistress, Pray tell your Knowledge of what the Boy declared?

L. C. J. Ay, ay, Tell what you know, what your Brother said concerning his seeing a Razor, and his denying of it afterwards. Tell all from the beginning to the end, and tell Truth in God's Name, and nothing but the Truth. We desire the Truth may come out, let it be of which side it will.

Sarah Edwards. My brother came home and said he had been at the Tower, and that he had seen His Majesty and His Royal Highness, and the Earl of *Essex* had cut his Throat, and that he saw an Hand sling a Razor out of a Window, and that a Maid or a Woman came out and took it up, and went in again, and presently after he heard the Noise of Murder cried, so I knowing he was very apt to tell Lies I did not believe it.

Mr. Braddon. Pray, Mistress, Did you prevail with him to deny it afterwards?

L. C. J. You are so wonderful full of Zeal and Heat in this Matter, you cannot let your own Witnesses tell their own Story, but you must interrupt them. You have been bred to the Law, and you have been before here present, I suppose, at many Tryals, and what pretence can you have to be more indulged in an extraordinary way of proceeding than others, 'tis not for the Integrity of your Conversation I am sure that you ought to have it, but only because you have more Impudence.

Mr. Braddon. My Lord, I have nothing of Confidence, but what is grounded upon Innocence.

L. C. J. I tell you, you are too confident, and pray know where you are, and behave yourself as you ought.

Mr. Braddon. My Lord, I hope I do no otherwife.

L. C. J. We must give such Liberty and Toleration because of the Extravagance of his

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Confidence, as to let him break in upon all Rules and Methods. When you behave yourself as you ought to do, the Court will indulge you and give you all just Liberty, but don't expect for your Zeal sake and the flinging of your Hands to do what you list. Go on Mistress.

Sarah Edwards. So, Sir, this Mr. *Braddon* came on *Tuesday* following about one or two of the Clock, and asked for my Father, and coming, my Sister *Mary* went to the Door, and called my Father out to him. When my Father came to him, he told my Father he came from Sir *Henry Capell*, and the Countess of *Essex* to know the Truth of my Brother's Report. So my Father told him the Boy had reported such a thing, but he would not assert the Truth of it, for he had been informed by us that the Boy was apt to tell Lies to excuse his playing Truant, so the Child was gone to School when Mr. *Braddon* came, and when he came home from School they went to the Child, said I, *Billy*, will you be sure to tell me the Truth of this Report, why Sister, said he, will any Harm come of it? Nay, said I, I do not know, for there has been a Gentleman to enquire about it. So then the Child denied it.

L. C. J. Did he know this before he made the Boy sign the Paper?

Sarah Edwards. Yes. This was on the *Tuesday* after Mr. *Braddon* had been first there. And I spake to him, said I, *Billy*, say nothing but the Truth be sure, and don't tell a Lye to save your Breech. So, Sir, as soon as ever the Child denied it Mr. *Braddon* came in again the same Day, and coming in found us, my Mother and all of us, daunted hearing the Boy deny it; but he asked the Child and bid him speak the Truth, and told him it was a dreadful thing to be a Liar, and bid him read the 5th of the *Acts*, telling him he would find there two were struck dead for telling of a Lye, and several other such Expressions that I cannot remember. Upon *Wednesday* about Noon he comes again, and then my Brother did own it again, and he writ down what the Boy owned, and went away, saying he would go to Sir *Henry Capell* and the Countess of *Essex*. And on *Thursday* he comes again and brings a Paper written over again, not the same he writ at our House, and then the Child set his Hand to it. The Child was something unwilling, so says he to him, it will be no harm to you, if any Danger does come of it, it will come to me and not to you.

L. C. J. The Child was unwilling to sign it you say, but by his Perswasion?

Sarah Edwards. Yes. Mr. *Braddon* told him it would be no harm to him, all the harm would come to himself.

Mr. *Braddon.* When the Child had owned to me what he first said, and upon your saying that he denied it, I asked him the reason why he denied it, pray will you tell what Answer he made to that Question. Pray tell the Truth, and nothing but the Truth.

Sarah Edwards. Upon my word, Sir, I can't recollect that.

Mr. *Braddon.* Pray, Mistress, what Answer did he make?

Sarah Edwards. I have told you what I know, to the best of my remembrance.

Mr. Braddon. Did not you hear your Brother run to his Mother, and cry out I shall be hang-ed?

Sarah Edwards. Yes.

Mr. Braddon. What was the reason of his crying out so?

Sarah Edwards. Why the Child had that Fear and Dread upon his Spirits, knowing it was a Lye, I suppose, he had told.

Mr. Braddon. What was the reason of his Fear?

L. C. J. She tells you, it was the Falshood of the Story.

Mr. Wallop. Mistress, Did not you tell him, that his Father would be in danger of losing his Place?

Sarah Edwards. Yes, Sir, we did.

Mr. Wallop. Did you tell him, the King will hang your Father if you do not deny it?

L. C. J. Why, you have a mind to have it believed that it was true then, Mr. Wallop.

Mr. Wallop. My Lord, the Boy best knows that.

L. C. J. But do you believe that if it had been true, that the King would hang his Father, or turn him out of his Place if he did not deny it, as tho' the King would force People to deny the Truth?

Mr. Wallop. My Lord, I do not say nor believe any such thing.

L. C. J. But your Question seems to carry it so.

Mr. Wallop. My Lord, I ask the Question of her, whether she did not say so to him, I ask Questions according to my Instructions.

L. C. J. Nay, Mr. Wallop, be as angry as you will, you shan't hector the Court out of their Understandings. We see plainly enough whether that Question tends. You that are Gentlemen of the Robe, should carry yourselves with greater Respect to the Government, and while you do so, the Court will carry themselves as becomes them to you.

Mr. Wallop. I refer my self to all that hear me, if I attempted any such thing as to hector the Court.

L. C. J. Refer your self to all that hear you, refer your self to the Court, 'tis a Reflection upon the Government, I tell you your Question is, and you shan't do any such thing while I sit here, by the Grace of God, if I can help it.

Mr. Wallop. I am sorry for that, I never intended any such thing, my Lord.

L. C. J. Pray behave your self as you ought, Mr. Wallop; you must not think to haff and swagger here.

Mr. Just. Withins. Mr. Braddon, You hear what the reason was of his crying out so. She said he was afraid, because he knew he had told a Lye.

Mr. Wallop. Pray, Mistress, who told him the Family would be ruined by it?

Mr. Just. Withins. Mr. Wallop, I asked this Gentlewoman, whether she did say it, and she said she could not tell.

Sarah Edwards. Indeed I cannot tell, my Lord.

Mrs. Edwards. She did indeed say so, my Lord.

Mr. Wallop. Pray let it go, my Lord, as it is, what was it she said? Did she speak about turning her Father out of his Place?

Mrs. Edwards. I cannot say that, but she said, when the Boy asked whether there would be any harm by it, she could not tell, but it may be her Father and Family might be ruined.

L. C. J. And is not this a Reflection upon the Government, to say the King would ruin any one if they did not tell a Lye?

Mr. Wallop. My Lord, For a false Report he might be ruined, but it seems upon this Saying he did deny it.

Mr. Just. Withins. Was there a Word said of his being turned out of his Place?

Mrs. Edwards. I cannot say there was.

L. C. J. No not a word, but only Mr. Wallop is so impetuous in the worst of Causes.

Mr. Wallop. I am in the Judgment of the Court, whether I do any thing but what becomes an Advocate for his Client, according to my Instructions.

L. C. J. Yes, you are so, and shall know that you are under the Correction of the Court too.

Mr. Wallop. My Lord, I know where I am.

L. C. J. Ay, you know well enough, but you would do well to carry yourself as you should do.

Mr. Wallop. With humble Submission, my Lord, I appeal to all that hear me.

L. C. J. Appeal to whom you will, I know the Business of the Bar is to appeal to the Court.

Mr. Just. Withins. What is the matter with Mr. Wallop, that makes him so earnest in this Cause?

L. C. J. There is such an Heat in this Cause, I wonder whence it should come, I am sure 'tis not from the Honesty of it.

Mr. Braddon. Young Mrs. Edwards, if I suffer any thing by reason of the falsity of your Testimony, it will return upon you.

Sarah Edwards. Sir, I do tell you all I know.

Mr. Braddon. Then I desire you to answer me this Question, whether or no when the Boy did own what he first said, and I asked him the reason of his Denial, whether the Falsity of the thing, or Fear caused him to deny it, did not he say it was Fear through your Discouragements and Threatnings?

Sarah Edwards. No, he did not say it, did he, Mother?

L. C. J. Why we are got into a way of appealing and appealing, here is appealing to the People, and appealing to the Witness, pray keep to the Business, and within the bounds of Decency. Before such time as the Boy denied it, did you desire him to speak truth?

Sarah Edwards. Yes, I did.

Mr. Thompson. And when Mr. Braddon examined him, did he desire him to speak Truth?

Sarah Edwards. Yes, he did.

L. C. J. But he knew before he examined him that he had denied it, did not he?

Sarah Edwards. Yes, the second time before he came into the House.

Mr. Braddon. I desire the old Gentleman may be asked this Question.

Mr. Thompson. Call Mr. Edwards again.

L. C. J. The Spirit of the Client was got into the Counsel I think just now, and now 'tis got into the Client again. 'Tis an hard matter to lay it, I perceive.

Mr. Wal-

Mr. Wallop. My Lord, I am here of Counsel for Mr. Braddon, and I only ask Questions as they are in my Breviate.

L. C. J. But, Sir, if you have any thing in your Breviate that reflects upon the Government, you ought not to vent it, nor shan't be permitted to vent it as long as I sit here.

Mr. Wallop. My Lord, with submission, I hope I never did, nor never shall let any such thing come from me.

L. C. J. Nay, be as angry, or as pleased as you will, 'tis all one to me, you shall not have liberty to broach your seditious Tenets here.

Mr. Braddon. Mr. Edwards, Pray will you answer this Question? Did not your Son, when he was asked why he denied it, say that it was Fear and Discouragement, through his Sister's Threats, was the Cause? Pray speak the Truth.

Mr. Edwards. I cannot tell whether the Child did say so, something of that nature he did say.

Mr. Thompson. Call Anne Burt.

L. C. J. We have got such strange kind of Notions now-a-days, that forsooth Men think they may say any thing because they are Counsel. I tell you, Mr. Wallop, your Questions did reflect upon the Government, as tho' the King had a mind to turn a Man out of his Employment, if he did not swear a Falsity. What can be a greater Reflection than that? But all the matter is, what has been done must be avouched and justified, though it be never so ill. But we plainly see through all. This was the Design from the beginning, the King and the Duke of York were in the Tower at that time, and it must be thought and believed that they had designed this Matter, and so then all People must be ruined in case they would not say the Earl murdered himself, tho' indeed others had done it.

Mr. Wallop. Mr. Edwards did not delight to have such a Report, as might create Trouble, first come out of his House.

Mr. Braddon. My Lord, As to the making such an Inference, or any Reflection as your Lordship mentions, I am as far from it as any body here.

L. C. J. We must give a wonderful deal of countenance to such barbarous and horrid Practices, and I warrant you must suffer the Government to be reflected upon at the Will and Pleasure of every Man. No, let us hear the Truth, but not in the face of a Court permit Men to asperse the Government as they please, by asking such Questions.

Mr. At. Gen. And the Witnesses say nothing to it neither.

L. C. J. No, nothing at all like it, but 'tis Asperion for Asperion sake. And we must sit still and hear it.

Mr. Wallop. My Lord, I think 'tis for the Honour of the Government to have all things fairly inquired into.

L. C. J. And 'tis for the Honour of all Courts of Justice not to suffer Reflections upon the Government, let them be by whom they will. And in Gentlemen of the Bar 'tis worse than others.

Mr. Just. Within. Truly, I do not see, where there is any countenance for asking such a Question.

L. C. J. No, but some People are so wonderful zealous —

Mr. Wallop. My Lord, Zeal for the Truth is a good Zeal.

L. C. J. It is so, but Zeal for Faction and Sedition, I am sure, is a bad Zeal. I see nothing in all this Cause but Villany and Baseness. And I believe no Man that has heard it, but will readily acknowledge that it appears to be an untoward malicious ugly thing, as bad as ever I heard since I was born, on purpose to cast an Indignity upon the King and Government, and set us all in a Flame.

Then Anne Burt appeared, and was sworn.

Mr. Braddon. Mrs. Burt, I desire to know what Discourse you had with Mrs. Edwards, and that Family?

Mr. At. Gen. I beg your Pardon for that. Here Mrs. Edwards is her self to tell what she has said.

Mr. Braddon. I desire to know what Discourse she had with any of the Family?

Mrs. Burt. I went to make a Visit to Mrs. Edwards, and I had not been there half an hour but in comes this Gentleman, now I had asked no Questions about the Business, but in he comes and desired to speak with Mr. Edwards; Mr. Edwards was called, and when he came in with Mr. Edwards, the Gentleman sat down in the Room, and told Mr. Edwards he had heard a Report of something his Son had spoken, but he desired to have it from his Son's own Mouth, and the Boy was called in (this is a real Truth, Sir, for I do not know whether I may stir from this Place where I am alive or no;) And when the Boy came in, the Gentleman said to him, if it be true that you have reported, own it; if not, do not own it; for, said he, 'tis a dreadful thing to be found in a Lye, I would have you read the 5th Chapter of the Acts, where a Man and a Woman were struck dead for telling a Lye. Sir, said the Boy, 'tis true, and what I said I will speak it before any Justice of Peace in the World. And then he asked him what he had reported, and the Boy made a Repetition of what he had seen and said before, that he went into the Tower and came to the first Row of Houses that goes along. And at the first House he saw no body look out at the Window, nor at the second House, but he looked up at the third House, and he took his Hand and shewed thus, said he, I saw a Man's Hand he did not say, but an Hand throw a Razor out of this fashion, and he imitated it with his Hand. Said the Gentleman, was it not the wrong Window, or the wrong House? I will not take the thing upon this Credit, take your other Brother down, — that was a bigger Boy than this, and, says he, go down to the House, and shew your Brother the Window where you saw this. The two Boys went down, and he shew'd his Brother the Place where he saw the Hand —

L. C. J. Were you present at his shewing?

Mrs. Burt. Will your Lordship please to give me leave —

L. C. J. And pray give me leave too, I ask you, Were you present? For you tell it as if you knew it your self.

Mrs. Burt. Both the Boys came up, and said so.

L. C. J. You should have said so then, that they told you it, for you are upon your Oath, and must affirm nothing but your own Knowledge.

Mrs. Burt. If I do misplace my Words I cannot help that.

L. C. J. You misplace your Evidence, Woman, you must not swear that to be true that you don't know to be true.

Mrs. Burt. My Lord, I heard what I say with my own Ears.

L. C. J. But you talk of a thing you did not see with your own Eyes, as if you had seen it.

Mrs. Burt. I beg your Pardon, my Lord, I can't tell how to place my Words so exactly.

L. C. J. I care not how thou placest thy Words, tell thy own Knowledge.

Mrs. Burt. I tell what is Truth, what I heard and saw; for, said Mr. Braddon, I believe it was not the right Window, when the Boy came up and said he had shewed the Window. And this Gentleman, I cannot hit his Name right (he is a Stranger to me) he and Mr. Edwards went down with the Boy, to see whether it were the right Window of the House where my Lord died (which where it is I cannot tell any otherwise than has been reported, or whether there be one Room or two of a Floor I don't know;) and when he came up again he called for a Sheet of Paper, that he might write from the Boy's Mouth, and that he might not differ one Word from what the Boy had said himself. And when I saw Mr. Braddon begin to write I went away, for I thought it may be the Gentleman might expect I should set my Hand to it as a Witness, and I did not desire any Trouble.

Mr. Braddon. I desire this Question may be asked her, my Lord, Do not you remember it was said the Boy denied it?

Mrs. Burt. Yes, it was said, the Boy did deny it.

Mr. Braddon. What did his Sister say was the reason of his denying it?

Mr. Thompson. Ay, what did you hear the Sister say?

L. C. J. I told you before, that was no Evidence what another body did say.

Mr. Wallop. Mistress, The Boy denied it, for what reason?

Mrs. Burt. Because his Sister, as his Mother told me, had been talking to him.

L. C. J. As his Mother told you, prithee, Woman, speak your own Knowledge, and not what another body told thee.

Mrs. Burt. Pray, give me leave, my Lord.

L. C. J. I tell thee, I will not give thee leave to say what thou shouldst not say.

Mrs. Burt. I heard his Sister say.

L. C. J. It is not Evidence if thou didst hear never so many People say it.

Mrs. Burt. My Lord, I speak nothing but the Truth.

L. C. J. Shall we allow that in this Case for Evidence that we allow in no other Case, for what reason, pray? I do not see it deserves any such extraordinary Favour.

Mr. Justice Wilmes. Mr. Wallop, We must not hear what another said, that is no Party to this Cause. You know it is no Evidence, therefore do not press it.

Mrs. Burt. My Lord, I have done, if that will satisfy you.

L. C. J. Prithee satisfy thy self, good Woman.

Mrs. Burt. My Lord, I have done. I come here to speak the Truth, and so I do.

L. C. J. Nay, prithee be not so full of Tattle, so full of Clack.

Then a little Girl came into Court.

L. C. J. What Age is this Girl of? How old art thou, Child?

Girl. I was 13 last Saturday.

L. C. J. Do you know the Danger of telling a Lye?

Girl. Yes.

L. C. J. Why, what will become of you if you tell a Lye?

Girl. The Devil will have me.

L. C. J. Give her her Oath. What is thy Name, Child?

Girl. Jane Lodeman.

Then she was sworn.

L. C. J. Child, Do not be afraid of any thing in the World, but only of telling any thing but what is true, be sure you do not tell a Lye, for if, as you say, you shall be in danger of Hell-fire by telling a Lye, much more will you be in danger if you swear to a Lye. Now what do you ask her?

Mr. Braddon. What did you see in the Tower that Morning the Earl of Essex died?

Lodeman. I saw a Hand out of a Window, but I cannot tell what Window it was, but it was a Hand throw out a Razor.

Mr. Braddon. And what did you hear after that?

Lodeman. I can't well remember, but it was either two Shrieks or two Groans that I heard presently after.

L. C. J. What time of the Day was it, Child?

Lodeman. It was between nine and ten of the Clock.

L. C. J. Who was with you besides your self there?

Lodeman. There were more besides me, but they went away.

L. C. J. Who were they, Child?

Lodeman. A great many that I did not know.

L. C. J. And how came you to take notice of it?

Lodeman. And there was a Coach stood just at the Door.

L. C. J. Tell us some of them, Child that were there besides thy self, speak the Truth, be not afraid. Thou sayst a great many People were there, and all the People must necessarily see it.

Lodeman. They were People I did not know.

L. C. J. But they all saw it as well as you?

Lodeman. So I suppose they did.

L. C. J. And you heard a Shriek or two, you say?

Lodeman. Two Shrieks or two Groans, I can't well remember which.

L. C. J. How high was the Window?

Lodeman. Not above one pair of stairs high.

L. C. J. How high from the Ground might it be?

Lodeman.

Lodeman. Not above one Story.

Mr. Thompson. Whereabouts in the Tower was it?

Lodeman. Sir, it was as you go upon the Mount.

Mr. Wallop. Whose Lodging do you think it was?

Lodeman. I did not know whose it was, but Folks said it was the Earl of *Essex's*.

L. C. J. Who did you tell this to?

Lodeman. I told no body till I came to my Aunt, and I told her.

L. C. J. What is her Name?

Lodeman. Margaret Smith.

L. C. J. Did you ever tell this to that Man?

Lodeman. Yes, afterwards I did.

L. C. J. How came he to enquire of you about it?

Lodeman. He came and asked me, and I could not deny it.

L. C. J. Ay, but how came he to ask you?

Lodeman. There was a Gentlewoman that was at our House, and she heard of it, and spake of it at a Gentlewoman's at Dinner, and so he came to our House to inquire about it.

L. C. J. Who is that Gentlewoman? What is her Name?

Lodeman. Susan Gibbons.

L. C. J. Let me see the Information of this Girl, that *Mr. Braddon* had taken.

Cl. of Cr. Yes, my Lord, there it is.

L. C. J. Do you know my Lord of *Essex's* Lodgings?

Lodeman. They said it was his.

L. C. J. Did you know it of your own Knowledge?

Lodeman. No, Sir, I did not.

Mr. Thompson. Pray what became of the Razor that was thrown out of the Window, after it was thrown out?

Lodeman. I saw a Woman in a white Hood come out, but I did not see her take it up.

Mr. Sol. Gen. Girl, you say, that when you were at this Place in the Tower, and saw this Matter, there were a great many People there besides your self.

Lodeman. Yes, Sir.

Mr. Sol. Gen. Did the Razor fall among the People that stood there, or did it fall out in the Street, or how?

Lodeman. Sir, it fell within the Pales.

Mr. Sol. Gen. And was the Passage easy into the Pales?

Lodeman. Yes.

Mr. Sol. Gen. What they must climb over, must they?

Lodeman. No, you need not climb over, there is a Door to go in. And when People went in the Soldier opened the Door.

Mr. Sol. Gen. Who went in with the Soldier? Did you see any body go in?

Lodeman. There was a Man went in, but I know not who he was.

Mr. Sol. Gen. Did the Soldier stand at the Door, when this Razor was thrown out?

Lodeman. I can't tell that, a Soldier used to be at the Door.

Mr. Sol. Gen. The Woman came out of the Lodging, did she not?

Lodeman. Yes.

Mr. Sol. Gen. Did she go in again?

Lodeman. I did not see her go in again.

Mr. Sol. Gen. Did she go into the Pale?

Lodeman. I did not see her go into the Pales.

Mr. Sol. Gen. Did you see the Razor after it fell upon the Ground?

Lodeman. No.

Mr. Sol. Gen. Was it bloody?

Lodeman. Yes.

Mr. Sol. Gen. Very bloody?

Lodeman. Yes.

Mr. Sol. Gen. Did you see no body take it up?

Lodeman. No, I did not.

Mr. Sol. Gen. Come hither, Child, are you sure it was a Razor, or a Knife?

Lodeman. I am sure it was a Razor.

Mr. Sol. Gen. Was it open or shut?

Lodeman. It was open.

Mr. Sol. Gen. What Colour was the Handle

Lodeman. Sir, I can't tell, I see it but as it flew out.

Mr. Sol. Gen. Was it all over bloody?

Lodeman. No.

Mr. Sol. Gen. All but a little Speck?

Lodeman. It was very bloody.

L. C. J. Blessed God, what an Age do we live in! Girl, you say, you did not know it to be my Lord of *Essex's* Window.

Lodeman. No, but as they told me.

L. C. J. Nor you did not see any body take up the Razor?

Lodeman. No.

L. C. J. But are you sure you did not?

Lodeman. I am sure I did not.

L. C. J. But Child, recollect thy self, sure thou didst see some body take it up?

Lodeman. No, I did not.

L. C. J. I ask thee again, Didst not thou know it to be my Lord of *Essex's* Window?

Lodeman. No, but as they told me.

L. C. J. Did you hear no body speak to the Maid that came out?

Lodeman. No body at all.

L. C. J. No, Prithee is that thy Hand, Child? Shew her the Paper, the uppermost Part of it.

Lodeman. Sir, I can't write.

L. C. J. Who put thy Name to it?

Lodeman. Sir, I don't know, no more than the Pope of Rome.

L. C. J. Whose Hand-Writing is that?

Lodeman. I cannot tell, I never could write in my Life.

Mr. Braddon. Those are the Names of such as heard her say it.

Mr. At. Gen. Yes, you have Cooked it up bravely.

L. C. J. You shall see what a brave Managery you have made of this poor Child. Read the Information.

Cl. of Cr. Reads. — The Eight of August, 1683. Jane Lodeman, Aged about 13 Years, did in the Presence of these whose Names are Under-written, declare as follows, That the said Jane Lodeman was in the Tower on Friday Morning, the 13th of July last, and standing almost over-against the late Earl of *Essex's* Lodging Window, she saw a Hand cast out a Razor out of my Lord's Window, and immediately upon that she heard Shrieks, and that there was a Soldier by my Lord's Door, which cryed out to those within the House, that some body should come and take up a Razor, which was thrown out of the Window, whereupon there came a Maid with a white Hood

Hood of the House, but who took up the Razor she cannot tell. —

L. C. J. Here 'tis said the Soldier cried out, but now she says, the Soldier she does not know was there, and she heard no body speak to the Maid.

Mr. Braddon. With Submission, my Lord; I desire to ask her this Question.

L. C. J. Prithee ask her what thou wilt. We hear what she says.

Mr. Braddon. Did you hear the Soldier cry out; or did you not?

Lodeman. No, I did not.

Mr. Braddon. Did not you say, you heard him cry out?

Mr. Sol. Gen. My Lord, we cannot admit *Mr. Braddon* should ask such Questions, they are leading Questions. Ask her a general Question, and you shall have an Answer, but you shall not give her Words to Swear to.

L. C. J. No, upon my Word, you have given her too many Words to Swear to already.

Mr. Braddon. My Lord, I only writ what she declared.

Mr. Sol. Gen. Were you carried by *Mr. Braddon* before any Magistrate, or any Justice of Peace?

Lodeman. No.

Mr. Sol. Gen. Did he take the Examination himself?

Lodeman. Yes.

Mr. At. Gen. Did not he desire you to go before a Justice of Peace to be Sworn?

Lodeman. No, Sir.

Mr. Sol. Gen. Did he write it himself?

Mr. At. Gen. Ay, he writ it, and took it, and this Woman that is coming here, is a Witness to it.

L. C. J. What is this Woman's Name?

Mr. Braddon. This is the Aunt *Margaret Smith*.
[Who was Sworn.]

L. C. J. Well, what say you to her?

Mr. Braddon. I desire to know, what this Girl said to you, when she returned from the Tower the 13th of July?

Mrs. Smith. She said to that effect that she speaks now.

Mr. Braddon. What was that? Tell the Court.

Mrs. Smith. I chid her, because she had been playing: That is all I can say.

Mr. Just. Within. Did she tell you, the Soldier cried out for some body to come and take up the Razor?

Mrs. Smith. I cannot say that.

Mr. Just. Within. Did she say, she saw a Razor thrown out of my Lord of *Effex's* Window?

Mrs. Smith. She said, she saw a Razor thrown out of a Window; I can't tell whether she said out of my Lord of *Effex's* Window.

Mr. Freke. Did you set your Hand to that Paper?

L. C. J. Were you a Witness to that Paper?

Mrs. Smith. There were others heard what the Girl said, as well as I.

L. C. J. Who desired you to sign it?

Mr. Freke. Who writ that Paper, Mrs.?

Mrs. Smith. Pray excuse me, Sir, I do not know.

Mr. Freke. Did you see it writ?

Mrs. Smith. No.

L. C. J. No: It was one got ready drawn by *Mr. Braddon*.

Mr. Just. Holloway. Pray let the Boy's Information be read again; for I observe there is a

difference; she says, the Razor fell within the Pales; the Boy says, it fell without.

L. C. J. Ay, ay, the one says it was the inside, the other, the outside of the Pales.

Then the Information was read.

L. C. J. Go on now, and ask your Questions.

Mr. Braddon. Did the Girl say, That after the Razor was thrown out, the Soldier cried to some body to take it up?

Mrs. Smith. Sir, I can say no more than what I have said.

Mr. Braddon. Did she, or did she not?

Mrs. Smith. Pray, Sir, excuse me; I have spoken what I know.

Mr. At. Gen. You may see how he has managed this Matter, my Lord, by his urging the Witnesses with Questions they know nothing of.

L. C. J. Yes, yes, we see he would fain put Words into their mouths.

Mr. At. Gen. Mrs. Did you send to *Mr. Braddon*, to inform him of what the Girl had said? Or did he come to you?

Mrs. Smith. Sir, I never saw him before in my Days.

Mr. At. Gen. He came first to you then?

Mrs. Smith. Yes: He hearing of it, came as a Stranger to me.

Mr. Braddon. Did I, directly or indirectly, offer you, or your Neece, any Thing?

Mrs. Smith. No, never in this World.

Mr. Braddon. Did I ever desire her, or you, to say any thing but what was true?

Mrs. Smith. No, Sir: You ever encouraged the Girl to speak Truth; and bid her speak nothing but what was Truth.

Mr. At. Gen. You need not pay dear for a Lie; you are like to pay dear enough before you have done.

Mr. Braddon. My Lord, as to Personal Knowledge; I am as much a Stranger to this Matter, as any body here; and in all my Concern in it, I have done nothing but what was very fair.

L. C. J. Mind your Defence, *Mr. Braddon*, and leave commending your self; or if you will, rather commend your self by your Actions, than your Expressions: One good Action is worth Twenty good Expressions.

Mr. Braddon. Swear *William Glasbrooke*. [Which was done.]

L. C. J. Well, what do ask him?

Mr. Freke. My Lord, we desire to know of him; whether he was by on the 13th of July, when the Girl gave this Report?

Mr. Glasbrooke. I was up two pair of Stairs when she came in.

L. C. J. What is your Name, Sir?

Mr. Glasbrooke. *William Glasbrooke*.

Cl. of Cr. Ay, here is his Information, among those that were taken about *Braddon*.

Mr. Glasbrooke. She came in to her Aunt, that went out just now before me, and I heard her very loud with her Aunt, saying, the Earl of *Effex* had cut his Throat in the Tower. Her Aunt chid her upon it; and her Aunt chiding her, she said, she was sure it was true; for she saw a bloody Razor, with a bloody Hand thrown out of the Window.

Mr. Freke. Was this the Day of my Lord of Essex's Death?

Mr. Glasbrooke. It was the Day the King was in the Tower, and, as was reported, the Day he was killed.

Mr. Braddon. Were you present when I first discoursed the Girl?

Mr. Glasbrooke. Yes.

Mr. Braddon. Had you ever seen me before, or no?

Mr. Glasbrooke. No.

L. C. J. Did she say, my Lord of Essex cut his Throat at that Time?

Mr. Glasbrooke. Yes.

L. C. J. Are you a Witness to this Paper? Did you set your Hand to this Paper?

Mr. Glasbrooke. To the Paper Mr. Braddon writ, I did: I am a Witness to that.

L. C. J. Then read his Information.

Cl. of Cr. Reads, — Mr. William Glasbrooke does declare, That one Jane Lodeman, aged about Thirteen Years, inhabiting in the same House where he, the said William Glasbrooke, lodged, did on Friday, the 13th of July last past, between Ten and Eleven in the Morning, in the presence and hearing of him, the said William Glasbrooke, declare to her Aunt, That the Earl of Essex had cut his Throat; upon which her Aunt was very angry with her; whereupon she, the said Girl, did declare, That she was sure of it; for she saw him throw the Razor out of the Window; and that the Razor was bloody; and that she heard two groans or shrieks (which of the two Words she used, he, the said William Glasbrooke, is not certain:) Of this, he, the said William Glasbrooke, is ready to make Oath.

L. C. J. Now my Lord of Essex cut his own Throat, and after threw the Razor out of the Window.

Mr. Glasbrooke. 'Tis what the Girl did declare.

Mr. At. Gen. Does not this Girl usually tell Lies?

Mr. Glasbrooke. I have before that time taken her in a Lie.

Mr. At. Gen. Did you acquaint Mr. Braddon with that?

Mr. Glasbrooke. I cannot tell that I did.

Mr. At. Gen. Do you remember that you told Mr. Braddon, That she was a Girl that told Truth?

Mr. Glasbrooke. No, I never did that; for I was always of another Perswasion about her.

Mr. Sol. Gen. He never was of that Temper, to praise her; he was always of a contrary Perswasion.

L. C. J. I'll assure him, that I am of his Opinion too: I do believe she is a lying Girl, and hath told us a company of Lies now,

Mr. Braddon. These two Children told me, they never saw one another till they were examined at the Council.

L. C. J. Well, well: Go on with your Witnesses.

Mr. Braddon. Where is William Smith. [Who appeared and was sworn.] I desire to know of you, Mr. Smith, what you heard the Girl say, when I was there?

Mr. Smith. I heard the Girl tell us, That she saw a Hand cast out a Razor, and either the Hand was bloody, or the Razor, I can't tell which; but she said it was out of the Window, where she said the Earl of Essex lodged.

L. C. J. Did she say the Earl of Essex did it himself?

Mr. Smith. She said, she saw an Hand cast out a Razor.

L. C. J. Did she tell you, it was the Earl of Essex's Lodging-Window?

Mr. Smith. She said it was that Lodging.

L. C. J. Ay, but she says now, she does not know it to be his Lodging.

Mr. Braddon. My Lord, she says she was told it was his Lodging.

L. C. J. But you have made her to say positively, it was his Lodging, and that he threw out the Razor.

Mr. Sol. Gen. Pray, Sir, where did you first hear this Report of this Girl?

Mr. Smith. There, at the House, where she was.

Mr. Sol. Gen. Were you alone when you went to the Girl the first time?

Mr. Smith. No, I went with Mr. Braddon.

Mr. Sol. Gen. Did you hear any thing of it before? What did induce you to go along with Mr. Braddon? What were the Arguments that prevailed with you to go with him?

Mr. Smith. I did not know where he was going; Mr. Braddon called me at the Shop, as I stood at the Door, and asked me if I was busie, or would go with him? So I went with him to the Tavern.

Mr. Sol. Gen. You never heard one Word before of the Girl's Report?

Mr. Smith. No, I did not.

L. C. J. What else did the Girl tell you?

Mr. Smith. I can't say what else she said. This I remember, that I have told you.

L. C. J. Did she name the Earl of Essex's Lodgings?

Mr. Smith. I am sure she said, the Lodging where the Earl of Essex lay.

L. C. J. Did she name the Earl of Essex?

Mr. Smith. She did name the Earl of Essex's Lodgings.

L. C. J. Did she in so many Words say, That it was the Earl of Essex's Lodgings?

Mr. At. Gen. Your Lordship sees, they give one Evidence, and she another.

Mr. Smith. I cannot say whether she did in so many Words say so, or no; but she said, That she saw a Hand toss out a Razor, and either the Hand was bloody, or the Razor, and it was where my Lord of Essex's Lodgings was.

L. C. J. But did she name my Lord of Essex's Lodgings?

Mr. Smith. Yes, she did.

L. C. J. Well, what else did she say? Tell us all she said.

Mr. Smith. She said, There was a Man stood below, and she heard two Shrieks, and the Man did say, Here is a Razor; and a Woman came out, or one in Woman's Cloths, with white Head-cloths. Mr. Braddon asked if she see any Body take it up, and she said, no; but she heard a Man say, here is the Razor, and she saw a Woman come out.

L. C. J. You are sure that is all you heard her say?

Mr. Smith. I think so.

L. C. J. Recollect your self, pray good Mr. Smith.

Mr. Smith. I do not know that I heard any thing else.

L. C. J. Pray read his Information.

Cl. of Cr. Here is *William Smith* subscribed.

Mr. Smith. Mr. Braddon writ down what the Girl said, and we did read it over all, and then set our Hands to it.

L. C. J. Well, Sir, Read the Information then.

Cl. of Cr. Reads the Information as before—

L. C. J. You hear what you have affirmed in this Paper, that the Girl said; you have forgot in your Evidence now this long Business about the Soldier.

Mr. Smith. My Lord, I have told all I did remember.

L. C. J. Why, you have set your Hand to it.

Mr. Smith. I did read it over, and it was nothing but what the Girl said, I am sure.

L. C. J. Where do you live?

Mr. Smith. In *Throgmorton-street*.

L. C. J. What Trade?

Mr. Smith. A Barber.

L. C. J. A notable Shaver upon my Word! a special Fellow I'll warrant him!

Mr. Braddon. Call Mrs. *Mewx* [*Who appeared and was Sworn.*]

Pray what Day was it you went from *London* to *Barkshire*?

Mrs. *Mewx*. The Day before my Lord *Russel* was tried.

Mr. Braddon. What Expression did you hear from a Gentleman in the Coach?

L. C. J. We must not suffer such a Question to be asked, that is not Evidence.

Mr. Braddon. My Lord, I ask the Question in general Terms, what she heard such a Day?

L. C. J. Does she know any Thing of her own Knowledge?

Mr. Braddon. She can tell what she heard, my Lord.

L. C. J. 'Tis no Evidence.

Mr. Braddon. Will your Lordship please to hear what she says.

L. C. J. No, I will not hear what I should not hear; let her speak what she knows.

Mr. Braddon. She knows this, that a Woman told her—

L. C. J. Ask your Counsel, whether that be Evidence. If you will not be satisfied with what I say, ask them.

Mr. Wallop. She proves a Report.

L. C. J. I ask it of you, Mr. Wallop; is what another said to her, Evidence in this Case?

Mr. Wallop. My Lord, if really there was such a Report—

L. C. J. Is that Evidence?

Mr. Wallop. 'Tis Evidence there was such a Talk, and that is Evidence of the probability of the Thing.

L. C. J. I'll leave it to your self, if you as a Lawyer say 'tis Evidence, we will hear it, because you say so; but I believe you, nor no body else will offer to say any such thing.

Mr. Wallop. My Lord, we lay it before the Court, as part of the Ground upon which we went, in our being concerned in this Business.

L. C. J. Is that a Justification of Mr. Braddon?

Mr. Wallop. Upon these Probabilities he engaged in this Matter, and to prove this Report, he brings this Gentlewoman to tell what she heard.

L. C. J. Why, is what the Woman told her,

Evidence? She reported a Report to me, can that be Evidence?

Mr. Wallop. My Lord, with Submission, we think it justifies Mr. Braddon, that he went upon these grounds.

L. C. J. Where is the Woman that told her? Why is not she brought?

Mr. Wallop. They say, she is so big with Child she can't come.

L. C. J. Why, if that Woman were here herself, if she did say it, and would not Swear it, we could not hear her; how then can her saying be Evidence before us? I wonder to hear any Man that wears a Gown, to make a doubt of it.

Mr. Braddon. I desire *Jeremy Burgis* may be called. [*Who appeared and was Sworn.*]

Mr. Wallop. What can you say about the Report in the Country?

Mr. Burgis. I was at *Frome* about my Business on a *Friday*—

L. C. J. Why, Gentlemen, what are we doing all this time? Do you think we sit here for nothing? Is not this the first time that a Report was given as Evidence in *Westminster-Hall*?

Mr. Freke. My Lord, We are necessitated to use this Sort of Evidence.

L. C. J. I tell you, Sir, It is no Evidence, be necessitated what you will.

Mr. Freke. My Lord, They have produced this Man's Letter that was taken about Mr. Braddon, that is produced in Evidence against him: Now this Man comes to give an Account how he came to write that Letter.

L. C. J. But he shall not give an Account by a Report in the Country.

Mr. Burgis. It was written to the Landlord of the House where I quartered, that he might give notice to Mr. Braddon of a Discourse that passed in his House that *Friday*, of a Report that was there concerning the Earl of *Essex's* murdering himself.

Mr. At. Gen. Had the Master of the House told you any such thing?

Mr. Burgis. No, he had not told me so; but I heard it in the House.

L. C. J. Of whom did you hear it? Who told you so?

Mr. Burgis. Sir, I was a Stranger there.

L. C. J. They can never tell any of them, who it was first reported it, nor particularly who told it them; but it was reported by some body, we don't know who.

Mr. Beech. Under Favour, my Lord, I rode directly to the Post-Master at *Frome*, whither this Letter was directed; and by the way, there is a Remark in the Letter of an alteration of the Figure, 'tis interlined the 13th; it was not so before, to hit the Day exactly of the murder of the Earl of *Essex*; and when I came thither, the Post-Master told me, There was no such Report in his House, nor in the whole Town at that Time.

L. C. J. I desire to know, upon your Oath, who told you that Report?

Mr. Beech. Sir, I do not know; I was a Stranger there.

L. C. J. Was it a Man or a Woman?

Mr. Burgis. He did not tell his Discourse to me.

L. C. J. But thou could'st guess by the Habit, whether it was a Man or Woman.

Mr.

Mr. *Burgis*. It was a Man.

L. C. *J*. Who did he tell it to?

Mr. *Burgis*. The Company in the House.

Mr. *At. Gen*. Pray, let him tell how Mr. *Braddon* came to speak to him about it.

L. C. *J*. Shew him that Letter. Look upon it, Friend; Is that your Hand?

Mr. *Burgis*. Yes, it is.

L. C. *J*. When did you put that Figure of 13 in? There was another Figure before, and that is blotted out.

Mr. *Burgis*. It was a Mistake in me, I mistook the Day, and I corrected it.

L. C. *J*. When did you correct it? How soon did you correct it?

Mr. *Burgis*. Presently.

L. C. *J*. What Day had you put in first?

Mr. *Burgis*. The 6th Day.

L. C. *J*. Ay, but that was not the right Day, Man.

Mr. *Burgis*. It was a great while after, and I did not expect to be brought in question for any such thing.

L. C. *J*. How long after?

Mr. *Burgis*. Six Weeks.

L. C. *J*. How camest thou to recollect, to make it from the 6th to the 13th, six Weeks after?

Mr. *Burgis*. Mr. *Braddon* was there when I had writ it.

L. C. *J*. And he corrected it, did he?

Mr. *Burgis*. He said, that that was not the Day of my Lord's Death.

L. C. *J*. You had written it the 6th, and he put you in mind of the 13th?

Mr. *Burgis*. Yes.

Mr. *At. Gen*. And he was to be the Messenger that carried the Letter himself?

Mr. *Burgis*. Yes, he was.

Mr. *Sol. Gen*. That is very well. I suppose, Gentlemen, you hear what he says, He says, Mr. *Braddon* was there, and told him that was not the Day.

L. C. *J*. Ay, Mr. *Braddon* said, You have mistaken the time, that will not do it, it must be the 13th.

Mr. *At. Gen*. Pray let me know one thing, Who recommended *Braddon* to you?

Mr. *Burgis*. Indeed I can't tell.

L. C. *J*. Who did he say he came to you from? Tell the Truth, upon your Oath.

Mr. *Burgis*. Sir, I was at work at my Business, and knew nothing of his Coming.

L. C. *J*. What Trade art thou?

Mr. *Burgis*. A Pinmaker.

L. C. *J*. Where do you live?

Mr. *Burgis*. At *Marleborough*.

L. C. *J*. How came Mr. *Braddon* and you acquainted?

Mr. *Burgis*. Sir, I will tell you; I was at work at my Trade, and there came down a Gentleman that lives in our Town to me, and asked me —

L. C. *J*. What is that Gentleman's Name?

Mr. *Burgis*. Mr. *Butcher*.

L. C. *J*. What is that *Butcher*?

Mr. *Burgis*. A Gentleman that lives in *Marleborough*, a *Grazier* by Trade. He came and told me, There was a Gentleman come from *London*, about the Business now in Dispute —

L. C. *J*. Prithee, what was spoke of?

Mr. *Burgis*. It was concerning the Earl of

Essex's Death. And he desired me to speak what I heard at such a time.

L. C. *J*. Who had you told what you heard first to? You must have told it to some body; who did you tell it to first?

Mr. *Burgis*. Indeed I can't directly say who I did tell it to.

L. C. *J*. Had you told that Gentleman of your Town, *Butcher*, as you call him?

Mr. *Burgis*. No, not that I know of.

L. C. *J*. Well, when he came to you, what then?

Mr. *Burgis*. He desired me to go to Mr. *Braddon* to the *White Hart*. And so I went up to the *White Hart*; and when I came to Mr. *Braddon*, I told him what I had heard at *Frome*.

L. C. *J*. And what then?

Mr. *Burgis*. Then Mr. *Braddon* asked me the same Night, Whether I would go down with him to *Frome*, and I could not; so then he desired me to write a Letter to recommend him to the House where I had heard it.

Mr. *Sol. Gen*. And you did write that Letter?

Mr. *Burgis*. Yes, I did so.

Mr. *At. Gen*. Your Lordship observes, this House was the Post-house, to be sure to have it spread in Publick Places.

Mr. *Sol. Gen*. Did you tell *Butcher* of your knowledge, before he carried you to *Braddon*?

Mr. *Burgis*. Yes, Sir, I did.

Mr. *Sol. Gen*. When?

Mr. *Burgis*. Then, at that time.

Mr. *Sol. Gen*. Did he ask you of your Knowledge, or did you tell him voluntarily?

Mr. *Burgis*. He asked me if I remember'd any such thing as I had spoken?

Mr. *Sol. Gen*. Why had you spoke of it before?

Mr. *Burgis*. Yes, I had.

Mr. *Sol. Gen*. Did he tell you upon whose Recommendation he came to you?

Mr. *Burgis*. I do not know upon whose Recommendation he came.

L. C. *J*. When you writ this Letter, did he dictate it to you, or did you write it of your self?

Mr. *Burgis*. I writ it of my self.

L. C. *J*. Did he tell you what you should write?

Mr. *Burgis*. I shewed him what I had written.

L. C. *J*. And when you writ it, of your self you put in the 6th day?

Mr. *Burgis*. Yes, I did so.

L. C. *J*. What did he say then?

Mr. *Burgis*. Mr. *Braddon* said, it was the 13th day.

Mr. *Sol. Gen*. Why did you shew *Braddon* your Letter after you had written it?

Mr. *Burgis*. He came to my House before I had sealed it.

L. C. *J*. But why did you shew him the Letter?

Mr. *Burgis*. He desired a Letter to recommend him to that Man at whose House I heard it.

Mr. *Sol. Gen*. What was he to be recommended to him for?

Mr. *Burgis*. It was to desire him to enquire, who brought the News first to Town.

Mr. *Sol. Gen*. You say, he desired a Letter of Recommendation?

Mr. *Burgis*. Yes, it was to recommend him to that Man.

Mr. *Sol. Gen*. That you may not be in a Mistake, pray recollect your self; for there is not one Word of Recommendation in the Letter.

Tell the true Reason, why you shewed him the Letter?

Mr. *Burgis*. I can't tell any other, but only he came before I had sealed it.

Mr. *Sol. Gen.* Did he desire to see it?

Mr. *Burgis*. No, but the Letter lay writ upon the Table.

Mr. *Sol. Gen.* Was the Master of the Post-house at *Frome* present, when that Report you talk of was made?

Mr. *Burgis*. I cannot rightly say, whether he was or no.

L. C. J. How comest thou to put it in thus? This bears Date a pretty while ago, *Marleborough*, Aug. 21. and that was a good distance of Time from that Report that thou talkest of: How comest thou then to say, *These are to desire you to call to mind, That I was at Frome such a time, and heard such a Report*: If he was not there, why should he call to mind? What did'st thou mean by that calling to mind?

Mr. *Burgis*. I would have had him called to mind my being at his House at that time.

L. C. J. But if he was not there, why did'st thou ask him to call to mind that Report?

Mr. *Burgis*. He might hear of it from some other at that time, tho' he might not hear it in that Company where I was.

Mr. *Sol. Gen.* There is a Riddle in it, if we could but solve it.

L. C. J. No, no, Mr. Solicitor, the Riddle is unfolded; 'tis a plain Contrivance.

Mr. *At. Gen.* Pray from whom did he tell you he was recommended?

Mr. *Recorder*. How came you to talk so to a Stranger, Sir, whom you never see before, about such a Business?

Mr. *Burgis*. He was recommended to me by Mr. *Butcher*, as I told you, who carried me to him.

Mr. *At. Gen.* But who, as *Braddon*, or *Butcher* told you, did recommend him first to come down thither to you?

L. C. J. Upon your Oath, Sir, who did *Butcher* tell you he came from?

Mr. *Burgis*. I have forgotten, Sir; I do not remember.

Mr. *Recorder*. Was it not a Non-conformist Parson, Sir, upon your Oath?

Mr. *Burgis*. Sir, I cannot remember.

Mr. *At. Gen.* Mr. *Beech*, Do you know any particular Person that *Braddon* said he came recommended from?

Mr. *Beech*. I can tell what Account *Braddon* gave of his Journey himself: He said, he had a Letter that came particularly from this Man to *London*, to bring him down into the *West*: Said I, when came you out of *London*? I came on *Thursday*, said he: Where did you lodge a *Thursday* Night? At *Ockingham*? Said I, That is not your way to *Marleborough*: Where did you lie the next Night? He told me, at one *Venables*; and the next Night at *Salisbury*, I think.

L. C. J. Did *Braddon* tell you he had a Letter from that Man?

Mr. *Beech*. He said a Letter from that Man brought him down into the *West*.

L. C. J. *Burgis*, Did you send him e're a Letter?

Mr. *Burgis*. No, I did not.

Mr. *Beech*. He said he came down purposely upon this Report.

Mr. *At. Gen.* What said the Post-master to you, Mr. *Beech*?

Mr. *Beech*. If you please to give me leave to speak, I'll tell you: I did desire, that Mr. *Braddon* might have no Pen and Ink, and presently I rid away to *Frome*, to this Post-master's House, and spake with the Post-master, and all his Family: We then examined them all, and there was no such Report in that Town till the Sunday after.

Mr. *Sol. Gen.* He was perswaded, sure, all People would say just as he would have them.

Mr. *Thompson*. Well, Mr. *Braddon*, Who do you call next?

Mr. *Sol. Gen.* Nay, I desire this Man may go on; for methinks he mends e'ery Step he goes.

Mr. *Braddon*. Mr. *Burgis*, Do you remember how it was that you came to recollect your self, and to know it was the 13th, and not the 6th?

L. C. J. He says, you told him.

Mr. *Braddon*. Pray, Sir, remember your self, whether you did not say yourself, you remember'd the true time; for you came from *Frome* to *Marleborough* on the *Saturday* Night, and then you heard there the Earl of *Essex* had cut his Throat the Day before; and when they told you so, you cried out, How can that be? It must be done before; for yesterday I heard it at *Frome* before 5 of the Clock.

Mr. *Just. Withins*. Did not Mr. *Braddon* himself tell you, you had mistaken the Day?

Mr. *Braddon*. Sir, It was from this, he told this whole Story that I just now repeated, that the *Saturday* Night he was told, that the Earl had cut his Throat, and replied to them, that he had heard at *Frome*, the Day before, that he was murdered, and then I said, that must be the 13th.

L. C. J. How came you to tell that Man, you had a Letter from *Burgis*?

Mr. *Braddon*. No, my Lord, I did not tell him any such thing.

L. C. J. Mr. *Beech*, Did not he tell you he had a Letter from *Burgis*?

Mr. *Beech*. He told me he came down upon the Information of this *Burgis*.

L. C. J. And he swears he never saw him before, nor never writ to him.

Mr. *Braddon*. You ask me, whether I had received any Letter from this *Burgis*. I told you, I had a Letter of Recommendation to Mr. *Butcher*, thinking he had been the Person that had reported it, and Mr. *Butcher* went to this Person and brought him to me, and he told me what he heard.

Mr. *Beech*. I never heard of the Name of *Butcher* till now he mentioned it.

Mr. *Braddon*. My Lord, I will call no more Witnesses.

Mr. *At. Gen.* Your Lordship and the Jury observe, I suppose, his confident Behaviour.

L. C. J. Ay, He is no more concerned at it, than if he had been doing the most justifiable thing in the World.

Mr. *Thompson*. My Lord, I have but one Word to add on the behalf of Mr. *Speke*, who is likewise joyned in this Information. Truly, Mr. *Speke*, is a young Gentleman of some Quality, his Father is of very good Quality, Mr. *Braddon* was of his Acquaintance, and being his Acquaintance

Acquaintance, and thus concerned, as you have heard in the Prosecution of this Business; he hearing of these Reports, and resolving to go down into the Country about it, desired Mr. Speke to lend him his Man and his Saddle, for he was going into the Country. Mr. Speke inquires what his Business was, thereupon he told him it was to enquire about some Persons that had reported something relating to the Earl of Essex's Death. And being to go into the Country where Mr. Speke, who was that Country-man, had some Acquaintance, upon this he desires him to write him a Letter, to recommend him to some Persons of Credit. He did write that Letter, but was never concerned in this Business, either before or after; and this is the whole of the Case, as to this Mr. Speke.

Mr. Speke. My Lord; I desire I may speak one Word for my self.

L. C. J. Ay, say what you will.

Mr. Speke. My Lord, One Day, sometime after Mr. Braddon had concerned himself in this Thing, I met him casually and accidentally, and he was telling me somewhat of the Matter. And after this one Night as I was going to Bed between 10 and 11 at Night, some Body knocked hard at my Door. My Man went to the Door, and opened the Door, and Mr. Braddon comes in, and tells me, he desired the Favour of me, that I would lend him my Man, and lend him my Saddle. He being my Acquaintance, and I knowing him, I was willing to do him that Kindness; and asking him, whither he went? He told me he was going down to *Marlborough*, and he told me he had heard that my Lord of Essex's Death was discoursed of there in the Country, that Day it was done; besides other Things of a Boy, and of a Girl, that could prove such and such Things. Said I, this is a Thing of great Concernment, and I would have you take good Advice in it, before you proceed, because otherwise it may be a Reflection upon the Government; therefore, said I, I would not have you proceed to concern your self further in this Thing, but take the Advice and Judgment of some prudent and discreet Person or other, that you may do nothing but what is according to Law. I was never at all concerned, nor knew any thing of the Business, but what I heard from Mr. Braddon at first. And before he came into my Chamber, I knew nothing of his coming; and I writ this Letter, because he should not concern himself without the Advice of some Person, that I thought was able to advise him, that he might do nothing that might bring him within the Danger of the Law, or reflect upon the Government.

Mr. Just. Holloway. And you advised him to go by the Name of *Johnson*, not *Braddon*?

Mr. Speke. It was late at Night, and I had been at the Tavern drinking a Bottle of Wine or two with a Friend, and might not so well consider what I did write.

L. C. J. But Mr. Speke, You hear what you writ, *We row again Stream*, and we thank you for the Countenance you have given to Us. And here is a worthy Gentleman, Mr. Braddon, who is a very proper Man for the Design he has in Hand, and none better than he, and when you are with him, you may discourse freely; and he is a true Man, and a stout Man, and fit to be trusted; but he must not go by the Name of *Braddon*, but of *Johnson*.

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Mr. Speke. My Lord, the Reason was, because he was not personally known to Sir Robert Atkyns; and for him to go down directly, and to have it reported, one of such a Name came to Sir Robert Atkyns, who was a Man that had retired himself into the Countrey from all Publick Concern, I thought not so well.

L. C. J. Why did you trouble him, if he was so retired?

Mr. Speke. I had particular Concerns of my own, that Sir Robert Atkyns was pleased to concern himself for me, and I knew him a prudent Man, that would advise him nothing but according to Law.

L. C. J. You should not have disturbed him in his Privacies, Mr. Speke.

Mr. Speke. My Lord, I never was any other way concerned, I knew nothing of the Matter.

L. C. J. You had done well if you had not concerned your self about it at all.

Mr. Sol. Gen. Most here do fear, you say, That he will be either stabbed or knocked on the Head, and therefore you lent him your Man to guard him, I suppose.

Mr. Speke. He desired me to lend him my Man, because he did not know the way so well himself.

Mr. Sol. Gen. But why was there such Fear about him?

Mr. Speke. I know nothing at all of the Matter, but what I had from Mr. Braddon.

L. C. J. Ay, we live in such a stabbing Age, that such an extraordinary Gentleman as Mr. Braddon, that is such an extraordinary good Protestant, can't walk the Streets for fear of being murdered.

Mr. Speke. My Lord, I writ it at such a time of the Night, after I had been at the Tavern, that I knew not well what I writ.

Mr. Just. Withins. Mr. Speke, You see what a Sort of a Man he is, upon the Evidence that hath been given.

Mr. Speke. Truly, my Lord, I never knew any thing, but what I had from him.

Mr. Sol. Gen. But to make the Country believe, that there were such Endeavours here to stifle any Thing that might give light into the Murder of the Earl of Essex, there must be great Caution used to conceal his Name.

L. C. J. Yes, being such a vertuous Man, as Mr. Braddon, there was great need of all Circumspection and Care to preserve him. Why did not he get his Life-guard to keep him from the Danger that was thought so near him?

Mr. Sol. Gen. They had not raised them as yet, but he was contented at present with Mr. Speke's Man.

Mr. Speke. My Lord, I am wholly innocent in all this Matter.

L. C. J. Would to God you were Innocent. You are a Man of Quality, Mr. Speke, I know; I should be glad you were Innocent with all my Heart. But when Men forget their Studies and their own Business, and take upon them the Politicks without being called to it, That puts them into Frenzies, and then they take all Opportunities of shewing themselves Men of Zeal.

Mr. At. Gen. We need but read the Letter which Mr. Speke has owned, and you will say it is ten times worse than what Mr. Braddon has done.

L. C. J. Nay, I will not have Mr. Braddon topped upon for all that, I assure you.

Mr. At. Gen. My Lord, if you read it once again, you will find, that he therein owns it all, and pins the Basket upon himself.

L. C. J. Indeed, Mr. Attorney, I will not have such a Reflection put upon Mr. Braddon, That any Man should be a greater Actor in the Business than he.

Mr. Speke. My Lord, I writ it at Night after a Bottle of Wine, and other People may be mistaken, as well as I.

L. C. J. If some of these Gentlemen, that now and then think themselves better headed than others, and that are so extraordinarily concerned to preserve our Religion, but are generally much mistaken, were, and I observe their Mistakes, are always on the wrong Side. I wish you could have gone and recollected your self next Morning, Mr. Speke, and then the Mistake had been more pardonable.

Mr. Speke. I writ nothing as to matter of Fact, but what he told me, and I could hardly recollect it next Morning, when he was gone away.

Mr. Recorder. My Lord, We shall prove he has bragged, that is, Mr. Braddon, That he was the only inventor of the Protestant Flails, an Instrument you have heard of, Gentlemen, and for what Use designed.

L. C. J. But, Brother Fenner; that is nothing to the Purpose now, what he was before this Business, or what he was after. You are, Gentlemen, to Try him upon this Indictment only, and are not to mind any other Thing at all.

Then Mr. Speke's Letter was read again.

Mr. At. Gen. You see, Gentlemen, in what Strain it runs, *We and We*, He makes himself a considerable Party in the Design.

L. C. J. Ay, *We* thank you for your Kindness towards *Us*, and *We* hope to bring on the Tryal of the Earl of *Essex*, before they can any of those in the *Tower*.

Mr. Speke. He told me, Sir Henry Capell said it was a Thing too great for him to meddle with. And I knew nothing, but what I had from him.

L. C. J. He was a Man of Integrity, and could tell you nothing but what was true, Mr. Speke.

Mr. Wallop. My Lord, All I can say for Mr. Speke, is this, He did believe Mr. Braddon's Grounds, as he told him, were probable to go upon, but he knew nothing himself, and concerned himself no further. I hope the Jury will consider of it, that there is no Contrivance proved against him.

L. C. J. Nay, Mr. Wallop, though we interrupted you in making Remarks upon every Witness, yet now make what Remarks upon what hath been said that you will.

Mr. Wallop. My Lord, I shall leave it to your Lordship and the Jury, how far they think the Defendant Guilty of this Information.

Mr. At. Gen. My Lord, We have indeed given as great an Evidence as ever was given I think of any Offence. But to clear up the Matter, that it was impossible for any Man, unless the most maliciously and villanously inclined against the Government, and Peace of the Kingdom,

that can be, to imagine such a Thing, much less spread such a Report, we will call you two or three Witnesses to prove, that the Earl of *Essex* murdered himself.

L. C. J. 'Tis necessary, Mr. Attorney, I think, for you so to do, to satisfy the World, though to a discerning Eye there is enough given from the Evidence this Day, to make it appear to be a most malicious and scandalous Contrivance, to hawk about for every idle Rumour, to pick up Children of such tender Years, and make them Swear any thing to serve a Turn.

Mr. At. Gen. My Lord, We do not call these Witnesses, as if there were any Doubt of it in the World.

L. C. J. But we live in an Age, when Truth passes for nothing in the World, and Swearing and Forswearing is taken for a Thing of course. Had his Zeal been half so much for Truth as it was for Falshood, it had been a commendable Zeal. But when Men are so zealous and fierce for such vile Things as these are, 'tis time of my Word for the Government to interpose.

Mr. At. Gen. 'Tis not to satisfy the Court nor the Jury, who I believe are all of them already sufficiently satisfied, but 'tis to satisfy the World, that may have entertained some Prejudices from this Conspiracy. Call Mr. Bomeney in.

Mr. Sol. Gen. Not as if there were any doubt, whether Mr. Braddon were the malicious Inventor of this Report at the beginning, and went down into the Countrey to spread it. The Evidence has been full, and by his own Management of his Defence, he has proved it himself, and seems by his Confidence to justify it. But we shall, to give the World some Satisfaction, call some that waited upon the Earl in the *Tower*, and others that saw him when dead, that will give a Confutation to anything that could be supposed, as if my Lord of *Essex* had not murdered himself.

Then Bomeney was Sworn.

L. C. J. Did you wait upon this unfortunate Gentleman, my Lord of *Essex*?

Mr. Bomeney. Yes, my Lord.

L. C. J. Well, what do you know of his Death?

Mr. Bomeney. I went with him from *White Hall*, and I stayed with him all the while he was in the *Tower*.

L. C. J. How came he by that unhappy End, pray?

Mr. Bomeney. When we were at his Lodging, my Lord used to call for a Pen-knife to cut his Nails of his Hands and Feet, and he then had long Nails, and said he to me, give me your Pen-knife to cut my Nails; said I, my Lord, I have none, I came in haste, but I will send to Morrow for one; and therefore I sent our Footman, one *William Turner*; to whom I gave a little Note for Provisions, and among other Things which I writ Directions to the Steward to send; there was a little Line; *Pray send a Pen-knife for my Lord.* He brought some Provisions, but he did not bring a Pen-knife on the *Thursday*, because he said he had none, but he would send one the morrow after; I sent *William Turner*, the Morning after very early, and gave him another little Note for Provisions; and,

and, among other Things, I writ in the Note, *Do not forget the Pen knife for my Lord.* He went, and when he was in the way, my Lord sent the Warder to me, to call me. I came to my Lord, and my Lord asked, Is the Footman come? Has he brought the Pen-knife? No, my Lord, said I, but I hope he will not stay long, because I sent him early. Then I was turning to come down from the Chamber, and I saw my Lord walking in the Room, and picking of his Nails with the Pen-knife. —

L. C. J. How? With a Pen-knife?

Mr. Bomeney. No, with the Razor that I gave him. For I went to my Lord, and when my Lord asked me, if I had gotten him a Pen-knife. I said, the Footman was not come, but I hoped it would come immediately, because I sent him early. And I was turning from the Chamber, thinking I had done with my Lord, and my Lord called me again, Hark, you, *Bomeney*, said he, I can do it with one of your Razors. My Lord, said I, I will fetch one, so I went into my Clofet and fetched one. And I went to my Lord, and when he had it, he did as if he picked his Nails with it, and was walking in the Chamber. I looked a little while upon him, and turned out of the Chamber into the Passage, where I talked with the Warder, *Russel* his Name was; and when I looked out of the Window, His Majesty was in the Tower, and there was a great Bustle in the Street; and when I had talked a little while with the Warder, I went down into my Clofet again, and at the same time that I was in my Clofet, there came the Footman, and one with him, that brought the Provisions, and he gave me the Pen-knife, and gave me a little Note, that he had brought with the Provisions, which, he said, *Mr. Billingsly*, that was our Steward, bid me to shew that to my Lord. I took it, and went up to shew it to my Lord; I found no body in my Lord's Chamber, There was a Clofet there, in which was a Close-Stool, and that I found shut, and thinking my Lord was there, I would not disturb my Lord, but came down again, and stayed a little while, in so much as I thought my Lord by that time might have been come out. I went up again, and found no body in the Chamber, but the Clofet Door shut still, I went against the Door, and knocked three times, and said, my Lord, my Lord, and no body answered: Then I looked through the chink of the Door, between the Door and the Wall, and I could see Blood, and a little part of the Razor. Then I called to the Warder, and the People of the House, and they came up and found him there.

Mr. At. Gen. Had you much ado to open the Door, or could you open the Door easily?

Mr. Bomeney. No, the Door could not be opened easily, I know not how they opened the Door, but I think *Russel* the Warder, when he came up, pushed at the Door, but could not open it very far, because my Lord's Foot was against the Door, and so they had much ado to open the Door.

Mr. At. Gen. Which way does the Door open, out of the Room, or into the Room?

Mr. Bomeney. Inward, into the Room.

L. C. J. And so his Feet being against it, it could not easily be opened.

Mr. At. Gen. How big is the Clofet?

Mr. Bomeney. A very little Clofet, I believe no

wider than that; and the length of a Man, and a Close-Stool at the upper end would fill it up. My Lord lay all along on his Side.

Mr. At. Gen. Did you observe your Lord melancholy, *Mr. Bomeney*?

Mr. Bomeney. Yes, he was melancholy. But we took no notice of it, for he was used to be so, and we had no reason to suspect any thing more than ordinary.

Mr. At. Gen. Did you find the Razor?

Mr. Bomeney. Yes, it lay by him.

Mr. At. Gen. What became of the Razor?

Mr. Bomeney. The Coroner's Jury had it.

L. C. J. Was there any Window in that Room, where the Close-Stool was?

Mr. Bomeney. Yes, there was a Window.

L. C. J. Was there a Casement to that Window?

Mr. Bomeney. Yes, I think there might.

Mr. Just. Withins. Which way does that Window look?

Mr. Bomeney. I can't very well remember, my Lord.

Mr. Just. Withins. Which way do you think?

Mr. Bomeney. I believe it is upon a Yard.

L. C. J. He says, he does not well know. But, *Mr. Bomeney*, you saw *Mr. Russel* the Warder in the same Place, as you came up again, that you left him in when you went down?

Mr. Bomeney. My Lord, I went down but a little while.

Mr. Sol. Gen. Where did you find *Russel* the Warder, when you came up again?

Mr. Bomeney. At the Guard.

Mr. Sol. Gen. Did you find him in the same Posture, when you went up again, that you left him when you went down?

Mr. Bomeney. Yes.

Mr. Sol. Gen. Did you hear of any body that went up else?

Mr. Bomeney. No, my Lord.

Mr. Sol. Gen. Then we will call *Mr. Russel* the Warder he speaks of. *[Who was Sworn.]*

Mr. At. Gen. Pray will you give my Lord an Account at that Time where you were, and what was done.

Mr. Russel. I was in the Chamber next opposite against my Lord's Chamber, there is but a little step betwixt the Doors, the Stairs come up betwixt the two Doors, no body could pass backwards or forwards, but I must see them; for I was then Waiter at that time, and stood upon the Guard; and my Lord asked *Mr. Bomeney*, Whether the Pen-knife was come; and he told my Lord, No. Then, says he, lend me your Razor, that will do it. And my Lord took the Razor in his Hand, and the Door was open, and he went two or three Turns in the Room, with the Razor so. This I saw, the Door being open, as I stood in the Passage. My Lord, by and by *Mr. Bomeney* goes down, and my Lord shut the Door to him, and *Mr. Bomeney* staid below a little while, and afterwards comes up again. And my Lord was gone to the Clofet to Stool, as he supposed. So away he comes down again, and staid about a quarter of an Hour, or thereabouts. And this I see all my self, my Lord.

L. C. J. Had any Person been there, from the time *Bomeney* went down, to the time he came up again?

Mr. Russel. No, my Lord, there was no body went

went up or down all the time, but *Bomeney*. He came up, and seeing my Lord was not come out of his Closet (this I did stand and hear) so he puts by the Hanging, and looks in, and sees my Lord in his Blood, lying in the Closet; and he makes an Oration, a great Noise, with that I stepped two or three Steps, hearing him make such an Oration, and I found the Key was on the out-side of the Door, and I opened the Door, and saw him lie in his Blood.

L. C. J. Could you open the Door with ease?

Mr. Russel. Yes, I could put it a little way open, and there saw him.

L. C. J. But you could not put it quite open?

Mr. Russel. No, for his Legs lay against the Door.

L. C. J. Was it a narrow Closet?

Mr. Russel. Yes, a very narrow Closet.

L. C. J. In what Posture did my Lord lie?

Mr. Russel. He lay all along on one Side.

L. C. J. Where lay the Razor?

Mr. Russel. By him. But I did not take so much notice of the Razor, for I was surprized with the sight.

Mr. Just. Holloway. Was there any Window in the Closet?

Mr. Russel. Yes, that looks into Captain *Hawley's* Yard. And the Window is quite Northward.

L. C. J. Which way does that Window look?

Mr. Russel. Quite the other way, into the Back-yard.

L. C. J. Then there is no Way out, nor Light, nor Casement out, into the Fore-yard?

Mr. Russel. No, my Lord, 'tis backward, and 'tis Paled in, only into the House there is a Door.

Mr. At. Gen. Was there any Door out of the Street, that way?

Mr. Russel. No, there is one Door that goes out from the Entry to go into the Yard.

L. C. J. Has any body else access to come to the Yard, but what must come through *Hawley's* House?

Mr. Russel. No, no body.

Mr. Sol. Gen. We will call Captain *Hawley* himself.

L. C. J. Warder, Do you remember there was any Coach that stood there?

Mr. Russel. No, there was no such thing.

L. C. J. I ask you for this reason, because here was a Girl that spake of a Coach, that came through the House I suppose, and so through the Entry out of that Door into the Yard.

Mr. At. Gen. Where is *Lloyd* the Soldier? For, my Lord, as there was a Warder above, so there was a Soldier that stood at the Door below. And while he staid there, there could not any one come in, nor near, but he must observe them.

Mr. Sol. Gen. Pray, my Lord, be pleased to ask *Mr. Bomeney*, how long he lived with my Lord.

L. C. J. How long had you lived with my Lord of *Essex*?

Mr. Bomeney. Six Years.

Mr. Just. Withins. You waited on him in his Chamber, I suppose?

Mr. Bomeney. Yes, in the Nature of his *Valet de Chambre*.

Then *Lloyd* was Sworn.

Mr. Recorder. Hark you, *Lloyd*, you were the

Sentinel. Give an Account where you stood that Day that my Lord of *Essex* murdered himself?

Lloyd. At my Lord's Door.

Mr. At. Gen. Which Door?

Lloyd. At my Lord of *Essex's* Door.

Mr. At. Gen. Were you above Stairs, or below at the Street Door?

Lloyd. Below at the Street Door.

Mr. Just. Withins. Did any body come into the House that Morning?

Lloyd. No body came in, all the while I stood there, that I knew of.

Mr. Just. Withins. Were you there at that time, when my Lord killed himself?

Lloyd. I was there when the noise was made of it above Stairs.

L. C. J. Did you see e're a Coach there?

Lloyd. Not so stand at the Door at all.

L. C. J. Did'st thou see e're a Coach in Captain *Hawley's* Back-yard?

Lloyd. No, no.

L. C. J. Why, could not the Coach go through the Door and the Entry into the Yard?

Mr. Sol. Gen. Had you seen my Lord of *Essex* that Morning?

Lloyd. Yes, he spake to me, and asked me, What a Clock it was?

Mr. Sol. Gen. Where was he?

Lloyd. At the Casement.

Mr. Sol. Gen. What did he say to you?

Lloyd. He said, Centry, What a Clock is it?

Mr. At. Gen. Did you see him, when my Lord *Russel* went by?

Lloyd. Yes, I saw him then.

Mr. At. Gen. How long after was the Cry of my Lord's having killed himself?

Lloyd. I believe, not half an Hour after.

Mr. At. Gen. Did any Maid go out of the House?

Lloyd. None at all.

L. C. J. What, not in a white Hood?

Lloyd. No.

L. C. J. Why did'st not thou call to the Maid to come and take up the Razor, that was thrown out of the Window of Captain *Hawley's* House?

Lloyd. There was no Razor at all thrown out, that I saw?

L. C. J. Did not you open the Pales for her to go in, and take up the Razor?

Lloyd. No.

L. C. J. Was there any other Soldier there besides you?

Lloyd. No.

L. C. J. Then you must be he that cried out, or no body?

Lloyd. I saw no Razor, nor did not cry out to any body.

Mr. Sol. Gen. Could you open the Pales? Is there a Door to the Street-side, out of the Pales into the Yard?

Lloyd. 'Tis no Yard, but there is a Door that all pass through that come to the House.

Mr. Sol. Gen. What else did my Lord of *Essex* say to you?

Lloyd. He only examined me, what a Clock it was? That was all.

Mr. At. Gen. My Lord, We have here two Women, who were the only Women that were in the House, they will tell you what they saw.

L. C. J.

L. C. J. Pray, Gentlemen, do not mispend your Time unnecessarily, because I am to sit this Afternoon at London.

Mr. At. Gen. My Lord, We will then only call Capt. Hawley. *[Who was Sworn.]*

Mr. Sol. Gen. Pray, Captain, tell what you know of this Matter?

Capt. Hawley. My Lord, All the Account I can give, is, That about 4 or 5 a Clock in the Morning, I went to open the Gates, that being the usual Hour to open the Gates. And I was at the Gate then, when a Warder came, and told me, my Lord of *Essex* had killed himself, and that was between 9 and 10 of the Clock. When I came into the House, I went up Stairs, and saw no body in the Room, nor no Blood; said I, to the Warder, What do you make a Fool of me? Here is nothing: Says one of the Warders, look into the Closet, I went to the Closet, and could not open the Door above this wideness, and I looked in, and saw the Razor all in Blood, and my Lord lay on his Arm in this fashion. I could not tell, whether he was dead or no, but I thought it was not my Business to stir him. Then my Lord Constable was ordered to come and Secure, and Examine all the Servants.

L. C. J. Pray, Captain Hawley, where does the Casement look into?

Capt. Hawley. The House, ever since I came to it, is just as it was; and the House having settled, the Casement won't open above thus far: and 'tis so low, and the Pales are 9 or 10 Foot high, that 'tis impossible for any one to throw any thing out of the Window 3 Foot hardly. It is one of the horridest Reports that ever was heard of, and the unlikelyest Thing, they cannot throw any thing out of the Window to be seen.

Mr. At. Gen. My Lord, I think it is not necessary to call any more Witnesses.

L. C. J. Have they any thing to say further, on the other Side?

Mr. Speke. I desire, my Lord, to call my Man.

L. C. J. Call your Man, for what Purpose?

Mr. Speke. My Lord, If your Lordship please, I will call my Man to prove, that I knew nothing of Mr. Braddon's coming to me.

Then Mr. Speke's Man was Sworn.

L. C. J. Ask him what you will?

Mr. Speke. Did you ever see Mr. Braddon with me?

Servant. Never but once, before that time he came to my Master's Chamber, which was the Night before he went out of Town; and when he came, after he had been there a little while, my Master ordered me to get me ready to go into the Country with him. And after I had been with him a little time, he got another to go with him, and sent me Home again.

Mr. Speke. I was going to Bed, was I not?

Servant. Yes, you was.

L. C. J. Have you done of both Sides?

Mr. Speke. Was it not a Surprize to me, when he came to me?

L. C. J. How does he know that?

Mr. Speke. I tell you, why, my Lord, I ask it; Because when I go out of Town, I always tell him to prepare himself.

Servant. It was a Surprize to me; I knew nothing of it.

L. C. J. Well, have you done now? Have you a mind to say any thing to the Jury, you that are of Counsel for the Defendants; or you, Mr. Braddon?

Mr. Braddon. No, I will say nothing.

L. C. J. Have you, Mr. Speke?

Mr. Speke. My Lord, I have proved it here; That I had no Hand in what I am accused of. It is put down in the Information, that I Conspired, with Mr. Braddon, to endeavour to procure false Witnesses. I have proved, I never had any Hand at all in any Thing of it. It was an accidental Thing, his coming to me; and it was a great Surprize to me, when he came; and I never concerned my self in it more, than the Writing of that Letter: And I had no ill intent in it; I did it not designedly; for I knew nothing of his coming; and I had not writ the Letter if he had not come to me. And 'tis plain, it was a Surprize, for I always give my Man notice, when I go out of Town, beforehand to prepare himself. I thought nothing at all of ill in the Letter: I writ it late at Night, when I had been with some Company at the Tavern. And he made me believe that to be True, which was not; I hope the Gentlemen of the Jury will consider that. I have nothing to say of the Thing, I did not concern my self in it any further at all, than writing the Letter, which I did not well know what I writ.

L. C. J. Well, have you any more to say, Mr. Speke?

Mr. Speke. No, my Lord.

L. C. J. Have you any more, Mr. Braddon?

Mr. Braddon. My Lord, I have only this to say for my self. It has not been proved directly, or indirectly, That I used any evil Arguments, to perswade these Witnesses to testify what was false; but I dealt with them with all the Candor, that any Person in the World could use; and used all the Caution that I could, to hinder them from speaking any thing that is false. There has been nothing proved of evil Practice used by me; and I desire the Gentlemen of the Jury to take no other notice of any Thing that has been, or shall be spoken, but what has been proved.

L. C. J. Gentlemen, of the Jury. The Evidence has been very long, that has been given both for and against the Persons, against whom this Information is exhibited. 'Tis an Information exhibited by the King's Attorney General, in His Majesty's Name, against *Lawrence Braddon*, and *Hugh Speke*. And the Information does set forth, That the late Earl of *Essex* murdered himself in the *Tower*, and that thereupon there was an Inquisition taken before the Coroner, that did find that he had so murdered himself, he being before that Time committed for High Treason, in Conspiring the Death of the King, and levying War to disturb the Government. And these Persons did render that Inquisition, as though it had been fraudulently and irregularly obtained; and also to breed ill Blood, and spread false Rumours among the King's Subjects, by endeavouring to perswade them to believe, That the Earl of *Essex* was murdered by some other Hand, and had not murdered himself, and had procured false Witnesses to testify some such Matter,

Matter, in order to the spreading about that false Rumour. This is the Substance of the Information. To this Information they have both pleaded, Not Guilty; and the Evidence, as I was telling you, has been somewhat long; but according to the best of my Memory, and for the assistance of yours, I will mind you of as many Things, as occur to me, that have been said against them, and what has been said on their Behalf, I mean so much of it, as is Evidence. For I must tell you, all Hear-says, and common Discourses of other Persons are not Evidence, and I will give you that Reason, that is sufficient to satisfy any Man, that is unbiass'd, That if in case the Person, that so told the Story had been here, if he had not told it upon Oath, you could not have believed that Person: Therefore, surely there is less Credit to be given to him, that tells a Tale out of another bodies Mouth. And I tell you this, because there have been great Allowances given, and ought to be when People are accused of such great and weighty Crimes; for these are monstrous Crimes that these Gentlemen are accused of; but 'tis you, that are to try, whether they are Guilty or not: Certainly there is scarce in Nature a greater Crime that can be committed, than this that is now before you; for I think Robbery, or any other such Felonies, are not such monstrous Crimes in their true real Weight, though in consideration of Law, in respect of Punishment they are greater; yet in Point of Crime, they are surely less, for to spread false Reports, in order to raise Sedition, Ill-will, Heart-burnings, and Jealousies in the King's Subjects against the Government, and to suborn Witnesses to that evil Purpose, is surely a much greater Crime than robbing on the High-way. Now, Gentlemen, 'tis not unknown to most of you, what Endeavours have been of late made, to possess the Minds of the King's Subjects, of great Injuries designed to be done them by the King, or His Authority: And in order to foment Differences and Misapprehensions between the King and his People, and among the People between one and another, all Arts have been used, to proscribe People that they are minded to expose. Those, they bear ill will to, must be called Papists, or Papists in Masquerade; but They and their Confederates are the Sober Party, the true Protestants, as if there were none Sober or True Protestants but such as are Factious and Troublesome in the Government. But by these Things they bring an Odium upon the Name of a Protestant, their Aim is, by distinguishing to divide us; whereas if they were Protestants in Truth, the Church of *England* Protestants, they would have another Behaviour, they would learn to obey, and submit to Authority, and not go buzzing from House to House, and spreading false Reports, *but study to be quiet, and do their own Business*. And though Mr. Braddon made use of the 5th Chap. of the *Acts*, to the Child, he would have done well to have taken notice of some other Parts of Scripture, that are as much Scripture as that, That enjoin Obedience and Submission to the Magistrate; and, being quiet and minding his own Business, it's odds, he had never come to that Trouble, he is now likely to meet with. But the Crime he is accused of, carries all the Venom and Baseness, the greatest Inveteracy against the Go-

vernment that ever any Case did, that I have met with. For its insinuated, That because the King and the Duke were walking in the *Tower*, that Day, and near that Time, when this unfortunate Thing happened, now it must be whispered, as though the King and the Duke had designed this Murder. How Base? How Devilish and Hellish a Design is this? But yet, this must be spread about, and endeavoured to be distilled into the Minds of the King's Subjects. But besides, Gentlemen, you are to consider, as was opened by the King's Counsel, to what this Thing tended; for in as much as there was an horrid bloody Conspiracy, to take away the Life of the King, and of his dear Brother, His Royal Highness the Duke of *York*. And forasmuch as several Persons have been duly executed for that Conspiracy, who were concerned along with this unfortunate Lord; (I cannot help the naming of it, though I am sorry for his Misfortune, for the Sake of that Honourable Family) but rather than he would abide his Tryal, God knows what other reason he had, but the probability of the Thing speaks it, he being conscious, the great Guilt he had contracted, in being concerned in such a Conspiracy, made him destroy himself. And 'tis easy to imagine, how far that might prevail upon him, it being done immediately after my Lord *Russel*, who was one of the Conspirators with him, was carried to his Tryal. It cannot be thought, but it was to prevent the Methods of Justice in his own particular Case. And, Gentlemen, there was *Digitus Dei* in it, and it is enough to satisfy all the World of the Conspiracy; though we live in an Age, wherein Men are apt to believe only on one Side, they can believe the greatest Lie, if it makes for the Advantage of their Party, but not the greatest Truth, if it thwarts their Interest.

But because Mr. *Attorney* has produced his Proofs, to manifest, that this Lord murdered himself, I will take notice a little of it, because it may have some good effect to undeceive some that have been imposed upon. Not for my own Satisfaction, I thank God I am satisfied, and so I believe are most honest Men: But that silly People may not be imposed upon by every busy Fellow for the future, that takes the liberty to run about and spread false News, and that Men may be aware of such Fellows, and may not be decoyed any more by such false Pretences; it was therefore fit that Evidence should be given of the Truth of the Fact, that that Gentleman did murder himself. And the Evidence is this.

Besides the Inquisition, which was taken upon the Oaths of several Persons of Quality (as you hear upon the reading their Names, several of them were Esquires, and Men of Note) 'tis here also proved by the Testimony of his Servant that attended him, how he came to this untimely End. And, Gentlemen, I would observe, 'tis Sworn by his Servant, one that had lived six Years with him, not an upstart, or a wandering Fellow, but one whose Integrity and Fidelity to my Lord, was confirmed by six Years Experience of his Service. Then here is the Warder that was at the Door, here's the Soldier, here's the Master of the House, who are all the Persons that probably can give any Account of the Matter, and they tell you positively

tively that no one did go up and down, but this *Frenchman*, who was his *Valet de Chambre*. And the Warder tells you, that he coming to the Door, and knocking at the Door, and hearing no one answer, did endeavour to open the Door, but it was so fast by my Lord's Feet, that he could open it but a little, and looking in, discerned Blood, and that made him make Acclamations, as the Warder calls it, Orations, which brought all the People in the House thither, and they gave the same Account that he does.

And 'tis likewise fit to be taken notice of, that the Window of this Closet looks into a private Yard, where no Strangers usually come, and where no Coach could come; and that the Pales were so high, that in case a Man were desirous to throw any thing out, it were impossible to cast it above three Foot. And if there could no Coach at all come into the Yard, as it is plain there could not (for there is no Door, save only a back House-door) then this must needs be a Lie, that was spread A, broad. And 'tis beyond all peradventure true that my Lord of *Essex* did murder himself.

Now to have so great a Truth as this to be perverted, and to reproach the Government with Falsities, is the most malicious Thing in the World. If in case the Law has made it Penal for any Man to scandalize any one private Person as it has; and if it be by Law, much more Penal to scandalize a Noble Man: How much more ought it to be, when the King and the whole Government is thus scandalized?

Now to come to the Fact, as near as I can recollect, I will give you an Account of what Evidence has been given of the one Side and of the other. But this I thought fit to premise, because there will some Circumstances fall out fit to be taken notice of in the Evidence, especially about the Window in Captain *Hawley's* Yard and House, which may be cleared this way.

In the first Part of the Evidence for the King, they call a Witness to prove the Earl of *Essex's* Commitment, which is Part of the Inducement in the Information.

But for the Information it self, there is this Evidence. First, *Evans* he comes and tells you, how that he had heard at the *Custom House*, from *Edwards*, the Father of this Boy, as though there had been a Report came to him from Home, at Ten a Clock that Morning my Lord *Essex* cut his Throat, of a Razor thrown out of my Lord of *Essex's* Window; That he came to him in the Afternoon again, and in the Afternoon told him, He had examined the Matter further, and his Boy confirmed the Truth of it. He says, That after this, Mr. *Braddon* and another Man, one Mr. *Hatsell*, if I am not mistaken in his Name, came to the Place where he was in *Essex*, and there they had some Discourse about my Lord of *Essex's* Death, and there *Hatsell* took out of his Pocket a printed Copy of the Inquisition; and Mr. *Braddon* was then in the Room, but he says, he thinks Mr. *Braddon* at that time took no manner of notice of it, but walked about the Room, but he says, the Inquisition was read while he was in the Room, and *Evans* said something about the Report he had heard, which did seem to contradict that Inquisition. But some time after, he says, That he being at the Coffee-house, *Braddon* and *Edwards* came to him into the Coffee-House,

and there they began to talk; *Edwards* said, that *Braddon* had been with his Child to examine him, to bear Testimony about flinging the Razor out at Window. He was very full of the Word [Matter] and tossed that to and fro, but at length the Substance of his Matter was, that Report of the Boy's, and he advised them to forbear talking any farther to him about the Matter, for it might do *Edwards* and *Braddon* both an Injury; and he had read the Inquisition which was quite contrary. That was all he could say.

Then comes *Edwards*, and the Substance of what he says, is this, That he first heard it from his Family, and afterwards the Boy confirmed the Truth of it; but then afterwards he heard he had denied it, which was after *Braddon* had been there to inquire about it. And then he says, *Braddon* came to him again, and then he had got a Note dictated by himself and not by the Boy, but at first he tendered it to the Boy, and the Boy refused to put his Hand to it, and Mr. *Braddon* came again another time (though he was told the Boy had denied it as he heard) and then the Boy did set his Hand. This is the Substance of what *Edwards* says. He does say indeed, the Boy used to tell Lies very often, to make excuses when he played Truant, and that his Family told him, the Boy was often guilty of telling of Lies.

Then the next Evidence is the Evidence of the Boy himself. He it seems is thirteen Years of Age: Certainly any Man that had been of an upright Mind and Conscience, as Mr. *Braddon* pretends to be, and would have you, Gentlemen, think them so; would have it thought that he was full of Honesty and Integrity to the Boy, when he baited his Hook with a Text of Scripture, about the Danger of telling a Lie, and, *Have a care, Child, of telling a Lie*; if he had done no more, but given him this Advice, it had been worthy of Commendation: But when the Boy had refused to sign it, for him to go and make such a stir, without examining further into the Particulars, but only taking a slight Report from such a Child, and to make such a Disturbance in the Nation, and such a Noise, not only here, but Abroad, as this has done, sure argues neither Uprightness nor Conscience. Had the Boy stood in it and persevered in it, it had become him, in regard of the tenderness of the Boy's Age, to have been more inquisitive into Circumstances, before he gave such Credit to what he said, as to make ail this adoc.

But what says the Boy when he comes here, he is now upon his Oath, and he tells you, He did tell his Mother so at first, and he did tell Mr. *Braddon* so at first; but afterwards when his Sister spake to him, and bid him be sure to tell nothing but what was Truth, then he said truly, it was not Truth. He tells you, Mr. *Braddon* offered him the Paper to sign, but he would not sign it; and being asked the Question, Why he would not sign it? He says, because it was not true; and being asked, Whether *Braddon* had notice of this? The Mother and Sisters, all tell you, He had notice the Boy had denied it.

How came Mr. *Braddon*, what Authority had he to take this Examination? He is no Justice of Peace, no Magistrate that had any Authority to take Examinations. What Concern had

he in it more than other People? The Boy could tell him there were abundance of People there besides himself, tho' it was a Lye he told then, and that the Girl told now. Why did not he stay to have it confirmed by some of those People? Why did not he carry these Children before some Magistrate or Justice of Peace, some body that had Authority to take Examinations? There was a Spirit that prevailed with Mr. Braddon to engage and make a Stir in this Business; and you may easily guess what a kind of Spirit it was which gave him this Authority that he had not before.

Gentlemen, Another thing is this, 'Tis plain, and the Boy now swears it directly, That whereas he put it into his Information, How that he told him he was going to see my Lord *Brandon Gerard's* Lodgings, but now he is upon his Oath, he swears directly, he never told him any such thing, and yet he hath put it into the Paper he made him sign.

He tells you a second time, Mr. Braddon came to him, which was after the Boy had refused and declared himself unwilling, and that then he was perswaded by Mr. Braddon, who told him there was no harm in it; if there be any harm, it would be to him, and not to the Boy, and so by virtue of that, he insinuated himself, and got the Child to sign that Paper, which is every tittle of it false, as the Boy now swears directly. And he tells you, how he was imposed upon by Mr. Braddon, pretending there was no Harm to him, all the Harm would come to himself, and by reason of these Insinuations he was prevailed upon to put his Name to that which was notoriously false.

The next Witness (to make it appear that it was notoriously false, not only by the Boy himself, but by other Circumstances) is *Hawkins* the Minister's Son, Dr. *Hawkins's* Son of the Tower. And he tells you, I play'd Truant as well as he that Day, and I saw the King and the Duke at the Tower, and when I had seen them I went about as they did, and afterwards I went home, and there came a Report, that my Lord of *Effex* had cut his Throat, which made me go back again to the Tower, and there was I a considerable time gaping among other People, and there did I see this Boy *Edwards*; when he came there, I was there; I was there all the time that he was there, and we went out of the Tower together, and there was no such thing, nor any pretence or ground for such a Story. And *Edwards* himself being asked the Question, upon his Oath, doth likewise say, *Hawkins* was with him all the time there. So that that shews not only by what the Boy says, that it was false, but it is also proved false by the Testimony of this other Witness *Hawkins*.

Then next comes Mr. *Blathwaite*, who was present when Mr. Braddon was before the King, and what does he say? He says, there was the Boy fetched, and the Girl fetched, and all Persons examined there, and then 'tis told him, all the Boy had said to him was false, and it was told him with all its Circumstances. So that Notice sufficient, if you will believe Mr. *Blathwaite*, was given to this Mr. Braddon, That the Boy had denied it then, as he had before to his Sister: So he knew it was false.

But what does Mr. Braddon do now? He is

so far from being satisfied in the Matter, that instead of stopping there, his Zeal transported him to pursue it further: And so he tells you, that Mr. Braddon confessed he would have got some Justice of Peace to have the Boy examined; and he applied himself to Sir *Robert Clayton*, and Sir *John Lawrence*. There were many Justices of the Peace besides them, in *London*, to whom he might have applied himself. But when he comes to Sir *Robert Clayton*, and acquaints him with the Matter, he would not do it alone; it was thought a Matter of that Importance. Then says Mr. Braddon, you shan't do it at all. He must have the Kindness of having it done in private; to have it examined when any body was by, was not so well for his purpose; which shews you still, Gentlemen, his Design was to contrive privately, to effect that which the Light should not easily discover.

Then the next thing is the Evidence of Mr. *Monstevens*, And he gives you an account, That he came to him, and he read the Information, and gave him a Caution, that he wondered at him: Says he, Why do you concern your self about this Business, there is Sir *Henry Capell*, he does not concern himself? Then he pretended to come in his Name, but at length, when Mr. *Monstevens* began to dispute it with him, why Sir *Henry* did not appear himself in it; then truly Sir *Henry Capell* was very ill, and could not possibly come himself, but I am to go to him, and give him satisfaction about what I do, and so also to the Countess of *Effex*. No, says Mr. *Monstevens*, that cannot be, for Sir *Henry Capell* is not so ill, but that he has been with my Lord *Sunderland*, and with the King too, since the Death of my Lord of *Effex*. To which he made him no Answer. So that that was but an Excuse and a Subterfuge; but yet notwithstanding all this Caution, he continues on his Zeal in the thing: Whereupon Mr. *Monstevens* brought him to my Lord *Sunderland*, and what Discourse has past between them, he has given you an account of.

The next Evidence is Sir *Henry Capell*, who tells you, That Braddon comes officiously and tells him, he had some Discovery to make about the Death of the Earl of *Effex*, and you hear that poor Gentleman being related to this unfortunate Noble Lord, was at the first time very much under Surprise (being in such great Affliction as one Brother must needs be for another, Nature obliges People to a great Concern for such Accidents) and he says, he is not able to give an account what he said or did at that time, or what Braddon did particularly say to him. But when he came the second time to him, he was a little more sedate and calm, and then (he does remember) he told him, If you have any thing of this nature to say, go to a Secretary of State, it is his Business to enquire into this Affair, and 'tis not the Business of every particular private Man, because these are Matters that concern the Government. But Braddon pretended (forsooth) it was his Zeal and his great Conscience that made him to be thus transported, and to be so eager for carrying on this Prosecution.

The next Witness, Gentlemen, that you hear of, is the Gentleman that seized upon Mr. Braddon in the Country; and that is Mr. *Beech*, who brought

brought him before a Justice of Peace (one *Aires* that it seems is since dead) and in his Pocket he found a Letter from the other Defendant *Speke*, which is the only thing indeed in the Evidence that does affect that Gentleman; and what that Letter is, you have heard it read, and for your better satisfaction, because the Language of the Letter is pretty extraordinary, if you have a mind to have it to peruse while you are here in Court, you may have it with you. I suppose you remember the Substance of it, commending the great Integrity, Courage, and Magnanimity of this Gentleman *Mr. Braddon*, thanking the Person to whom it was writ, for his great Kindness to him and his Friends, how they did hope to be able to get the Murder of my Lord of *Effex* tryed before any in the Tower could come to their Tryal; That the Tide ran strong against them: And, pray, you must take notice, I have given him a hint he must go by another Name, by the Name of *Johnson*, and not by the Name of *Braddon*; for alack-a-day he would be stabbed in these dangerous Times, or knocked on the head, if he be known by his own Name. *Mr. Braddon* would be thought a Man so considerable in the World for his Zeal for Truth, and the Protestant Religion, that there was very great Hazard of his being murdered, we live in such perilous Times.

Gentlemen, This is to amuse and affright People, and to put odd Thoughts and Jealousies and Fears into the Minds of the King's Subjects, which was the Beginning and Rise of the late Rebellion, which we have All reason to remember with Horror; that Rebellion that in the Issue of it brought the late King of blessed Memory to the Scaffold: And therefore we must have a great care of such things growing upon us now.

And pray, Gentlemen, mind the Style of the Letter: *We* have many Thanks to give you, for your Care of *Us*, and Countenance you have given to *Us*, and *We* don't doubt *We* shall be able to carry on the Business of the Earl of *Effex*, notwithstanding that the Tide runs strong against *Us*; *We* hope this, and *We* hope that, and t'other, and so makes himself a Party. And he recommends him in particular to *Sir Robert Atkyns*, to whom the Letter was written, to advise him in the Matter he went about (which by the way, you see, was to pick up false Evidence) to carry on this wicked Design. And I must tell you, Gentlemen, If *Mr. Speke* was given to believe a Lye, and did write that Letter, with a Design to have that Lye spread abroad, he makes himself a Party, and he is as guilty in every Circumstance as the other, as to the Design in general laid in the Information, tho' not equally guilty about the Management of the Witnesses: And it is the Letter only that particularly affects him. But I tell you, If in case you think he was surprized in the thing, or did it ignorantly or innocently, without any Concern (tho' he seems to have a wonderful Concern in his Letter, and very zealous he seems to be in the Prosecution of this Business) you are to acquit him. But, if he did contribute to the Design of spreading this false Report, he is as guilty of that part as *Mr. Braddon*, tho' he be not guilty of Suborning the Witnesses. But the Evidence

against *Braddon* goes farther; There is not only the Evidence of this Letter, which speaks plain enough, as to this Design, but you find also about him all the Informations that have been read. The Information of this Boy of 13 Years of Age; the Information of the Girl of 13 Years of Age: There was also taken in his Pocket a Letter from one *Burgis* a famous Pin maker of *Marleborough*, written to one *Cumpen* a Post-master at *Frome*, in this manner: "Pray call to mind such a Business of hearing such a Report, of my Lord of *Effex*'s cutting his Throat upon *Friday* the 13th of *July* last. Pray recollect such a thing, and impart it to this Gentleman the Bearer. This likewise was intrusted with *Mr. Braddon*: But it seems the Man had gone and writ his Letter, and had put in the 6th Day, which happened to be a Week too soon, and this must be rectified by *Mr. Braddon* himself, he being a great Companion of *Mr. Braddon*'s; for it seems he had such a Confidence in him, that upon his Report, he came down from *London* to *Marleborough*; tho' now indeed they pretend they never knew one another before: But it is proved he confessed he had such a Regard to his Report, that that brought him down from *London*. He had (as I was saying) put it down the 6th at his first writing; and I believe as to the thing it self, it was as true the 6th as any other time, and the 16th and the 26th is all one to such People. And this Letter, he tells you himself, was written six Weeks after, but *Mr. Braddon* must correct it: No, says he, you mistake, it must be the 13th, it must not be the 6th; the 6th would not do the Business, for the 13th was the Day that he was murder'd, and so he was forced to interline it, the 13th, to make it to humour the Story; for the Lye would not pass so well if it had been put upon a Day so long before; but to make the Lye a correct Lye, and to humour the rest of the Evidence, *Mr. Braddon* comes and informs him, it must be the 13th.

That was the next piece of Evidence that was given, and I think the Substance of the Evidence of the whole Matter given against the Defendants for the King, except it be some Remarks out of the Evidence that has been given on the other side, which it will be material for you to take notice of.

Now, Gentlemen, for the Defendants they bring this Evidence: First, They bring a Man, I think his Name was *Lewes*, to whom they gave the Money before he would give his Evidence. And he says, one Day he was going up a Hill near *Andover*, and going up the Hill, he heard the News of my Lord of *Effex*'s cutting his Throat; but what Day, Week or Month it was, he cannot tell, that he heard this. And, Gentlemen, Let me tell you, 'tis as bad as the Case it self, and worse if possible, the endeavouring to pick up Witnesses to put a Colour and Countenance upon so black a Villany as this is. Then the next Evidence is *Felder*, and he tells you, that at their Town of *Andover* the *Wednesday* before my Lord murder'd himself, it was all the Talk about the Town, that he had cut his Throat; it was in every body's Mouth, the Market-people, Men, Women and Children, all over the Town had it, when the Earl of *Effex* did it not till the *Friday* following.

We asked him to name any one ; no truly he could not, the Town was so full of People, and yet he cannot remember one, whence he had it : But, Gentlemen, here is the malicious Design of the Matter. 'Tis to make it believed it was a designed Business to murder my Lord, and cast it upon himself, and they knew of the Design at *Andover*, two Days before the Fact was done : As tho' the Persons that designed to murder him, would go to make it publick, as such a Report was likely to do. But the Design of this, besides the Falshood and Baseness of the thing it self, does speak Malice and Sedition, and all the Distempers of a disloyal Man's Heart ; and to go about to get Witnesses to support the Credibility of a thing that is notoriously false, is ten times worse than the spreading of such a Report it self.

Then comes Mrs. *Edwards* the Mother, she is the next Witness, and she tells you at first, the Boy did tell this strange Story, but afterwards denied it, but she likewise tells you, how Mr. *Braddon* came, and how he dealt with the Boy. He is a busy Man, you see, a great Reformer that does mightily concern himself in the Reformation of the Government. I never knew that Mr. *Braddon* had any great share in it : He has not such a prodigious Estate I suppose, that for fear of losing his great Estate he should be so wondrous busy and active in reforming the Government ; but I have always observed it for a Rule, that your beggarly inconsiderable Fellows are the warmest People in the Business of Reformation, and for defending Liberty and Property as they call it ; and then they put it under the Disguise of Religion, when alas those that have no Religion are generally the greatest Pretenders of taking care of it ; and those that have no Estates nor Properties, are usually the fullest of Noise about Liberty and Property. But the meaning of it is plain, if they can but exasperate the People into a Rebellion, that is the way to get a Property : And if they can but have Liberty to do what they please, that is all the Liberty they contend for. They are such mean inconsiderable Fellows only that make all this ado among us : For no Persons of any Interest or Quality will offer to engage in any such thing. But I hope the Snare is seen, and we shall avoid it ; for God be thanked we live under a regular Government, where the Laws are duly executed ; we need not be afraid of wrong from the Government. The Courts of Justice are open where they may have Security ; and the best Security to good Subjects, is that which the Law gives them.

Mrs. *Edwards*, she tells you, When *Braddon* came to inquire about it, it made them all a little concerned ; and the Daughter was affrighted, and she comes to the Boy, and says, *Billy*, *Billy*, here has been a Man about such a thing, pray speak the Truth : Why, says he, will any harm come of it ? Says she, I can't tell, but tell you the Truth. And then when the Boy comes to tell Truth, he then says, all the Story was false. Besides this, says she, We told Mr. *Braddon*, before the Boy signed it, That he had said it was false ; and he was told it again before the King and Council, that it was false. But nothing would serve him, but he must have a Horse and a Man, and he must go his Circuit

to pick up ridiculous Stories. Letters must be contrived from one to another to give a Colour to the Matter, and all this to spread about his malicious Reports and false News.

And by this means, Gentlemen, I must tell you, The Matter is fixed as to the second part of the Information, which is the corrupting of Witnesses ; for tho' he did not get any Witnesses sworn, and so 'tis no Subornation of Perjury, strictly, yet however 'tis a Misdemeanor to labour any one, much more such a Child, into a Falsity, as apparently he did ; for as the Boy swears now, He never did make mention of going to my Lord *Gerard's* Lodgings.

The next Evidence is young Mrs. *Edwards*, *Sarah* the Daughter, and she comes and gives an account of the same. That the Boy did tell such a Story at first, but, says she, I knew him to be such a lying Boy, and I had so often found him in Lies, that I did not mind what he said. And he used to tell Lies when he had been playing Truant. Then comes Mr. *Braddon* to inquire about the Business, and when he began to prosecute it, the Girl began to be affrighted, and she calls the Boy to her, and engaged him to tell her the Truth, and then immediately upon that, he did say it was all a Story, and Invention of his own.

And then 'tis very material to observe, That the Boy in that Paper of Information (which is all of Mr. *Braddon's* Hand-writing) makes the Circumstance of the Razor's falling down, to be cast of the inside of the Pales, and the Girl says, it was of the outside, and there was a Coach, and abundance of People by, and a great many fine Circumstances, and not one of them true.

The next piece of Evidence is, she does say, That after he told her it was false, she gave notice to *Braddon*, and being asked, Whether she did not frighten him by threatening his Father would be turned out of his Place ? She swears, No. But all those kind of Questions were by a Side-Wind, to make Reflections upon the Government ; as tho' the King would turn Men out, because they would not swear what was false. It carries, I tell you, a Sting towards the Government still, and shews the Malice of the Design. But, Gentlemen, you hear what is said about that, there was no such thing said ; They did apprehend some Fear, but from whom their Fear came, that they can't tell. But she positively swears, when the Boy had denied it, he had notice of it ; and when he refused to sign it, yet he pressed him, by telling him, there was no Harm in it like to come, but only to Mr. *Braddon* himself, and so he was perswaded to sign it.

The next Witness is Mrs. *Barton* ; She comes and tells you, that she was at Mr. *Edwards's* House, and what she tells you of her own Knowledge, you are to take for Evidence, and nothing more. She says, *Braddon* did engage the Boy to tell Truth, and put him in mind of that Chapter in the *Acts*, of the great Displeasure of God against the two Witnesses that forswore themselves, and bid him speak nothing but the Truth. And after he had talked thus awhile, she observed he was going to take Pen, Ink, and Paper, and she was afraid she might be drawn in for a Witness, and so she went out of the Room. But before that time,

Mr.

Mr. *Braddon* did go to see the Window, and the Place where the Boy said the Razor was thrown out.

Then there is the Evidence of the little Girl, who is the next Witness, *Jane Lodeman* I think her Name was, and that is likewise written by Mr. *Braddon*. Now you hear what that young Wench says. She comes and would give some sort of Countenance to the thing, How she was looking up at the Window of my Lord of *Essex's* Lodgings, and that there was a bloody Razor thrown by a Hand out of the Window, but whether it was half bloody, or all over bloody, she can't tell, but bloody it was; and it was, as she says, thrown on the outside, though the Boy said, it was thrown of the inside. But the Wench being asked, Whether she knew that was my Lord of *Essex's* Lodging? She answered, No, she did not, when they come and make her swear in her Information, that she saw the Razor thrown out of my Lord of *Essex's* Lodgings: And then she says, she heard no Soldier speak a Word at all; but in the Information, it is set down, that the Soldier cried out to the People of the House, Go and fetch up the Razor. And this was all done in the open Day, and there were abundance of People, but she could not tell any particular body. So that of one hundred People, which, if she say true, were there, Mr. *Braddon* could not satisfy himself to enquire after some of them, but only he must pick up a Child of 13 Years of Age to practise upon in this villainous manner. And it carries the greater Venom, and Malice, and Virulency, and Baseness, to endeavour to corrupt young People to that height, as to come and say, and swear those things in the Face of a Court, that are impossible to be true. It is impossible to be true, that she saw a Coach in the Yard; for you hear what account Captain *Hawley* gives of his House. It is impossible to be true, that there should be a Crowd of People, because that there was a Sentinel at the Door, who must see all that go out, and that come in; and there is no way to go into the Yard, but through the Back-door, and the Pales are so high, that nothing can be flung over, that could be easily discerned. So that the very Thoughts of such a thing as this are ridiculous in themselves, and not only the Falsity of the Story is apparent, but there is also apparent a great Villany, in endeavouring to get Witnesses to prove that Falsity. For you see who Mr. *Braddon* employs; he gets a Barber to go along with him on purpose to testify what idle Reports he could pick up. But this Barber, and the other Witnesses, when they come here, can't tell any thing. For the Barber, he says, she said, *There lay a Razor*; but the Information says, (to which he is a Witness) that the Soldier cried, *Take up the Razor*; and she now upon her Oath denies any thing of that.

The next Evidence is the Aunt, and she tells you, she does not remember such and such Particulars, but somewhat to that purpose she does; but whether she named my Lord of *Essex*, or no, in particular, as to his Lodgings, she cannot give an account.

Then you have *Glasbrooke*, that comes to give an account concerning this Girl's Story, and he plainly is quite different from what the others had testified before; for his Evidence is, That

the Girl had said my Lord of *Essex* cut his own Throat, and afterwards flung the Razor out of a Window: After he had committed this horrid Murder upon himself, he got to life again, and threw away the Instrument he did it with, that is plainly his Testimony, that this Child should say so. So that, as in the Case of *Susanna*, which I heard cited here upon another occasion, the wicked Elders were discovered by the different Circumstances of Time and Place; so here you have Circumstances of Time and Place, and of all things in the World that can contribute to prove the Falsity of this Report, and to prove the malicious Design of these People that were engaged in this Business.

The next Witness is one *Smith*, and he speaks much to the self same purpose. He was the Barber that went with *Braddon* to examine this Girl.

Now, Gentlemen, You are to consider of these Contrivances of *Braddon*, in busying himself to sollicite these Children to testify these Stories, after a Denial by the Boy to sign the Paper, To tell him there was no Harm could come to him, to dictate what he should say, and put Words into his Mouth, about going to see my Lord *Gerard's* Lodgings, which he never spake of; for him to dictate to the other Witness the Pinmaker of *Marleborough*, what the right Day should be, to set up such a senseless Story that he heard such a thing at the Post-house, but he cannot tell from whom, or name any one that heard it or spake it besides himself: It is strange how he should meet with this Man, for even the Man himself tells you, he knows not who he had discoursed of it to; and never saw *Braddon* till that time he writ the Letter. But you may observe, that to be sure the Report might be spread, it was so contrived that the Scene should be laid in the Post-house, and then it was like to run abroad quickly; for alas it was not their Business to make Truth of it, but to make the discontented Rabble believe it to be a Truth. And so they began to consult with themselves where it was best to lodge it, and upon deliberation the Place must humour the Design as well as the Time, and that must be at the Post-master's House, in order to disperse the Noise of it, and then Mr. *Braddon* takes his Circuit to *Salisbury* unto Sir *Robert Atkyns* at *Stow* in the *Hold*, and to other People, filling the Country with his braded Ware; and 'tis time to look after such Pedlars, for they vent the worst of Ware.

Then, Gentlemen, you may observe this Fellow is easily perswaded to swear any thing, for he gives no manner of account how he came to hear what he speaks of, or from whom, or how Mr. *Braddon* came to him: He had never seen him before that time, he says; (tho' Mr. *Braddon* had such a value for this worshipful Pinmaker, whom he never saw, that he came from *London* upon the least intimation of this Man, so zealous he was for the carrying on this weighty Affair, which I may call this impudent and intolerable Lye.)

Gentlemen, I must tell you, if any Proof in the World be sufficient to prove Malice, you have sufficient Proof of it before you now. If it had been a thing of Indiscretion only without Malice, if there had been nothing of Caution given to him about it as a thing that concerned

cerned not him, there might have been something said to alleviate it; but for him to come as if he had Authority from the Countess of Essex, and Sir Henry Capell who denies it, shews the Malice of his Design.

Gentlemen, 'Tis a Concern of an High Nature, and if you do believe these Persons that are Defendants, or either of them to be guilty; such as you believe to be guilty, you must find guilty, and of so much as you believe them guilty. And if in case they shall by you be found guilty, the Court is to take care to in-

flit a Punishment, if it be possible, suitable to their Offence.

Then the Court arose, and the Jury afterwards gave in a private Verdict, which the next Morning was repeated in Court and recorded. And by that Verdict they found the Defendant Laurence Braddon guilty of the whole Matter charged upon him in the Information, and the Defendant Hugh Speke guilty of all but the Conspiring to procure false Witnesses, and of that they found him Not Guilty.



Lunæ 21. Aprilis, 1684. Termino Paschæ, 36 Caroli Secundi Regis. B. R.

Dominus Rex versus Braddon and Speke.

Mr. At. Gen. MY Lord, Here are two Persons to receive your Judgment.

L. C. J. Who are they?

Mr. At. Gen. Braddon and Speke. But it being late, I know not whether you will give it now, or appoint some other time.

L. C. J. No, no, let them come in, They will say we are afraid of giving Judgment else.

Then Mr. Braddon and Mr. Speke came into Court.

Mr. At. Gen. My Lord, We pray your Judgment for the King, that you will set a good Fine.

Mr. Williams. We are retained to move in Arrest of Judgment.

Mr. At. Gen. Judgment is enter'd already, and there is nothing but a Fine in the Case.

Mr. Williams. My Lord, If it be enter'd, it is enter'd but this Term, and 'tis in the Breast of the Court, if they please to admit us to speak in Arrest of Judgment.

L. C. J. When were the Rules out?

Mr. Williams. My Lord, It was put off by Consent to this Day.

L. C. J. But when were the Rules out, I ask?

Cl. of Cr. The Rules were out the last Day of the last Term, and then Judgment was entered.

L. C. J. Well then, Judgment is entered, what say you against a Fine?

Mr. Williams. We were retained to move in Arrest of Judgment, I am sure I was, and instructed to that purpose.

L. C. J. I cannot tell what you were retained to do, but now Judgment is entered, what say you as to the Fine?

Mr. Williams. We cannot say any thing as to that, we are not instructed; I am sure I am not.

Mr. Wallop. My Lord, We took it, and I was told so, That it was put off by Consent to this Day.

L. C. J. I know nothing of your Consent, nor what you consented to. If you consent among your selves at the Bar, that is nothing to the Court. Here we find Judgment en-

tered, and we must proceed upon what is before us.

Mr. Wallop. Your Lordship will please to remember, what the Evidence was.

L. C. J. I do remember it very particularly.

Counsel. My Lord, Mr. Speke is found Guilty of nothing but writing that Letter.

Mr. At. Gen. He is found Guilty of all but the Suborning.

L. C. J. We do very well know there is a difference between them.

Then the last Rule was Read.

L. C. J. Well, Judgment is regularly entered, What say you to it for the Defendants?

Mr. Wallop. My Lord, we conceive we have very good Matter upon the Verdict, to move in Arrest of Judgment.

L. C. J. Yes, no doubt what you have to say is extraordinary material, but you come too late, we cannot hear you. Sir Samuel Astrey, is Judgment entered according to the Course of the Court?

Cl. of Cr. Yes.

L. C. J. Then we must proceed to fine them.

Mr. Braddon. Pray, my Lord, Let Mr. Ward be asked, whether they did not agree we should move to Day?

Mr. Ward. That was only an Agreement on Saturday, that they might appear to Day, and I would not take them in Execution.

Mr. Braddon. This was the Day I was to move in, my Lord; Mr. Burton knows very well, he agreed to it.

Mr. Burton. I know nothing more of it, my Lord, but that indeed I did consent on Saturday, that whatsoever they could move then, they should move on Monday.

Mr. Ward. That was only that they should appear to Day, instead of Braddon's being taken up by a *Capias pro Fine*.

L. C. J. Well, well; I know nothing of your Agreements, here is Judgment entered regularly, as we find it, you had best bring your Action against Mr. Burton, if he have done you any wrong, but I did not know that Mr. Burton was the King's Attorney. But I find here is Judgment against you, and 'tis for a very foul Offence, as notorious an Offence as any Person, under

under that which is Capital, could be guilty of; base Aspersions of the Government, in order to promote Sedition, and Faction, and for that End, made use of all villanous Means to corrupt Infants, and then justify that Villany with a brazen Face, to that degree of Impudence, as I never before saw, That all the Justice of the Nation must be affronted by such audacious Fellows, for it seems his Confidence has not left him, but here he smiles, and seems as if he done no harm.

Mr. Braddon. My Lord, I know my own Innocency, and therefore have no reason to be troubled.

L. C. J. Your Innocence! Your Impudence, you mean. I tell you, had you been in any other Countrey, but this, the Innocence you brag of, would have sent you to the Gallies.

Mr. Just. Withins. Then you think, Mr. Braddon, you have done very well in what you have done?

L. C. J. Ay, I assure you, does he. And the Zeal of his Party has gone so far, that at Winchester, when I was there in the Circuit, I was told that his Doctrine had obtained so much in that Countrey, especially about that Place, whence some of his Witnesses came, I mean, Andover, that there was a Woman that was here the other Day, Mrs. Drake, being at Conventicle, held forth, That my Lord of Essex was murdered while the King was in the Tower, and that God was the Avenger of Murder, and had found out a proper Person for the Prosecution of it, that was Mr. Braddon; and this snivelling Cant prevailed at the Conventicle. It is no such smirking Matter as you make it, Mr. Braddon, I assure you.

Mr. Braddon. My Lord, if I did know my self to be under any Guilt, I would very readily and humbly acknowledge it.

L. C. J. Well, I see a great many of the Party about you, I can spy them out, though they think they are not seen; but they shall know we will not suffer such Monsters as these to go without due Punishment.

Mr. Just. Withins. He stands upon it, he is innocent still, notwithstanding all that was proved, and the Juries Verdict.

L. C. J. Yes, alack a Day, he wipes his Mouth, and has not so much as eaten, I'll warrant you.

Mr. Just. Withins. I expected you would have been sorry, Mr. Braddon, for what you had done, and expressed some Penitence, but, it seems, you are very innocent.

Mr. Braddon. I did not directly, nor indirectly, offer any thing to induce the Children to give their Testimony, nor was any such thing proved: I know my own Innocency.

Mr. At. Gen. The Jury have found it otherwise.

L. C. J. And that upon a fair, a full, and a convincing Evidence, and no Man in the World can make any doubt of the Truth of that Verdict; but he that had a share in your Guilt, or in that it had a tendency towards, I mean that horrid Conspiracy. And I assure you, Mr. Braddon, you tread upon the very Heels of it; smirk at it, and be as merry about it as you will.

Mr. Braddon. If I did not know my own Innocency, then I had reason to be troubled.

L. C. J. Your own Innocency! If you did

not know your own Impudence, you mean; 'tis that only that makes you smirk and smile at such Things as these.

Mr. Just. Withins. Mr. Braddon, when you were advised by Sir Henry Capell to take a prudent and a good course, to go and leave it with a Secretary of State, you would not take that Advice, but you would go your own way, and you would turn Examiner, and Prosecutor your self; when he that was the Earl's Brother, and was sure more concerned than you, thought it fitter to go that way.

L. C. J. We remember what Sir Samuel Bernardiston, in his Letter, speaks of this Matter, Mr. Braddon, he was got off; why, they dare not meddle with Mr. Braddon, he is such a dreadful Man, and his Party are so considerable, that we dare not meddle with them; and the TORRIES are all cast down; alack a day! because these Fellows can't cast down the Government, therefore all honest Men must be cast down, and not dare to meddle with them; but they shall see we are not so much cast down, but we are able to reach the highest of them. What Condition is this Man in? I speak in Point of Estate, for his other Conditions, we know what they are, his Tryal will satisfy any Man of that.

Mr. At. Gen. He is the eldest Son of a Father that has a good Estate.

Mr. Williams. He is then but Heir Apparent.

Mr. Braddon. No, I am a younger Brother.

Mr. Williams. It seems he is but the Second Son, and a young Gentleman.

Mr. Braddon. My Father has an elder Son alive.

L. C. J. I remember particularly 'tis said in one of the Letters, That he was a Man of 7 or 800 l. a Year.

Ch. of Cr. That was in Mr. Speke's Letter. He says his Father had so much.

Mr. Braddon. That is in Mr. Speke's Letter; but that is not true.

L. C. J. I don't know truly, that may be as false as any thing else you went about to have these Children Swear, but I'll undertake it, if thou had'st told the little Girl that he had 800 l. a Year, she would have been as ready to have Sworn it as the other.

Mr. Just. Withins. 'Tis a wonderful Thing; Mr. Braddon, you could bring no body to come and testify these Things, but those two little Children.

L. C. J. But oh! What a Happiness it was for this Sort of People, that they had got Mr. Braddon, an honest Man, and a Man of Courage; says Mr. Speke, a Man à propos; and pray, says he to his Friend, give him the best Advice you can, for he is a Man very fit for the Purpose, and pray secure him under a sham Name, for I'll undertake there are such Designs upon pious Mr. Braddon, such Contrivances to do him a Mischief, that if he had not had his Protestant Flail about him, somebody or other, would have knocked him in the Head, and he is such a wonderful Man, that all the King's Courts of Justice, must needs conspire to do Mr. Braddon a Mischief; a pretty sort of a Man, upon my Word, and he must be used accordingly; Men that arrogate and assume to themselves a Liberty to do such kind of Things, must expect to fare accordingly.

Mr.

Mr. *Just. Withins*. Mr. *Speke* is not found Guilty of the Subornation.

Mr. *At. Gen*. He is found Guilty of all but the Subornation, he is found Guilty of Conspiring to spread the Report. The Subornation will require another Sort of Punishment.

L. C. J. Ay, but there is a Difference between them. The Crime was very great in Mr. *Speke*, though not so great as in Mr. *Braddon*, and I am sorry that Mr. *Speke* should be concerned in it, and should take such care about such a Business, with all that Piety and Zeal for Religion he expresses in his Letter to Sir *Robert Atkyns* (Mr. Justice *Atkyns* that was) that he should recommend him to have a wonderful Care of him, and then thank him for his Kindness shewed to Our Party: So he makes himself to be of the Party, and makes this the Business of the Party, and so makes himself to be a Sharer in the Business; for 'tis *We thank you for your Kindness to Us, and the Tide is strong against Us; and We hope we shall be able to bring the Business of my Lord of Essex upon the Stage, before they do any of those in the Tower.* So Mr. *Speke* makes himself a Party in the Business. And I am mighty sorry that when he comes to be asked the Question, How he came to write this Letter, he should tell us, He had been at the Tavern, and did not know what he writ, but does not say, he recollected afterwards. It seems he used to be often at the Tavern, and had been there when he writ this pious Letter, and so his Saintship broke out in a Fit of Drunkenness, for most of our Reformers of Religion now a-days want common Morality. And yet they are wonderfully Zealous for Reformation and Religion. All the Villany that has been thought of, nay, more than ever could enter before into the Imagination of Mankind, has been wrought by these Men, that pretend to be Reformers of Religion, and amongst the rest Mr. *Braddon*; and indeed I look upon *Braddon* to be the Daringest Fellow of the Party, he and his Brother *Smith*. If there were any Reluctancy, or any Sense of any Guilt they had contracted, and would shew it by acknowledging their being surprized into it, and testified Repentance by a submissive and dutiful Behaviour, that were something to encline the Court to Commiseration; but when we see, instead of that, they are more obdurate and steeled in their Opposition to the Government, they must be reclaimed by Correction, and kept within due Bounds by condign Punishment, otherwise it will be thought by the ignorant Sort of People, that all Courts of Justice are afraid of them.

Mr. *Just. Withins*. Nay, Mr. *Braddon's* Zeal was very extraordinary in the Case, going on in this Business, not only without, but contrary to the Advice of Sir *Henry Capell*, who surely was most concerned about the Death of his Brother.

Then the Judges between themselves consulted about the Sentence, which Mr. Justice Withins pronounced thus.

Mr. *Just. Withins*. Mr. *Braddon*, You see what it is you are convicted of, It was for as foul an Offence, as any can be imagined, that is not

Capital, wherein the King is very much concerned, for the Insinuations were such, as that the King was mightily concerned, for in as much as you say the Earl of *Essex* should be murdered at that time the King was in the Tower, it was an implied Accusation of the King, and an Insinuation that the King should design to take away an innocent Man's Blood, and so downright be guilty of murdering an innocent Person, which how great an Offence that is, let any Man that has any Loyalty, or Reverence for the King in him consider, and you cannot say you are innocent, Mr. *Braddon*. Your Prosecution was most pertinacious, and you would proceed after the Boy had denied it, and proceed in such a manner, when Sir *Henry Capell* had told you what you should do; and what did you go upon? You had got a little Girl, a Child of 11 or 12 Years old, to tell a Story of I know not what, and no body else knew any thing of it, and this must be a ground sufficient for you to go up and down, and spread such a Report, when Sir *Henry Capell* gave you Advice to go to a Secretary of State, and let him examine it; indeed you did go to him, but would not rest satisfied with what the King and Council did; no, Mr. *Braddon*, you thought that would not gratify your own Passion, and Malice, against the King and the Government, but you must take Ways of your own. This is to scandalize the whole Justice of the Nation, and not only make the King a Murderer, but you would have all the Plot hereby quite lose its Credit; and you would make it, as Sir *Samuel Bernardiston* would insinuate, a Sham Plot, to take away innocent Protestants Lives. But as to the Plot, there has been fresh Proof of it beyond all Contradiction this Day, a Man here in the Face of the whole Court has owned the whole Thing, he would not take the liberty of defending himself, that was offered him, if he would try it, but confessed that Conspiracy, which you had a great Mind to be an Instrument of making the World to believe, was nothing but a Sham. I shall not make any long Speech to you, The Court for this Offence,

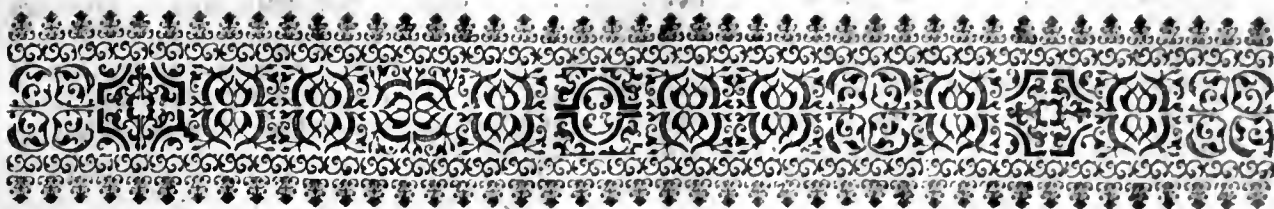
Sets upon you, Mr. Braddon, the Fine of 2000 l. and Order that you find Sureties for your good Behaviour during your Life, and that you be Committed till this be Performed. And for you Mr. Speke (we have considered that you are not so highly Guilty as Mr. Braddon, you are Guilty of a great Offence, but not so Guilty as he, and therefore) we think fit to set upon you the Fine of 1000 l. and that you find Sureties for your good Behaviour during your Life, and be Committed till you perform it.

L. C. J. Marshal, Take them in Custody, and use them as they ought to be used.

Counsel. My Lord, Mr. *Speke's* Bail is discharged, I suppose?

L. C. J. Ay, they must be, as to this Matter, but nothing else but this:

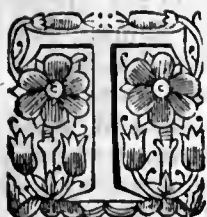
Then they were carried away to the King's Bench.



T H E T R Y A L O F

Sir *SAMUEL BERNARDISTON*, Bar.

The 14th of *February*, 1683.



HERE being in *Hillary Term* last, an Information in the Court of King's-Bench preferred by His Majesty's Attorney-General against Sir *Samuel Bernardiston*, for a very great Misdemeanor; upon Oath made, that he was so extreemly indisposed, that he could not appear in Person without danger of his Life: The Court were pleased to respite his Recognizance, (which he by order of the Lords of His Majesty's most Honourable Privy Council, entered into the last Vacation, to appear in Court the First Day of this Term) and to allow him the liberty of Pleading to the Information by Attorney, which he did. And *Thursday* the 14th of *February*, 1683. being the Session of *Nisi Prius*, after the Term holden for the City of *London*, and County of the same, was appointed for the Tryal of this Cause, and accordingly then the same came on, and was tried before the Right Honourable Sir *George Jefferies*, Knight and Baronet, Lord Chief Justice of His Majesty's Court of King's-Bench, in this manner.

Clerk. Call away *Cryer*.

Cryer. You good Men of *Nisi Prius*, summoned to appear here this Day between our Sovereign Lord the King, and Sir *Samuel Bernardiston*, Baronet, answer to your Names, and save your Issues.

Cl. Thomas Vernon and his Fellows. *Vous avez plein Inquest.* Call the Defendant Sir *Samuel Bernardiston*.

Cryer. Sir *Samuel Bernardiston*, come forth, or this Inquest shall be taken by your Default.

Mr. Williams. He appears.

Cl. Gardez vostres Challenges. Swear *Thomas Vernon*.

Cr. You shall well and truly try this Issue, between our Sovereign Lord the King, and Sir *Samuel Bernardiston* according to your Evidence. So help you God.

Cl. Percival Gilburn. Who was Sworn, and so the rest.

Thomas Vernon
Percival Gilburn
Edward Boverly
William Withers, Sen.
James Wood
Robert Masters

Jur. { *Samuel Newton*
George Torriano
Kenelm Smith
Thomas Goddard
Thomas Amy, and
Richard Blackburn.

Then they were counted, and Proclamation made for Information, in usual manner.

Mr. Poultney. May it please your Lordship, and you, Gentlemen of the Jury; this Cause is between the King and Sir *Samuel Bernardiston*, and it is upon an Information exhibited by *Mr. Attorney General*, wherein he sets forth, That there having been lately a horrid Plot discovered (as appears by the Convictions of those that have suffered justly for it, and by the Evidence that has been given of it, has been made so apparent, that I do not question, but that no Man, but who either has a Hand in it, or else bears a good Will to it, doth at all scruple the belief of it) Sir *Samuel Bernardiston* the Defendant intending to scandalize and vilifie the Evidence, wrote a Letter, wherein are contained these Sentences.

The return of the Duke of Monmouth to White-Hall, and his being received into extraordinary Favour of His Majesty, hath made a strange alteration of Affairs at Court; for those that before spake of him very indecently, now court, cringe and creep to him. His Grace complained to the King of the scandalous Misrepresentation that was made of him in the Monday's Gazette, upon which the Gazetteer was called to Account for it, who alledged for himself, that a Person of great Quality sent him in Writing the Words therein recited, commanding him to put them in the Gazette. Yesterday being the last Day of the Term, all the Prisoners that were in the Tower upon the late Sham Protestant Plot, were discharged upon Bail. Mr. Bradon who prosecuted the Murder of the Earl of Essex, the Information put in against him in the King's Bench by Mr. Attorney, for a pretended Subornation, &c. was not prosecuted, and his Bail was discharged.

The NAMES of the Twelve were these.
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And the passing Sentence upon the Author of Julian the Apostate, and the Printer of the late Lord Russel's Speech was passed over with silence. Great Applications are made to His Majesty for the pardoning Mr. Sidney in the Tower, which is believed will be attained, and that he will be banished. The Lord Howard appears despicable in the Eyes of all Men; he is under Guard at Whitehall, and 'tis believed will be sent to the Tower, for that the Duke of Monmouth will accuse him concerning the Testimony he hath given, and the Papists and High Tories are quite down in the mouth, their Pride is abated, themselves and their Plot confounded, but their Malice is not asswaged. 'Tis generally said the Earl of Essex was murdered. The brave Lord Russel is afresh lamented. The Plot is lost here, except you in the Country can find it out amongst the Addressers and Abhorers. This sudden Turn is an Amazement to all Men, and must produce some strange Events, which a little time will shew.

And then he goes on further, and says in another Letter these Words.

I am to answer yours of the 27th and 29th past, and truly I cannot but with great Sorrow lament the Loss of our good Friend honest Mr. John Wright, but with patience we must submit to the Almighty, who can as well raise up Instruments to do his Work, as change Hearts, of which we have so great an Instance in the Business of the Duke of Monmouth, that no Age or History can parallel. I am now thoroughly satisfied, that what was printed in the Monday's Gazette is utterly false, and you will see it publicly declared so shortly. The King is never pleased but when he is with him, hath commanded all the Privy Council to wait upon him, and happy is he that hath most of his Favour. His Pardon was sealed and delivered to him last Wednesday. 'Tis said, he will be restored to be Master of the Horse, and be called into the Council Table, and to all his other Places, and 'tis reported he will be made Captain General of all the Forces, and Lord High Admiral, &c. he treats all his old Friends that daily visit him with great Civilities, they are all satisfied with his Integrity, and if God spares his Life, I doubt not but he will be an Instrument of much Good to the King and Kingdom. He said publicly, That he knew my Lord Russel was as Loyal a Subject as any in England, and that His Majesty believed the same now. I intend shortly to wait on him my self. It would make you laugh to see how strangely our High Tories and Clergy are mortified, their Countenances speak it. Were my Shew-ban to be moved for now, it would be readily granted. Sir George is grown very humble: 'Tis said Mr. Sidney is reprieved for 40 Days, which bodes well.

And then, Gentlemen, he goes on further, and in a third Letter says,

The late Change here in Publick Affairs is so great and strange, that we are like Men, in a Dream, can hardly believe what we see, and fear we are not fit for so great a Mercy as the present Juncture seems to promise. The Sham Protestant-Plot is quite lost and confounded. The Earl of Macclesfield is bringing Actions of Scandalis Magnatum against all the Grand Jury-men that indicted him at last Assizes.

L. C. J. That is the only true Sir George Jefferies.

[Mr. Poultney reads.] — And the several Gentlemen that were indicted in Cheshire and Northamptonshire will bring their several Actions at Law against them.

And, Gentlemen, then in a fourth Letter are contained these Expressions.

Contrary to all Men's Expectations, a Warrant is signed at last for beheading Col. Sidney at Tower-Hill next Friday. Great Endeavours have been used to obtain his Pardon, but the contrary Party have carried it, which much dasheth our Hopes, but God still governs.

Gentlemen, All this the Information says, he has done against the Peace of the King, his Crown and Dignity. To this he has pleaded Not Guilty. We will call our Witnesses, and if we prove it, we question not but you will find him Guilty.

Mr. Recorder, May it please your Lordship, and you Gentlemen of the Jury; I am of Counsel for the King in this Cause. Upon the opening of these Letters to you, you cannot but wonder much more than he does that wrote them. His matter of Wonder was one way, and I suppose your matter of Wonder is another way, that a Man, such an one as he is, should have that confidence to write such Letters as these are. Gentlemen, I do not doubt but you observe in the Series of these Letters how he hath travelled through all the Transactions of this horrid Conspiracy, that was of late contrived against the Life of the King, and the Life of His Royal Highness, and for the Destruction of the Government; and how he does endeavour to turn it all into ridicule, and to magnify the Men that have come to Publick Justice for being concerned in that horrid Conspiracy, as being very brave Men. The brave Lord Russel he is lamented as a brave Man lost; The Earl of Essex he forsooth was murdered, and Mr. Braddon, who prosecuted that Murder, he is a brave Man, whom I suppose some of you have heard of, and what is become of him, how he is convicted of one of the most notorious Facts that ever was acted by Man in any Civil Government, which was that Braddon should go up and down to get Witnesses to make it appear to the World, as tho' some body had murdered that Earl. Thus you see he goes through the Conspiracy from one thing to another, and calls it a Sham Protestant-Plot, and all to ridicule the Discovery, which by these very Letters you may easily be satisfied of the Reality and Extent of. You see how he magnifies his Julian, but he likewise is come to condign Punishment for that most pernicious and scandalous Libel. In the next place he comes to the Duke of Monmouth, and tells you what a brave Man they have in him to be their Captain General, and he did not doubt but to see him come to it; and sets forth that he has denied all the Plot, and how he doth persist in that Denial. And this Gentleman has raised his Confidence in these Letters to that degree, that I think any Man, that has lived any time in this Nation, cannot but wonder,

der, that ever there should be such an impudent Action committed in it. Gentlemen, We shall call our Witnesses and prove it positively upon him, that these Letters he did write, and then I suppose he will give an account how he came to write them.

Mr. Herbert. May it please your Lordship, and you Gentlemen of the Jury; I have but one Word which I desire to observe; for the opening of the Case, and a right Understanding of the Matter will have a great Influence upon the Proofs. And I shall not insist upon any thing that has been opened at large out of the Letters, but one thing I would observe to you, and that is out of the last Letter. *Great Endeavours have been used to obtain his Pardon, but the contrary Party have carried it, which much dasheth our Hopes.* So it seems by this that the Faction, the Party, have their Hopes still, and it seems likewise the Writer of these Letters hath a very great share in them. We have, Gentlemen, nothing to do here before you, but to prove that Sir Samuel Bernardiston was the Author, Writer and Publisher of the Letters, which contain that which is charged in the Information, and that we question not but to prove clearly without contradiction. Call Mr. Blathwaite. (*Who was sworn.*) Pray give in the Letters.

[Which was done.]

Mr. Recorder. Pray, Sir, look upon those Letters, and give the Court and the Jury an account where you had them.

Mr. Blathwaite. Gentlemen of the Jury, These three Letters Sir Samuel Bernardiston upon the 10th of December, before the King and the Lords of the Council, did own to be of his Hand-writing. I marked them at that instant of time, and I am well assured they are the Letters he owned to be of his Hand-writing.

Mr. Williams. Did he own them to be of his Hand-writing?

Mr. Blathwaite. Yes.

L. C. J. Did he own them all three?

Mr. Blathwaite. Yes, my Lord, he did.

Mr. Williams. Pray, Sir, who are they directed to?

L. C. J. Mr. Williams, He is informed against for writing, not for superscribing.

Mr. Williams. My Lord, I ask that Question for this reason, He is indicted for writing and publishing, therefore I would know who they are directed to. Did he say they were published by him, or sent to any one?

Mr. Blathwaite. He did not deny but that he had published and sent them.

Mr. Williams. Did he confess it?

Mr. Blathwaite. He did not deny it.

L. C. J. I suppose they on the other side will give an account where they were taken.

Mr. Herbert. Yes, my Lord. Swear Mr. Atterbury.

[Which was done.]

Mr. Recorder. Hark you, Mr. Atterbury, Do you know any thing of these Letters?

Mr. Atterbury. If you please to let me see them, Sir.

Mr. Recorder. Shew him them.

Which was done, and he looked upon them, and gave them in again.

Mr. Herbert. Did you hear Sir Samuel Bernardiston own them to be his Letters?

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Mr. Atterbury. My Lord, and you Gentlemen of the Jury, I had a Warrant from Mr. Secretary *Jenkyns*, about two Months, or ten Weeks ago, to apprehend Sir Samuel Bernardiston, and I did, according to Order, by virtue of that Warrant, apprehend him, and carry him before His Majesty. When he was there, those three Letters I had just now in my Hand, were then shewn to Sir Samuel Bernardiston. I marked them, and know them to be the same; Sir Samuel Bernardiston did own he wrote them Letters all three.

L. C. J. Were the Superscriptions upon them all, as they are now?

Mr. Atterbury. Yes, They were all as they are now.

L. C. J. What say you, Mr. Blathwaite?

Mr. Blathwaite. Yes, They were just so, the same Superscriptions.

Mr. Atterbury. His Majesty asked him, Who subscribed them? —

L. C. J. Superscribed them, thou meanest, they are not subscribed.

Mr. Atterbury. Yes, my Lord, superscribed them; and he looked on them again, and said, They were superscribed by one of his Servants, and so ordered to be carried to the Post-house.

Mr. Recorder. Where is *Nebemiah Osland*?

Jury-man. My Lord, We would ask the Witness, Whether he did own that he sent them to the Post house?

L. C. J. He says, he order'd his Man to superscribe them, and so to carry them to the Post house.

Mr. Williams. Look you, Mr. Atterbury, Did he say he directed any of his Servants to carry them to the Post-house, upon your Oath?

Mr. Atterbury. I am upon my Oath, Sir; I say, that he did say, that they were superscribed by some of his Servants, he could not say which of his Servants it was, and then they were sent to the Post-house.

Mr. Williams. Pray, Sir, mind, and answer my Question, Did he say, he directed any of his Servants to carry them to the Post-house?

L. C. J. Did he take any notice to you, or did you understand by him, that they were sent to the Post-house by his Consent?

Mr. Atterbury. Yes, my Lord, I did understand him so.

L. C. J. Did he write these Letters to keep them in his Pocket, do you think, Mr. Williams?

Mr. Williams. I do not know what he design'd them for, my Lord; nor do I yet know till they are read, what is in them: But I ask him this Question, Did he say he sent them to the Post-house?

Mr. Atterbury. With your Leave, I remember one thing more; my Lord; while he was in my House, (for there he was in Custody two Days or more) talking about these Letters, says he, I wonder how they were taken, they were sent to Sir *Skippon*, or some such Name he named.

Mr. Recorder. Swear *Nebemiah Osland*.

[Which was done.]

Mr. Herbert. Look upon those Letters, Sir. Shew him them.

[Which was done.]

L. C. J. Is this Man's Name *Osland*?

Mr. Recorder. Yes, *Nebemiah Osland*, Do you know any thing of those Supercriptions?

Osland. Two of those Supercriptions I writ by his Order as his Servant.

Mr. Recorder. Which are those two? Then he gave them into the Court.

L. C. J. Can you tell whose Hand is the other Part?

Osland. I did not see it writ, but the Hand is somewhat like Sir *Samuel Bernardiston's* Hand.

L. C. J. You believe it to be his Hand?

Osland. Yes, I do.

Mr. Williams. Did you ever see the Inside of those Letters that you say you superscribed?

Osland. No, I never saw the Inside.

L. C. J. What Directions had you about them, after you had superscribed them?

Osland. I had no Direction, but to leave them where I used to leave his Letters, and that was in a Window that Sir *Samuel Bernardiston* always left his Letters in, and from thence one of the Boys used to carry them to the Post-House.

Mr. Williams. Sir, Did Sir *Samuel* order you to superscribe those three Letters, and send them to the Post-House?

L. C. J. He said he superscribed them by his Command, and left them in the Place that Letters used to be laid that were to go the Post-house.

Mr. Recorder. Pray, Sir, look upon those Letters again.

L. C. J. Whose Hand is the Supercription? Is that Sir *Samuel's* too?

Osland. I believe it Sir *Samuel's* Hand.

L. C. J. Shew that other Letter to Mr. *Blaithwaite*: What say you to it, Sir?

Mr. *Blaithwaite*. Gentlemen of the Jury: This is another Letter that was seized and brought before the King and the Lords of the Council, and this Letter was afterwards owned by *Osland*, to be writ by him by Sir *Bernardiston's* order.

L. C. J. Did Sir *Samuel* own this Letter to be his Hand-writing too?

Mr. *Blaithwaite*. No, he did not, but *Osland* did own it.

Mr. Recorder. My Lord, We prove it otherwise to be Sir *Samuel's* Letter, because it is not his Hand, but his Man's. You *Osland*, Do you know who writ that Letter?

Osland. I writ it.

Mr. Recorder. By whose Order?

Osland. I transcribed it out of a Copy given me by Sir *Samuel Bernardiston*, as I was his Servant.

L. C. J. And did you write the Supercription too?

Osland. Yes, I writ the Supercription.

L. C. J. In order to what? To go down into the Countrey too?

Osland. In order to go where it was directed, my Lord.

L. C. J. Where was that?

Osland. Into *Suffolk*, to Sir *Philip Skippon*.

L. C. J. This Letter was written at *London*, was it not?

Osland. In *Bishopsgate-street*, at Sir *Samuel's* House.

Mr. Williams. What is your Name, Sir?

Osland. My Name is *Osland*.

Mr. Williams. Your Christian Name?

Osland. *Nebemiah*.

Mr. Williams. Then, *Nebemiah Osland*, I ask you this Question upon your Oath, when these Letters were superscribed by you, did you lay them in that Window you speak of, or did you give them back again to Sir *Samuel*?

Osland. Sir, I am not so certain as to swear to these particular Letters; but his usual Custom was, He would write a Letter, and then give it me to Copy: His Closet-door was near another Window, and there he would leave it. If it were but one Letter, he would use to say, direct such a Letter to such a Person, or such a Place, and when it was so directed, I was used to put my Letters there, and thence one of the Boys came and fetched them to carry them to the Post-house. But sometimes he would send me down directly with it away to the Post-house, if he had not any other Business for me to do.

Mr. Williams. But, Sir, mind the Question. I ask you again: Did you deliver these Letters, or any of them back again to Sir *Samuel Bernardiston*, or no?

Osland. I cannot tell for these particular Letters. I tell you what the usual Custom was in the House.

Mr. Williams. Pray when you had superscribed them, or Sir *Samuel*, what became of them Letters?

Osland. They went to the Post-house, as I believe.

Mr. Williams. How long have you served Sir *Samuel Bernardiston*?

Osland. Five Months.

Mr. Williams. Did you serve any body before?

Osland. No.

Mr. Recorder. Why, do you think he doth not serve him well now, Mr. Williams?

Mr. Williams. I know very well what I think of it, Mr. Recorder.

L. C. J. Well, come read them.

Clerk reads ——— *This is directed to Sir Philip Skippon, Knight, at Ipswich, and dated Novemb. 29. 83.*

(Reads) Sir, *The Return of* ———

Mr. Williams. That is not Sir *Samuel's* Hand, I think.

L. C. J. No, but writ by his Order.

Osland. I transcribed it by his special Order: For he came to me and gave me a Letter, says he, Go and make a Copy of this Letter.

Mr. Recorder. And you did transcribe it exactly as it was in the Paper he gave you?

Osland. I examined it after I had writ it my self, and read it over again.

L. C. J. What did you write it out of?

Osland. A Copy he gave me.

L. C. J. Was that Copy his Hand-writing?

Osland. I did not see him write it, but I believe it to be his writing.

L. C. J. Come read it.

Clerk reads ———

SIR,

THE return of the Duke of Monmouth to White-Hall, and his being received into extraordinary Favour of His Majesty, hath made a strange alteration of Affairs at Court: For those that before spake

spake of him very indecently, now court, cringe, and creep to him. His Grace complained to the King of the scandalous Misrepresentation that was made of him in the Monday's Gazette, upon which the Gazetteer was called to Account for it, who alledged for himself, That a Person of great Quality sent him in writing the Words therein recited, commanding him to put them in the Gazette.

Yesterday being the last Day of the Term, all the Prisoners that were in the Tower upon the late sham Protestant Plot, were discharged upon Bail. Mr. Braddon, who prosecuted the Murder of the Earl of Essex, the Information put in against him in the King's Bench by Mr. Attorney (for a pretended Subornation) &c. was not prosecuted, and his Bail was discharged. And the passing Sentence upon the Author of Julian the Apostate, and the Printer of the late Lord Russel's Speech, was passed over in Silence. Great Applications are made to His Majesty for the pardoning Mr. Sidney in the Tower, which is believed will be attained, and that he will be banished.

The Lord Howard appears despicable in the Eyes of all Men, he is under a Guard at White-Hall, and believed he will be sent to the Tower, for that the Duke of Monmouth will accuse him concerning the Testimony he hath given, &c.

The Papists and high Tories are quite down in the Mouth, their Pride is abated, themselves and their Plot confounded, but their Malice is not asswaged. 'Tis generally said, the Earl of Essex was murdered, the brave Lord Russel is afresh lamented. The Plot is lost here, except you in the Country can find it out amongst the Addressors and Abhorers.

This sudden Turn is an Amazement to all Men, and must produce some strange Events, which a little Time will shew.

Mr. Recorder. Now, go on to the next. The Second Letter.

Clerk Reads——This is directed, To Sir Philip Skippon, Knight, at Ipswich, Suffolk.

L. C. J. That is one of his own writing.

Mr. Recorder. Yes, my Lord.

Clerk. It is dated London the first of December, 1683.

Dear Sir,

I AM to answer yours of the 27th and 29th past, and truly I cannot but with great Sorrow lament the Loss of our good Friend, honest Mr. John Wright, but with Patience we must submit to the Almighty, who can as well raise up Instruments to do his Work, as change Hearts, of which we have so great an Instance in the Business of the Duke of Monmouth, that no Age or History can parallel. I am now thoroughly satisfied, that what was printed in the Monday's Gazette is utterly false, and you will see it publicly so declared shortly. The King is never pleased but when he is with him, hath commanded all the Privy Council to wait upon him, and happy is he that hath most of his Favour. His Pardon was sealed and delivered to him last Wednesday. 'Tis said, he will be restored to be Master of the Horse, and be called into the Council Table, and to all his other Places. And 'tis reported, he will be made Captain General of all the Forces, and Lord High Admiral, &c. He treats all his old Friends that daily visit him, with great Civilities; they are all satisfied with his Integrity, and if God spares his Life, doubt not but he will be an Instrument of much good to the King and Kingdom. He said publicly, that he knew my Lord Russel

was as Loyal a Subject as any in England, and that His Majesty believed the same now. I intend shortly to wait on him my self. It would make you laugh to see how strangely our high Tories and Clergy are mortified, their Countenance speaks it. Were my Secretary to be moved, for now it would be readily granted. Sir George is grown very humble. 'Tis said Mr. Sidney is reprieved for Forty Days, which bodes well.

Mr. Kedder sat with me sometime this Evening.

L. C. J. There is no more in the Record.

Mr. Recorder. No my Lord. Then go on to the Third.

Clerk. This is directed, For Mr. Edward Gael, Linnen-Draper at Ipswich.

Mr. Williams. It is likely he should write these Letters to a Draper?

L. C. J. It is, it seems, the ordinary riff-raff he writes. He thinks it not below him to keep a Correspondence with all the Scoundrels of his Party in the Country.

Mr. Recorder. Ay, all Sorts of Trades he is acquainted with.

Clerk. It is dated the first of December, 1683.

Reads——Mr. Gael,

This Evening Mr. Kedder came and sat with me——

L. C. J. Will you have it all read?

Mr. Williams. No, my Lord, we do not defer it.

L. C. J. Then read what is in the Record.

Mr. Recorder. Look where that Passage begins, The late Change——

Clerk. Where is it, Sir? It is not marked.

L. C. J. If you cannot find it out, then read the whole.

Clerk Reads——

Mr. Gael,

THIS Evening Mr. Kedder came and sat with me, when acquainted him what you and others writ me in reference to himself, as also of the Death of Mr. Wright, which he was sorry for. He protested, if could persuade his Wife, he would accept of Ipswich choice, notwithstanding all the Discouragement he had met with. One more he acquainted me with, that had seen a Letter from Mr. Cutliffe to Dr. Cleagat, extremely discouraging him from coming to Ipswich, where if he did come, said, would find himself mistaken, for that would never enjoy quietness or peace, notwithstanding his Balsamick Temper, &c. as he called it. These Things frights Mr. Kedder, who I am now persuading so soon as it is up again, to go down for a Month or two, and then if doth not like the Place and People, may return hither again. This I resolve to press hard on Monday, when have promised to Dine with me, as also Mr. Hodges. Be confident, I shall think nothing too much to effect this Business, though one or other still pulls down as fast as I build up——Here is now a Door of Encouragement opened for sober Men to come into publick Employment. You will undo the Town of Ipswich if you bring not sober Men into play: For God's sake consider of it. Persuade Mr. Snelling, or some sober Men, to come in their two Ports-men's Places void for other Matters, refer

refer you to Sir P. the late Change here in Publick Affairs, is so great and strange.

L. C. J. There begins the Passage in the Record.

Clerk reads — *The late Change here in Publick Affairs is so great and strange, that we are like Men in a Dream, can hardly believe what we see, and fear we are not fit for so great a Mercy as the present Juncture seems to promise. The Earl of Mackensteild is bringing Actions of Scandalis Magnatum against all the Grand Jury men that Indicted him at last Assizes. And the several Gentlemen that were Indicted in Cheshire and Northamptonshire, will bring their several Actions at Law against them. Acquaint Mr. Snilling* —

L. C. J. There is all that is in the Record.

Mr. Recorder. There are but two Lines more.

Clerk reads — *Acquaint Mr. Snilling we received the two Barrels of Oysters, and two Couple of Ducks, and desire him to take Money of Buckle for them.*

I rest, yours.

Mr. Recorder. Now go on to the next.

Clerk. This is the Fourth Letter: It is directed to Mr. William Cavell, at Brightwell near Ipswich in Suffolk, and dated London the 4th of December, 1683. Shall I read it all?

L. C. J. No, no: If you can find that Part that is in the Record, Contrary to most Men's expectations, there it begins.

Clerk Reads — *Contrary to most Mens expectations, a Warrant is Signed at last for Beheading Colonel Sidney at Tower-hill next Friday. Great Endeavours have been used to obtain his Pardon, but the contrary Party have carried it, which much dasheth our Hopes, but God still governs. Acquaint Buckle* —

L. C. J. There is all.

Clerk. Here is but a Line more, (reads) *Acquaint Buckle, here is no News of Crafton Hoy, notwithstanding the Wind is fair, 'tis his Practice always to loyter by the way.*

I rest,

Your loving Friend.

Mr. Williams. Pray let me see that Letter.

Mr. Recorder. We have done, my Lord, we leave it here.

L. C. J. Well, What say you to it that are for the Defendant?

Mr. Williams. May it please your Lordship, and you, Gentlemen of the Jury, I am of Counsel here for the Defendant. Sir Samuel Bernardiston, and the Question now before you is, Whether this Gentleman be knowingly guilty of the writing and publishing these four Letters that have been read here to you, and which of them he is guilty of writing, and which not? I do not see that his Name is put to any of

them, nay, the Letters are not subscribed by any body, and that, Gentlemen, you may see by looking upon the Letters. For the Evidence that hath been given, I beseech your Lordship to observe what it is. As to his publishing of them, I see no Evidence at all to prove him any way concerned in that: Some of them indeed are his own Hand-writing, and proved to be his Letters, by his own Confession before the King and Council; that Mr. Blatbwaite and Mr. Atterbury the Messenger swear directly, That Sir Samuel Bernardiston did own the Letters, but for the fourth they say he did disown that to be his Letter, and it is not so much as his Hand; but what Proof is it they have brought to apply this to him? You see what a Sort of Proof is made: They produce you here a young Man that was (as it happened) his Servant at this time, and lived in his Family with him in the nature of a Secretary, it seems; and how fit he was to be entertained in that Quality, you I question not observe. He says, he did copy this Letter by the Direction of his Master. It is well if he did not keep a Copy himself by him of such a Letter as this for a particular Use, as some honest Servants have done before now, that have designed somewhat of Advantage to themselves: But that is his Evidence about this fourth Letter. That then Gentlemen which we would offer on behalf of the Defendant, is this, Whether there be any Evidence of the publishing of these Letters by Sir Samuel Bernardiston, either of all, or any, and which of them? All the Proof that I hear, comes from Atterbury, and the Clerk of the Council Mr. Blatbwaite, which is but this: Atterbury says, That Sir Samuel should say, they were sent to the Post-house; and Mr. Blatbwaite says, he did not deny the publishing of them, but he does not say, he confessed it. As to the sending to the Post-house, if it be true, I shall leave it to your Lordship, how far that, my Lord, can be a publishing of a Libel; whether that be a publishing within the Information, or no? A Gentleman writes a Letter to a private Friend, and sends it to the Post-house; whether that be a publishing of a Libel, I leave it to you? For the fourth Letter, this same trusty Secretary cannot tell you, whether he delivered it back again to Sir Samuel, or no; or whether he put it in the Window; or whether he delivered it in at the Post-house, only, as he believes, he laid it in the Window as he used to do other Letters. But whatever he believes must not pass for Evidence, especially in Matters of this nature, it being a great Crime, as the Information has set it forth. If then there is no Proof (as with Submission I hope there is not) of the Publication of these Letters, I suppose, Gentlemen, you will not take it upon your Oaths, that he is Guilty of what he is here accused of without Evidence. This Information, Gentlemen, doth mention several Things which do very much aggravate the Matter, if they were proved. Many Things are laid in it to induce the Information, and which may much enhance the Crime, but of which I see no manner of Proof at all. Many Things are mentioned as Facts leading to the main Fact, which is the great Offence; but these not being proved upon him, I desire he may be acquitted of that Part.

L. C. J. What do you mean Mr. Williams?

Mr. Williams. Of all your Preamble.

L. C. J.

L. C. J. What Preamble do you mean?

Mr. Williams. That he being a Person of a turbulent and unquiet Spirit—

L. C. J. Why, Mr. Williams: Would you have the Jury find that he is not so?

Mr. Williams. My Lord, There is no Proof of it; or that he did do it with a Design seditiously to disturb the Peace, that he did it with a seditious Intent.

L. C. J. You would have the Jury find, I warrant, that he did it piously, and with a good Intent.

Mr. Williams. My Lord, There is a middle way—

L. C. J. No, no, Mr. Williams. Let us have none of that Doctrine, we must have a care of that, and your middle ways. For certainly the Law supplies the Proof, if the thing it self speaks Malice and Sedition. As it is in Murder, we say always in the Indictment, He did it by the Instigation of the Devil: Can the Jury, if they find the Fact, find he did it not by such Instigation? No, that does necessarily attend the very nature of such an Action, or Thing. So, in Informations for Offences of this nature, we say, He did it falsely, maliciously, and seditiously, which are the formal Words; but, if the nature of the Thing be such as necessarily imports Malice, Reproach, and Scandal to the Government, there needs no Proof but of the Fact done, the Law supplies the rest. If the Fact were indifferent in it self, then to make a Crime of it, the accidental Circumstances must be proved, but it needs not where the Thing implies Malice in its own nature. You would have the Jury find he had no ill Design in it; he did it with a good Intent, I warrant you.

Mr. Williams. All I would ask, my Lord, is but this—

L. C. J. Do you think he did it to serve the Crown? If the Jury will take it upon their Oaths that Sir Samuel Bernardiston wrote these Letters to serve the Crown you say something. Pray ask them that Question. Try, if you can make them believe that, Mr. Williams.

Mr. Williams. There is no Evidence given about his Malice.

L. C. J. Yes, The very thing is Evidence of it self.

Mr. Williams. Pray, my Lord, let the Fact lie upon its own weight: There is no Proof given of any of these aggravating things.

L. C. J. How shall any Man prove another Man's Malice, which is a thing that lies only in a Man's Mind? How should any Man know that I am malicious against the Government, but by my Actions?

Mr. Williams. I lay it before your Lordship and the Jury.

L. C. J. No Proof can be expected, but what the nature of every thing will bear.

Mr. Williams. Then I pray this, my Lord, that I may be at liberty next Term, if we be convicted, to urge this, and observe in mitigation of the Punishment, that there was nothing of these things proved.

L. C. J. Urge what you can in its proper time, but offer nothing here but what is fit to be offered.

Mr. Williams. Here are mentioned in this Information, (tho' it be by way of Inducement,

yet they must be proved) things that are Matters of Record, but they have proved none of them.

L. C. J. Have you any of those Records here, the Convictions of my Lord Russel and Colonel Sidney?

Mr. Recorder. Those things are so well known, I suppose they will not contest them.

Mr. Williams. Sir, I must lay hold on all Advantages for my Client. You have made them part of your Case, pray prove them.

Mr. Recorder. Truly, my Lord, We did not think they would have made that any Question, and we have them not here. They know it well enough to be true.

L. C. J. If you have them not here, go and find them; if they insist upon it, you must prove them. I will stay till you fetch them.

Mr. Williams. My Lord, We would not hinder your Lordship's Business.—

L. C. J. No, no, It will be no hindrance, I will do something else in the mean time. This is a Cause of publick Example and Consequence, and I will give it all the fair Hearing I can.

Mr. Williams. My Lord, If you please, there is, I suppose, no such haste of Trying this Cause now, to hinder Business and keep you here longer than needs. This Cause may as well be Tried the beginning of next Term.

L. C. J. No, no, I will make an end of it now, it I stay never so long for it; indeed the Defendant says, *I am down in the Mouth*: 'Tis true, I have got a little Hoarseness, but I thank God, my Heart is not down, nor I hope never will be to serve the Government.

Mr. Williams. If they will, they shall find the Letters without the Records.

Mr. Jones. No, no, We must have the Records, tho' it is true it is but matter of Form, yet we must prove our whole Case.

L. C. J. Well, I will stay till they are fetched. Let the Jury stand by, and I will go on and Try another Cause, and in the mean time fetch these Records. Do not make two Journeys, but bring all that are mentioned in the Record.

Then the Jury were set by, and the Court went on in some other Causes, and about an hour and an half after the Records were brought, and this Cause was resumed, and proceeded thus.

L. C. J. Well come, Have you those Records now?

Mr. Recorder. Yes, swear Mr. Tindal. (Which was done.) Is that a true Copy?

Mr. Tindal. Yes, It is a true Copy of the Indictment, Conviction and Attainder of my Lord Russel. I examined it with Mr. Tanner.

L. C. J. Well, put it in. (And then a Word of it was read by the Clerk.)

Mr. Recorder. And here is the Record it self of the Attainder of Colonel Sidney.

[Which was some part of it read also.]

L. C. J. What say you now to it, Gentlemen, for the Defendant?

Mr. Thompson. My Lord, I have nothing more to say than has been said.

L. C. J. All this was well enough known.

Mr. Jones.

Mr. Jones. Ay, but they would give the Court all the trouble they could by making them send for that which they could not deny.

L. C. J. Gentlemen of the Jury, Here is an Information exhibited against Sir Samuel Bernardiston, and the Information sets forth this Matter. It doth take notice of a horrid Conspiracy, a damnable Conspiracy, lately hatched and set on foot for the Destruction of the King, and for the Subversion of the Government, That there were divers Persons who were Indicted, and stood Convicted, and were afterwards Executed for this horrid Conspiracy. Among the rest, there is notice taken of my Lord Russell for one, and Colonel Sidney (he went by that Name, *Algernone Sidney* I mean) for another, to be two of those Conspirators that were engaged in that damnable Conspiracy for the Destruction of the King, and Subversion of the Government.

Now, Gentlemen, That these Persons according to the Inducement of this Information, were so Indicted, so Attainted and Executed (as far forth as is recited in the Information) is proved to you by the two Records, which the Counsel on the other side insisted to have shewn, and which have been now produced. The one is sworn to be a true Copy of the Conviction and Attainder of my Lord Russell, and the other which they produced, was the Record it self of the Conviction and Attainder of Sidney. So that, as to that part it is plain, they were Convicted and Attainted, both the one and the other, as Actors in that Hellish Plot.

The next thing, Gentlemen, and which was so much insisted upon by the Defendant's Counsel, is this: The Information takes notice that the Defendant Sir Samuel Bernardiston, being a Man of a factious, seditious, disaffected Temper towards the Government, a Man of ill Principles, in order to disturb, disquiet, and discompose the Government, he did cause several Letters, Four in Number, to be Writ and Published, which Letters have been read unto you.

It hath been objected, That in as much as the Words, Falsly, Seditiously, Maliciously, Factiously, and the like Words are in the Information, they would have you believe, That there being no Evidence of any such thing as Faction, Malice and Sedition, or that the Man did it Maliciously, and Advisedly and Seditiously (which are the Words in the Premises, as I may call them, or the Preamble of the Information) therefore they must be acquitted of that part. Now as to that, I told them then, and tell you now, Gentlemen, That no Man living can discover the malicious evil Designs and Intentions of any other Man, so as to give Evidence of them, but by their Words and Actions. No Man can prove what I intend, but by my Words and Actions. Therefore if one doth compass and imagine the Death of the King, that by our Law is High Treason; but whether or no he be guilty of this Treason, so as to be convicted of it by another, is not proveable, or discoverable, but by some Words or Actions, whereby the Imagination may be manifested. And therefore my Imagining, my Compassing, which is private in my own Mind, must be submitted to the Judgment that Reason and the Law passeth upon my Words or Actions, and

then the Action it self being proved, that discovers with what mind the thing was done; as in the Case I put before to the Counsel. Suppose any Man without Provocation kill another, the Words of the Indictment are, That he did it Maliciously, Feloniously, not having the Fear of God before his Eyes, but being moved and seduced by the Instigation of the Devil. Now all these things, whether he had the Fear of God before his Eyes, or not; or whether he were moved by the Instigation of the Devil, and of his Malice forethought, or no; these cannot be known, till they come to be proved by the Action that is done.

So that in case any Person doth write Libels, or publish any Expressions which in themselves carry Sedition and Faction, and ill Will towards the Government; I cannot tell well how to express it otherwise in his Accusation, than by such Words, that he did it Seditiously, Factiously, and Maliciously. And the Proof of the thing it self proves the evil Mind it was done with. If then, Gentlemen, you believe the Defendant, Sir Samuel Bernardiston, did write and publish these Letters, that is Proof enough of the Words, Maliciously, Seditiously, and Factiously, laid in the Information.

The Letters are Factious, Seditious, and Malicious Letters, and as base as the worst of Mankind (tho' he had had all the Provocation that ever could be given a Man to libel another) could ever have invented. And let Sir Samuel Bernardiston put it under the Countenance, or under the Umbrage, or under the Enamel of his Zeal for the true Protestant Religion, if he will; or if he have a mind to it, to give himself any Fine Name, by calling himself one of the Sober Party, or the Godly Party, or the Upright Party; let him gild himself, and paint himself as he pleaseth, yet the inside is rotten, and 'tis Factious and Seditious at the bottom to all Intents and Purposes whatsoever. And if he be Guilty of it, as you Gentlemen are to Try and Consider; the greater the Man is, the greater the Crime, and the more Understanding he has, the more Malicious he seems to be: For your little ordinary sort of People, that are of common mean Understanding, they may be wheedled and drawn in, and surprized into such things; but Men of a publick Figure, and of some Value in the World, that have been taken to be Men of the greatest Interest and Reputation in a Party, it cannot be thought a sudden Surprize upon them, no, 'tis a Work of Time and Thought, 'tis a thing fixed in his very Nature, and it shews so much Venom, as would make one think the whole Mass of his Blood were corrupted. I had thought the Act of Oblivion might have put Sir Samuel Bernardiston in mind, That it was not fit any more to go down to Whitehall, to make Uproars, and Tumults, and Hubbubs.

But here is the Matter that he now is accused of, and here is in it Malice against the King, Malice against the Government, Malice against both Church and State, Malice against any Man that bears any Share in the Government, indeed Malice against all Mankind that are not of the same Perswasion with those bloody Miscreants, (I cannot give them a milder Name) I mean the Conspirators in the late damnable Conspiracy, some of whom have been Attainted and

and Executed for it. Here is the Sanctifying of Traitors, that were justly Sentenced to Execution according to the Law of the Land, and at the same time there is joyned with it the most inveterate Insinuation against the Government that can be, as tho' the King was prevailed with, upon a Sham Protestant Plot, to do things in order to destroy the Government it self, and every one of the *Sober Party*, as they call themselves. For these Persons could not have suffered, but as Condemned according to the Rules of Law, but these Letters carry an Insinuation as if they were cut off by a Sham Trick and Design. For after the good News of the Reprieve of *Sidney* was contradicted, the Warrant for his Execution is taken notice of, and you see the manner of Expression that is used, *their Party has prevail'd*, as tho' the putting the Laws in Execution, and hanging of Traitors, were such a thing that a Party must be set up to prevail to do it, and Mankind must be divided into Parties, their Party and our Party, and the contrary Party, they have prevailed; and truly now our Party, the *Sober Party* as he calls it, are in a very sad Condition.

Then here is, as I said, the Sainting of Two horrid Conspirators, here is the Lord *Ruffel* Sainted, that blessed Martyr, my Lord *Ruffel*, that good Man, that excellent Protestant, he is lamented, and what an extraordinary Man he was, who was fairly Tryed, and justly Convicted and Attainted, for having a hand in this horrid Conspiracy against the Life of the King, and his dearest Brother His Royal Highness, and for the Subversion of the Government. And here is Mr. *Sidney* Sainted, what an extraordinary Man he was? Yes surely, he was a very good Man, because you may some of you remember, or have read the History of those Times, and know what Share Mr. *Sidney* had in that black and horrid Villany, that cursed Treason and Murder, the Murder I mean of King *Charles I.* of Blessed Memory, a Shame to Religion it self, a perpetual Reproach to the Island we live in, to think that a Prince should be brought by pretended Methods of Law and Justice to such an End at his own Palace. And 'tis a Shame to think, that such bloody Miscreants should be Sainted and Lamented, who had any hand in that horrid Murder and Treason, and who to their dying Minutes, when they were upon the brink of Eternity, and just stepping into another World, could confidently bless God for their being engaged in that Good Cause, (as they call it) which was the Rebellion which brought that Blessed Martyr to His Death. It is high time for all Mankind, that have any Christianity or Sense of Heaven or Hell, to bestir themselves, to rid the Nation of such Caterpillars, such Monsters of Villany as these are.

Nay, In these very Letters is contained the very Language of that cursed Murderer and Traitor *Walcot* himself, *That God Almighty in his own time would raise up Instruments.* I know, Gentlemen, you have heard and read what that bloody Traitor said to that effect; and you hear what Expressions like it are in these Letters, *I am sorry for the Death of our Friend, honest Mr. John Wright, but God can easily raise up Instruments to do his own Work*; the very Language

of *Walcot*. And I would have you take notice of it, Mr. *Blackerby*, for I would have you take warning by these things.

[Speaking to a Gentleman that was taking Notes.]

Mr. *Blackerby*. My Lord, I have neither said nor done any thing that should give you occasion to speak thus to me.

L. C. J. These Letters tell you, *God will be sure to raise up Instruments*, but what Instruments do they mean? Instruments of Rebellion, and Faction, and Sedition, which they most falsely call, *his own Work*. For it is that monstrous Sin Rebellion that they mean by it, Instruments of Treason, under pretence of fighting for God Almighty they would fain be fighting against the Government. It was the Language of the former Times, wherewith they destroyed the best of Kings, and subverted the best of Governments for a time, and were very near having totally destroyed Three Kingdoms, under pretence of doing God good Service. And when once a People pursue such Principles, and, under the Pretence of Religion, endeavour to destroy Monarchy and Government it self, it is high time for all honest Men to look about them.

Nay, and you may observe, Gentlemen, another thing in these Letters, it is not only the Destruction of the Civil Government, the King and those that are in Authority near Him that are aimed at; but all Persons that come with humble Representations of their Loyalty to Him, all that Address themselves to the King to shew their Duty, and their Dislike of that damnable Design and Conspiracy against Him. For now (says Sir Samuel Bernardiston) *all the Sham Plot is quite blown off, and we cannot find any here, 'tis lost except you can find it among the Addressers and Abhorers in the Country, or among a parcel of Clergymen.* — So that all Mankind, that ever thought themselves obliged to congratulate that blessed and happy Deliverance, either to own our Thankfulness to God for it, to whom we owe more than we are able to pay for his great Mercy to us therein, or to express our Joy to the King, in humble Addresses, Congratulating His Deliverance from the horrid Conspiracy lately designed against Him, His Brother and the Government; these Gentlemen, because they are Loyal Subjects, and desire to shew themselves so, must be branded with the Names of *Abhorers, Tories, Addressers, Sham-Plotters*, and all the Ignominy they can lay upon them. This shews it was not only aimed at the Civil Magistracy, but at all that dare be honest and oppose Faction and Rebellion.

As for any thing that he has said of me, Sir Samuel Bernardiston shall write and speak of me as long as he pleases. But tho' he says, *I am down in the Mouth*; it is true, I have a little lost my Tongue by my Cold, yet I hope I shall never lose my Heart nor Spirit to serve the Government, nor forbear to use my utmost Diligence to see that such Offenders as these Persons, that entertain Principles so destructive to the Government, be brought to condign Punishment. And be they who they will, were they my own Brothers, I should be of the same mind, and in that mind I hope in God I shall live and dye.

Gentlemen, the Question before you is, whether the Defendant be guilty of writing these mali-

Malicious, Seditious Letters; for that they are Malicious and Factious, no honest Man can doubt in the least, and I do not find that the Counsel for the Defendant do offer to say any thing in defence of the Letters, or can say, but that they are as venomous, malicious, seditious, factious, tumultuous Letters, as can be written, and I must tell you, tread very near upon the Borders of High Treason it self. I am sure I may venture to call it *Cozen German* to *High Treason*.

Now that he did write and publish them, you have this Proof before you: Mr. *Blashwaite* tells you, That Sir Samuel did own three of them, acknowledge them to be his own Writing, before His Sacred Majesty in Council. *Atterbury* the Messenger says, he was by too when he did before the King acknowledge the Writing of those Three Letters. As to the Superscription to one of those Three Letters, you have the Testimony of *Osland*, the young Man that lived with Sir Samuel Bernardiston, he Swears he writ it by his Direction, being his Servant. And as to the Fourth Letter, this young Man does directly swear, that the Original he copied it by (for it is his Writing) he had from Sir Samuel Bernardiston, and 'twas of Sir Samuel's own Writing (which he knows well, being acquainted with his Hand) and that Sir Samuel expressly directed him to Copy it out, which he did by his Command, and this is the same Letter; and so though 'tis not under his Hand, yet it is under his Man's, and written by his Direction. And he says, he does believe the other Three to be his Hand-writing. So as to the Dictating and Writing of these Letters, you have as full and as plain a Proof as can be made.

And as to his Publishing of them, which is another Part of the Information, and of which Mr. *Williams* said there was no Proof, I would say but this to you. Is it not very preposterous, absurd and senseless, to think that ever it should enter into any Man's Imagination, That Sir Samuel Bernardiston would take such a wonderful deal of Pains and Care to write these Letters to Sir *Philip Skippon*, and to the other two Men, to tell them of his Endeavours to take off Mr. *Kedder's* Scruples, and perswade him to go down to *Ipswich*, and to desire them to take care of the *Sober Party*, and endeavour to get *Sober Men* into play, and *all will do well*, and that the Duke of *Monmouth* had denied all the Plot, and so given the Lie to the King and the Courts of Justice, and now there was a Door opened for *Sober Men* to come in, and God would raise up Instruments, and the *Sober Party* will up again? Do you think, I say, he would write all this Fustian Stuff (for I can call it no better than Stuff, though it be very malicious Stuff) and carry to his Man to Copy out, and Superscribe them and Seal them, only to put them in his Pocket? If you can believe this, upon my Word you have a Faith able to remove great Mountains; but I assure you my Faith cannot get to that Strength.

But for further Proof of the publishing, you hear what the young Man that was the Defendant's Servant says. He tells you, the usual way of dealing with Sir Samuel's Letters was this, There was a Window near Sir Samuel's Closet, and when the Letters were Sealed up, they were used to be put there, in order that the Boy, according to the usual course, might carry them to the Post-House. And he doth believe these

Letters (though he cannot particularly and positively speak to them) were so used.

Besides all this, you have it by *Atterbury* positively Sworn, that about the same time that Sir Samuel Bernardiston did acknowledge before the King, that he writ those Letters, being in his Custody, he did say they were sent to the Post-house, and he wondered how they came by 'em. That proves it was done by his Privy. And beyond all there is this Circumstance, that the Thing speaks it self, they are directed to Men at *Ipswich*, where Sir Samuel Bernardiston is known to have a Correspondence, they take notice of the receipt of Letters from thence, and of the Death of Mr. *Wright*, mentioned in those Letters, which shews them to be Answers to Letters received; and must not these think you be sent, but kept still in his Pocket? There is notice also taken in them, of their Country Affairs: Though they seemed to have met with some Disappointment in such a Business about Mr. *Kedder*, yet they were resolved to go on, and desires them to communicate this Business of Mr. *Kedder* and Dr. *Clegitt*, to such and such of our Friends, and desire them to bestir themselves, and get in *Sober Men*, such as Mr. *Kedder*, among them. For it is mightily for our Advantage, that there should be *Sober Men* brought into play at *Ipswich*, and pray be sure to keep the *Sober Party* up. These Things in their own nature speak, that these Letters were intended and written, in order to preserve a Correspondence between those of the *sober Party* in *Ipswich*, and their Friends here, and therefore you may easily conclude what was to be done with them.

So that, Gentlemen, this Information surely (if ever any was) is fully proved, as it is laid in all the Parts of it.

I would not have given you so much Trouble at this Time, in an Affair of this Nature, that has been so evidently proved, because your Question that you are to Try, is only, Whether the Defendant be Guilty of this Offence, or not Guilty? (You are not to inflict the Penalty, that is the Province of the Court above;) but only because I see it is a Matter of great Expectation and Consequence. I would not we should be gulled twice in one Age, by the self-same Men, and the self-same Way, into the same Treason and Rebellion, and all those other Mischiefs, that dreadful Chaos and State of Confusion, Misery and Destruction, that we were brought into in the late Times. And that has made me take so much notice now in this Place of the Tendency of Things of this Nature, that we may learn to beware of, and know these Men that carry Sheep's cloathing, pretend Zeal and Religion, but their Insides are Wolves. They are Traitors in their Minds, whatsoever they are in their outward Pretences.

Then the JURY laid their Heads together in the Place where they stood, and being presently after agreed upon their Verdict, the Foreman gave it in,

That the Defendant Sir Samuel Bernardiston was Guilty of the Offence and Misdemeanour, Charged on him by the Information.

Which Verdict was Recorded by the Clerk.

PROCEEDINGS on the OUTLAWRY against
James Holloway, for High Treason.

Die Lunæ 21 April. 36 Car' Secund. Regis. Anno Dom'
1684. B. R.

Dominus Rex versus Jacobum Holloway.



His Majesty's Attorney General having on *Friday* last, moved the Court of King's Bench for an *Habeas Corpus* Returnable this Day, directed to the Keeper of His Majesty's Goal of *Newgate*, to bring thither the Body of *James Holloway*, then in his Custody, to shew Cause why Execution should not be awarded upon an Outlawry for High-Treason against him. The Keeper of *Newgate*, according to the Command of the Writ, brought him this Day to the Bar of the said Court, where he was proceeded against in this Manner.

The Return of the Writ of Habeas Corpus was first Read.

Cl. of Cr. *James Holloway*, Hold up thy Hand,
[Which he did.]

Thou hast been Indicted in *London*, by the Name of *James Holloway*, late of *London*, Merchant, for High Treason by thee committed, touching the King's Majesty's Person, and the Government of this His Kingdom of *England*, and for not appearing and answering that Indictment, by due Process of Law, upon the Indictment thou standest Outlawed, and upon that Outlawry thou standest Attainted of the same High Treason; What hast thou to say for thy self why Execution should not be awarded against thee upon that Attainder by this Court according to Law?

Holloway. My Lord, I have been a great while Absent, and know not what hath been done in this Matter, or proved against me.

Sir George Jefferies. L. C. J. Yes, you have been absent so long it seems, that you now stand Outlawed, and thereby Attainted of High Treason; there is nothing now remains with the Court, but only to make a Rule for your Execution.

Holloway. If an ingenuous Confession of the Truth will merit the King's Pardon, then sure I have done it.

L. C. J. For that Matter we are not to dispose of the King's Mercy, he will dispose of his own Mercy as he shall think fit. Is Mr. Attorney in the Hall?

Cryer. Yes, my Lord, he is.

L. C. J. Then pray send for him.

Which was done, and in a little time after he came into Court.

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L. C. J. Mr. Attorney, here is the Prisoner at the Bar, *Holloway*.

Mr. At. Gen. Yes, my Lord, I see he is. Sir *Samuel Astry*, have you the Record there? Sir *Roberts Sawyer*.

Cl. of Cr. Yes, Sir.

L. C. J. It has been read to him, Mr. Attorney.

Mr. At. Gen. My Lord, I would know what he saith that Execution should not be Awarded.

L. C. J. He talks of Discoveries and Confessions which we, you know, cannot take any notice of; Ask him again.

Cl. of Cr. Hast thou any thing to say for thy self why Execution should not be awarded against thee according to Law?

Holloway. My Lord, I know not what hath been proved against me, but I have made such an ingenuous Confession to His Majesty of what I know——

L. C. J. Proved against you? You are Outlawed upon an Indictment for High Treason; what can you say against the Court's awarding Execution?

Mr. At. Gen. My Lord, has he heard the Indictment upon which the Outlawry was grounded?

Cl. of Cr. No, Sir, only the Substance was told him, That he was Indicted of High Treason, and Outlawed for it, and stands Attainted by that Outlawry.

Mr. At. Gen. If your Lordship please, the Indictment may be read to him, that he may understand what it is, and may not go blind to Execution.

L. C. J. Ay, Mr. Attorney, if you please, let it be so.

Cl. of Cr. Reads. The Jurors being Sworn to enquire for our Sovereign Lord the King, and the Body of the County of the City of *London*, upon their Oaths present, That —— [And so the whole Indictment was read.]

Cl. of Cr. That is the Indictment, Mr. Attorney, and upon this he is Outlawed.

Mr. At. Gen. And so stands Attainted. What hath he to say to it?

L. C. J. Ay, why should not we award Execution against him according to Law?

Cl. of Cr. Have you any Thing to say?

Holloway. I have said what I have to say.

Mr. At. Gen. Pray what is that, my Lord, that he has said, for I was not here?

Holloway. I beg His Majesty's Mercy.

Mr. At. Gen. If the King be so Gracious as to admit you to your Tryal, can you make a Defence against the Indictment? Have you any Thing to say that you can defend your self by, if the King do admit you to be tryed, and that is a Mercy and a Grace, for at Law you are gone.

L. C. J. It is so, indeed, Mr. Attorney; if you will on the King's Behalf indulge him so far, as I suppose you have Authority from the King to Consent unto, that if he has a mind to try the Fact, and can defend himself, he shall have that Liberty, that is a great Mercy, I assure you.

Mr. At. Gen. My Lord, That is the only reason why I did cause the Indictment to be read that he might hear it; that supposing he were not Outlawed, but that were out of the Case, if he hath any thing to say that could defend him from it, the King would not exclude him, but admit him to his Tryal, and extend his Mercy so far to him.

L. C. J. Mr. Attorney, it is exceeding well. Now you understand what is said by the King's Attorney, you have heard the Indictment read, it is an Indictment of High Treason, that you with other false Traytors, *Hone, Rumball, the Goodenough's*, and the rest, did Conspire the Death of the King. Now though you are in Law actually Attainted, as much as if you had been Tryed and Convicted, and received Judgment of Death upon that Conviction, to all intents and purposes, and there is no more for the Court to do, but to award Execution upon this Attainder, and be dealt with as a false Traytor. Yet however in as much as you have heard the Indictment read, if you think you have any thing to say that would satisfy the World, or a Jury, that you are not Guilty of what you are Indicted and Accused of, it seems the King is pleased to signify His Gracious Intention towards you by Mr. Attorney General, that he is contented to wave that other Part the Attainder by Outlawry, and you shall have the Liberty to try it, if you think you can defend your self.

Holloway. My Lord, I cannot undertake to defend my self, for I have Confessed before His Majesty that I am Guilty of many Things in that Indictment, and I throw my self on the King's Mercy.

L. C. J. Then he Confesseth it, and will not undertake to defend himself; as for the King's Mercy, that we must leave to His Majesty, who is the Dispenser of his own Grace, we are to execute his Justice, and must give a Rule accordingly.

Mr. Just. Withins. But I hope every body here takes notice of his open Confession, when he might try it if he would. Surely none but will believe this Conspiracy now, after what this Man hath owned.

L. C. J. We were well enough satisfied about

it before, and so was every honest Man, I dare say.

Mr. Just. Withins. Yet, perhaps, though he saith it, and others have confessed it, and the Evidence hath been made Publick, there are many People that say they will not believe it.

L. C. J. We do not mightily concern our selves what the People say. I am sure not one of all that were concerned in this Conspiracy, have dared to deny it absolutely, though some have been prevailed upon by ill Advice, to Prevaricate about it, and shuffle it off. But none of them have had the Confidence absolutely to deny the Truth of the Fact, notwithstanding all the Calumnies and Reproaches cast upon the Government, and all the Arts that have been made use of to stifle it.

Mr. Just. Withins. My Lord, I speak it the rather, because we see what work Sir *Samuel Bernardiston* has made of it in his Letters, where he calls it a Sham Plot, and says it is lost, except it be found among the Abhorrrers and Addressers.

L. C. J. But now the Plot is found among the Conspirators and Traytors, he may write to his Correspondents in the Country the next time: It is found among the Reformers of Government and Religion, that can swallow all Things, that can kill Kings, and levy War, and do the worst of Villanies to promote Religion and Reformation, as they call it — Let us think of some convenient Day, and give such Order that the Sheriffs see Execution done according to Law.

Mr. At. Gen. You must first pronounce the Judgment, my Lord.

Mr. Just. Withins. It is never pronounced in such a Case, Mr. Attorney.

L. C. J. No, we only give a Rule for Execution, the Outlawry is the Judgment, and that is upon the Record already.

Cl. of Cr. Yes, my Lord, we always enter it so.

L. C. J. Captain *Richardson*, I think, *Wednesdays* and *Fridays* are your usual Execution Days in London, are they not?

Cap. Richardson. Yes, my Lord, either of them.

L. C. J. Then *Wednesday* seven-night.

Cap. Richardson. Does your Lordship appoint *Wednesday* next?

L. C. J. No, that will be too quick; *Wednesday* seven night.

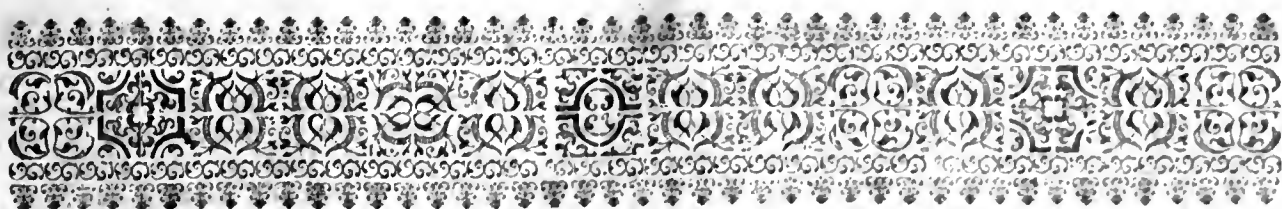
Cap. Richardson. What Day your Lordship pleaseth, I suppose I shall have a Rule.

Cl. of Cr. You shall have a Rule, and an *Habeas Corpus* to deliver him, as the Course is.

L. C. J. In the mean time take your Prisoner back again.

And accordingly he was carried back to Newgate.





The manner of Executing a Writ of Inquiry of Damages : Between His ROYAL HIGHNESS *James Duke of York, &c.* and *Titus Otes.*

Die Mercurii 18. Junii, *An. Dom.* 1684. B. R. *Dux Ebor' versus Otes.*

HIS Royal Highness the Duke of York, having brought an Action against *Titus Otes*, grounded upon the Statute *de Scandalis Magnatum*, for very Slanderous and Opprobrious Words, the Defendant suffered Judgment to go against him by Default, and thereupon a Writ of Inquiry was taken out, directed to the Sheriff of the County of *Middlesex*, to enquire by a Jury of that County, what Damages the Plaintiff had sustained thereby, and upon a Motion made at the Court of King's Bench, a Day was given to the Defendant, to shew Cause why that Writ of Inquiry should not be executed at the Bar of that Court, which he not doing, it was ordered, That it should be executed at the Bar on this Day, and that the High Sheriff should appear and attend the Execution of the Writ in Person. Accordingly this Day *Sir Peter Daniel*, Knight, and *Samuel Dashwood*, Esquire, the present Sheriff of the County of *Middlesex*, came into this Court, and being placed at the Table at the Judges Feet, were during the Execution of the Writ, covered. Mr. *Thomas Rous* the present Under-Sheriff managed it, and proceeded in this manner.

Mr. Under-Sheriff. Cryer, Call *Sir Charles Lee*.
Cryer. *Vous avez* *Sir Charles Lee*. [*Who was sworn thus*]

Mr. Under-Sheriff. You shall well and truly enquire of Damages, between the most Illustrious Prince *JAMES Duke of York and Albany* Plaintiff, and *Titus Otes* Defendant, and therein a true Verdict give according to your Evidence. So help you God.

The rest were Sworn thus,

Mr. Under-Sheriff. *Sir William Hill*, *Sir Richard Downton*, and *Sir John Berry*; the same Oath your Foreman hath for his Part taken, you and every of you for your Parts, shall well and truly keep. So help you God.

Mr. Under-Sheriff. *Thomas Harriott*, *Thomas Row*, and *Walter Brydall*; the same Oath, &c. *Edward Guise*, *Thomas Done*, and *William Wood*; the same

Oath, &c. *John Sharp*, and *Nehemiah Arnold*; the same Oath, &c.

Will you please to have any more than Twelve sworn?

L. C. J. How many do you use to have? Pray swear an odd Number as you used to do. Sir George Jefferies.

Mr. Under-Sheriff. Then I will swear three more, and that will be just fifteen.

Francis Stevens, *Nicolas Baxter*, and *John Kirk*. The same OATH, &c.

The NAMES of them that were upon the INQUIRY.

<i>Sir Charles Lee</i> , Kt.	<i>Thomas Done</i> , Esq;
<i>Sir William Hill</i> , Kt.	<i>William Wood</i> , Esq;
<i>Sir Richard Downton</i> , Kt.	<i>John Sharp</i> , Esq;
<i>Sir John Berry</i> , Kt.	<i>Nehemiah Arnold</i> , Esq;
<i>Thomas Harriot</i> , Esq;	<i>Francis Stevens</i> , Esq;
<i>Thomas Row</i> , Esq;	<i>Nicolas Baxter</i> , Esq;
<i>Walter Brydall</i> , Esq;	<i>John Kirk</i> , Gent.
<i>Edward Guise</i> , Esq;	

Mr. Under-Sheriff. Gentlemen, You that are sworn, hear the King's Writ.

L. C. J. Ay, read it to them.

Mr. Under-Sheriff. ' *CHARLES II.* by the Grace of God, of *England, Scotland, France* and *Ireland* King, Defender of the Faith, &c. to the Sheriff of *Middlesex*, Greeting; Whereas the most Illustrious Prince *JAMES Duke of York and Albany*, one of the Nobles and Peers of *England*, our most dear and only Brother, who as well &c. lately in our Court before Us at *Westminster*, by Bill without our Writ impleaded *Titus Otes*, then in the Custody of the Marshal of our Marshalsea, before us being: For that whereas in a Statute made in the Parliament of *Richard II.* late King of *England* after the Conquest, held at *Gloucester* in the Second Year of his Reign, amongst other Things: It is ordained and strictly prohibited, That from thence none should be so hardy to devise, tell or relate of the Prelates, Dukes, Earls, Barons and other Nobles and Great Men of *England*, nor of the Chancellor, Treasurer, or Clerk of the Pri-

by Seal, Steward of the King's Household, Justices of the one or of the other Bench, nor of other great Officers of the Kingdom aforesaid, any false News, Lies, or any such false things, whereby Scandal or Discord within the said Kingdom might arise; and whosoever should do this, should incur and have the Penalty otherwise thereon ordained by the Statute of Westminster the first, as in the Statute aforesaid is more fully contained. And whereas the 4th Day of December in the Five and Thirtieth Year of our Reign, and long before the yearly Rents, Issues and Profits arising, or due and payable for or by reason of the General Post-Office within this Kingdom of England, for the Carriage of Letters, before were erected and yet are established upon the said most Illustrious Prince JAMES Duke of York, and Albany. The aforesaid Titus Otes the Statute aforesaid not considering, but the good Name, State, Credit, Dignity, and Honour of the said JAMES Duke of York and Albany, our Brother, devising and maliciously intending to hurt and detract, and Him the said JAMES Duke of York and Albany, our Brother, into the great Displeasure and Hatred of Us and of the Peers of this Kingdom of England, and also divers other venerable Persons our Subjects, to bring, out of his meer Malice and Envy had and forethought the aforesaid 4th Day of December, in the Year of our Reign the Five and Thirtieth, at the Parish of St. Martin in the Fields in the County of Middlesex aforesaid, upon a certain Discourse then had and moved by and between the aforesaid Titus Otes and divers of our Liege People, of and concerning the aforesaid JAMES Duke of York and Albany, our Brother, and of and concerning a certain Letter in the Hand of the aforesaid Titus Otes, at that time, being divers false News and horrible Lies of the aforesaid JAMES Duke of York and Albany, our Brother at that time, and yet being of the Peers and Nobles of this Kingdom, in the Presence and Hearing of divers venerable Persons, publickly, falsely, maliciously, and scandalously said and related; and with a loud Voice published in these English Words following, viz. This Letter (the Letter aforesaid, so in the Hands of the aforesaid Titus Otes as is before said being, meaning) cost me (the said Titus Otes meaning) nine Pence, and might have been brought for a Penny, I (himself the aforesaid Titus Otes meaning) know no body is the better for it, but that Traitor JAMES Duke of York (the aforesaid JAMES Duke of York and Albany our only Brother meaning) And the aforesaid Titus further devising and maliciously intending the aforesaid JAMES Duke of York and Albany our Brother into the Hatred of us, and of the Peers of this Kingdom of England, and also of divers other venerable Persons, and our Subjects to bring; out of his meer Malice and Envy, had and forethought, the 4th Day of December, the Year aforesaid, at the Parish of St. Martin in the Fields aforesaid, in the County of Middlesex aforesaid, upon a certain other Discourse then had and moved by and between the aforesaid Titus Otes and several of our Liege People of and concerning the aforesaid JAMES Duke of York and Albany, our Brother, and of and concerning a certain

Letter in the Hands of the aforesaid Titus Otes at that time being, divers other false News and horrible Lies of the aforesaid JAMES Duke of York and Albany, our Brother at that time, and yet being one of the Nobles and Peers of this Kingdom of England, and our only Brother, in the Presence and Hearing of several venerable Persons, publickly, falsely, maliciously and scandalously said, related and with a loud Voice published, viz. This Letter (the aforesaid Letter so in the Hands of the aforesaid Titus Otes, as is before said being, meaning) cost me (the aforesaid Titus Otes meaning) nine Pence, and might have been afforded for a Penny, I (himself the aforesaid Titus Otes meaning) know no body is the better for it, but that Traitor JAMES Duke of York (the aforesaid JAMES Duke of York our only Brother meaning) And afterwards, to wit, the 5th Day of December in the thirty fifth Year aforesaid; the aforesaid Titus Otes further devising and maliciously intending the said JAMES Duke of York and Albany our Brother to scandalize, and into the further Displeasure and Hatred of us, and of the Great Men of this Kingdom of England, out of his meer Malice and Envy, had and forethought, at the Parish of St. Martin in the Fields aforesaid, in the County of Middlesex aforesaid, the said 5th Day of December, in the Year aforesaid, upon certain other Discourse of the said JAMES Duke of York and Albany, divers false News and horrible Lies of the aforesaid JAMES Duke of York and Albany, publickly, falsely, and maliciously said, related and with a loud Voice published, to wit, that the Letter in the Hands of the aforesaid Titus at that time being, cost him the aforesaid Titus nine Pence, but might have been brought for one Penny, and that he knew no body to be the better for it but that Traitor JAMES Duke of York. And the aforesaid Titus Otes further contriving and maliciously intending the aforesaid JAMES Duke of York and Albany, our only Brother, into the further Displeasure and Hatred of us, and of the Great Men of this Kingdom of England, and also of divers other venerable Persons, and our Subjects, to bring, out of his meer Malice and Envy, had and forethought the 6th Day of December, in the Five and Thirtieth Year aforesaid, at the Parish of St. Martin in the Fields aforesaid, in the County of Middlesex aforesaid, upon a certain Discourse at that time had and moved by and between the aforesaid Titus Otes and several of our Liege People, of and concerning the aforesaid JAMES Duke of York and Albany, our Brother, divers other false News and horrible Lies of the aforesaid JAMES Duke our only Brother, at that time, and yet being one of the Nobles and Peers of this Kingdom of England, in the Presence and Hearing of divers venerable Persons, publickly, falsely, maliciously and scandalously said, related, and with a loud Voice published in these English Words following, to wit, The Duke of York (the aforesaid JAMES Duke of York and Albany our only Brother meaning) is a Traitor. And the aforesaid Titus Otes further contriving, and maliciously intending the said JAMES Duke of York our Brother, into the Hatred of us, and

and of the great Men of this Kingdom of England, and also of divers other venerable Persons, and our Subjects, to bring, out of his meer Malice and Envy, had and forethought the aforesaid 6th Day of December the Year above said, at the Parish of St. Martin in the Fields, in the County of Middlesex aforesaid upon certain other Discourse at that time had and moved by and between the aforesaid, Titus Otes and divers of our Liege People, of and concerning the aforesaid JAMES Duke of York and Albany our only Brother, divers other false News and horrible Lies of the aforesaid JAMES Duke of York and Albany our only Brother, and at that time and yet being one of the Nobles and Peers of this Kingdom of England, in the Presence and Hearing of divers venerable Persons, publickly, falsely and maliciously said, related, and with a loud Voice published; to wit, *That the said Duke of York was a Traitor*. By reason whereof the said JAMES Duke of York and Albany our only Brother, in his Reputation, Honour and Dignity is very much hurt and scandalized. And the said JAMES Duke of York and Albany, the Grace, good Opinion and Esteem which we and others the great Men of this Kingdom of England before towards him JAMES Duke of York and Albany, did bear, utterly lost, and divers Rumors and Scandals between very many Nobles and Peers of this Kingdom of England, and other our Subjects, by the Occasions aforesaid, within this Kingdom of England, are arisen and divulged, and great Scandals and Discords by occasion of the Premises between him the aforesaid JAMES Duke of York and Albany, and divers Nobles and great Men, and other Subjects of this Kingdom of England are arisen; and daily more and more in the like may arise, to the great Disturbance of the Peace and publick Tranquillity of this Kingdom of England, and in Contempt of us and our Government of this Kingdom of England, and to the great Scandal and Grievance of him JAMES Duke of York and Albany, to the Damage of him the said JAMES Duke of York and Albany, our most dear Brother, a Hundred Thousand Pounds: As he then said, and thereupon in our Court before us it was so proceeded, That the aforesaid JAMES Duke of York and Albany our only Brother his Damages against the said Titus Otes by occasion of the Premises ought to recover: But because it is not known to our Court before us, what Damages the aforesaid JAMES Duke of York and Albany our Brother hath sustained, as well by occasion of the Premises, as for his Costs and Charges by him about his Suit in this behalf expended. Therefore We command you, that by the Oaths of good and lawful Men of your Bailiwick, you diligently enquire what Damages the aforesaid JAMES Duke of York and Albany hath sustained, as well by occasion of the Premises, as for his Costs and Charges by him about his Suit in this behalf expended, and the Inquisition which thereupon you shall take, you shall have before Us at Westminster on Wednesday next after three Weeks of the Holy Trinity, under your Seal, and the Seals of them by whose Oath you take that Inquisition, distinctly and openly

you send, and this Writ. *Teste Sir George Jefferies, Knight and Baronet, at Westminster the Thirtieth Day of May, in the Year of our Reign the Six and Thirtieth.*

Ri. Swift.

Henley.

You are to enquire what Damages his Royal Highness the Plaintiff has sustain'd, by means of the Premises; As also, what Costs he has been at in this Suit.

Mr. *Hausen*. May it please your Lordship, you Mr. Sheriffs, and Gentlemen of the Jury, His Royal Highness the Duke of York is Plaintiff, and Titus Otes is the Defendant; And this is in an Action of Trespass and Contempt, grounded upon the Statute of *Scandalum Magnatum*, wherein His Royal Highness sets forth, That whereas such a Statute was made, prohibiting the Slandering the great Men and Peers of the Kingdom, and the Plaintiff being the King's only Brother, and a Peer, the Defendant upon a Discourse between him the Defendant and some other Persons, about a Letter that the Defendant had then in his Hands, publickly, falsely, and with an intent to scandalize the Plaintiff, spoke these English Words:

This Letter (meaning the Letter then in the Defendant's Hands) *cost me* (meaning the Defendant) *nine Pence, and might have been brought for a Penny; I* (meaning the Defendant) *know no body is the better for it, but that Traytor JAMES Duke of York*, meaning the Plaintiff.

Gentlemen, This is not all, the Declaration goes on further, and says, That the Defendant intending further to scandalize the Plaintiff, the Sixth of December in the Thirty fifth Year of this King, upon a Discourse had and moved by and between him the Defendant and some other Persons, in the Presence of divers venerable Persons, said these Words of the Plaintiff:

The Duke of York (meaning the Plaintiff) *is a Traitor*; And this is laid to the Plaintiff's Damage of One Hundred Thousand Pounds: The Defendant has not pleaded, and the Plaintiff has signed his Judgment; and now you, Gentlemen, are to enquire of the Damages.

Mr. *At. Gen.* You observe, Gentlemen, the Words are acknowledged by the Defendant's Default, and not pleading; so that they were spoken is owned by him, and you are to enquire only of the Damages: And, I think, there will need nothing to be said for the Aggravation of them, they are Words of the highest nature, in respect of Slander and Scandal, that can be spoken or thought of, Accusing him of Treason. We shall only call you some Witnesses to prove this way of Discourse to be his constant habit in all Places, and among all Persons and Company, inveighing against the Government, and particularly against His Royal Highness the Plaintiff; and then you will, I know, give such Damages, as may be fit to repair the Plaintiff's Honour.

Mr. *Sol. Gen.* We will call some Witnesses, to give you an Account how he uses to treat the Plaintiff in all Companies, and we shall begin with Mr. *Smith*. And the Truth is, the proving of the Words, will demonstrate the Malice of them; and the Manner and Circumstances of speaking, will make them appear to be such, as need nothing to be said

Sir Robert Sawyer.

Mr. Finch.

said for their Aggravation at all. Swear Mr. James Smith.

Mr. Under-Sheriff. *The Evidence that you shall give to the Sheriffs and the Jury, sworn about the Matter in Question, shall be the Truth, the whole Truth, and nothing but the Truth.*

Mr. Sol. Gen. Mr. Smith, pray will you tell the Court and the Jury, what you have heard the Defendant Otes say of his Royal Highness.

Mr. Smith. At the last *Westminster* Parliament, as I was sitting in a Coffee-house, I saw Mr. Otes, he had a Letter in his Hand, and he said, *This Letter cost me nine Pence, it might have been brought for a Penny, I know no body that is the better for it but a Traitor, to the best of my remembrance he said, the Duke of York.*

Mr. At. Gen. Swear Mr. Penniston Whaley (which was done) What Words did you hear Mr. Otes say of his Royal Highness?

Mr. Whaley. The Time was either the *Easter* or *Whitsontide* after Sir Thomas Gascoigne's Tryal.

Mr. Sol. Gen. What were the Words you then heard him say?

Mr. Whaley. It was at the Bishop of Ely's Table at Ely House. I had received the Sacrament at the Chappel there that Day, and so had the Doctor too; it was upon *Easter-day* or *Whitsunday*, I suppose, because I never used to receive the Sacrament here in Town, but one of those two times; and Dr. Otes and I were sitting there, and some Discourse happened about Sir Thomas Gascoigne's Tryal, and he fell very foul upon the Jury, and said, *They were a Company of profligate Villains* (or some such Expression as he was wont to use) and said, *He would have them Attainted*. Then said I to him, Doctor, you are a good Man at a Matter of Fact, but, I doubt, you are not so at a Matter of Law. Upon that, we came to some high Words about that and other Things, and among the rest of the Discourse, he said, *The Duke of York was a Traitor*. Upon that, I said to him, Doctor you lie under a great Error in that, I suppose, by mistaking a Statute made against Popery; says he, *No matter for that, I say he is a Traitor*. Then there were some other Discourses happened afterwards, and I began to reply, and growing both of us pretty warm, the Doctor called to his two Men, his Myrmidons, that used to be always with him, and follow him up and down: Said I to him, Nay, Doctor, you need not call your Men to your Assistance, there is no body here will hurt you: Do you think the Bishop of Ely's Table is not a Protection good enough for any body that comes here?

L. C. J. Where was this, Sir, pray do you say?

Mr. Whaley. At the Bishop of Ely's Table.

L. C. J. Was the Bishop there, then?

Mr. Whaley. He was at the Table, but at a great distance from us, the Doctor and I sat at the lower end of the Table. Afterwards I begged the Bishop of Ely's Pardon, for being so hot and loud at his Table; says the Bishop to me, *I thank you kindly for it, none of us dare talk with him*.

L. C. J. And this you say was at Dinner, after the Sacrament was over?

Mr. Whaley. Yes, it was so.

Mr. North. Then swear Edward Johnson.

[Which was done.

Mr. At. Gen. Mr. Johnson, Pray will you give the Court and Jury an Account, what Discourse you have heard from the Defendant, Mr. Otes, against the Plaintiff.

Mr. Johnson. Upon the Three and twentieth of August, 1680. I met Dr. Otes, and said, Good morrow Doctor, all Things will go well now—

L. C. J. You mean him they call Dr. Otes, I suppose.

Mr. Johnson. Yes, they used to call him so; said I, Good morrow Doctor, all Things will go well now, for there is a Parliament to meet in a little time. No, said he, *not till YORK is either Banished or Hanged; but of the two, Hanging is the fittest for him*. Said I, Do not talk so, Doctor: Says he, *I speak nothing but what is true; he has a good Brother, but he takes all the Courses in the World to undo him: And then the Doctor and my Lord Howard went away together*.

Mr. Sol. Gen. Swear Randall Bowring. [Which was done. What have you heard Mr. Otes say of the Duke of YORK?

Mr. Bowring. About the middle of October, 1679. there were several Persons at Dinner with the Doctor.

L. C. J. What Doctor, prithee?

Mr. Bowring. Mr. Otes.

L. C. J. Mr. Otes we know very well, but we do not so well know who this Doctor is.

Mr. Bowring. They used to call him Doctor, or I should not have taken upon me to give him the Title.

L. C. J. Well, go on: There were several Persons at Dinner with him, and what then?

Mr. Bowring. There happened some Discourse concerning His Royal Highness.

L. C. J. Where was this?

Mr. Bowring. At his Lodgings at *White-Hall*: And a Gentleman that was there, said, In case His Royal Highness were a Papist, how should we be secured, that in case he come to the Succession of the Crown, he would not bring in Popery among us? Then the Doctor replied, *I would not have you trouble your self about that, for he shall be hanged before that time*.

Mr. At. Gen. What have you heard him say any where else, at *Foster-Lane*, or any other Place?

Mr. Bowring. After the Sermon he had preached there at *Foster-Lane* Church, the Church-wardens, and some of the Parish, invited him into the Vestry to drink a Glass of Wine.

L. C. J. What? He made as if he would preach there?

Mr. Bowring. He did preach there, and then the Church-wardens invited him to Dinner; but then he asked them, *If ever any of them had dined with JAMES Duke of YORK, at any of the Feasts of the City, where the Duke used to come sometimes?* To which none of them answering a Word, he replied, *He would not dine with any Man that had eat with the Devil*: And so would not go to dine with them, but went and dined at a private Brasier's by *London-wall*.

L. C. J. An excellent Gospel-Precacher, upon my word.

Mr. At. Gen. What Brasier was that?

Mr. Bowring. Truly I do not well know his Name.

Mr. At. Gen. Where did he live?

Mr. Bowring. By *London-wall*.

Mr.

Mr. Sol. Gen. Then Swear Mr. Fairfax.

[Which was done.

Pray, Sir, tell my Lord and the Jury, what Words you heard this Man speak of his Royal Highness.

Mr. Fairfax. May it please your Lordship, in August 1679. I happened to come into the Company of Otes the Defendant, upon the account of an Election that was to be of Parliament-men for *Grinstead* in *Suffex*, by the means of one *Aukland*; Otes was to go down thither in my Lord *Wharton's* Coach, and then we came first to be acquainted, and afterwards we frequently did eat together, and became very well acquainted. And in my Lord *Scrogg's* Time, when he was Lord Chief Justice, there was some Presentment intended to be brought in by the Grand Jury here at the Term, against His Royal Highness for being a Papist, and not coming to Church, and this Otes was the main Prosecutor of it. He was used often to come up to me, and speak to me when he met me; and I was about that time walking in the Court that was built up here for the Tryal of the Lords in the Tower, it was after that Grand Jury were dismissed, which was done a Day or two before they used to be dismissed in the ordinary course, and walking there I met Otes, and said I to him, Doctor, Now you are Nonsuited, what will you do now? *Oh*, says he. *We will do well enough; there will be a Sessions after the Term, and there we will at him again; and we will have no more regard for him, than if he were Scavenger of Kent-street*: And upon that he was called away from me, and he went away.

Mr. Sol. Gen. Swear Mr. Philips. [Which was done.

Mr. At. Gen. Come, Mr. Philips, will you acquaint my Lord and the Jury, what you have heard Otes say of the Duke of YORK?

Mr. Philips. In or about January (78.) may it please your Lordship, I was in the Company of one Deacon, at Otes's Lodgings at *White-Hall*, where Mr. Otes said, *He hoped to see your or our Master JAMES* (meaning the Duke of YORK, His Royal Highness I suppose) *at the Bar of the House of Commons; and it would be no disparagement to him to appear there, for there were better Men Members of that House than he was.*

L. C. J. Pray what was the Occasion of this Discourse?

Mr. Philips. Truly it was a Discourse of his own; he ran it on, we talked but little to him.

L. C. J. Who did he apply himself to in that Discourse?

Mr. Philips. To us two, Mr. Deacon and I.

L. C. J. How came he to mention your Master JAMES, had you any relation to the Service of His Royal Highness?

Mr. Philips. No, my Lord, we had not; but he said, either our Master, or your Master: He run on in such kind of Discourse as he used to do.

L. C. J. But do you think he intended His Royal Highness, when he named your Master JAMES?

Mr. Philips. I could not imagine he did mean any body else.

Mr. At. Gen. Then swear William Ashlock.

[Which was done.

Pray will you acquaint my Lord and the Jury,

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what Words you have heard him speak of his ROYAL HIGHNESS.

Mr. Ashlock. May it please your Lordship, in Easter Term, 1682. Dr. Otes—

Mr. At. Gen. Mr. Otes, you mean.

Mr. Ashlock. Mr. Otes went out one Morning, with *Dolben* and *Robin Nichols*, two of his Men, from his Lodgings at *White-Hall*, and while he was dressing, he said he went out, in order to draw up a Bill of Indictment against the Duke of YORK; but he did not do it, because he was otherwise advised by some Persons, as I heard. Then at *Michaelmas*, 1682. when he was going to dress him, I held the Bason to him to wash, as he commonly had two or three every Day to wait upon him to dress him, there came in a Gentleman, that came newly out of *Suffex*, I cannot remember his Name: He asked him how all Friends did in *Suffex*, and then fell a talking about the Election of Sheriffs, and abusing them that were then chosen, and reflected very much upon Sir *John Moor*, and called him Rogue, and said he deserved to be hanged up as an Example. And afterwards, he said, the City of *London* was fired by the Duke of YORK's Order, and Sir *Thomas Bludworth* had a Hand in it; and the Forces at *Black-Heath* were to have plundered the City, and killed all the honest Protestant Dissenters in *London*: And this he would prove, if ever they had a Parliament to their mind that should sit. At another time there was one *Starkey*, *Henry Starkey*, that was concerned in *Colledge's* Business at *Oxford*, and one Mr. *Paschall*, and I think, *Capt. Clare*, and some others that used to keep him Company, and Mr. Otes stepped up on a sudden, and said, *The Duke of YORK was a Son of a Whore, and he should live to see him hanged; and if they could but get a Parliament to their mind, they would soon send the Duke and all his Gang out of England, for he must never expect to succeed to the Crown.*

Mr. Sol. Gen. Pray who did he say was to head the Forces at *Black-Heath*, that you talk of were to plunder the City?

Mr. Ashlock. The Duke of YORK, and *London* was fired by his Order; and this he would prove, if they could but get a Parliament to their mind: And he said, *They should take away the Post-Office from the Duke of YORK, and give it to the Duke of Monmouth.*

Mr. Sol. Gen. Then call Captain Cressett, and swear him.

[Which was done.

Mr. At. Gen. Capt. Cressett, Pray do you remember what Discourse you had with Otes, when the Duke went into *Flanders*, what he said of His Royal Highness?

Capt. Cressett. It was the last time the Duke went into *Scotland* with her Royal Highness, I think it was in *October* 1680. I was commanded over Night to wait at the Duke's Lodgings, till a Paper should be delivered me by my Lord *Rochester*; I stay'd there till Twelve a Clock at Night, and not seeing my Lord come out, I went away, and came early the next Morning. And when the Duke and *Durcheff* went to take Water at the *Privy-Stairs*, I came down through the Guard Chamber, and Dr. Otes was in the Gallery that leads betwixt that and the Gate; when he saw me, I bid him, good Morrow Doctor, or he bid me, good Morrow; one of the two, I cannot exactly tell which: Says he to me, *You will never leave, till you have lost your Reputation.* Why,

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What is the matter now, Doctor, said I, I hope my Reputation is not hung upon so slender a Thread, as to be lost for my going any where? Says he, *You have been with JAMES: Who do you mean by JAMES, said I? YORK, says he. Surely, said I, it might have been the Duke of YORK, or his Royal Highness: No, said he, he is a Rascal, a Papist, and a Traytor, and I hope to live to see him hanged.* Truly Doctor, said I, now let me give you a little Advice to govern your Tongue and your Passions, I assure you, they will do neither you nor your Cause good; it may do you a great deal of hurt in time, if you do not take care.

Mr. Sol. Gen. Call Sir William Jennings.

Mr. At. Gen. Truly, my Lord, I think we need call no more, though we have Multitudes of them, it is his daily Discourse.

L. C. J. Call whom you will, Mr. Attorney; for though it be the last Day of the Term, and it is an unusual thing to have a Jury at the Bar on that Day, and more unusual to have them to execute a Writ of Enquiry here; yet in regard of the Greatness of the Person that is concerned, and the extraordinary nature of the Cause, We have ordered it thus, *That all the World may see how his Royal Highness has been abused and scandalized by this Person.*

Mr. At. Gen. The Defendant, my Lord, has been a Person pretty much talked of too.

L. C. J. Yes, truly, it is done with regard to him too; for he has been an eminent Man in his way.

Mr. Sol. Gen. Then swear Sir William Jennings. *[Which was done.]*

Mr. At. Gen. Now, Sir William Jennings, speak out, you hear the Question, What have you heard Otes say of the Duke of YORK?

Sir William Jennings. My Lord, at the Time of the Sitting of the Parliament at Oxford, I was in a Tavern there with Mr. Cranfield, one of the King's Gentlemen-Ushers, who seeing Mr. Otes going along by the Room, invites him to drink a Glass of Wine, there were a matter of some eight or nine at the Table; there was a little Partition Curtain, it being a long Room, and there was some Company beyond that Curtain, and some body in that Company named James Duke of YORK, and the KING's Health being drunk at our Table, Mr. Cranfield began a Health to the DUKE: Says Mr. Otes, *Do not you Drink YORK's Health.* Why should we not, says Mr. Cranfield, and a Gentleman or two more in the Company: *Why, says he, he has ruined the Nation; and if the Devil has a place in Hell more hot than others, I hope he will bestow it upon him.* Several Words past between Mr. Cranfield and him upon it, and the KING was told of it presently.

Mr. At. Gen. Swear Justice Warcup. *[Which was done.]*

Pray tell what you know of this Man's discouraging concerning the Duke.

Mr. Warcup. My Lord, I went into the Company where Sir William Jennings was that he spoke last of, and being desired to drink a Glass of Wine with them, I did so, and they told me what Dr. Otes had said there.

L. C. J. Mr. Otes, Titus Otes you mean?

Mr. Warcup. Yes, my Lord, the Room had a Partition by a Hanging or Curtain, and I was first in the other Company beyond the Partiti-

on, and there some body began a Health to his Royal Highness the Duke of York; this Health went round, and Otes was, it seems, in the next Room, and heard this Health I suppose: When I came into Sir William Jennings Company, Otes was gone; the Company there told me what Otes had said, as Sir William Jennings has declared, they all agreed those to be the Words, *That he had ruined or betrayed the Nation; and if the Devil had a hotter place in Hell than other, he hoped he would bestow it upon him.* I met Otes afterwards, and asked him why he would speak such irreverent Words of the DUKE? His Answer was, *He was a Traytor, and was in the Plot; and he told me, I was a Yorkist, and he would remember me for it.*

Mr. At. Gen. Did not that fright you, Mr. Warcup, to have him threaten you so?

Mr. Warcup. I had then an Impeachment against me, and truly I think I might well be afraid.

L. C. J. You say, he owned the Words they told you of?

Mr. Warcup. They did all agree those to be the Words; and I met him afterwards, and asked him why he would speak so irreverently of the Duke, considering he was the King's Brother, and as virtuous a Prince as trod upon the Earth? Says he, *He is a Traytor, and in the Plot; and you are a Yorkist, and I will remember you for it.*

Mr. Sol. Gen. We shall only call one more, to shew in what mind he continues to be, ever since this Action brought. Swear Mr. Charles Chapman. *[Which was done.]*

Pray, Sir, Tell what you know.

Mr. Chapman. My Lord, I met Mr. Swift, the Duke of York's Attorney, when he was going over, as he told me, to demand a Plea of the Defendant Mr. Otes, and he desired me to go along with him, I did so; and when we came to him, Mr. Swift told Otes the Rules were out, and desired to know what he intended to do, whether he would plead or no. Otes asked him, *If he were the Duke's Attorney?* He answered him, *Yes; Says he, I do not value the Duke, nor his Attorney neither, I will plead as I shall see Cause according to Law; I declare I neither love the Duke, nor fear him:* And so turned his back, and was going away, and comes up again, and says to him, *It may be I may be in for One hundred thousand Pounds here, but if ever a Parliament sit, I do not question but to have some body else in my place.* Mr. Swift asked him to explain himself who he meant, says he, *Do you come to Traipan me?* And away he went.

Mr. At. Gen. My Lord, we have now done, if the Jury please to consider of it.

L. C. J. Is there any body here for Mr. Otes, to offer any thing to lessen the Damages?

[To which no body answered.]

Then, Gentlemen of the Jury, your Business now is to enquire what Damages you think fit to assess to His Royal Highness, by reason of the speaking of the Words mentioned in the Declaration, there being in this Action Judgment by Default obtained by His Royal Highness; and you have nothing now to do, but only to assess to the Plaintiff such Damages as you shall think fit.

Now, Gentlemen, tho' the Acknowledgment of this Judgment (for so it is in effect, it being by Default) be a sufficient Confession of the Words

Words being spoken as they are laid in the Declaration, yet they have given you Proof of the very Words.

The Declaration is in an Action grounded upon the Statute *De Scandalis Magnatum*, taking notice that His Royal Highness is a great Peer of this Kingdom, and His Majesty's only Brother; and that Otes the Defendant knowing him to be so, to bring him under Reproach and Calumny, and to cause Discord to arise between the King and him, and between him and other Great Men, did speak the Words laid in the Declaration which you have heard read, and which are these.

The first are, *This Letter (Otes having a Letter in his Hand) cost me nine Pence, and might have been brought for a Penny; I know no body is the better for it, but that Traitor JAMES Duke of York.* This is laid over again with a very little Variation, *This Letter cost me nine Pence, and might have been afforded for a Penny, I know no body is the better for it, but that Traitor JAMES Duke of York;* which are Words of the same sound, and to the same purpose with the former; they differ only in some minute Circumstances a Word or so, but import the same thing.

The next Words are these, *The Duke of York is a Traitor;* and these Words too are laid two several ways, differing but in very small Circumstances (*Is a Traitor, and Was a Traitor*) the Substance of the Words is the same.

Now I say, Gentlemen, Tho' it is not your Business to enquire whether or no Otes spoke these Words, for by letting Judgment go against him by Default, he doth in Law confess the Words, but you are to enquire what Damages may be fit to be given to the Plaintiff by reason of these Words; yet in as much as this Case is a Case of an extraordinary Nature, Weight and Moment, having relation to so great a Prince, His Royal Highness the King's only Brother, requires this extraordinary Solemnity, it having not been usual heretofore, that is to have Writs of Enquiry executed at the Bar. But the Occasion is extraordinary, such as has not happened before this Age, this Corrupt Age, this Profligate Age, wherein we live, and wherein common ordinary Fellows, the meer Scum and Scoundrels of the Faction Party, have taken a Liberty to reproach and calumniate Magistracy and Government, and the greatest Personages concerned in it, not sparing even Majesty it self, nor Him, who is next in Degree to His sacred Person, His only Dear and Royal Brother. And therefore as the Case is extraordinary in its Nature, so ought the Example of it to be made as publick as can be, in order to satisfy all People what a sort of Fellow this Defendant is, who has been so much adored and looked upon with an Eye of Admiration, courted with so wonderful an Affection, and so, I had almost said, *Hofanna'd* among People that have been Faction and Tumultuous to the Government.

Such as he ought to be made publick Examples of; and therefore the King's Counsel have desired that this Cause might be canvassed here at the Bar, and the Defendant, as he has made himself eminent for some particular Qualifications, might be made a publick Example for this Offence

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Thus this Writ comes to be executed here. Now tho' the Words laid in this Declaration are Words that do import in themselves so much Scandal and Reproach, so much Malice and Venom, that they need no Aggravation besides themselves, and his suffering it to go by Default shews they are no way to be extenuated, but are thereby acknowledged. Yet however to satisfy all People that desire or have any Inclination to be satisfied, that this Prosecution is highly reasonable, nay absolutely necessary; they come here and give you an account that these in the Declaration are but a small Part of the scandalous and malicious Words that the Defendant useth concerning the Plaintiff. And indeed it doth plainly appear, that the Malice of the Defendant is attended with all the most unchristian and uncharitable as well as disloyal and disobedient Circumstances that any thing can be, with design to traduce and disparage a Subject so Loyal, and a Person so Great and Illustrious as His Royal Highness.

As to the first Words, you have the first Witness Mr. Smith, and he gives you this Account, He was in a Coffee-house where he met the Defendant Otes; and the Defendant in a vain-glorious huffing sort of manner, takes occasion, tho' none was offer'd him by any thing spoken to him by any body, but only on set purpose to express his Malice and Venom against the Plaintiff. He takes up a Letter that it seems came to him by the Post, and to gratify his own malicious Inclination, and to give it vent, he proclaims, *This Letter cost me nine Pence, it might have been brought or afforded for a Penny; and I know no body is the better for it, but that Traitor JAMES Duke of York.*

So you see, Gentlemen, he takes hold of every little Occasion, if he can but happen upon an Opportunity, such as this was in an open Coffee-house, to reek his Malice upon His Royal Highness. And sure there can be no greater Imputation of Scandal brought upon any Man than this upon the Plaintiff. That the first and greatest Subject of the King of England's should be taxed with the greatest Crime in the Law, Disloyalty and Treason to his Sovereign. And so at once not only chargeth him with being perfidious to his only Brother, against that Affection which by Nature he is obliged to pay him, and which all that know any thing, cannot but observe to have always been extraordinary; but also touches that which is much dearer to him than his Life, his Honour, by charging him with the foulest of Crimes, Treason and Breach of his Allegiance, which as a Subject he owes to his Sovereign. And thus besides the Defendant's Confession by this Judgment you have the very Words proved that are in the Declaration.

The next Witness is one Mr. Whaley, and he gives you an account of another Passage which I cannot but take notice of by the way, to shew you what a wonderful Christian Temper this Man is endued with. Mr. Whaley says, That being at the Bishop of Ely's House upon a Publick Festival either of *Easter* or *Whitsontide* (and he is sure it was one of those two, *Because, says he, I never use to receive the Sacrament in London, but upon one of those two Days; and therefore I take it upon me to say, it was one of those two Days that I heard these Words*) Otes having, it seems,

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received the Holy Sacrament at the Bishop of *Ely's* Chappel with Mr. *Whaley* that Day. When a body would have thought that if Mr. *Otes* would have been believed to be so hearty and pious a Protestant as he pretends to be, he should have remember'd that he ought, according to the Protestant Doctrine, to have left behind him at his Approach to the Altar, all Malice and Rancour and ill Will and Hatred to every body: But you see what kind of Deportment his was.

For after such time as he had been at the Sacrament, he takes occasion without any Provocation to fall foul immediately upon His Royal Highness, giving him the Name of a *Profligate Wretch*; and then particularly he comes to say, *The Duke of York was a Traitor*. This Gentleman being concerned, as every honest and loyal Man ought to be, and I hope every good Subject is, and ever will be, to hear so great a Prince, the King's only Brother, so traduced and vilified, reproved him for it; but so far was he from taking the Correction due to his extravagant Tongue in a becoming manner, that he presently (as the Gentleman phraseth it) calls for his Myrmidons, two Fellows that he had along with him to come to him, upon which the Gentleman was pleased to say to him, *Nay, good Mr. Otes, you need not be in so very much Fear of your self as to call for your Men, no body here intends you any Harm*. Nay certainly, Mr. *Otes* did apprehend himself to be secure from all manner of Correction, or he would never have been so impudent to speak such Words.

But you will no doubt take notice, as all Men cannot but do, of what an excellent Gospel Spirit, what a delicate Christian Temper the Man is of, after the receiving the Sacrament, that very Morning to come and belch out such extravagant Words of Calumny and Reproach.

And it seems this Person had obtained to make such a wonderful Figure in the World, that every body was afraid to speak to him; for you hear what the Witness says when he came to beg the Bishop of *Ely's* Pardon for being so loud and hot at his Table, the Bishop gave him Thanks for it, and told him, *None of us dare speak to him*. Such a Considerable Man hath he been, that he might rail against the King, and the Duke, and the Government without Controul. He was got into such a Post that no body durst meddle with him, but he must have liberty to say any thing of any body. To what an height of Corruption were we grown, that we could suffer such a Fellow's Insolence, at which no Man living that has any spark of Modesty or Loyalty left in him, but must blush and tremble.

Then they produce to you one Mr. *Johnson*, who gives you an account that after some Discourse between him and the Defendant *Otes*, about the Duke of York, he immediately told *Johnson*, That the Duke was either to be hanged or banished; it seems he was so ill a Man in his Eye, but of the two, hanging was the fitter for him. So the Doctor sheweth what a wonderful Kindness and Affection he has for the Duke, and what Thoughts he has of his great Deserts.

Mr. *Bowring* is the next Witness, and he comes and tells you, That the Doctor could not be

prevailed with to dine with the Gentlemen of the Parish of *Foster-lane*, because some of them had dined with the Duke, which he calls *Dining with the Devil*. It seems he made as tho' he would preach there to them, he got up into the Pulpit and took a Text, and pretended to preach, and if he would have preached according to the Duty of a Church of *England* Divine, he was by that to have preached not only Obedience and Submission to Authority; but Respect to Superiors, and Charity among all Subjects towards one another; and if he did preach it, it was worse in him not to practise it. But you see after he had performed his painful laborious Preachment, after he had taken such a wonderful deal of pains, as no doubt he did in instructing his Auditors, what his Language is in answer to a Civil Invitation to Dinner by the Church-Wardens: *Have any of you dined with York at the City Feasts?* And they not answering, but being silently amazed at the impertinent Impudence of the Question, *why truly he would not dine with those that had dined with the Devil*. It seems His Royal Highness had been pleased to honour some Societies of Loyal Men in the City of *London* with his Company at some Entertainments they made, and that is a great Offence to the Defendant; and as for those that had received that Royal Favour from His Highness, he takes notice of them as such whom he would neither eat nor drink with, for *truly they had eaten and drunk with the Devil*; but immediately the Doctor, in his great Zeal and wonderful Concern for the Protestant Religion, broke up from the Company, would neither eat nor drink with them, but chose rather to dine at a private *Brasser's* by *London-Wall*; a properer Place in good Truth for him, than any such Conversation they offer'd him.

Then further to shew what mean Thoughts he had of the Plaintiff, Mr. *Fairfax* he comes, comes and testifies, That there being some Talk of a Presentment or Indictment against the Duke of York by the Grand Jury here, but that meeting with a Disappointment, he met *Otes*, and asked him, *What he would do, for*, says he, *now you are Non-suited?* That is, You have happened not to obtain the End that you designed: Ob, says *Otes*, *No matter for that, that is all one, we will at him next Sessions; and for my part, I will have no more regard to him than I would to a Scavenger*. Nay, and because they should see the very utmost of his Malice, and the low Thoughts he had of His Royal Highness, as if it had not been malicious enough to have compared him to a Scavenger of *London* or *Westminster*, no, that was a Station too honourable for him in his Thoughts, but he must necessarily be compared to a Scavenger of *Kent-street*; which we all know to be one of the meanest, filthiest, and most beggarly Parts of the Town.

The next piece of Evidence is, that which is given by one Mr. *Philips*, and when he came to him, he began to have some Reflexions about the House of Commons and the Duke; and truly he did not doubt but he should see him at the Bar of the House of Commons; and it would be no Disparagement to him to come there, for there were a great many Members there that were as good Men or better than he. And even by this Fancy of his he would fain degrade His Royal Highness; for

for in case he had him in no other Consideration but as a Peer, he should know that no Peer of this Realm can be forced by any Vote or Order of the House of Commons to come to their Bar. But he had a mind to take off his very Privilege of Peerage, and it would be no lessening of his Greatness, since that House had in it many Members better Men than the Duke himself. I presume he meant some particular Friends of his own in that House.

The next Man is one Mr. *Ashlock*, and he tells you, That because he would engage all People into an Hatred of the Duke's Person, he must, as a thing of the greatest consequence in order to it, make it be believed, that the Duke had a great Hand and Concern in the dismal Fire of *London* in Sixty six, that thereby he might make him obnoxious to the Rancour and Malice of all that suffered in that dreadful Calamity. And with what handsom Expression he cloaths it? *He fired the City of London, he is the Son of a Whore, and we will have him hanged or sent out of England for it, whenever a Parliament meets.*

So that here is not only a Personal Reflection, and Malicious Indignity done to His Royal Highness, but carries in it a great Reflection upon His Sacred Majesty himself in his Relations, and he is not contented only to belch out his Venom and Malice against those that are alive, but even against those that are dead too. For you see it is a most foul Imputation and Slander against Her late Majesty the Queen Mother to our Sovereign and His Brother, by calling him the *Son of a Whore*; which is an Expression of that impudent and insolent Nature, as is not fit to be mentioned in a Civil Government.

These things I think my self obliged to take notice of for Example's sake, and to induce all People to consider to what a height of Corruption we were grown when such Scoundrel Fellows as this dare to take such base Words into his Mouth, of the Royal Family.

Then comes Captain *Cressett*, and he gives you an account, That when His Royal Highness and the Dutchess were going last to *Scotland*, as the Captain return'd from the Duke's Lodgings, he met with the Defendant, who fell upon him, *What, you have been with JAMES?* It seems he was one of his intimate Acquaintance, and very familiar he was with his Name. Indeed a Man would have thought, if in case he had spoke as one Man ought to speak of another, that he had been speaking of one of his Myrmidons, and it would have been a very hard matter to have known who else he meant by that familiar Appellation. Says the Captain, *What James? Why York.* And he was very kind that he gave him that Addition to let him know what *JAMES* he meant; but when the Captain chid him, and told him, *Sure you might either say the Duke of York, or His Royal Highness,* then immediately, instead of that, he flies out, *He is a Papist, he is a Traitor, and I hope to live to see him hanged, and you will go near to lose your Reputation if you go so often thither.*

So that I perceive, if he will not be advised by this Gentleman, he should lose all his Credit; and yet I presume it is wonderfully for the Advantage of Mr. *Cressett* to lose the Credit he could get by any Characters or Com-

mendations such an one as he could give him.

Then Captain *Cressett* kindly advised him to take care of injuring his Party by his Passion and his indecent Behaviour, and told him, it would turn to his Prejudice at last. And truly now, I think, if all his Party were in his Condition, and made to smart for the Lavishness of their Tongues, I think it were a good Accomplishment of his Prophecy, and if we were rid of them, we should be more at Peace. And we may without offence hope to see that sooner, than what the Defendant says he hoped to see.

The next is Sir *William Jennings*, who tells you of a Passage at the Parliament at *Oxford*, which shews his wonderful Gospel and Christian Temper. When a Company of Gentlemen were met together to drink a Glass of Wine, and were wishing Health and Long Life to His Sacred Majesty, His Royal Highness, and the Royal Family, he would not be contented to refuse the Glass, but to shew how wonderful a Christian Spirit he was of, and to evidence his true Protestant Charity (and by his Carriage who was one of the Heads of the Faction, we may guess at the Temper of all the Party) he cries out, *He has ruined the Nation, and if there be any hotter Place in Hell than other, I hope the Devil will preserve it for him.*

I presume his great Conversation with him he spoke of, hath given him some Intelligence there is in Hell some hotter Places than others, and who they are reserved for. But, Gentlemen, I speak not this that I think any thing that is thus proved by the by, doth in the least aggravate the Damages, for the Words in the Declaration are as bad as bad can be; but to let you see the Disposition of this Man that has been so much admired and courted.

After him comes Mr. *Warcup*, who tells you, he was not in the Room with *Otes* when the last Words were spoken, but coming in immediately after, they all told him the same Words, and he afterwards meeting with *Otes*, and reproving him for his indecent Behaviour and Expression, instead of any Remorse or Concern that he had upon him, by reason of his having spoken such Words, he doth still add to it, *The Duke of York is a Traitor, he is in the Plot; and because you take his Part you are a Yorkist, and we will be even with you for it at one time or another.* So he threatens him only for asking him why he behaved himself in such an indecent manner towards his Royal Highness.

The last Witness Mr. *Chapman*, is produced to shew what Mind he continues in. After all this is past, and a body would have thought he might by this time have been brought to some Consideration and Submission to Authority; yet you see how the Man is. The Witness tells you since the beginning of this Term, the Declaration being delivered, and by the Course of the Court he ought to Plead within such a Time, the Attorney goeth to him for a Plea, in order to make his Defence if he could in the Action now before you, but he lets Judgment go by Default; and so far is he from repenting of what he had formerly done, that he persists in it, and tells him, *Are you the DUKE's Attorney?* Yes. Well, *I care not a Farthing for the DUKE nor his Attorney*

ney neither ; it may be I may be in here for 100000 l. (and that I believe is one of the truest Things he ever spoke in his Life) but suppose I be, I do not doubt but when a Parliament meets, a Time will come, when some other People may come in my Place. But truly since he has declared his Hopes, I think it may not be amiss for us to declare ours too ; and for my Part, to say I hope I shall never see such a Parliament.

Mr. Under-Sheriff. Lay your Heads together, Gentlemen, and consider of your Verdict.

They did so standing at the Bar.

Mr. Under-Sheriff. Are you all agreed of your Verdict ?

Omnes. Yes.

Mr. Under-Sheriff. Who shall say for you ?

Omnes. Foreman.

Mr. Under-Sheriff. What Damages do you find ?

Sir Charles Lee. Full Damages, an Hundred Thousand Pounds.

Mr. Under-Sheriff. What Costs ?

Sir Charles Lee. Twenty Shillings.

Which VERDICT, being Recorded in an Inquisition indented, taken under the Hands of all the Jury, was afterwards annexed as the Return to the Writ of Inquiry.

PROCEEDINGS on the OUTLAWRY against Sir THOMAS ARMSTRONG.

De Term. S. S. Trin. Anno Regni Regis Carol. II. xxxvi. Die Sabbati, 14. Junii, An. Dom. 1684. B. R.

Dominus Rex versus Thom. Armstrong. Mil.

THIS Day Sir Thomas Armstrong was brought to the Bar of the Court of King's-Bench at Westminster, by Vertue of a Writ of Habeas Corpus, directed to the Keeper of the Goal of Newgate ; which Writ was on His Majesty's behalf moved for on Thursday last by Mr. Attorney General.

The Return of the Writ was read by the Clerk of the Crown, by which it appeared he was in the Custody of the Keeper of Newgate, by a Warrant from the Honourable Sidney Godolphin, Esq; one of His Majesty's Principal Secretaries of State ; which Warrant followeth *in hæc verba*.

Sidney Godolphin, Esq; of His Majesty's most Honourable Privy Council, and Principal Secretary of State.

THESE are in His Majesty's Name to Authorize and Require you to receive into your Custody, from on Board His Majesty's Yatch the Catherine, Captain Davis Commander, the Person of Sir Thomas Armstrong, Kt. Outlawed for High-Treason, and him safely to keep in His Majesty's Prison of Newgate, till His Majesty's Pleasure be farther known. And for so doing this shall be your Warrant. Given under my Hand and Seal at White-Hall, this 10th Day of June 1684. In the 36th Year of His Majesty's Reign.

S. Godolphin.

To Captain Richardson Keeper
of His Majesty's Prison of
Newgate.

L. C. J. What would you have, Mr. Attorney ?

Sir George Jefferies.

Mr. At. Gen. Have you the Outlawry there ?

Sir Robert Sawyer.

Cl. of Cr. Yes, Sir, here it is.

Mr. At. Gen. That which I humbly pray, my Lord, is, an Award of Execution for the King against Sir Thomas Armstrong, upon the Outlawry.

L. C. J. First, we must file this Return.

Mr. At. Gen. I pray it may be filed.

L. C. J. Let it be filed : Now what do you desire, Mr. Attorney ?

Mr. At. Gen. My Lord, I pray an Award of Execution upon the Outlawry.

L. C. J. Arraign him upon the Outlawry.

Cl. of Cr. Thomas Armstrong, Hold up thy Hand, [Which he did.]

Thou hast been Indicted in London, by the Name of Thomas Armstrong, of London, Knight of High Treason, for Conspiring against the King's Majesty's Life, and the Government : For not appearing to Plead and Try that Indictment by due Process of Law issued against thee, upon that Indictment thou standest Outlawed, and thereby Attainted of the same High Treason. What hast thou to say for thy self why Execution should not be awarded against thee upon that Attainder according to Law ?

Sir Thomas Armstrong. My Lord, I was beyond Sea at the Time of the Outlawry ; I beg I may be Tried.

L. C. J. That is not material at all to us ; we have here a Record of an Outlawry against you, Sir Thomas.

Sir

Sir Thomas Armstrong. I desire to be put upon my Tryal, my Lord.

L. C. J. We cannot allow any such Thing, we have nothing to do upon this Record before us, but to award Execution. Captain *Richardson*, Which are your usual Days of Execution?

Capt. Richardson. Wednesdays and Fridays, my Lord.

Mrs. Matthews. Here is a Statute, my Lord.

L. C. J. What is the matter with that Gentlewoman?

Sir Thomas Armstrong. Hold your Tongue. My Lord there is a Statute made in the 6th Year of *Edward* the 6th, which I desire may be read.

L. C. J. To what Purpose would you have it read, *Sir Thomas*?

Sir Thomas Armstrong. It giveth the Prisoner, or Person Outlawed for High Treason, a Years time to reverse the Outlawry, if he were beyond Sea. I desire it may be read.

L. C. J. Ay, let it be read. Where is it, do you say?

Sir Thomas Armstrong. It is in the 6th Year of *Edward VI.*

Mrs. Matthews. Here is a Copy of it——

[*Shewing a Paper.*]

L. C. J. Why, how now? We do not use to have Women plead in the Court of *King's Bench*; pray be at quiet, Mistresses.

Sir Thomas Armstrong. Pray, hold your Tongue. My Lord, I could not come to alledge this before, because I have been a close Prisoner, and no body permitted to come at me. I desire Counsel to be assigned me at this Bar.

L. C. J. For what, *Sir Thomas*?

Sir Thomas Armstrong. To argue whether this Outlawry ought not to be reversed.

L. C. J. Read the Statute he desires.

Mr. At. Gen. Ay, let it be read. *Sir Thomas* will not find it to his Purpose.

Cl. of Cr. What Chapter is it?

L. C. J. You may easily find it about Outlawries for Treason.

Cl. of Cr. Reads. *Provided always, and be it Enacted by the Authority aforesaid, That if the Party*——

Mr. At. Gen. Read the Clause before that, *Sir Samuel.*

Cl. of Cr. Reads. *And that all Process of Outlawry hereafter to be made and had within this Realm, against any Offenders in Treason, being Resident or Inhabitant out of the Limits of this Realm, or in any the Parts beyond the Sea, at the time of the Outlawry pronounced against them, shall be as good and effectual in the Law, to all Intents and Purposes, as if any such Offenders had been Resident and Dwelling within this Realm, at the time of such Process awarded and Outlawry pronounced.*

L. C. J. Read on the next Paragraph.

Cl. of Cr. Reads. *Provided alway, and be it enacted by the Authority aforesaid, That if the Party so hereafter to be Outlawed, shall within one Year next after the said Outlawry pronounced, or Judgment given upon the said Outlawry, yield himself unto the Chief Justice of England for the time being, and offer to Traverse the Indictment or Appeal, whereupon the said*

Outlawry shall be pronounced as is aforesaid: That then he shall be received to the said Traverse, and being thereupon found not Guilty by the Verdict of Twelve Men, he shall be clearly acquitted and discharged of the said Outlawry, and of all Penalties and Forfeitures by reason of the same, in as large and ample manner and form, as though no such Outlawry had been made, any herein contained to the contrary in any wise notwithstanding.

Mr. At. Gen. *Sir Thomas*, I suppose, now will shew he yielded himself to your Lordship.

L. C. J. This is the first time I have seen *Sir Thomas*.

Sir Thomas Armstrong. My Lord I have been a Prisoner, and the Year is not yet out; I now render my self.

Mr. At. Gen. Before he went out of *England* he might have rendered himself, and been Tried, if he pleased.

Sir Thomas Armstrong. I am within the benefit of the Statute, I conceive, my Lord.

L. C. J. We think otherwise, *Sir Thomas*.

Sir Thomas Armstrong. I think, my Lord, the Statute is plain in the Case.

L. C. J. We are of another Opinion than you are; it doth not reach your Case.

Sir Thomas Armstrong. The Year is not yet out, and therefore I come time enough now; and here I am, and desire the Benefit of this Act.

L. C. J. *Sir Thomas*, you should have rendered your self to me.

Sir Thomas Armstrong. I do it now, my Lord, and the Year is not yet out.

L. C. J. We cannot take notice of that; we have nothing but the Outlawry, and you did not render your self according to that Act, but are brought as a Prisoner before us now.

Sir Thomas Armstrong. My Lord, I beg I may have Counsel to Plead for me in this Case.

L. C. J. For what reason? We are of Opinion it is not a Matter of any doubt. For you must not go under the Apprehension that we deny you any thing that is right; there is no Doubt nor Difficulty at all in the Thing.

Sir Thomas Armstrong. Methinks, my Lord, the Statute is plain.

L. C. J. So it is very plain that you can have no Advantage by it. Captain *Richardson*, you shall have a Rule for Execution on Friday next.

Sir Thomas Armstrong. I would only take notice of one Thing, my Lord; may I speak?

L. C. J. Ay, *Sir Thomas*, very freely what you please.

Sir Thomas Armstrong. A little while ago there was one in this Place had the benefit of a Tryal offered him, if he would accept of it; that is the Thing I desire now, and I thank God, my Case is quite another thing than his, I know my own Innocence; and I desire to make it appear by a Tryal.

L. C. J. *Sir Thomas Armstrong.* You may go away with what Opinion you please, of your own Innocency: But you are here Attainted by Outlawry. That which was done, to him you speak of, was the Grace and Mercy of the King, and he may, if he please, extend the same Grace and Favour to you; but that is not our Business: We are satisfied that according to Law we must award Execution upon this Outlawry.

Mrs.

Mrs. *Matthews*. My Lord ; I hope you will not murder my Father ; this is murdering a Man.

L. C. J. Who is this Woman ? Marshal, take her into Custody. Why, How now ? Because your Relation is Attainted for High Treason, must you take upon you to tax the Courts of Justice for Murder, when we grant the Execution according to Law ? Take her away.

Mrs. *Matthews*. God Almighty's Judgments light upon you.

L. C. J. God Almighty's Judgments will light upon those that are Guilty of High Treason.

Mrs. *Matthews*. Amen, I pray God.

L. C. J. So say I. But Clamours never prevail upon me at all ; I thank God, I am Clamour Proof, and will never fear to do my Duty.

[Then She was carried away.]

Mr. *At. Gen.* My Lord, I would only acquaint you with one Thing, in reference to what Sir *Thomas Armstrong* has said : The King did indulge *Holloway*, that he speaks of, it is true, so far as to offer him a Tryal, and His Majesty perhaps might have some reason for it, but the Prisoner truly deserves no Sort of Indulgence or Mercy from the King. For it has appeared by the Evidence that has been given of this late horrid Conspiracy, that after the Disappointment that was given by the Providence of God, by the Fire at *New-Market*, to the meeting at the *Rye* ; this Gentleman was one of the Persons that actually engaged to go upon the King's hasty coming to Town, and to destroy him by the way as he came to Town. And this appears upon a full and clear Evidence, as positively testified as any thing can be. And when he was taken beyond Sea, Letters of Communication with foreign Ministers and other People were taken about him, and will be——

L. C. J. We are not to meddle at all with the Evidence, Mr. Attorney ; that is not our Business ; here is an Outlawry, upon this Outlawry he is Attainted ; we have nothing more to do, but to do the Duty of the Court upon this Record before us, to award Execution upon that Attainder, and we must give a Rule for it. If the King will be pleased to do for Sir *Thomas Armstrong* what he did for *Holloway*, and indulge him a Tryal, and wave the Outlawry, with all our

Hearts. We are not Disposers of his Grace and Favour, but the Ministers of his Justice. If the King will pardon him, he may ; that is not our Business ; but all we have to do upon what is before us, is to consider the Record, and what the Prisoner says against our awarding of Execution. We have considered whether this be a yielding within the Proviso of this Statute, and we think it is not, nor can be, by any means.

Sir *Thomas Armstrong*. My Lord, I am within the Statute, I was Outlawed while I was beyond Sea, and I come now here within the Twelve Month. That is all I know, or have to say in this Matter.

L. C. J. We think quite the contrary, Sir *Thomas*.

Sir *Thomas Armstrong*. When I was before the Council, my Lord, they ordered that I should have Counsel allotted me, but I could have no benefit by that Order ; for when I was taken, I was robbed of all the Money I had, and have not had one Penny restored to me, nor any Money since, I know not whether the Law allows Persons in my Condition to be robbed and stripped.

L. C. J. I know nothing at all of that Matter, Sir *Thomas*.

Sir *Thomas Armstrong*. My Lord, I know Lawyers will not plead without Money, and being robbed I could not have wherewithall to Fee them.

L. C. J. Sir *Thomas Armstrong*. You take the Liberty of saying what you please ; you talk of being robbed, no body has robbed you that I know of.

Sir *Thomas Armstrong*. No body says you do know of it ; but so it is.

L. C. J. Nay, be as angry as you will, Sir *Thomas*, we are not concerned at your Anger. We will undoubtedly do our Duty.

Sir *Thomas Armstrong*. I ought to have the benefit of the Law, and I demand no more.

L. C. J. That you shall have by the Grace of God. See that Execution be done on *Friday* next according to Law. You shall have the full benefit of the Law.

Then the Prisoner was carried back to Newgate, and afterwards upon a Petition, the COURT ordered Mrs. *Matthews* to be released out of Custody without Fees.

This Attainder was Reversed in B. R. on a Writ of Error, 6 W. III.

4 Mod. 366.



Paschæ xxxvi Caroli Secundi Regis.

London ff.



Wilhelmus Pritchard Miles nuper Major Civit. prædict. quærit de Thoma Papillon in Custod. Marem, &c. pro eo videlicet quod cum duode-

cimo die Februarii Anno nostri Domini Caroli Secundi nunc Regis Angliæ, &c. tricesimo quinto ipse idem Wilhelmus Pritchard ac antea & abinde pro separat. mensis ex tunc prox. sequend. extitit. Major Civitat' London. prædict. in Offici-um Majoratus illius debito modo elect. præfect. & jurat. ac secundum Consuetudinem Civitat. London. prædict. à tempore cujus contrar. memoria hominum non existit in eadem usitat. & approbat. Officium suum Majoratus illius indies intendere debuit pro assiduam diligent. ip-sius Wilhelmus in regimine Civitat. illius pro ipsum secundum debitum Officii sui prædict. exequend. & per-formand. ad honorem & dignitat. ad Officium illud spectant. & pertinen. prædictus tamen Thomas existens unus de Comit. Civitat. prædict. & sub regimine dicti Wilhelmi virtute Officii sui prædicti præmissor. non ignarus, sed machinans & false, ac malitiose, in-videns felici statui ipsius Wilhelmi in Officio suo prædict. necnon ipsum Wilhelmum in executionem Officii illius minus juste inquietare & disturbare prædicto duodecimo die Februarii Anno tricesimo quinto superdicto idem Thomas Papillon pro vexatione præfat. Wilhelmo adhibend. (eodem Thoma ad tunc non habente aliquam legitimam vel probabilem Causam Actionis versus ipsum Wilhelmum) false & malitiose prosequut. fuit extra cur. dicti Domini Reg. coram ipso Rege nunchit. scilicet apud Westmon. in Corn. Middlesex adtunc & adhuc tent' existen. quoddam Breve ipsius Dom. Reg. de alias Capias versus ipsum Wilhelmum per nomen Wilhelmi

Pritchard Militis adtunc Coronator. Civitat' London. præd. direct' per quod quidem Breve idem Dominus Rex nunc eidem tunc Coronatori præcepit quod capiet ipsum Wilhelmum Pritchard si invent' foret in Civitat' Lon-don. præd. & ea salvo custodiret, ita quod haberet Corpus ejus coram Domino Rege apud Westm. die cur' prox. post quindenam Paschæ ex tunc prox. sequend. ac respondend. præfat' Thomæ Papillon præ nomen Thomæ Papillon Armiger. de placito trangres. & quod idem tunc Coronator haberet ibi tunc Breve illud Et prædictus Thomas Papillon ex ulteriori nequitia & malitia sua præcogitat' versus ipsum Wilhelmum postea & ante retorn' Brevis prædicti scilicet viceesimo quarto die Aprilis Anno tricesimo superdicto apud London. præd. videlicet in Parochia Sanctæ Mildredæ Virginis in Pulletria in Warda de Cheap. London. prædictum Breve de alias Capias cuidam Johanni Brome Gent. adtunc Coronator. Civit' London. præd. existen. deliberavit exe-quend. ac adtunc & ibidem apud Wilhelmum adtunc Major' Civitat' London. præd. ut præfert' existen præ-textu Brevis illius pro Corpus suum capi & arrestari ac in Prifona sub Custod. ejusdem tunc Coronator. per spatium sex horarum ex tunc prox. sequen. detineri malitiose & minus juste procuravit in vituperation' de-rogation' & vilipendium prædicti Wilhelmi & Officii Majoratus ipsius Wilhelmi. præd. necnon ad damnum præjudicium & gravamen ipsius Wilhelmi manifest' ubi revera & de facto prædictus Thomas Papillon prædicto tempore captionis arrestionis & detentionis ipsius Wilhelmi. in Prifona sit ut præfert' fact' non habuit aliquam justam vel probabilem Causam Actionis versus ipsum Wilhelmum in Præmissis præd. unde idem Wilhel-mus dic' quod ipse deteriorat' est & damnum habet ad valent' decem mille librarum & inde produc' se-ctam, &c.

Die Jovis 6. Nov. Anno Dom. 1684. Mich. Ter. 36 Car. 2. B. R.

At the Session of *Nisi Prius* for the City of London,
held at Guild-hall.

Pritchard versus Papillon.

London ff. **S**IR William Pritchard, late Lord May-
or of the City of London, having
in Easter Term last brought an Action upon the
Case, for falsely, maliciously, and without prob-
able Cause, procuring him to be arrested and
imprisoned in his Mayoralty, against Thomas

Papillon, Esq; The Defendant pleaded Not
Guilty, and thereupon Issue being joyned, it
came this Day to be tryed before the Lord Chief
Justice Jefferies; and the Jury sworn to try
this Cause were these,

Bartholomew Ferryman,	} Jur'	Joseph Baggs,
Thomas Blackmore,		Daniel Chandler,
Thomas Symonds,		John Reynalds,
William Whatton,		John Allen,
John Green,		Joseph Caine, and
Thomas Amy,		William Withers, Jun.

Mr. Mundy. May it please your Lordship, and you Gentlemen of this Jury, Sir William Pritchard, Knight, late Lord Mayor of the City of London, is Plaintiff, and Thomas Papillon, Esq; is the Defendant: And this, Gentlemen, is in a special Action upon the Case, wherein the Plaintiff does declare, That whereas the 12th of February in the 35th Year of this King, and before and after for several Months then next ensuing, he was Mayor of the City of London, being duly elected and sworn into the Office of Mayoralty of the said City, and according to the Custom of the said City time out of mind, he ought daily to attend the said Office in the diligent Government of the said City, according to the Duty of his said Office, which he was to execute to the Honour and Dignity belonging thereunto; That the Defendant, Thomas Papillon, being one of the Commonalty of the said City, and under the Government of the Plaintiff, by virtue of his Office aforesaid, not being ignorant of the Premises, but contriving, and falsely, and maliciously envying the happy Estate of the Plaintiff in his said Office, as also unjustly to disturb the Plaintiff in the Execution of his said Office, the said 12th Day of February in the 35th Year aforesaid, the Defendant for Vexation to the Plaintiff, not having any lawful or probable Cause of Action against the Plaintiff, falsely and maliciously did prosecute the King's Writ of *Alias Capias* out of the Court of King's Bench against the Plaintiff, by the Name of Sir William Pritchard, Knight, directed to the then Coroner of the City of London; by which Writ it was commanded the said Coroner to take the Plaintiff, if found within the said City, and safely keep him, so as to have his Body before that Court at Westminster upon Wednesday next, after 15 Days of Easter then next following, to answer the now Defendant in a Plea of Trespass: And that the Defendant of his further Malice against the Plaintiff, afterwards and before the Return of the Writ, to wit, upon the 24th Day of April in the 35th Year aforesaid, at London, to wit, in the Parish of St. Mildred the Virgin, in the Poultry, in the Ward of Cheap, London, delivered the said Writ of *Alias Capias* to one John Brome, Gent. then being Coroner of the said City, to be executed; and then and there the Plaintiff, then being Mayor of the said City, by virtue of that Writ, maliciously and unjustly did procure to be taken, and arrested, and detained in Prison under the Custody of the said Coroner for the space of six Hours, to the Disgrace and Scandal of the Plaintiff and his said Office, as also to the manifest Damage, Prejudice, and Grievance of the Plaintiff: Whereas in Truth and in Fact the Defendant at the time of the taking, arresting, and detaining of the Plaintiff in Prison, as aforesaid, had not any just or probable Cause of Action against the Plaintiff in the Premises, whereby the Plaintiff says he is injured, and which he lays to his Damage 10000 l. To this

the Defendant has pleaded Not Guilty. If we that are of Counsel for the Plaintiff shall prove this Matter unto you, Gentlemen, that we have laid in the Declaration that has been opened unto you, you are to find for the Plaintiff, and I hope will repair him in Damages for this Affront and Injury.

Mr. At. Gen. May it please your Lordship, and you Gentlemen of the Jury, I am of Counsel in this Case for the Plaintiff; and this Action is brought, Gentlemen, to vindicate the Honour of the Chair from such Affronts as these, which in no Age, till of late days, our Times of Faction and Confusion it ever met with; That by a Person that is a Citizen of London, and one of the Commonalty, that ought to have paid Submission to the Lord Mayor as his Chief Magistrate, and was bound so to do by his Oath as a Freeman should, without Cause of Suit, arrest the Lord Mayor of the City. That there was no probable Cause, is evident by his not proceeding in the Action that he had thus brought. But, Gentlemen, we shall shew you in the Course of our Evidence, that there lay a further Malice in this Case, and that there was a Design in it against the Government. For we shall give you Evidence that this Design was laid to carry on the great Plot against the Lives of the King and his Brother, and for the Subversion of the Government. For they contrived it so, that they would imprison the Mayor, and then, thought they, the Loyal Citizens will interpose to rescue him, and then the Party should rise to assist the Officer, he having the Countenance of Authority, and being in the Execution of the King's Writ (especially if it be considered then who was Coroner) and so a publick Commotion would be made, a general Mutiny, and that would be a fit Opportunity, in the Confusion of the City wanting its Chief Governor, of doing what they designed. Gentlemen, We shall prove all that is laid in the Declaration; and likewise that the End of this Business was to have had a Commotion for the accomplishing their great Conspiracy as has been opened. That Sir William Pritchard was arrested in his Mayoralty, I suppose, will be agreed, or else we shall prove it.

Mr. Ward. Yes, yes, we agree it.

Mr. Sol. Gen. Then we will go on and prove the manner of it. Swear Mr. Gorges, and Mr. Keeling. (Which was done.) Mr. Keeling, Pray, will you tell my Lord, and the Jury, were you made a special Bailiff to arrest Sir William Pritchard when he was Lord Mayor, and what did you do upon it? Tell all you know of it, and what was designed by it.

Keeling. My Lord, All that I do know of it is this: It was upon the 24th Day of April, I have the Warrant here to shew, I met with Mr. Goodenough at Mr. Russel's the Cook in Ironmonger lane, and several others were there; and I went away a little while and came again: While I was gone from them, they put my Name into the Warrant, and upon that Warrant I did arrest Sir William Pritchard, who was then Lord Mayor, at the Suit of Mr. Thomas Papillon, I suppose this is the Gentleman. (Pointing to the Defendant.) I had no Order for it from Mr. Papillon, nor ever spoke with him about it; but I had Order from the Coroner, who upon the arrest.

Sir Robert
Smyer.

arresting of him took my Lord Mayor into his Custody.

Mr. At. Gen. Where was my Lord Mayor then?

Keeling. At Grocers-hall.

Mr. At. Gen. Was that the Place he kept his Mayoralty in?

Keeling. Yes, it was so.

Mr. Sol. Gen. What was he doing when you arrested him?

Keeling. There was some Disturbance upon it among the Officers and People there. The Coroner came up to him and said, Sir, I have a Writ against you, I pray you would please to give an Appearance at the Suit of Mr. Thomas Papillon, and another at the Suit of Mr. John Dubois, and some Words there pass'd between him and the Coroner; and my Lord Mayor refusing to give any Appearance, the Coroner Mr. Brome bid us execute our Warrants, upon which I came up to my Lord Mayor and touched him upon the Shoulder, and said, I arrest you at the Suit of Thomas Papillon Esq; and one Ferdinando Burley arrested him again at the Suit of Mr. John Dubois.

Mr. At. Gen. What did you do with him when you had arrested him?

Keeling. The Coroner dismiss'd us, and, as I take it, carried him home to his House.

Mr. At. Gen. What Instructions had you what to do, in case he made any Resistance, and did not submit to the Arrest?

Keeling. I know of no Instructions about any such thing.

Mr. Sol. Gen. Who was by, pray, when Orders were given you to arrest my Lord Mayor?

Keeling. Both the Goodenoughs.

Mr. At. Gen. He in the Proclamation, you mean, and his Brother?

Keeling. Yes, Richard and Francis Goodenough.

Mr. Sol. Gen. And who else, pray?

Keeling. Several that I did not know.

Mr. At. Gen. Can you remember any body besides the Goodenoughs, in particular?

Keeling. There was one a Tallow-Chandler, and a great many that I did not know.

Mr. Sol. Gen. How many do you think there were? And where was it?

Keeling. I believe there were about thirty or forty, and it was at Ruffel's the Cook's in Ironmonger lane.

Mr. At. Gen. Did they all come along with you to Grocer's Hall to arrest my Lord Mayor?

Keeling. No, my Lord, they did not.

Mr. Sol. Gen. Did any of them, and which, pray?

Keeling. Sir, I will tell you who did come to my Lord Mayor's. There was the Coroner, Francis Goodenough, Ferdinando Burley, and my self: And after my Lord was arrested, the Coroner bid us be gone, and he would look after my Lord Mayor.

Mr. Sol. Gen. Whither did you go after that?

Keeling. I went to Sir Harry Tulse's directly.

Mr. At. Gen. Did not you expect an Opposition? And had you not some Discourse what you should do in case there was an Opposition?

Keeling. No, I cannot tell any thing of that.

Mr. At. Gen. You say, there was a Meeting, or Consult, at Ruffel's, of forty People; Had

you not there some Consultation what was to be done if my Lord Mayor did not obey the Arrest?

Keeling. I do not remember any thing about that at that time.

Mr. At. Gen. Was there at any other time before? Or did you hear any of those People discourse the Goodenoughs, or any of them, what they would have done in case they were resisted?

Keeling. I do not remember any Discourse of any such thing, before or after.

L. C. J. Pray, Mr. Keeling, let me ask you a Question or two. Sir George Jefferies. Were you ever employed by the Coroner to be a special Bailiff to arrest any body before this time you speak of, that you arrested Sir William Pritchard?

Keeling. No, my Lord, I never was.

L. C. J. Then, pray recollect your self, who were at that Meeting, when, as you say, your Name was put into the Warrant for this Arrest?

Keeling. My Lord, When I went away for a little while, I left these Persons particularly that I did name, the two Goodenoughs, and one Burton, I think, and one Crompton, and that Tallow-Chandler; there were to the Number of thirty or forty that I did not know their Names.

L. C. J. But, pray, how came you to be employed in this Service then? Were you a Tradesman in Town then?

Keeling. Yes, in Wapping.

L. C. J. Good now, how came you to be employ'd in arresting my Lord Mayor more than any other of those thirty or forty that you say were there then?

Keeling. I went there among them, but did not know then that I should be concerned in this Business; and I went away a little while, and when I came back, they told me, that my Name was put into the Warrant.

L. C. J. Pray tell us the whole Story, How you that were a Tradesman at Wapping, should come to be employed as a Bailiff to the Coroner of London to arrest my Lord Mayor? There must be some particular End in it.

Mr. At. Gen. Mr. Keeling, Tell the Court and the Jury the whole Story, and what it was that brought you into this.

Keeling. My Lord, Mr. Goodenough told me I must be concerned.

L. C. J. Ay, prithee tell us what Goodenough desired you to be concerned in?

Keeling. Upon my coming back to the Company that was at Ruffel's, Mr. Richard Goodenough told me, I must be concerned in the Business of arresting my then Lord Mayor, Sir William Pritchard: Said I to him, Mr. Goodenough, This is foreign and remote to my Business, to be concerned in such a Matter as this, it will seem very strange for me to do it. He press'd it upon me to do it; and, says he, if you will not do it, you will be a Man look'd ill upon, and it will be taken strangely from that Party; he meant, I suppose, the Discontented Party, the Faction, or what you please to call it, that were not contented with the Administration of the Government in the City at that time; and he urged it upon me with a great many Arguments. I oppos'd it with much Vigour a good while,

While, but at last he prevailed upon me to go along with the Coroner; and *Frank Goodenough* his Brother said he would go with me, and he did so; and we came and arrested my Lord Mayor, as I told you before.

L. C. J. Where did Mr. *Goodenough* press you to be concerned in this Business, as you say?

Keeling. At Mr. *Russel's* a Cook's in *Ironmanger-Lane*.

L. C. J. How came you thither?

Keeling. He sent me a Letter to meet him there. He was at me before to be concerned in it, but I did not comply with him in it. Mr. *Richard Goodenough* it was; and Mr. *Alhurst*, I think it was Alderman *Cornish's* Son in Law was by.

L. C. J. Was *Nelbrop* there?

Keeling. No, my Lord, he was not there, but they did not proceed then, because my Lord and his Brethren were gone out of Town to wait upon the King, I think; And this was six Weeks or two Months before this Meeting at *Russel's*.

Mr. *Sol. Gen.* Pray, Mr. *Keeling*, recollect your self. Had you any Discourse with *Goodenough*, or any body else, what the Consequence of such an Arrest would be?

Keeling. They told me, my Lord Mayor, and Court of Aldermen, had made an ill Return to the *Mandamus's* that were served upon them for the swearing of Mr. *Papillon* and Mr. *Dubois* Sheriffs, and therefore Mr. *Papillon* and Mr. *Dubois* had good Cause of Action against them; and *Goodenough* said, he had order from them to arrest my Lord Mayor upon an Action, and desired me to be concerned.

Mr. *Sol. Gen.* But pray remember what you said before, Mr. *Keeling*, Why should the discontented Party, as you call them, be concerned, and be angry with you if you did not arrest my Lord Mayor?

Keeling. The particular Argument that he used with me to perswade me to it, was this, That I having a Trade and Dealing among that Sort of People, they would think ill of me if I did not do it.

Mr. *Sol. Gen.* But why should the Party be angry with you, if you were not a Bailiff to arrest my Lord Mayor, at the Suit of Mr. *Papillon*?

Keeling. I did not know the reason of their Anger, he might have something in his Head that he did not reveal to me. But that was the Argument he used, The Party would think ill of me.

Mr. *Serj. Maynard.* If you have done with this Witness, I would ask him a Question. You say, Sir, that *Goodenough* told you, the Discontented Party would be angry with you, if you did not do it? Upon your Oath, was the Discontented Party named?

Keeling. No, Sir, but that Party of which Mr. *Goodenough* and I then was, and they were the Discontented Party, I think, for they were so discontented, that they would have killed the King and the Duke.

Mr. *At. Gen.* That is an Answer, I hope, to your Question, Mr. Serjeant.

L. C. J. I think, when he names the *Goodenoughs* to be of the Party, no body questions but they were discontented.

Mr. *Sol. Gen.* He has explained well enough

sure what he meant by the Discontented Party, those that were so discontented that they would have killed the King and the Duke. Those were the Promoters of this Action, and Mr. *Keeling* must engage in it, or they would be displeased. Now, my Lord, we shall call Sir *Henry Tulse*, and Sir *Robert Jefferies*, to shew what the Coroner did.

Keeling. I arrested Sir *Harry Tulse* afterwards.

Then Sir *Harry Tulse* was called.

Mr. *Ward.* My Lord, we desire Sir *Harry Tulse* may not be sworn, we have an Exception to his Testimony.

L. C. J. What is your Objection?

Mr. *Ward.* We are informed, he and the rest of the Court of Aldermen, have joined their Purse to carry on this Suit, and then, with Submission, he is not a good Witness.

L. C. J. Ask him that Question upon a *Voyer dire*.

Then he was sworn upon a *Voyer dire*.

Mr. *Williams.* Pray, Sir, is there any Order of the Court of Aldermen to lay out Money for this Cause out of their Joint Purse, or the Publick City Stock?

Sir *Harry Tulse.* Not that we know of.

Mr. *Williams.* Pray, Sir, do you know whether Sir *William Pritchard* laid out Money in it, or who else doth?

Sir *Harry Tulse.* I cannot give a positive Answer to that, who layeth out Money upon it, nor do I know of any such Order as you speak of.

Mr. *Ward.* Sir *Harry Tulse*, though you know of no such formal Order of the Court of Aldermen, yet is there not some Direction by the Court of Aldermen about expending Monies in a joint way?

Sir *Harry Tulse.* I assure you, Sir, I know nothing of it.

L. C. J. Come, he has given a full Answer to your Question, swear him.

[Which was done.]

Mr. *Holt.* Sir *Harry Tulse*, now you are sworn, Pray, will you give an Account of what happened about this Matter within your knowledge: Pray tell the whole Story.

Sir *Harry Tulse.* My Lord, about four of the Clock in the Afternoon, this Gentleman, and two more, came to me to my own House, and he did arrest me (I mean, Mr. *Keeling*, that was sworn here before me) at the Suit of Mr. *Papillon*; and another of them did arrest me at the Suit of Mr. *Dubois*: Said I to them, I do not know that I owe them, or either of them, a Farthing. But, what must I do? He told me, It was only to give an Appearance. Said I, Gentlemen, I shall consider of that. Then, says he, you must go to my Lord Mayor: Why, where is he, said I? Said he, He is in the Custody of the Coroner at his House. Where, said I? He is gone to *Skinner's Hall*, said he. This is well, said I. So I called for my Man to bring my Cloak. Then they told me, If I pleased, they would take my Word till to morrow Morning, if I would promise to appear. I told them, they might do as they pleased. So they left me; and I went first to my Lord Mayor's House, but found

found him not there ; so I went down to *Skinner's Hall*, and there I found my Lord Mayor all alone, and no Alderman, only the Officers. I asked his Lordship how he came there ? He told me, he was arrested by the Coroner. I asked him how long he had been detained ? And, he said, but a little time : And indeed I think it could not be long, for I met his Coach coming back, from *Skinner's Hall* when I went. After that he was detained there till about Eleven of the Clock, or thereabouts. This is all that I know of it.

L. C. J. What became of the Government of the City all that Time ?

Sir Harry Tulse. There was presently a great Noise all about the City concerning my Lord Mayor's being arrested, and abundance of People were gathered together about the Door, but there came a Company of Soldiers of the Trained Bands, and they kept all quiet. There were great apprehensions of an Uproar. I saw nothing of hurt done though. And I asked *Mr. Brome* the Coroner, who was by, Am I a Prisoner too ? For I was arrested to Day by a Warrant pretended to be from you. Says he, I have a Writ against you, and now you are here, I cannot let you go till you have given an Appearance. So I took my self to be detained there with my Lord Mayor in Custody, and staid as long as he staid, and went away with him.

Mr. Recorder. Swear *Mr. Wells*, the Common Cryer, and *Sir John Peak*.

Mr. Wells was Sworn.

Mr. Recorder. *Mr. Common Cryer*, were you at my Lord Mayor's House when this Hubbub was made ? Pray tell my Lord and the Jury what you know of it.

Mr. Wells. Yes, I was there.

Mr. Holt. Then tell what pass.

Mr. Wells. I was not in the Hall where my Lord Mayor was, but in another Room by : And the Officers came running in to me, and told me, I must come to my Lord Mayor quickly, for he was arrested by some People. When I came, I found there were none of the Sheriffs Officers that used to arrest People ; but the Room was full of other Persons. My Lord Mayor bid me take the Sword and go along with him, for the Sword-bearer was not then just at hand. I asked his Lordship whither he was going ? The Coroner said, he was his Prisoner, and must go along with him to his House. My Lord Mayor bid me presently send out the Officers to summon a Lieutenancy, which I did. I desired the Coroner and his Men to be gone ; said I, Cannot you let my Lord alone, and go about your Business ? No, he said, except my Lord would give an Appearance, he must go along with him. I then asked him whither my Lord must go ? He said, he had no Place but his own House to carry him to, and thither we went ; where when we came, my Lord was put up into a little Room by himself, where were none but my self, and the Coroner, as I remember. My Lord Mayor bid me go and see for *Sir James Edwards* and *Sir Harry Tulse*, and my Lord Mayor that now is, and so I went, but I found they were arrested too before I came.

L. C. J. How did my Lord go away from thence ?

Mr. Wells. In his Coach.

Mr. At. Gen. Were you by when he went away ? And who was there ?

Mr. Wells. *Mr. Brome* the Coroner was not there when my Lord Mayor went away, but there was *Goodenough*.

L. C. J. Ay, he was in trusty Hands upon my Word.

Mr. At. Gen. The Soldiers prevented the Design, and so they let him go again.

Mr. Recorder. Swear *Sir John Peak*. *[Which was done.]*

Sir John, what can you say to this Business ?

Sir John Peak. My Lord, I had order from the Lieutenancy to raise my Regiment upon the News of my Lord Mayor's being arrested ; which I did in a very little time, and came with my Soldiers to *Skinner's Hall*, where I heard my Lord Mayor was, and prevented any Stir, as it was feared there would have been. But *Mr. Keeling*, I believe, can tell something more of the Design than he has spoken ; for I remember at the Tryal of the Traitors at the *Old Bailey*, he did say, That after my Lord Mayor was arrested, they did intend something, but their Hearts misgave them when the Regiment was up.

L. C. J. That is nothing to this Cause, what he said there, now he remembers nothing of it. Have you done, Gentlemen, or will you call any more Witnesses ?

Mr. At. Gen. We rest it here, my Lord, till we hear what they say to it.

L. C. J. Come then, what have you to say that are for the Defendant ?

Mr. Serj. Maynard. May it please your Lordship, and you Gentlemen of the Jury, I am of Counsel in this Case with the Defendant, *Mr. Papillon*. I see, Gentlemen, it is a Cause of great Expectation, and by that means they would make it greater by far than indeed it is in it self. But, I suppose, you who are upon your Oaths, to try this Issue, will duly weigh and consider what it really is. Gentlemen, the Record tells you what it is, an Action upon the Case, wherein the Plaintiff declares, that the Defendant did arrest him, being then Lord Mayor, without any probable Cause, and out of Malice. Now as to that, Gentlemen, I conceive and think, I may appeal to my Lord Chief Justice in it, for Direction in Point of Law, that my Lord Mayor, if he do mistake in his Office, and do not do that which belongs to him to do, he is as much subject to the Process of Law and Actions, as any private Person in the City of *London*. If he does any Man an Injury, or does that which is not right in his Office, by which another Person is grieved, he is liable to the Prosecution of any particular Subject the King has, that is so grieved by him. Then they alledge, that this particular Action and Arrest thereupon was prosecuted and done out of Malice, and without probable Cause. Now what have they proved of that ? They prove the Thing done, that he was arrested at the Defendant's Suit, and that he was kept in Custody six Hours. But if we can give you any Account of a probable Cause for it, that is sufficient to justify us from this Action. Gentlemen, the Question that you are to try is not, Whether this Man or that Man were duly chosen into such an Office, but whether there were any probable Cause for the Defendant to contest about the Choice. And herein the

the Case will fall out to be thus. There was a difference in the City of *London*, as is very well known to every body, about the Choice of Sheriffs for the City, wherein the Defendant was one of the Competitors; there were upon the Nomination and Election in the Hall, a great many more Voices or Suffrages for one than for the other, which was certified to the Court of Aldermen and Lord Mayor, as is usual; but some Contest being, a Poll was demanded and granted, and upon that Poll my Lord Mayor was pleased to declare the Election on one Side against Mr. *Papillon*, who yet was apprehended by the first Choice, to be one that had most Suffrages. But several Meetings there were, and several Common Halls assembled, so that it was a contested Matter, and as I said, there had been a Report made on the Defendant's behalf. We insist not upon the Right of Election, that has been otherwise determined. But when he is put in Nomination by the Electors in the City, and has many Suffrages, and he conceives himself rightly chosen, and they that are the Managers of the Election give such an Account, that in their Judgment he was chosen; that surely was a probable Cause for him to proceed upon it. And if there be but a probable Cause to bring this to a Question, no doubt he might very well take the Course the Defendant took. Here is no Arrest without legal Process; nay, their own Witnesses say, there was an Offer to take an Appearance without putting it on so far as an Arrest: If my Lord Mayor would have but given an Appearance, there had been an end, but he did not think fit to do that, and so the Process of Law was executed upon him. Then here is the Case in short: A Man thinks himself rightly and duly chosen into an Office, and has probable reason so to think, for the Judges of the Election think so too, and deliver that as their Opinion; so that though he is mistaken, as the Event proves, yet he is not alone in his Mistake, nor without ground of his Apprehension; then if it be (under favour) such a Man has no other Proceedings to take in the World for settling this Matter, but to appeal to your Lordship, and that great Court where your Lordship sits, to have a Writ to command the Mayor, or other proper Officer to swear such a Man into the Office, or shew good Cause why he doth not. If the Mayor upon the Receipt of the Writ thinks fit to obey it, and swears the Man, all is well: If not, he must make a Return of the Writ, with the Cause why the Command of the Writ is not obeyed. Now the Suggestion of the Writ is, that he was duly chosen into such an Office, and therefore he had a fair way to put this Matter to an end; if he would have returned he was chosen, or not chosen, there had been an end of the business, which he ought (under favour) to have done in Obedience to the King's Writ. What then follows upon his not doing so? The Party that is grieved hereby, has no other Course, to take, but to bring his Action against the Mayor for it. This Course the Defendant took, by taking out a Writ against the Plaintiff: And what was the Effect of that Writ? It is indeed charged here by the Counsel on the other Side, That there was a Design of a discontented Party in it, and I know not what, and a great deal of Scir made, that a Coroner of the City of *London* should ar-

rest my Lord Mayor. It may be it was not so reverently done; but yet if he thought he had good Cause of Action against him, he might do it lawfully. Doth this prove to you, that this was maliciously and unreasonably done? Malice must be to the Person; Zeal and Earnestness to have Right done to a Man's self or another, in a legal Course of Justice, is not Malice, nor will make the Prosecution of the Action unreasonable and groundless. Have they proved, to you, Gentlemen, any particular Discontent and Malice that is between the Plaintiff and Defendant? No truly, I think, by all the Proof that has been offered, the quite contrary does appear. The Defendant took out a *Mandamus*, directed to the Plaintiff, which was not duly returned: What then doth he do next? Doth he most violently arrest him? That, with Submission, he might do, and no Offence in Law: No, but he doth not do it, but only desired from time to time, as we shall prove anon, that he would but give an Appearance, that would have put a Conclusion to this Dispute. There is no Appearance given: Whereupon he is arrested and detained in Custody six Hours. If a Man be once in the Officer's Hands taken upon legal Process, how long soever the Officer keeps him, is not at all to be laid upon the Person that brings the Suit, that is to be looked after by the Officer himself. Whatsoever was the Usage in that Matter, we are not to answer for (though it is plain an Appearance would have done all presently) we shall prove we gave order to use all Deference and Respect in the World. And besides (though I would not speak it to invalidate any of the Evidence given about the Right of Election one way or other, yet) there being a Return of the Defendant's Election by the Sheriffs to the Court of Aldermen; but they being of another Opinion, gave Order, that those that thought themselves aggrieved should take their Remedy at Law: Which Order we have pursued in that regular Course that the Law has prescribed. And I hope it will never come to that, that a Man (though mistaken) conceiving himself to have a Right of Action, and suing out the King's Writ, shall suffer for so doing, unless particular Malice be made to appear. Here is a great Noise of Damage, and Disrepute, and Disgrace to the Plaintiff and his Office, and he has been pleased to reckon his own Damages at 10000 *l*. We say he has sustained no Damage by any thing we have done, but we are quite not guilty of this unreasonable and malicious Prosecution laid to our Charge. And that we are not guilty, the Matter that has been opened, we think will sufficiently declare. For if there was a Contest about the Election, and the Sheriffs returned it as their Opinion, that the Defendant was chosen, though they and he too were mistaken; yet that might give a probable Ground for his pursuing the Course he did take; and the very Court of Aldermen, and the Lord Mayor bidding them take their Course at Law, we sure shall not be punished for it. We did not prosecute our Question in any malicious way, but in that Course that the Law allows, by taking out the King's Writ; and we hope the Law will protect us for it.

Mr. *Williams*. Will your Lordship be pleased to spare me a Word on the same side with Mr. Serjeant *Maynard*. I am of Counsel, Gentlemen, with

with Mr. *Papillon* the Defendant in this Action. We do not insist upon it, nor now offer any thing to assert our Election; We did apprehend we were Elected, but that is ruled against us, and we rested satisfied with it. But we come here now before you upon this Question; Whether we had any probable Cause of Action, upon which we might take out this Process mentioned in the Declaration, which is a *Capias* upon a *Latitat*. And we do insist upon it, that this Action of the Plaintiff's must fall upon the Issue joined, if we can satisfy you, and shew that it was not malicious, and without probable Cause. And tho' our Cause of Action against the Plaintiff falls out in the Event not to be a good and sufficient Cause; yet if it were probable, it will evade this Action, and that is all we labour for. They do not attempt to prove, at leastwise I have not heard any thing of it, that there was any express Malice, any thing either said or done by the Defendant, more than the causing him to be arrested upon this Writ. It is very well known, it was in the City of London a very much controverted Question, Whether Mr. *Papillon*, and Mr. *Dubois*, or Sir *Dudley North*, and Mr. *Rich*, were chosen Sheriffs of London? I would not run over the History of it, it is but too well known and remember'd the Divisions that were in the City about it. Some were so much dissatisfied with the swearing Sir *Dudley North*, and Mr. *Rich* Sheriffs, as thinking them not duly Elected, that they would have the Court of *King's Bench* moved, for the Writ of *Mandamus* to swear Mr. *Papillon*, and Mr. *Dubois*. This *Mandamus* was moved for, and granted; and to this Writ the Mayor and Aldermen, to whom it was directed, made a Return that we were not Elected Sheriff of London; which Return was apprehended to be false; and really to try the Truth of this Return, was the Action brought against the Plaintiff. A Man that is injured by a False Return, hath indeed no other way to right himself, but by bringing an Action against them that made it. Upon this Action brought, I hope you are satisfied, Gentlemen, from the Evidence that has been already given, the Defendant proceeded regularly and orderly, in a decent manner, applying himself to get an Appearance to his Action. And we shall prove he did so; For, first, he took out a *Latitat* against my Lord Mayor, and by the Attorney gave him notice of it, and desired an Appearance; so that the Question in dispute might come to some Determination. But he was not pleased to give us an Appearance to that Writ; so we took out a *Capias*, gave him notice of it, and desired an Appearance, but could have no Appearance; whereupon we took out an *Alias Capias*, which is the Writ mentioned in the Declaration; and the Coroner who has been named, was then told, he should be called upon to make some Return to his Writ; which he acquainted my Lord Mayor with, and desired him to give an Appearance; which he refusing to do, the Officer was constrained to arrest him, to execute the King's Writ; and you hear how he treated him, with all the respect, and carried him to his own House, where he staid some Hours and then went away. All this time were we satisfied with what was done, we expected no more than an Appearance, which at last was

given. Upon that Appearance we did declare, in the Beginning of *Hilary* or *Easter Term* (83.) But it fell out, that in *Easter Term* (83.) there was an Information for a Riot upon *Midsummer-Day* before, about this contested Election, came to be tryed. And that coming to Tryal, 10. *Maii*, and being found to be a Riot, and the Sheriffs sworn to be duly Elected; thereupon we were abundantly satisfied that we were mistaken, and under Misapprehensions, and that our Cause of Action would not hold, and we did discontinue it. Indeed, if we had prosecuted our Action after that, it would have been more like an angry and a silly Prosecution, and the whole have had a worse Construction, than the thing in it self would bear. But when we found the Opinion of the Court to be against us about our Election, we immediately discontinued our Action. Gentlemen, We shall prove these to have been our Proceedings, and that, I hope, will satisfy you we are not guilty according as we have pleaded.

Mr. *Ward*. May it please your Lordship, and you, Gentlemen of the Jury, I am of Counsel on the same side, for the Defendant, and desire to be heard one Word as to some Things that have been said on the other side in this Cause. There have been some Questions asked that do very much reflect upon the Defendant, and which I would take out of this Cause. I shall take notice, first, what the Questions were, and then give them that Regard and Answer which they deserve. That which is urged, Gentlemen, by way of Crimination, in this Case against the Defendant, and an unjust as well as foreign Reflection (not at all concerning the Cause) is, as if the Defendant were acquainted with the Insurrection and Conspiracy that was intended against the King's Life, and for Subversion of the Government, and procured the Plaintiff, then Lord Mayor, to be arrested, to further and promote that Insurrection. But as that was insinuated only for Reflection's sake, so I hope you, Gentlemen, will be pleased to take notice, that not one Word of any such thing is proved at all, that the Defendant ever knew of any intended Insurrection, nor that this was done with any such Design: For even their first Witness, *Keeling*, from whose being employed by the Coroner in the Execution of the Writ upon Sir *William Pritchard* the Plaintiff, they would argue that somewhat else was designed in it, doth give a positive Denial of any such thing now upon his Testimony here. And Mr. *Papillon* the Defendant never knew him in his Life, nor employ'd him in this Business, nor ordered that he should be employed in it, nor ever saw him; but the Coroner gave him his Warrant to execute. If therefore *Keeling* and *Goodenough* were concerned in any ill Business, and have taken upon them to do that which they ought not to have done, that doth not signify any thing in this Case, nor ought to turn to the Defendant's Prejudice. Nor if any thing were done by the Officers that were to execute this Process, that were a *Misfeasance*, or a Male-execution of their Office, that ought not to be imputed as a Fault in the Defendant. But for this Matter now before you, the Case will depend upon this Point chiefly, Whether the now Defendant had a reasonable Cause, or probable Ground, to bring an Action against the

the Plaintiff at the time when it was brought, and this Arrest made: For there is many a Man that, at the Commencement of his Action, doth conceive in himself he has a good probable Cause of Action against another Man, that in the Event of Things finds he was mistaken, and hath no such Cause; and thereupon desists the Prosecution of it. Therefore the Probability of the Cause at the time when this Fact was done, is the Question you now are to try. For we are not now considering, whether that probable Cause did continue and prove a good Cause; the Event of this Matter has proved it quite otherwise. Indeed the original Question of this whole Cause was, Who were only Elected Sheriffs? And that at the time of such Election made, a great Number of Votes passed for the Defendant, is, I think, very notorious, both upon the lifting up of Hands, and upon the Poll. These things we shall offer to you, and shall make it out that these gave occasion to the Defendant to contest the Election, and consequently to the bringing of the Action that the Plaintiff was thus arrested upon. If then there were such things as these that we have opened, which gave a colour to controvert the Right, and the Defendant pursued the Method prescribed by the Law to bring it to a Determination; and there was no particular Disrespect or Incivility offered to my Lord Mayor, then sure there was no reason to bring this Action against us. And that there was no indecent Behaviour used towards the Plaintiff, doth appear from the Evidence that hath been given of the whole Transaction. All that was desired of my Lord Mayor, was but an Appearance. For this was indeed an Action that did not require Bail, but an Appearance; tho', I must needs say, I never knew any one so averse to give an Appearance to an Action as the Plaintiff was; for after a *Latitat* and *Capias* taken out, and being frequently acquainted with it, and at length upon application after the taking out of the *Alias Capias*, and many Attendances, with all the Deference and Respect imaginable, both to his Person and Office, not so much as a bare Appearance could be obtained. Upon the opening of the Declaration and the Cause, you have been told of the great Dangers that were in the Case, as to the Infringement of Publick Peace, and the Government, which has been very much aggravated on the other Side. But had the reasonable Request of the Defendant by his Attorney, or the Officer, so often repeated, been but complied with, it had been but sending to any Attorney, and ordering an Appearance; and then, I hope, the Peace of the Kingdom had been in no Peril from such a Design as this Arrest. Which I would not have mentioned, nor should have taken to be at all concerned in the Issue now before you to be tryed, but that I find them to be taken into the question, when I hope you will consider they are no way material to the Point in Controversy. Now, Gentlemen, in our Defence against this Suit of the Plaintiff's, we shall call our Witnesses to prove what we have opened. And our Defence will be in these Steps: First, To shew the Inducement to our Action against the Plaintiff, which will shew there was a probable Cause. Secondly, Give an account of the reverent Carriage and Be-

haviour towards the Plaintiff in the Prosecution; how with reiterated Applications it was only desired that the Plaintiff would give an Appearance, which he was not pleased to do; and that thereupon, with great Civility, the King's Writ was executed, as indeed I see no Proof to the contrary. For neither the Coroner, nor those other People that gave their Assistance to him, were at all rude in their Carriage to my Lord Mayor; but as soon as the Arrest was made, they were all turned off, and the Coroner staid alone with my Lord, and went with him, in his Lordship's own Coach, to the *Skinner's Hall*, which was the Coroner's House. Neither was there any thing ill done after all this was past: For upon the Plaintiff's Appearance, the now Defendant declared in his Action, and intended to pursue it; but it happened that afterwards, in a short time, these things suffered some Debate in a Tryal that was here about a Riot at this Election, where the Question of the Right and Election, was determined on the other side, which gave the Plaintiff in that Action, the Defendant in this, satisfaction that he was in a Mistake, and so he thought fit to discontinue that Action, and proceeded no further—

L. C. J. No, Mr. *Ward*, that was not the Question determined then.

Mr. *Ward*. My Lord, I humbly conceive the Issue of that Cause did determine that Question—

L. C. J. No, no, I tell you it was not the Question.

Mr. *Ward*. I must submit it to your Lordship.—

L. C. J. I perceive you do not understand the Question that was then, nor the Question that is now. You have made a Long Speech here, and nothing at all to the purpose; you do not understand what you are about; I tell you it was no such Question.

Mr. *Ward*. My Lord, I was only giving an account of what we should prove as to the Fairness of our Proceedings—

L. C. J. But I must interrupt you, and tell you, all you have said signifies nothing. And as to what you mention of the Tryal for the Riot; I say, if there be any Election to an Office at any time that is controverted or doubtful, you have Forms and Methods of Law to determine the Controversy—

Mr. *Ward*. And we say, with Submission, my Lord, we have only pursued such Form and Method.

L. C. J. You are not to try Rights by Club-Law, by Riots, by Noise, and by Tumults. Therefore you are mistaken, to say, that was the Question upon the Tryal of the Riot. No, it was not the Question; but the Defendants there were tryed for a notorious Offence, and disorderly tumultuous Assembly, an Assembly that had like to have set us together by the Ears. Therefore you must not talk after that rate. If you will speak, apply to the Business in hand. Do not make such Excursions, *ad captandum Populum* with your Flourishes, for that is all that is designed by your long Harangues. But I must not suffer it, I will have none of your Enamel, nor your Garniture. The Business of the Court is, and by the Grace of God it shall always be my Business, and so it should be

be the Counsel's too, *Servare jus illæsum*. But I see you do not understand the Question, and that makes you ramble so much in your Discourse.

Mr. Ward. My Lord, I desire always to do my Duty; and do it as well as I can. I know very well, and hope to apply it to this Case, that in a Question of Right there are Forms and Methods of Law to be pursued, and I would defend my Client from this Action, by proving he did pursue that Method; and when he apprehended he had been before mistaken, he desisted from what he had begun.

L. C. J. I tell you, I perceive you do not understand the Question.

Mr. Ward. If your Lordship will give me leave to explain my self, I hope I shall satisfy your Lordship.

L. C. J. Indeed, Mr. Ward, you do not understand the Question at all, but lanch out into an Ocean of Discourse that is wholly wide from the Mark. I see you do not understand it.

Mr. Ward. Will your Lordship please to hear me.

L. C. J. Ay, if you would speak to the purpose; but I cannot sit here all Night to hear you make florid Speeches about Matters that are foreign to the Point before us. Come to the Question, Man; I see you do not understand what you are about.

Mr. Ward. My Lord.

L. C. J. Nay, be as angry as you will, Mr. Ward, I do tell you agen, all you have said is nothing to the purpose, and you do not understand the Business.

Then there was a little Hiss begun.

L. C. J. Who is that? What in the Name of God! I hope we are now past that time of day, that *Humming* and *Hissing* shall be used in Courts of Justice; but I would fain know that Fellow that dare to *hum* or *hiss* while I sit here; I'll assure him, be he who he will, I'll lay him by the Heels, and make an Example of him. Indeed, I knew the time when Causes were to be carried according as the *Mobile* hiss'd or humm'd; and I do not question but they have as good a Will to it now. Come, Mr. Ward, pray let us have none of your Frangancies, and fine Rhetorical Flowers, to take the People with.

Mr. Ward. My Lord, I do not do any such thing; but if your Lordship would please to hear me, I would explain my self, I hope, to your Lordship's Satisfaction, and the Satisfaction of the Gentlemen of the Jury.

L. C. J. Hear you? Why, I did not interrupt you, Man, till you came to lanch out into extravagant things that did not at all concern the Cause. Keep close to the Question we come here to try, and I will hear you as long as you will. The single Question is here, Whether there were a probable Cause for your arresting the Plaintiff, or not?

Mr. Ward. My Lord, We did apprehend, I say, that we had a probable Cause; but when we found our Mistake, we discontinued our Action, paid Costs, and have a Receipt for them. This was it I was saying.

L. C. J. Say what you can, in God's Name, that will conduce to the Point in hand, but do

not make the People believe as tho' the Right of Sheriffs, or not Sheriffs, were determined upon the Tryal of a Rior.

Mr. Serj. Maynard. There are these things that are proper to be considered in this Question. Whether the Cause were probable, or not probable? And if not probable, whether malicious or not?

L. C. J. True, Brother; If People will but understand their Business, it is reduced to a narrow Compass; but if they will not understand what it is they come about, they will ramble from the Point, and who can help it? But we must keep to what is before us.

Mr. Williams. We shall make it out, that nothing was done but very civilly.

L. C. J. You must make it out, that nothing was done but what you had probable Cause at least for.

Mr. Williams. We will, my Lord, apply ourselves to that which your Lordship directs. Call Mr. Brome, Mr. Courthope, and Mr. Cornish.

Mr. Brome sworn.

Mr. Ward. Mr. Brome, Are you sworn?

Mr. Brome. Yes, Sir.

Mr. Ward. Have you the Writs here? The *Latitat* and the *Capias*?

Mr. Brome. Truly, Sir, I have not; I did not bring them with me, they are at home at my House; if you please, I will fetch them.

Mr. Ward. Pray, can you tell, Sir, when the first Writ was returnable?

Mr. Brome. In *Hilary* Term.

Mr. Ward. When you had that Writ brought to you, Sir, what did you say to my Lord Mayor about it?

Mr. Brome. I went to my Lord Mayor with Mr. Goodenough, and desired my Lord that he would appear to it, as Mr. Goodenough told me he had desired of him himself before. But he said he would give no Appearance. If I would take him upon the Writ, I might do as I pleased, and he would consider and do as he should think fit, but he would not give any Appearance. I told him, I had Writs against several of the Aldermen upon the same account, and that I would wait upon them also; and I did so, and desired them to appear, and offered to take an Appearance from them, and gave my Lord Mayor and them time to consider of it, and came again; but they told me, they had considered of it, and would give no Appearance.

Mr. Williams. When was this, Sir?

Mr. Brome. In the beginning of *Hilary* Term, to the best of my remembrance.

Mr. Williams. What time did you give my Lord Mayor to consider of it?

Mr. Brome. About a Week, or some nine or ten Days time, as I remember.

Mr. Ward. Where was it that you had that Answer, that he had considered of it, and would give no Appearance?

Mr. Brome. It was at the Court of Aldermen.

Mr. Williams. Were the Writs brought agen to you?

Mr. Brome. There was not time to make a Return then, and so they let all alone till a little before the beginning of *Easter* Term, and

then, one Day, Mr. *Goodenough* the Attorney brought me the Writs again, and threatened to complain to the Court of me, and acquaint them, that I had neglected the Execution of the King's Writs, two of them.

Mr. *Ward*. Upon your Oath, Sir, Did he threaten you, that if you did not make a Return of the Writ, he would complain?

Mr. *Brome*. He said I had exposed him to the Complaint of his Client; and if I did not do it, he would complain to the Court of me: If I would make a Return as I ought to do, well and good, if not——

Mr. *Williams*. If not, what then? Did he use any other Threatnings, pray Sir, but that he would complain to the Court?

Mr. *Brome*. He did threaten to complain of me.

Mr. *At. Gen*. You say, Sir, he threatened you; what Answer did you make to him?

Mr. *Brome*. I did not use to execute Writs my self, I told him: Thereupon he did propose two Persons to me, Mr. *Keeling*, and one Mr. *Burleigh*; for he told me the Sheriff's Officers would not do it.

Mr. *At. Gen*. Pray, Sir, did you endeavour to get any of the Sheriff's Officers to do it?

Mr. *Brome*. He told me he could not get any of them to do it.

Mr. *Ward*. Mr. *Brome*, What did you do after he had proposed those two Persons to you?

Mr. *Brome*. After I had given those Warrants to the Officers he had named, I told him, I was willing to go once more to my Lord Mayor, to see if I could get an Appearance of him without arresting him; so I waited on him at his House at *Grocers-hall*, but found him then at Dinner; so I went away, and came again about four a Clock, and I first spoke to Mr. *Gibson*, and intreated him to let my Lord Mayor know, that I desired to speak with his Lordship at his leisure: Afterwards when I came up to my Lord Mayor, he asked me, what was my Business? I told him the Writs were renewed, at the Suit of Mr. *Papillon* and Mr. *Dubois*, and I was pressed to make a Return; and I desired his Lordship that he would be pleased to give an Appearance. He told me he was ready to submit to the KING's Writ, but would not give an Appearance; thereupon the Officers named in the Warrant by my Command did arrest him.

Mr. *Ward*. How often did you wait upon my Lord Mayor for an Appearance upon both the Writs, before he was arrested?

Mr. *Brome*. Several times, I cannot exactly tell how often.

Mr. *Williams*. Had you Directions, if he would please to give an Appearance, to take an Appearance, and not to arrest him?

Mr. *Brome*. I had Directions to take an Appearance, if he would give it.

Mr. *At. Gen*. From whom had you that Direction, Mr. *Brome*?

Mr. *Brome*. From the Attorney *Goodenough*.

L. C. J. Now, Mr. *Brome*, let me ask you a Question or two; how long had you been Coroner before?

Mr. *Brome*. About two Years before, or thereabouts.

L. C. J. Had you ever made any Warrants upon Writs of *Capias* before?

Mr. *Brome*. Yes, my Lord, several.

L. C. J. Who did you use to make your Warrants to, to be executed?

Mr. *Brome*. I never keep my Warrants, they that execute them have them.

L. C. J. But answer me, To whom did you make them?

Mr. *Brome*. To one of the Sheriff's Officers commonly.

L. C. J. Then I ask you, upon your Oath, did you before this Time ever make any Warrants to any other Person, till such time as you made these Warrants to arrest Sir *William Pritchard*?

Mr. *Brome*. I have made several to the Sheriff's Officers, that I cannot remember now particularly.

L. C. J. But mind my Question, Man, and answer me directly, for I expect you should answer me positively to it. Have you ever at any time made any Warrants to any other but the Sheriff's Officers till this time?

Mr. *Brome*. I cannot remember that I have.

L. C. J. How then came you at *Russel's House* to discourse with Mr. *Goodenough*, about who would be fit to execute the Writ, when you used to employ the Sheriff's Officers, and there were so many of them?

Mr. *Brome*. He told me he could get no one of them to execute it.

L. C. J. But there must be something more in it than ordinary, that you and *Goodenough*, and all those other People should come to meet about such a thing as this, to discourse and consider who should be fit to be put into a Warrant to make an Arrest upon a *Capias*, when before that time you used to make it to those that are versed in those Matters.

Mr. *Brome*. When the Attorney came with a Writ, and desired a Warrant upon it, it is usual to take whom he nominates, and make him the Officer to execute it.

L. C. J. Then give me, if you can, any one special Instance wherein you have taken the Direction of the Attorney, whose Name to put into the Warrant.

Mr. *Brome*. Yes, my Lord, I can.

L. C. J. Do then, let's hear it, when was that?

Mr. *Brome*. I did it in the Case of His Royal Highness against Mr. *Pilkington*: Mr. *Swift* came for a Warrant, and directed me whom to put into it.

L. C. J. What Directions did he give you?

Mr. *Brome*. He gave me the Names in writing.

L. C. J. Where is *Keeling*?

Keeling. Here, my Lord.

L. C. J. What was the meaning of that Word that was used by you, that the Party would be angry if you did not arrest my Lord Mayor; for that is it which makes me so inquisitive into this Matter, how these People came to be employed?

Mr. *Sol. Gen*. Ay, pray consider with your self, and recollect, Mr. *Keeling*; when you were first mentioned to be a special *Bayliff* to arrest my Lord Mayor, you say you opposed it: How then came you to be drawn in, and engaged to do it?

Keeling. I will tell you, my Lord.

L. C. J.

L. C. J. Ay, and tell us what number of People were there.

Keeling. There were about thirty or forty.

L. C. J. Was Brome among them?

Keeling. He was there some part of the time.

L. C. J. Well, what was the reason that you should be engaged about this Thing?

Keeling. I went away a while, and came again: Mr. Brome came in, and I was away an Hour and half, as I remember, or some considerable time. Mr. Brome cannot forget, that when I came again, I found my Name inserted in the Warrant, as a Bayliff to the Coroner, to arrest Sir William Pritchard, then Lord Mayor. I disputed it, as being never concerned in any such thing before, and was very unwilling to be employed in the Affair. Says Mr. Goodenough to me thereupon, you will disoblige the Party in case you do not do it.

L. C. J. Was Mr. Brome in the Company when Goodenough said so to you?

Keeling. I know not that truly, but he was before in the Company.

L. C. J. How many were then in the Room?

Keeling. About Twenty, or more, as near as I can remember.

L. C. J. You Brome, did you ever, when you received a Writ to arrest a Man, and were to give a Warrant upon it, call a Consult of Twenty or Thirty, how to do it, before this time?

Mr. Brome. I did not do it now.

L. C. J. No, no, a-lack-a-day, thou wert as innocent in all this Matter as a sucking Child.

Mr. Williams. Was Mr. Papillon in the Company, Mr. Keeling?

Keeling. No, he was not.

Mr. At. Gen. Mr. Brome, pray answer me; When you had my Lord Mayor in your Custody, how came you to discharge him out of Custody?

Mr. Brome. I was taken into Custody myself.

Mr. Ward. Did my Lord Mayor give an Appearance?

Mr. Brome. I was Committed to the Compter my self.

Mr. Williams. Were you by when it was agreed that my Lord would give an Appearance?

Mr. Brome. I believe not; it was afterwards as I have heard.

L. C. J. A-lack-a-day, it went strangely against Mr. Brome's Stomach, all this did. I know it very well, he had no mind to it at all.

Mr. At. Gen. Mr. Keeling, did you hear any Discourse between the Twenty or Thirty that were in that Company about this Business?

Keeling. I cannot say who in particular discoursed of it, or what was said.

Mr. Sol. Gen. Was it discoursed of in the whole Company?

Keeling. There was some Discourse about it in the Company.

L. C. J. You Brome, were you ever acquainted with Keeling before?

Mr. Brome. I had the Misfortune, my Lord, to be concerned with him about some Coal Works.

L. C. J. Did you know that Mr. Burleigh before, that was the other Bayliff?

Mr. Brome. I knew him by sight, I had no great Acquaintance with him.

L. C. J. Pray where lived Keeling?

Mr. Brome. At East-Smith Field.

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L. C. J. And where lived Burleigh?

Mr. Brome. Truly, my Lord, I know not, I think at the other end of the Town.

L. C. J. But prithee, how came you to join these two People together in this Business; the one from Wapping, the other from Westminster?

Mr. Brome. Where the Sheriffs were concerned, as they were in this Matter, and therefore it came to me, I thought it not so proper to pitch upon the Sheriffs-Officers, nor would they do it, as he told me; and especially it being to arrest my Lord Mayor, I did not think proper to imploy any one that lived in the City.

L. C. J. But there were abundance of People that were not Citizens, that were nearer at hand, and nearer together, and fitter for such a Purpose than a Tradesman fetched out of the East, and I know not who out of the West, to arrest a Man: There must be some other meaning in it.

Mr. Brome. I gave them the Nomination, as I used to do in like Cases.

L. C. J. Upon your Oath, Sir, was it you or the Attorney that named these Persons?

Mr. Brome. He told me he could get none of the Sheriffs-Officers to do it, and I did not think it indeed proper for any of them.

L. C. J. And why, good Sir?

Mr. Brome. I did think so, truly, my Lord.

L. C. J. Why? Why? What reason had you for it?

Mr. Brome. It was reasonable, as I apprehend, my Lord, for me to think so, it being in a Matter wherein the Sheriffs were so much concerned.

Mr. Sol. Gen. But did you propose it, or any one else in the Company, upon your Oath? And who was it?

Mr. Brome. The Attorney named them.

Mr. Com. Serj. It seems here were a great many Persons met at Russel's about this Business, I desire, my Lord, that Mr. Brome may name as many of them as he can that were there.

L. C. J. Ay, as near as you can, name the twenty or thirty Persons that were there; for you living in the City, and having an Acquaintance among that Sort of People, must needs know most of them.

Mr. Brome. Why, my Lord, there were both the Goodenoughs, and Mr. Nelthorpe, and who in particular else, I cannot well remember.

L. C. J. Yes, yes, I am sure you can tell more of them.

Mr. Brome. My Lord, I cannot swear that I remember any other in particular.

Mr. Com. Serj. It seems he has named some of those that are in the Proclamation; pray, Sir, do you remember any others were there that were in the Proclamation?

Mr. Brome. I do not remember any other of those in the Proclamation were there.

Mr. At. Gen. Can you remember any that were not in the Proclamation?

Mr. Brome. There were several People that I knew by sight, but I cannot remember their Names.

L. C. J. Nay, nay, pray open your Eyes a little, and recollect your Memory, and tell us who were there, I know you can do it.

Mr. Brome. My Lord, there were many Citizens that I knew by sight, but had no particular Acquaintance with them.

Mr. Sol. Gen. Did you know any of the Company besides the *Goodenoughs*, and *Keeling*, and *Nelthorpe*?

Mr. Brome. I had a little Acquaintance with him.

Mr. Sol. Gen. How come you to remember him so particularly?

Mr. Brome. I verily believe he was there.

Mr. Recorder. Was Mr. *West* there?

Mr. Brome. I cannot positively say whether he was or nor.

Mr. Williams. Swear Mr. Cornish then.

[Which was done.]

L. C. J. You Brome, was Mr. Cornish there?

Mr. Brome. Not that I know of.

Mr. At. Gen. It is strange we cannot learn who those Persons were that met there.

L. C. J. Oh these Fellows have strange Memories for their Purposes. Well, what do you call him for?

Mr. Ward. My Lord, we call Mr. Cornish to give an Account what he knows of this Matter, what Directions were given by the Plaintiff to his Attorney, how he should carry on this Matter.

Mr. Cornish. My Lord, That which I particularly remember, I shall fully and very faithfully declare. I was with Mr. *Papillon*, and Mr. *Dubois* at my House. The Occasion of their coming thither I knew not, nor did expect either of them there; I my self came from *Guild-Hall*, either from a Court of Aldermen, or from a Committee, and when I came Home, I found them there. We had not been many Minutes together, but in comes Mr. *Goodenough* the Attorney, and he applied himself particularly to Mr. *Papillon* and Mr. *Dubois*, to receive their Orders what he should do, for he said the Time was almost spent, and he had addressed himself from time to time to my Lord Mayor, and some of the Aldermen to get them to appear, but they would not. They told him then, they had given him what Orders they had to give him already; that it was fit the Matter should be brought to some Tryal or Issue, that there might be an end of it. He pressed them then earnestly to know what he should do: Said they, you are to desire an Appearance to the Action, and if he will give it, take it, and remember my Lord Mayor is the chief Magistrate of the City, and pray, carry it with all respect and regard imaginable to him.

Mr. Williams. You say, Sir, they bid him to take an Appearance, if he could get it.

Mr. Cornish. Yes, and they declared, That their Design was only to bring it to an Issue to be Tried, and they would not insist upon any thing but an Appearance, if it might be had.

L. C. J. Wonderful careful and civil they were, no doubt of it.

Mr. Cornish. This is the Truth, and the whole of the Truth, that I know of, relating to this Matter.

L. C. J. Mr. Cornish, you speak of some of the Aldermen, that he said he had been with, What Aldermen were those?

Mr. Cornish. There were several of them, that he said he had Writs against.

L. C. J. You were an Alderman then, pray had he any Writ against you?

Mr. Cornish. I know not whether he had or no.

L. C. J. But he did not require an Appearance of you, I suppose.

Mr. Cornish. If he had, I must have taken notice of it to defend to my self as well as I could.

L. C. J. Ay, no question but you would, but were you asked for an Appearance or no?

Mr. Cornish. I was told I should be sued among the rest.

L. C. J. But was there any Writ shewn to you?

Mr. Cornish. No, my Lord.

L. C. J. Then pray let me ask you a Question or two. Did you ever know any Man before bring an Action, or sue to be Sheriff of London? You have been Sheriff your self we know.

Mr. Cornish. This was a Matter that had been much disputed in the City, and a Question had been depending upon it, whether the Right was to my Lord Mayor, or in the Sheriffs.

L. C. J. But the Question of Right between my Lord Mayor and Sheriffs, what was that to Mr. *Papillon*? Did you ever know a Man bring an Action, or sue to be Sheriff?

Mr. Cornish. Truly he that experienceth the Trouble of it, will, I believe, never be desirous of it.

L. C. J. But that is no Answer to my Question, answer me directly: Did you ever know any such thing before?

Mr. Cornish. I never did hear of any such, that I know of.

L. C. J. How then came Mr. *Papillon* so officiously to desire it?

Mr. Cornish. I cannot answer; what his Reasons were I know not.

Mr. Williams. It was an Action to determine the Question that was at that time so much litigated in the City of London.

Mr. At. Gen. Mr. Cornish, Pray, will you answer me one thing; Were you never in no Company, wherein it was agreed this Suit should be brought and carried on in their Names?

Mr. Cornish. Mr. At. Gen. I never meddled nor managed it.

Mr. At. Gen. Did you never hear it was so agreed?

Mr. Cornish. It is known to Thousands, as much as I know of it; the Matter was disputed of in all Companies in the City.

Mr. At. Gen. But you do not answer to my Question, were you ever in any Company when it was agreed that so it should be?

Mr. Cornish. Sir, I tell you as well as I can, the Matter that was to be disputed by that Action, was the general Discourse of all Societies of Men whatever, in the City at that time.

L. C. J. It is a strange thing, that one cannot get a direct Answer from these People, to any thing one asks them; I desire to know one thing of you, Mr. Cornish; You have known Mr. *Papillon* the Defendant before this time.

Mr. Cornish. Yes, my Lord, I have known him several Years.

L. C. J. Was he ever chosen Sheriff of London before?

Mr. Cornish. Yes, my Lord, I suppose he was.

L. C. J. How chance he did not hold then?

Mr. Cornish. I have heard he Fined, as was common and usual, when Persons Occasions would not permit them to attend the Service of the Place.

L. C. J.

L. C. J. He did so, it is known to Thousands, as you say, that he did. Now, pray let me ask you another Question; was *Mr. Betbel* ever chosen Sheriff before that time you and he were Sheriffs together?

Mr. Cornish. I do not know that he was chosen before.

L. C. J. How is that?

Mr. Cornish. My Lord, I do not understand what the Question is, or else I know nothing of it.

L. C. J. How, did you never hear of that before? For, *Mr. Cornish*, I do not speak of a thing that no body knows; alas thousands, and ten thousands of People know that too.

Mr. Cornish. My Lord, upon my Oath, I do not know that ever he was.

L. C. J. Did you ever hear it?

Mr. Cornish. I do not know that ever I did.

L. C. J. Did you never hear that *Mr. Betbel* swore himself off, as they call it; you know what I mean.

Mr. Cornish. I do not remember any thing of it.

L. C. J. Nay, nay, it is to the matter, I assure you, *Mr. Cornish*, whatever you think of it. I ask you then another Question that lies something nearer your memory: Upon your Oath, when you two were elected upon *Midsummer-day*, was not that Election vacated, and you chosen again within a Week, or some little time after? And was it not because you had not taken the Sacrament, and the Corporation-Oath?

Mr. Cornish. My Lord, I do remember there was a second Election.

L. C. J. And we remember it too well enough.

Mr. Cornish. That was so lately, that any Citizen of *London*, or any one that lived here, may remember the Passages of those Times.

L. C. J. And you have as much Cause to remember it as any Man, I assure you, for several Reasons that I know.

Mr. Cornish. My Lord, I think I have reason to remember it.

L. C. J. Least you should forget it, I will enlighten you, and refresh your Memory a little, I ask you again, upon your Oath, Was not your first Election set aside, because you had not taken the Oaths and the Sacrament?

Mr. Cornish. There were two Elections, my Lord, I say I do remember.

L. C. J. Sir, do not prevaricate with me; I expect a positive Answer: Was not that the reason, upon your Oath?

Mr. Cornish. I cannot say that was the positive reason.

L. C. J. Then I ask you upon your Oath, had you taken the Oaths and the Sacrament as the Law requires?

Mr. Cornish. My Lord, *Mr. Betbel* was a Stranger to me, I did not know him before that time.

L. C. J. Gentlemen, Men must not think to dance in a Net, and blind all the World. As to my own self, I know these Things very well, without any of their Assistance, and I only ask these things by the by, to let the World be satisfied what sort of Men these are, that pretend to Saintship, and yet, you see, one can hardly get one Word of Truth out of them: Let the Law, in God's Name, take place, and let every

Man prosecute his legal Actions; but when, under the Umbrage and Countenance of Law, Men shall desire to put themselves into Offices, and Places of Trust, on purpose to disturb the Government: Do you think the Government will ever suffer it self to be snivelled at, and overthrown by a Company of such whining Fellows? Let them hiss and hum, and make a Noise and a-do as they will; Thanks be to God, 'tis not that time of day now: Such things have pass'd too much uncontroul'd in the Body of this City heretofore. What, Gentlemen, are you baffling the Law with such pretences as these now-a-days, and do you think to sham People into Offices? No, I tell you, Villany was the Foundation of it, and Knavery the Superstructure; and it is high time it should be told out, since I hear People begin to doubt of it as a question.

Mr. Ward. Where is *Mr. Serjeant*? Swear him. *[Which was done.]*

L. C. J. Do not I know, as sure as I sit in this Place, that *Betbel* did once before swear himself off; and that there were two Elections of these two very Men that Year, and that one of the Reasons was, because they had not taken the Oaths and the Sacrament according to Law; nor would they ever have done it, we know them, neither *Betbel*, nor that very Fellow that stands there, *Cornish*, neither, till they found it would contribute to the Design of Subverting the Government; then these Rascals could qualify themselves for an Office, only to put the Kingdom into a Flame.

Mr. Cornish. When the City chose me, I had good reason for what I did.

L. C. J. Reason; I tell you, the City was in great happiness and quiet, ever since the late Times of Rebellion and Confusion; every one knew his Duty to his Superiors, and did it cheerfully and conscientiously, till such time as a couple of busie Fellows came to get into the publick Offices. Let the whole Party go away with that in their Teeth, and chew upon it if they will.

Mr. Williams. *Mr. Serjeant*, will you please to tell my Lord and the Jury, what Directions you heard the Defendant, *Mr. Papillon*, give about the Plaintiff, how they should treat him.

Mr. Serjeant. My Lord, I was in the Counting house at *Mr. Alderman Cornish's* House, when *Mr. Papillon* and *Mr. Dubois* were there; I went into the Parlour to them, and *Goodenough* coming in, they fell into a Discourse about this Action, that was brought by them against *Sir Wilham Pritchard*, then Lord Mayor, and some of the Aldermen; and *Goodenough* gave them an Account how far he had proceeded in it; he said, he could not get any of them to give an Appearance, and the Time was near spent, and he desired to know of them what he should do. *Mr. Papillon* and *Mr. Dubois* both, did declare to him over and over again, that it was their mind only to have the matter brought to a fair Tryal; and they charged him to look to it, to do nothing but what was Legal, and carry it with all respect imaginable to my Lord Mayor, as the chief Magistrate of the City; that he should by all means get an Appearance from him if he could, and get the Coroner, who was an Officer of the City, to go with him, and carry all Things fairly and decently.

Mr. At. Gen.

Mr. At. Gen. Who gave these Directions, Sir, do you say?

Mr. Serjeant. Mr. Papillon, and Mr. Dubois, both of them did.

Mr. Ward. Now, my Lord, we shall shew that we proceeded so far in the Action, as to declare, but afterwards apprehending our selves to be under a Mistake, we discontinued our Action.

Mr. Williams. And the Costs upon the Discontinuance were received by my Lord Mayor's Attorney. Here is the Declaration as it was filed.

L. C. J. Ay, it may be there was a Declaration filed, but not regularly.

Mr. Williams. My Lord Mayor after appeared.

L. C. J. How doth that appear in Evidence? For the Coroner says he himself was in Custody, and knows no more of the matter afterwards.

Mr. Williams. I believe your Lordship doth remember there were many Motions made in Court about this matter, on the one side and the other, and at length in Court it was compromised, and my Lord Mayor promised to give an Appearance.

L. C. J. Prove what you can; prove the Appearance enter'd, and Declaration received.

Mr. Williams. My Lord, I only offer this as an Evidence of an Appearance.

L. C. J. A Record, I know, is a good and fair Evidence, shew that if you can.

Mr. Ward. It is not usual to declare till the Defendant appears.

L. C. J. A Declaration may well be upon an Appearance, but because it cannot be good without an Appearance, therefore it cannot be a sufficient Evidence of it.

Mr. Ward. We will prove the Costs of the Discontinuance paid and accepted. Swear Mr. Baker. (*Which was done.*) What do you know, Sir, of any Costs that were taxed and paid for a Discontinuance in this Case?

Mr. Baker. My Lord, Mr. Aston told me he appeared for Sir William Pritchard, then Lord Mayor, and had a Declaration from the now Defendant's Attorney: So I enter'd up a Discontinuance, and paid the Costs, and have Mr. Aston's Receipt for them.

L. C. J. He says well. Go on then.

Mr. Williams. My Lord, It is a thing that hath frequently happened, that after a Man has brought an Action against another, he finds he was mistaken, and hath no Cause of Action, and thereupon relinquisheth his Suit: But sure that will not make him liable to a Suit.

L. C. J. Well, pray go on with your Evidence.

Mr. Ward. My Lord, We are not now offering to try the Right of Election, tho' that really was the Foundation of the Action that we brought, but we apprehended that Question to be determined, and we acquiesced in it when that Tryal was over. Now, my Lord, we shall shew that apprehending our selves really chosen, we did in a due Course of Law sue forth our *Mandamus*, directed to the Plaintiff and the Aldermen; and there is a Return made. I pray these may be read.

The Mandamus and Return were read.

Mr. Williams. Then that which we shall next shew, is the Grounds and Reasons why we thought this Return was false, and thereupon brought our Action. We shall shew that at a Common Hall, held for the Election of Sheriffs, the Defendant was in Nomination, and had a great number of Hands and Voices for him. Pray call Mr. Gilbert Nelson, Mr. William Wightman, and Mr. Leonard Robinson.

Who all appeared, and were sworn.

Mr. Ward. Mr. Nelson, Pray, were you at the Common Hall for Election of Sheriffs, in the Year 1682.

Mr. Nelson. I was at the Common Hall in June 1682. on *Midsummer-day*.

Mr. Williams. Pray, Sir, will you tell us who were then in Nomination, and how they did proceed.

Mr. Nelson. There were in Nomination for Sheriffs, he that is now Sir Dudley North, then Mr. North, Mr. Box, Mr. Papillon, and Mr. Dubois.

Mr. Ward. Pray, Sir, who had the Majority of Hands?

Mr. Nelson. I did see the Poll-Books after they were cast up.

Mr. Williams. But did you observe the holding up of the Hands?

Mr. Nelson. Upon the holding up of the Hands, the Election was by the Sheriffs given to Mr. Papillon and Mr. Dubois.

Mr. Williams. Put pray, Sir, upon your View, and in your Judgment, were there many Hands for Mr. Papillon?

Mr. Nelson. I guess there were the most Hands for him and Mr. Dubois.

Mr. Ward. What say you then to the summing up of the Poll-Book that you spoke of.

Mr. Nelson. I did see the Books after they were cast up.

Mr. Ward. Was there a great Number for Mr. Papillon?

Mr. Nelson. Yes, there was the greatest.

Mr. Com. Serj. What Books do you mean, Mr. Nelson?

Mr. Nelson. The Books in the Sheriffs Custody, Sir.

Mr. Com. Serj. But did you see my Books?

Mr. Nelson. That was upon the second Poll.

Mr. Ward. Then which is Mr. Wightman?

Mr. Wightman. Here I am, Sir.

Mr. Ward. Were you present at this Common Hall? Did you see this Election?

Mr. Wightman. I can say nothing to the Election.

Mr. Williams. Were you at the Common Hall on *Midsummer-day*, 1682?

Mr. Wightman. I cannot say that, Sir.

Mr. Ward. Then what is it you can say to this Matter in question? Did you take any Poll?

Mr. Wightman. I did take the Poll in one of the Books.

Mr. Williams. Was there any Number for Mr. Papillon?

Mr. Wightman. There were 2400 and odd for Papillon and Dubois.

Mr. Thompson. Who were in Nomination, Sir? Who were the Persons poll'd for?

Mr. Wightman. Sir Dudley North, Mr. Papillon, Mr. Dubois, and Mr. Box.

Mr. Ward.

Mr. Ward. What say you, Mr. Robinson, Were you at this Common Hall in 1682?

Mr. Robinson. Yes, I was.

Mr. Williams. Who were named to be Sheriffs then?

Mr. Robinson. Mr. North, now Sir Dudley North, Mr. Ralph Box, Mr. Thomas Papillon, and Mr. John Dubois, they four.

Mr. Williams. What Number had Mr. Papillon for him?

Mr. Robinson. I never saw the Poll.

Mr. Ward. But upon the View in the Hall, in your Opinion, did you look upon it as a doubtful Case which was Elected?

Mr. Robinson. By the Hands, I judged the majority was much more for Mr. Papillon, and Mr. Dubois, than for the other two.

Mr. Williams. So you think in your Judgment?

Mr. Robinson. Upon my Oath, that was my Opinion.

Mr. Williams. Well, my Lord, we must rest it here unless they give us further Occasion.

Mr. At. Gen. You say, the majority was for Papillon and Dubois: Pray, was the Election declared at that time by the Mayor and Aldermen, or was there a Poll demanded?

Mr. Robinson. Mr. Attorney, First the Question was put for the Persons; then the Sheriffs declared their Opinion, and a Poll was demanded, and a Poll was granted, and the Sheriffs went with the Common Serjeant up to the Court of Aldermen, and acquainted them with it, and then they all came down again, and declared that there should be a Poll.

Mr. Sol. Gen. Who were Sheriffs then, pray, Sir?

Mr. Robinson. Mr. Alderman Pilkington, and Mr. Samuel Shute; and in the Evening, after the Poll was closed, the Books were number'd up, the Sheriffs came down upon the Hustings and declared the Numbers, and then, as I remember, the Number declared for Mr. Papillon, and Dubois, was above 2000, and the Number declared for the other two, was some Hundreds under 2000.

Mr. Ward. My Lord, We leave it here.

L. C. J. Will you that are for the Plaintiff, say any thing more to it?

Mr. At. Gen. Yes, my Lord, We have more Evidence to bring in answer to what they have brought here. My Lord, that which they would excuse themselves by, is, that there was a probable Cause; but that will fail them, if it be but observed what doth appear upon their own Evidence. It is true, where a Man hath a probable right he may sue. But this matter here contended for, was never such a right as a Man may sue for. No Man can ever shew that for the Shrievalty, an Office of Burthen, an Office of Hazard, and an Office of Charge and Expence, any Man did ever sue; so little ground of Reason had they to bring this Action for this Office. And then for their Title to the Office, that will appear but very weak. They pretend that my Lord Mayor and Aldermen could not try the right who was Elected truly and rightfully; and they bring this Action to try it; and then they produce some of the Men that held up their Hands, and in their Opinions, Gentlemen, they say, the Election fell upon Papillon and Dubois. But, Gentlemen, that my Lord will tell you is nothing at all of Title, but a Poll was demanded,

and by that it must be decided. Then one of their Witnesses tells you a Story of what the Sheriffs did upon the Poll: But all that is nothing too. For we tell you, and shall prove it, That those Sheriffs did in a riotous manner, assume, and take upon themselves the Supreme Government of the City, and would have excluded my Lord Mayor from it. But all their Proceedings, and all that they call a Poll, was void, and can make no Title to any thing at all. It was a bare Dispute of a factious Party, to subvert the orderly Government of the City. There was no probability of Title or Right could be gained by it. For the Chief Magistrate of the City, for the time being, ever did direct the Poll, and all the Proceedings upon Election of Officers. And when he did so in this Case, we shall prove to you there was not any considerable Number (that is, not twenty Men) to give any pretence of Title to this Gentleman that thus sued for this Office. But indeed in that most riotous Assembly one of them that ever was, they do pretend to be Elected: But we shall shew that for that riotous Assembly they were Convicted here as Rioters upon an Information, and fined to the King for it. And I could tell them of a like Case of an illegal Title, a Man goeth by a false Oath to get a Possession of Goods, takes out a *Capias*, and with others, getting into a House to arrest the Party, he then carries away all the Goods, and upon this Possession would set up a pretence of Title. But upon an Information for a Riot, he was severely punished for it. Mr. Papillon, if he had thought he had had a good Title or Cause to bring this Action, he would have employed better Instruments to have proceeded in it. The Attorney he makes use of, who is it but Mr. Goodenough? One who did not live within the City, nor had any thing to do in it, till brought into Office as the great Instrument of Mr. Bethel in his Actions, and a great Plotter in the late horrid and dreadful Conspiracy. And this Cause, how is it managed? Not by any Counsel of worthy Men of the Robe, or grave Citizens; but by a Cabal of thirty or forty Rioters, most of them in the Proclamation, proscribed as Traitors, and run away from Justice upon the Discovery of the Plot. All this speaks Malice, and the worst of Malice; the thing it self speaks it, to pretend a Title with so little or no ground. For you plainly observe, there is no Title but this riotous Assembly to ground their pretences upon. In the Prosecution of this Action, there was no Order, whatsoever they pretend, for to take an Appearance; I mean by those that really were at the bottom of the Design. For the forty Men at the Consult at *Russel's*, did not meet to be sure to give Order for an Appearance. No, they had other Work to do. An Appearance would not do their Work: For, as Mr. Keeling at large could explain it, they took all Opportunities to rise and make a Mutiny, and take Advantage of the *Mobile* and Disturbances to bring about their main Plot. They did not care five pence for the Appearance: But when the Soldiers were up, then the Plot was spoiled, and then my Lord Mayor may go home if he will. Gentlemen, We shall prove what I have opened to you, tho' I am perswaded not one of you but know it as well as I.

Mr. Sol. Gen. Shew the Records of the Conviction of the Riot.

L. C. J. Hold Mr. Solicitor, I tell you before hand, that as I stopped them from urging the Tryal for the Riot, as any Determination of the Right of Election, or as any ways tending to the Question now before us; So I must not let you neither enter into that matter. The Business of the Indictment, Conviction and Sentence upon the Rioters makes nothing, either to the Right of Election, or this Right of Action. And therefore, as I said to Mr. Ward, it was nothing to the Purpose to mention it on that side: So it is to no Purpose, I must tell you, to mention it on the other side. For it was no Determination of the Point of Right one way or other. And he could not give it in Evidence, that that was a *Litigation* of the Matter in Dispute, and upon the Decision of that Indictment (till which he apprehended he had a Right) he found it was against him, and so desisted. No, the Right I say was not at all affected by that Tryal one way or other. For admitting they had a Right, or you had a Right; yet the gaining your Right must not be attempted in a wrongful manner; but they had a lawful Way to come by their Right; and if they pursued that, well and good; if not, then they must take what comes of it.

Mr. At. Gen. My Lord, that Right was insisted on by them as the probable ground of their Action, and that we say was no Right.

L. C. J. Therefore it is to no Purpose to urge it.

Mr. Sol. Gen. But, my Lord, with Submission, our Answer to their Title is, That there was no Colour of Pretence, and this Conviction proves it.

L. C. J. No, Mr. Solicitor, that is not any Evidence one way or other.

Mr. Sol. Gen. If your Lordship please, it destroys their very Title, which is the Number of the Poll.

L. C. J. Lord! the thing is as plain, Gentlemen, as any thing can be. You or they may have a good Title, and yet do a thing that is unlawful to bring the Title into Possession. But then the punishing you for that unlawful Act, is not an Evidence, either against or for the Title, nor doth determine it for you, or against you.

Mr. Sol. Gen. My Lord, we submit to your Lordship's Directions in it. But then this we say to it; the Question now is reduced to this Point: Whether there were any probable Cause for the Defendant's Suit against the Plaintiff? They have insisted upon it that there was, from two grounds. They call Witnesses, who declare they were of Opinion, that the Defendant had the Right of Election by the holding up of the Hands. That is one of the probable Causes of their Suit. Now that is clearly gone by this single Point, whether the Election was determined upon that holding up of the Hands, or they went to a Poll to decide it? If they went to a Poll, then it is clear the Right of Election was not determined; and he could have no Right to be Sheriff upon the holding up of the Hands. Then they went a little further, and offered in Evidence the Sheriff's Poll-books, or the Numbers taken out of them; wherein they say, the Majority was for Mr. Papillon; and so

thereupon, say they, we brought our Action. Now, to that Objection it is proper for us, with Submission, my Lord, to answer it, that that can be no manner of Cause of Action in the World; because, say we, that was no Part of the Election at all, nor was it at all to govern the Question of Right one way nor other; 'twas a Number of Names taken out of the regular Course upon Elections by Persons that had no legal Authority; nor was it such a Method, as was a Foundation to ground any Opinion upon one way or other; much less, such a one, as would be a Cause of Action. These are all the grounds they went upon. The first, by their own shewing, was no ground at all; for there was no Determination of the Right upon the View, but a Poll was agreed upon: The other, we shall call Witnesses to prove was irregular, and so not legal. Swear Mr. Town-Clerk.

[Which was done.]

Mr. At. Gen. Pray, Sir, will you give my Lord and the Jury an Account, who is to govern the Poll upon the Election of Sheriffs, or other Officers at the Common-Hall?

Mr. Town Clerk. My Lord, I never knew a Poll about Sheriffs till about five or six Years ago, and that was the first Poll that ever I knew, and it was between Mr. Jenks and Sir Simon Lewis; and indeed, it was the first that ever I did read of in any time within the City of London. I think, I have seen the Entry of all the Elections of Sheriffs, that are extant in our Books in all times; and I think, I did never see in any of those Entries one Poll that was ever taken for Sheriffs; it is only mentioned, Such an one elected by the Mayor, by Prerogative; and such an one, by the Commonalty. Among other Books of the City's, there is an old Book, that is called by the Name of *Liber Albus*, which, speaking of the Constitution of the Common-Hall for Election of Sheriffs, says, *First of all the Mayor shall chuse one of the Sheriffs for London and Middlesex, for whom he will answer; and then the Commonalty shall chuse another to join with him, for whom they will answer. And if there arise any Difference between them, who is elected, or not elected, it shall be determined in the same manner, as it is in Common-Council.* This is all the Notice, that I find in any of the City-Books, that looks like a deciding the Election, when disputed, by a Poll. Now in another Chapter of that Book where the Common-Council is mentioned; it is said, *If there be any Division of Opinions in the Common-Council, the Common-Serjeant and the Town-Clerk, shall examine every Man severally, what their Opinion is, which is by way of Poll at this Day when we had a Common-Council.* But till that time that the Poll was between Mr. Jenks and Sir Simon Lewis, I never knew any Poll for Sheriffs, and that Poll was taken immediately by telling one and the other. For my Lord Mayor and Aldermen as soon as ever they come upon the Hustings, make Proclamation to have the Liveries attend for such Elections; and then withdraw and leave the Sheriffs and the Common Serjeant.

Mr. At. Gen. Sir, the Course is very well known, I suppose, to the Gentlemen of the Jury. But pray, did any Persons poll at my Lord Mayor's Books for *Dubois* and *Papillon*?

Mr. Town-Clerk. Not that I know. As to this Poll, my Lord Mayor caused the Common-Hall

to be adjourned to such a Time ; and after that sent for the Common Serjeant, and my self, and required us to go get Books, to take the Poll for Mr. Box, Mr. Papillon and Mr. Dubois ; as for Sir Dudley North, he was not to be Polled for, he being chosen before, by the Prerogative of the Lord Mayor, and my Lord Mayor and Aldermen declared him fully Elected, and upon that he was called out by publick Proclamation upon the Hustings, to come and take the Office upon him, as is usual in such Cases. But we had Directions to provide Books to take the Poll for Mr. Box, Mr. Papillon and Mr. Dubois ; and we did so, and took the Poll for these three Gentlemen, and upon closing of the Poll, we all of us sealed up our Books, and delivered them to my Lord Mayor ; and at a Common-Hall afterwards, he did declare Mr. Box to be chosen the other Sheriff, to be joined with Sir Dudley North : The Poll was, as it always ought to be, by the Direction of my Lord Mayor ; and the Sheriffs are but Officers, and not the Judges and Managers of the Poll, without my Lord Mayor's Direction.

L. C. J. What say you to it, Gentlemen ? Have you any more Evidence ?

Mr. Serj. Maynard. My Lord, and Gentlemen, Here has been much said in this Cause that is nothing to the Purpose. As particularly, that which the Plaintiff's Counsel did last insist upon, who took the Poll, and who had right to take the Poll or not, is not any thing to this Question : This Action is not at all concerned in that matter. For whatsoever the Dispute was, and which soever had the right (and because it was a Dispute, some it may be could not poll at the one, and others would not poll at the other) yet the lifting up of two Thousand Hands, might make him think that he was chosen Sheriff ; and there lies the Cause of his Action, his apprehension of a Right : Your Lordship did object this to us, Who ever before brought such an Action as ours, and did sue to be Sheriff of London, a Place of Charge and Trouble ? —

L. C. J. No, I did not make it as any Objection. I asked your Witness Cornish, that Question indeed, for some Reasons that I know.

Mr. Serj. Maynard. That may be objected indeed to the Prudence of my Client, Mr. Papillon, to desire such an Office : But that proves nothing of Malice in him against the Plaintiff ; for if he were never so unwise as to desire it, if he had a Right to it, or thought he had, it is not a malicious thing in the Eye of the Law, for him to take his Legal Course for it ; and then the Objection that is made of the Instruments that were used. Our Attorney Goodenough is in a Plot : What is that to us ? There is not the least Suspicion upon us. He is a bad Man : But that doth not make all his Clients bad. But the Question now before you is, First, Whether there were any probability of a Cause of Action. Secondly, If there were not a probable Cause ; yet whether that Action was grounded upon Malice ? What Malice I pray is there in this against my Lord Mayor, to desire an Appearance of him, when it is conceived, though upon mistake, that there is Cause of Action against him ? We did not press him to give us Bail to our Action, or threaten else to arrest him : No, it was a decent rather than an irreverent Application to him. If then there be not both concurring, want of Title, or probable Cause and Malice too, this

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Action of the Plaintiff's is without ground. No Man that has any Sense, if he knows he has a clear Title against him, will bring an Action ; but though it should be clear against him, yet if he do bring an Action, but not vexatiously and maliciously, that cannot subject him to an Action ; that would frighten Men from bringing Actions upon doubtful Matters, which certainly is lawful for any Man to do. Now what Malice is proved in the Defendant against the Plaintiff, the Jury here are Judges of. If we were Criminal in the manner of our Proceedings, they might come before your Lordship in another way ; but sure this is not the way ; and if it should be actionable, and we likewise subject to be punished as a Criminal, then we should suffer twice for the same Fault. Now, Gentlemen, upon this Action we are not to be fined ; but they, if they can, are to shew what Damages the Plaintiff sustained by our Action ; and if what we have said do not satisfy you, that we had probable Reason for what we did, then you upon your Oaths, are to give him what Damages you in your Consciences think he has received by it.

Mr. Williams. My Lord, if your Lordship please, I would ask one Question of Mr. Town-Clerk, as to the Right of managing the Election. Sir, You have observed many Common Halls for Elections.

Mr. Town-Clerk. Yes, Sir, I have for this twelve Years.

Mr. Williams. Did the Common-Hall ever go to a Poll upon an Election, before this time, that you know of ?

Mr. Town-Clerk. Never but once for the Election of Sheriffs, I say.

Mr. Williams. I speak, Sir, of any sort of Poll ; for I suppose you do not call the holding up of Hands a Poll.

Mr. Town-Clerk. Mr. Jenks's Poll was the first that ever I knew for Sheriffs.

Mr. Williams. Well, Sir, Was that managed by the Sheriffs, or by my Lord Mayor, or by you, and the Common Serjeant ; or who was it by ?

Mr. Town Clerk. Sir, The Mayor and Aldermen withdraw, and leave the Sheriffs to view the Election by the Hands ; and the Common Serjeant propounds the Question, *So many of you as will have, &c.* —

Mr. Williams. By whose Direction doth he propound the Question, pray ?

Mr. Town-Clerk. By the Direction of the Common-Hall, I take it.

Mr. Williams. But if a Question do arise upon an Election, so that it cannot be decided by the view, but they go to a Poll, Who is to manage that Poll ?

Mr. Town Clerk. The Officers of the City, by Direction of the Lord Mayor.

Mr. Williams. That Poll you speak of, for Lewis and Jenks, Was that managed by any body but by the Sheriffs ?

Mr. Town-Clerk. It was managed by the Sheriffs and the Common Serjeant, in the accustomed manner.

Mr. Williams. How ! in the accustomed manner, when you say that was the first that ever you knew ?

Mr. Town Clerk. It was so for Sheriffs ; but there have been Polls for other Officers.

L. C. J. Why *Mr. Williams*, every body knows that well enough, that the Sheriffs are concerned in the management of the Election or the Poll, as all the rest of the Officers of the City are, under my Lord Mayor, and the Common Serjeant consults with the Sheriffs Officers and People about him, upon the view.

Mr. Williams. Pray, Sir, do you remember the Election of *Mr. Bethel*, and *Mr. Cornish*?

Mr. Town Clerk. Yes, Sir, There was a Poll there too, that was the Year after.

Mr. Williams. Who managed that Poll?

Mr. Town Clerk. The Sheriffs, and the Common Serjeant, and I, did agree to take it thus in two Books, whereof one was with the one Sheriff, and the other with the other Sheriff, at the two ends of the Hall.

Mr. Williams. That was taken in Writing, Sir, Was it not?

Mr. Town Clerk. Yes, Sir, That other of *Jenks* was only by telling.

Mr. Williams. Were you concerned in taking that Poll?

Mr. Town Clerk. I did assist at it one Day.

Mr. Williams. Who ordered you to take the Poll that Day?

Mr. Town Clerk. Truly, I did concern my self as little as I could in those Things: What Report was made to the Court of Aldermen, I cannot tell; but one Day coming into the Hall, I had no mind to concern my self in it; but some Gentlemen, did pray me to go up to the Poll; and I did go up.

Mr. Williams. Sir, upon your Oath, Did the Sheriffs direct you to take it?

Mr. Town Clerk. I really think they did not.

Mr. Williams. Did my Lord Mayor direct you?

Mr. Town Clerk. No, Sir.

Mr. Williams. Did the Sheriffs manage it?

Mr. Common Serj. I did it by *Sir Robert Clayton's* Order, who was then Lord Mayor.

Mr. Williams. My Lord, all that we say to it is this, We are not now proving our Right upon which we brought our Action, that we submit unto, it is against us, we must agree it: But be the Right one way, or other; yet we might from a supposed Right, have a probable Cause of Action. It seems to be a doubtful Business, by all that *Mr. Town Clerk* has said, who has the Right, for all he knows of the Constitution, is from *Liber Albus*, and that is somewhat dark. You, Gentlemen, hear what is said; the Thing was a Question of five or six Days, and a puzzling one it seems, and therefore we might be misled into an apprehension, that what the Sheriffs did was right, and so not at all concern our selves with what my Lord Mayor did. —

L. C. J. *Mr. Williams*, you talk of that you do not understand; for my Lord Mayor was not there at that time of *Jenks's* Poll: I was Common Serjeant my self, and I know the Sheriffs have nothing to do with it.

Mr. Williams. It should seem by *Mr. Town Clerk* to be doubtful, sometimes one, and sometimes another did direct the taking of the Poll.

L. C. J. But you are out still: But for all that, this is nothing to your Right of Action, one way or other.

Mr. Williams. My Lord, I must lay it here,

it was a doubtful Thing, and we brought our Action to try the Right; but afterwards conceiving we were out, and had no Right, we discontinued and desisted.

L. C. J. It was so far from being their Right, that I desire you to call me any one Witness, that can say, before *Jenks's* time, there was ever a Poll for Sheriffs, or such a thing thought of.

Mr. Williams. We were under an apprehension of a Right in them.

L. C. J. There could be no Colour for any such apprehension in the World.

Mr. Williams. We must submit it to your Lordship's Directions.

Mr. At. Gen. So do we.

Mr. Serj. Maynard. Whether this Action brought by us, was malicious.

Mr. Ward. My Lord, *Mr. Attorney* doth challenge the Defendant, to shew that his Action was brought by advice of Counsel; we shall shew it was with good Authority of Counsel.

Mr. Baker. can you tell whether it was by any Advice, and whose?

Mr. Baker. It was by the Advice of *Mr. Thompson*, *Mr. Pollexfen* and *Mr. Wallap*, as I have heard.

Mr. At. Gen. But you hear what *Keeling* says, there was a Party that were at a Consult about it, and that were concerned in it.

Mr. Sol. Gen. My Lord, We have done on both Sides, I think, and submit to your Lordship's Direction in it.

L. C. J. Will any of you say any thing more?

Mr. Williams. No, my Lord, we have done, we leave it upon this Evidence to your Lordship and the Jury.

Mr. At. Gen. My Lord, We have no more to say for the Plaintiff.

L. C. J. Then, Gentlemen of the Jury, as my Brother *Maynard* said in the beginning of his Defence in this Cause; so I say now to you, to set all Things strait and right; God forbid, that any heat or transport of the Times, should bring us into that Condition, but that every Subject of the King's that hath a right of bringing an Action at Law against another, should have free Liberty so to do. And the Courts of Justice are now, and I hope always will be so open, that every one that would take a Remedy prescribed by the Law for a Wrong done him, may be received to bring his Action, which is a legal Remedy.

And I am to tell you, Gentlemen, that much has been said in this Case (which I perceive is by the Concourse of People a Cause of great Expectation as my Brother likewise said) which is not at all to the Case. I am sorry truly at this time of Day, that we should stand in need of such Causes as these, to settle and keep People in their due Bounds and Limits. But though many Things have been said in the Case that are quite besides the natural Question; yet, they having been made Dependancies upon that Question, and because it seems to be a Case of such Expectation, I think it will become me in the Place wherein I am, to say something to you, and according to the best of my Understanding, tell you what I apprehend to be the legal Part of it, stripped of what hath no Relation at all to it. And if I shall omit any thing that is material on the one Side or the other, there are Gentlemen that are learned in the Law, who

who are, of Counsel both for the Plaintiff and the Defendant; and I shall not think my self under any sort of Prejudice in the World, if they take the liberty, as they may freely do, to interrupt me and enmind me of what I forget, or wherein I may mistake.

For, Gentlemen, I assure you for my own part, I would not have the Law made subservient to any Purpose, but the exact Rule of Justice. I would to the best of my understanding in all Cases *servare jus illasum*, preserve the Law and the Right of every Man inviolable. I would have the Law of the Land to be the Measure of my own and all other Men's Actions. And I hope no Man can justly (I am sure I do not know they can) complain of any Breach or Invasion that is made in the Courts of Justice, either upon Law or Right. But all those that have the Administration of Justice committed to them by the Government, do behave themselves with all Equity and Impartiality towards all the King's Subjects; And the Law has as full and free a Course, and Justice doth every where take place as much as can be desired by any honest and good Man.

Gentlemen, In this Case that you now are to try, I must first of all tell you, that this Business of the Right of Election one way and the other, hath been too much insisted on on both sides. And I speak it, because tho' I my self in my own mind know what of it is true, and what not; yet I conceive it not so proper to be mentioned in this Case, it being no legal Evidence to the Point in question. Now it is a Duty incumbent upon you to observe; and upon the Court to suffer nothing to be urged so as to have any weight with you, but what is legal Evidence. That you are only to mind, Gentlemen. So that if I mention to you any Point of Fact that hath not been given in Evidence, as having a true Relation to this Issue, you are not to mind what I say to you about it. On the other side, I must likewise acquaint you, if there be any Difficulty in Point of Law in the Case; you are to observe the Directions of the Court, who will be always ready to assist and direct you in it. Or the Gentlemen that are of Counsel on the one side, or the other may have the Matter found; specially, if they think there is Fact enough to be found to ground a Question upon.

Therefore, Gentlemen, for the Customs of the City of London; As to the manner of Elections, or who hath the Right to manage them, they are not at all material to this Business; and if they were, there is never a one of you but know it as well as we or any body doth. I my self had the Honour to serve the City of London in the Places of Common-Serjeant and Recorder several Years: So long ago, that not above one or two that sit upon the Bench in the Court of Aldermen have been longer conversant in *Guild-hall*, or know the Customs of London in those matters better than I do.

It is notoriously known to all that have had any Dealing in London, or been acquainted with any thing there, that till within these six or seven Years last past, the Lord Mayor and Court of Aldermen, and the Common Hall used to go a birding for Sheriffs, (you very well know what the Phrase means) and perhaps it was not once in ten times, that those that were chosen

Sheriffs, held; but generally every Year there were I know not how many Elections upon fining off, or swearing, or some reason or other; so that now and then there was but one Sheriff chosen for a great while together; and now and then never a one from *Midsummer-day* till near *Michaelmas*. And the way was, to consider, such a one hath most Money in his Pocket; Oh, then put him up for Sheriff: And then, if he went off, then another would be found out. And there was one old Deputy *Savage*, that used to keep a black Book that would furnish Names for I know not how many Elections. And who should be Sheriff, so as to divide into Parties, and Poll, was never a Question before such time as Mr. *Jenks* that they speak of came to be put up, and there the Dispute began; then the Faction began to appear.

Now, if any Man offers to tell me, I apprehended always it was the Sheriff's Right to manage the Poll; I would ask him how that can be a Right that never was done before? Let them shew me any one Instance of a Poll for Sheriffs before that time. No, it was notoriously known when the Polls began, Persons did not think the Shrievalty such an Office, that it was so earnestly to be coveted and desired. Polls indeed used to be heretofore for the Bridgemasters Places, that are Places of Profit and Advantage; and so for Aleconners and the like, those have been often in your Time and mine, Gentlemen, we may very well remember them. But this Office of Sheriff, People were not heretofore so ambitious of as to poll for it; but the City was glad if they could get any worthy and fit Person to accept of it.

And for the Management of the Election, we all can tell the manner of it as well as any thing in the World. After my Lord Mayor and the Aldermen were gone off the Hustings and retired to this Place, the Common-Serjeant staying there with the Sheriffs, used to make a Speech to the Common Hall, a Rehearsal of what had been before said by the Recorder; and then received the Nomination of such Persons as were to be put to the Question for Election from the Common Hall. And upon the putting of the Question, every Man held up his Hand for those that he desired should be chosen; and if it could be decided by view of the Hands, well and good; and the Common Serjeant consulting with the Sheriffs and those about him, declared their Opinion, that the Election fell so and so, on the one side or on the other; but if doubtful, or a Poll demanded by any one; then they used to acquaint my Lord Mayor what was done in the Common Hall; and thereupon they gave Order for declaring the Election, or granting the Poll, and used to come down to the Hustings for that purpose; and no one ever thought that either the Common-Serjeant or the Sheriffs, or any body else but my Lord Mayor had the Power of those Courts. For the Common Hall was always summoned by Precept from the Lord Mayor, and when the Business was done, or was to be put off to another Day, the Common Cryer by Command from the Lord Mayor makes Proclamation, You good Men of the Livery, &c. may depart for this time, and give your Attendance here again such a Day, or upon further Summons. No body ever talked of summoning

a Common Hall by any body but my Lord Mayor. He did it by virtue of his Office, and he dissolved it, or adjourned it by virtue of his Office. All this is as notoriously known to all Men that know any thing of *London*, as the Faces of you of the Jury are to the People here, or to one another. And this never came to be a Question, till the Business of the Poll between *Sir Simon Lewis* and *Jenks* came about, which you have heard of. *Mr. Papillon* himself, when he was chosen Sheriff before, and fined for it, was chosen in this manner and no other.

Mr. Cornish, he comes and gives Evidence that the Common Serjeant was reckoned to be the Man that managed the Choice by Command and Direction of the Sheriffs. And some of those Gentlemen, that have been produced on the Defendant's side, they say, they have looked upon it as the Sheriff's Business. But alas-a-day it belongs to neither of them, they are but Officers to the Lord Mayor. The Common Serjeant's Business is but to put the Question into the Mouth of the Common Cryer. In so much, that when I my self was Common Serjeant, as I used to pass by the Shops in *London*, they used to cry, There goes *So many of you as would have*. It was as plain a Road of things, that every body knew it before these things untowardly have come to be imbrangled by our Factions and Divisions, and the Heat of some busy Fellows. Here are a great many ancient Citizens, that I see that know, and so you do all, Gentlemen, that this is true. So that all the Discourse of this Matter is but Flourish and Garniture, and doth not affect this Case at all one way or other.

Another thing, Gentlemen, hath been mightily talked of, and urged and insisted upon both by Plaintiff and Defendant; and that is the Defendant's Right, or not Right of Election to the Office of Sheriff, and that the majority was on his side, say his Counsel: On the other side, say the Plaintiff's Counsel. And for the settling that Right, he brought his Action against the Plaintiff; but it being determined upon the Conviction for the Riot. There is no such thing, Gentlemen, as that it was therein determined: That cannot be a Determination of any Right at all. For tho' I may have a Right to an Office, or any such thing; yet I must pursue a legal Method to attain to that Right, and not go irregular Ways to work.

As if I have a Right to come into your House, because you have not paid me your Rent, (to make my Thoughts and Meaning intelligible to you by a familiar Instance, which will shew what I intend) I must not make a Riot, and turn you by Violence out of Possession. For I have a legal Course to come by my Right; to wit, by bringing an Action and evicting you. But if any Man attempt to get a Right in an unjust manner, and he be punished for it by an Indictment or Information, that, I say, doth not determine the Question of Right one way or other.

To come then to the Issue that here you are to try, the Point of this Action before us resolves it self into a narrow Compass, and is only this in short, which you are to enquire of, Whether or no the Plaintiff was arrested by the Defendant without probable Cause, and maliciously?

Now matters of Malice are things that remain in a Man's Heart, and it is impossible for me to discover whether another Man hath a Malice against me, if I do not see it in his Actions. Malice being a thing that is internal, is not else discernible.

Therefore you must consider the Circumstances that do attend this Action of the Defendant, and if so be they are malicious, then you are to find for the Plaintiff: But if they for the Defendant have offered to you any Circumstances that can prove or convince you, that he had any Probability of a Cause of Action, and that not attended with a malicious Prosecution of that probable Cause, then the Issue is with the Defendant.

This is the right Question, and the Law of this Action; and the Fact to make it out one way or other is now in Judgment before you, upon the Evidence that hath been given on both sides.

Now, in point of Law, I am to tell you, and that you must observe, That tho' I have a probable conjectural Cause of Action against another Man; yet if, to obtain my End in that, I prosecute him maliciously, with a Design to ruin him, or to put an Indignity upon him, or the Character he bears in the Publick, or put a Hardship or Difficulty upon him (I mean Hardship and Difficulty in point of time) when it is probable the Remedy may be had at another time, and the same thing done with less Injury and less Trouble; then an Action will lie against me, for bringing my Action in such a manner; tho' it be true, that I had a conjectural Cause of Action against him.

As in the Case that was here in this Court the other Day, of *Mr. Swinnock* against the Serjeant, that came to him and told him in his Ear, that he had an Action against him, and this was upon the Exchange; thereupon *Mr. Swinnock* brings his Action for this against this Man, for whispering this in his Ear: If he had proved any malicious Intention to disgrace him, no doubt the Action would have lien. For tho' there might be a Cause of Action against *Swinnock*; yet if that be maliciously pursued to get him arrested, and held to Bail, where no Bail is required by Law; or with an intent to disgrace him upon the Exchange, when it might have been done elsewhere, or at another time, this irregular malicious Proceeding will bear an Action. The pursuing malicious ways to obtain a Right, makes a Man obnoxious to the Action of the Party so prosecuted. I desire to express my self by Words, that may declare my Meaning as plainly as can be: And I hope I do so.

Then, Gentlemen, taking it thus as the Counsel for the Plaintiff say, to shew that the Defendant had no probable Cause of Action against the Plaintiff; they endeavour to answer what is alledged on the other side, as their probable Cause. And therefore that we must consider first what is said by the Defendant.

They tell you, here was an Election for Sheriffs of *London* at *Guild-hall*, where those Persons that they have nominated, were Candidates, and put in Nomination for that Office. And upon that Nomination, as say those three Witnesses; we were the Persons that had the majority of Voices, and thereupon we apprehended our

our selves chosen, which gave us the Right of Action : So the Defendant, say they, sheweth some Probability of a Cause of Action ; and if he have not pursued it with Malice, but in a regular way, the Probability of the Cause doth take off from the Malice, that else the very bringing of an Action without Cause would imply in it self. And they say true, for I must repeat it again ; if I have *prima facie*, a probable Cause, and pursue it legally, no Action will lye against me for it.

But then say they on the other side for the Plaintiff, That is no probable Cause ; for you could from those Transactions have no such Apprehensions of a Right ; for that is not the measure of a Right of Election, or a Rule to guess who is elected by : For there being no Decision of the Election upon the holding up of the Hands, and a Poll being demanded, whereas the usual method is to have by the Lord Mayor's Order and Direction, the Poll taken by such as he shall appoint ; you went another way to work, you go your ways and take Books to your selves, and come not to the fair Determination of the Question : And they bring Mr. Town-Clerk to prove. You have heard what the Evidence is, and you are Judges of it.

Now take it, that this were in the Case of an Office of Profit ; as suppose it were a Question between me and *John a Styles*, for the Place of Bridgemaister, for the purpose, and a Poll is demanded, and granted ; if they that have no Authority shall go after the Court is adjourned by him that has Power, and take a Number of Names in the way of a Poll by themselves, and upon that come and say, *J. S.* has four and twenty hundred, and I have but so many ; that sure is not any probable Cause, nor a Right ; for you have gone here out of the known and usual method of such Matters, and depend upon that which can give no Foundation of Right at all. This is the Answer that is given to that by the Counsel for the Plaintiff.

You may have fifty thousand Names for you after that rate, and yet not to be Elected, nor have probable Cause of any such Apprehension. We all remember *Sir Samuel Sterling's* Case, which was upon the Denial of a Poll for a Place of Profit, that is to say, the Bridgemaister's Place : But this is upon a wrong Poll.

Suppose there had been a Poll granted (as there was) in this Case, and upon that Poll thus managed, *Sir Dudley North* and *Mr. Box* had had the majority but by a very few, and there had been an Action brought in such a Case ; here was a probable Cause as good as in this Case, as it now stands, because some of them might happen not to have legal Suffrages ; yet the taking the Poll by Persons of their own Heads, after the Court was adjourned, avoids all : so that that would have signified nothing. You are to consider of this Answer of theirs.

Then the great thing, Gentlemen, that you are to observe, is this : To bring an Action alone, will scarce amount to a Proof of Malice ; therefore Malice being in this Issue a great Point of Fact, you must weigh the Evidence whether the Circumstances do shew it, that there was Malice in *Mr. Papillon*. If the Circumstances are enough to amount to a Proof of Malice, you then are to find for the Plaintiff ; and you are the Judges what Damages

it is fit to give him for that Injury : He has laid Ten Thousand Pounds ; but you must do what you that are Judges of it think fit in it.

Come, Gentlemen, it is best to be plain ; and no Man needs to be thought wanting of an Apprehension, what is the meaning of all these things. It is commonly and universally known to all Mankind :

First, That no Man ever did pursue such an Action as this is, to be Sheriff, till these unhappy Times wherein we are, and wherein we have lost that Quiet and Felicity, which I pray God we may be restored unto. And tho' it is true, a Man may lawfully sue for such an Office, and it is no Offence ; yet it looks somewhat extraordinary, and that a Man has a mind to do something unusual in the Place ; 'tis for some strange purpose or other, especially when a Man has sined for the Office once before, as we all know *Mr. Papillon* did.

Again, It is notoriously known, That for several Years last past, the Government hath been beset : And that which is a baser Thing than ever was thought of, or acted in the highest times of Villany in these Kingdoms (I mean those of the late Rebellion) the very Methods of Justice have been corrupted, and all to serve the main Design of subverting the Government.

Gentlemen, This is so black a Wickedness, that no honest Man that has any Sense of Loyalty, Religion, or common Justice, but must tremble at the very thoughts of it : When we see such Fellows as are obnoxious to the Government, known Dissenters from the Established Worship, and that never thought of conforming to the Government, or the Laws Civil or Ecclesiastical, or complying with the Church, but only to capacitate them to destroy it ; nay, when Men that are taken notice of to be common Reproaches to the Government under which they live, shall get into Office to make *Ignoramus Furies*, and to enable People to commit and be guilty of all the Falsties and Basenesses that Human Nature is capable of ; no Man living, that has any Ingenuity or Goodness in him, but must cry out against it.

When Men begin to take Oaths to sanctify Villany, and enter into Clans and Clubs, and Cabals, to destroy the most Merciful of Kings, and to disturb, distract, and overthrow the best of Governments, What shall we say ? And all this you, All of you, Gentlemen, know to be true. Was it not more safe to commit Treason in the City, than to sit upon a Bench of Justice to bring the Traitors to Judgment ? Was it not more safe to Conspire the Death of the King and his Brother, than to give the least Frown or Look of Displeasure against one of these snivelling Saints ? Did not we know that Men were sanctified to be Jury-men, to enquire of Conspiracies against the King's Life and Government, that before that time were never thought fit to be trusted with the common Discourses or Society of honest Men ?

When Men were thought fittest for Offices of such high Trust, according to their being thought capable of, and well-intended to the overthrow of the Government : Do not we all know this to be as true, as that the Sun shines at Noon-day ? When Traitors at the Bar were in less danger of being convicted of their Treasons, than the Judges were of their Lives ?

Mr. *Papillon* knows all this to be true eminently. When pack'd Juries were grown to that height, that though seven or eight Witnesses came and swore positive down-right Treason, the Traitor could not be by these Men so much as thought fit to be accused by an Indictment; to that Stupidity in Villany were Things brought by these Fellows: Nay, so far were the Proceedings in Courts of Justice tainted, that in no common Action whatsoever that came here to be Tried, but cropp'd Hair, and a demure Look were the best Signs of a good Evidence; and the Business of an Oath signified nothing, provided the Party were to be prop'd up, and the Faction to receive an Advantage by it.

For God's sake, Gentlemen, let any Man but seriously consider and believe that there is a God in Heaven, and a dreadful Day of Judgment, when every one of us must answer for every Thought of our Hearts, every Word of our Mouths, and every Action of our Lives; and then tell me what horrid Impieties these are, such as any ordinary ingenuous Person would blush and tremble at.

And I would have Mr. *Cornish* to consider, whether ever till that Time of famous, or rather infamous Memory, that he and his Fellow-Sheriff Mr. *Bethel* came into that Office, there were ever in *London* such Things as Tavern>Returns of Juries, or Clans and Cabals how to pack Fellows together, for such wicked Purposes as these?

Do not most of you here know this? And doth not every one of your Hearts and Consciences agree with me in it? How far unlike the Proceedings of those Times, in reference to Juries, were from what they anciently were? I have had the Honour to practice in this Place among you in my Profession, when without any disturbance or mixture of Faction and Sedition, we were all quiet, and every one knew his Duty; and Justice was done in this Place so regularly, that it was grown to a common Proverb, if there were any Cause of any Difficulty, they would use to say to one another, *Come, we will be so fair with you, as to try it by a London Jury*. So far was it then from being thought, that in the City of *London*, Justice should be corrupted, that the Ordinary Juries of *London* were thought the best Judges, and most impartial of any in the Kingdom. I appeal to all the Practicers of those Times that hear me, if what I say be not true.

But when once they had begun to pick and cull the Men that should be returned for a Purpose, and got this *Factionous Fellow* out of one Corner, and that *pragmatical, prick'd ear'd, snivelling, whining Rascal*, out of another Corner, to prop up the Cause, and serve a Turn; then truly Peoples Causes were Tried according to the Demureness of the Looks on the one Side or the other, not the Justice of the Cause.

Gentlemen, I take my self bound to tell you of these Things, and I wish I had no reason for it; and especially in this Case I should not do it, it being a private Action between Man and Man, were it not for the Ingredients that are in the Case, and that any Man that has any Sense may perceive.

Now then for this Case before you, Gentlemen, I desire if possible to be satisfied in one Thing or two: My *Lord Mayor* of *London*, it is

true, is not, nor no Person whatsoever, be he of never so great Quality, is exempt from the Law: If he owe any Man any thing, he is bound to answer it to him, as much as any the meanest Citizen of *London*, or poorest Subject the King has: But is he to be arrested just at such a Time, because he is chief Governor of the City, and the Action will sound the greater? And the Court of Aldermen, are they to be arrested, because they are his Ministers, and necessary subservient Assistants to him in his Government, in a such time as this was, when the Government both in the City and elsewhere, was surrounded with Difficulties, and in great Danger on all Sides? What occasion was there for such hast and speed in this Action to be done just then? Would Mr. *Papillon* and Mr. *Dubois* have starved, if this Action had been suspended for a while? Sir *William Pritchard* would have been as answerable to this, or any Man's Action, when the Year of his Office had been out: But it carrieth Vengeance and Malice in the very face of it; it speaks, that therefore they would do it, because he was then *Lord Mayor*, the chief Person in the City for the Time; and thereby they should affront the Government, in arresting and imprisoning the King's Lieutenant, in one of the highest Places both of Trust and Honour. And this would be sure to make a great noise, and the Triumph of the Action would make their Party then to be uppermost, having got the chief Governour of the City in their own Clutches.

Nay, and because they would be sure their Malice and Revenge should take place, they take the very *Scoundrels* of the Party to be employed in this great Work. For before that time, the Coroner (as he tells you himself) used to make his Warrants to the Officers that usually are versed in that Business; but here he must have the Direction of the Attorney, and who is that but *Goodenough*, a Man we have all heard enough of; and then *Burleigh* and *Keeling* must be employed; and by whose Advice, but by *Goodenough's* and *Nelbors's*? And all these Rascals, who now stand attainted of Treason, must be fetched in to consult about a fit Man to make an Arrest. And there they pitch upon this Man *Keeling* for one, who was one of the principal Conspirators in that damnable, hellish Plot against the King's Life, and that of his Royal Brother; but by the Blessing and Providence of Almighty God, was made use of as a great Instrument of preserving those precious Lives, and with them our Government and Religion, and all that is dear to us, which by that Conspiracy was undermined; and I wish we had not Reason to say, and think the Conspiracy still to be going on. But I hope in God, the Government, as established both in Church and State, will always be able to prevail, maugre all Designs, and those that are engaged in them for its Destruction.

Now *Keeling* tells you he scrupled the Employment; No, said he, I desired not to have my Name put in, because I was never concerned in any such Thing before, and my Business was of another Sort. But then, Mr. *Goodenough* (and Mr. *Brome* the Coroner no doubt had a Hand in it, though now he has a very treacherous Memory, and has forgot all that was done) comes and tells him, you must concern your self, and

do this thing ; for you have a Trade with the Party, and it will be ill taken if you do not do it. And being asked whom he meant by the Party ? He tells you, the discontented Party, and he explains their Discontent to be such, that they would have killed the King and the Duke. Now how far he was engaged with that Party is pretty well known ; and therefore if he boggled at such a thing as this, which that Party it seems was engaged in, they would suspect him ; and so, for the Parties sake he was drawn in.

But then, when this Thing is done ; Pray, Gentlemen, do but consider what the Consequences might have been, and which perhaps (nay upon what has happened to be discovered since, doubtless) they did design it. But God be thanked, those Consequences were prevented, and they themselves have Cause to be thankful to God Almighty for it. For here all the Magistrates of the City, that had any Care for the good Government of it, were to be taken up ; and then, here was a Body without a Head, a Town full of Faction without any Government ; and if the heady Rabble had been once up, without those that had Authority to restrain them, where then had been your Liberties or Properties, Gentlemen, or any Man's ; Nay, theirs that were engaged in this Design, if they had any, for those were Things much talked of by them ? In what Danger had you, and all you had, for Life, Estate, Relations, and every thing been ? But it pleased God in his infinite Mercy to shewre down upon us, and upon this City, and the Government, in a mighty Preservation, putting it into the Hearts of some in Power, to bring the City Militia some of them together, and prevent this Mischief ; or else God knows, this whole City might have been by this time once more in Ashes, and most of the King's Subjects wallowing in their own and one another's Blood. And their Party too would have felt the sad Effects of it, no doubt, as well as others. So that the Consequence of it was to destroy the Government, and that appears by the Parties being engaged in it ; it could not be to gain a Right, to make this Hubbub, and Ado to arrest the Magistrates of the City ; and then take Advantage for some other wicked Purpose.

Another Point of Circumstance, that is considerable in this Case, is the particular Persons that were to be sued. The *Mandamus*, that was directed to the Lord Mayor and Aldermen ; and there is a Return made, not by this, or that, or the other Man, but in the Name of them all, the whole Court. How comes it then to pass, that my Lord Mayor, Sir Henry Tulse, and those other Gentlemen, must be sued and arrested ; but I warrant you, Mr. Cornish, or his Party, were not to be meddled with ? No, he had so much Zeal for Justice, and to do the Defendant Right, that if he should have been called upon to appear, he would not have stood out an Arrest ; so just a Man he is, and such a lover of Right without all doubt ; but he was in no danger I dare say, they loved one another too well to sue one another. That, I say, Gentlemen, is another Circumstance, that carrieth Malice in it. For I must tell you, these Things cannot be smothered, they are as apparent as the Light. And though it falls to my Turn in

this Cause, to enmind you of them ; yet, they are as well known to you all, as the Passages in your own Families.

No, Gentlemen, there was not a Pursuit of Right in the Case ; it was a designed Piece of Villany, on purpose to affront the Government ; nay, to destroy it, and set us all together by the Ears. And if he were ten thousand times Mr. Papillon, I would and must tell him so ; and if it were not for some such devilish End and Purpose, he would never have been so greedy of an Office, he had before declined and fined for ; and which he was only called to by a turbulent, seditious, factious Party, that had further Aims in it. Otherwise, I know Mr. Papillon's Humour so well, that I am confident, he would much rather have been contented to sit in his Counting-house, than in *Guild Hall* in a Scarlet Gown. Alack-a-day, I know Mr. Papillon knows how to spend his Time to better Advantage to himself.

Ay, but say the Counsel for the Defendant, We did go on very tenderly and civilly, and respectfully ; for there met at Mr. Cornish's House, Who, I pray ? Mr. Papillon, and Mr. Dubois, and Goodenough, the prime Attorney in this Cause : And there, forsooth, they tell Goodenough, be sure you do nothing, but what is exactly according to Law ; and be sure you carry it very civilly and respectfully to my Lord Mayor, good Mr. Goodenough. Alack-a-day, how wonderful pious and considerate these People are ! If Mr. Cornish had gone to my Lord Mayor, as it was his Duty to do, being then an Alderman, (we know it full well) and said to my Lord Mayor, there were such Persons at my House talking of such a matter, and I come to advertise you of it, and desire you would consider of it, he had shewn his Piety and Zeal, and Love for Justice, much more in that than in admitting such Cabals in his House. But we know very well, as well as if we were in them, that they must go hand in hand in all these seditious and factious Business.

It is plain, Gentlemen, what the Design was from the Beginning to the End, nothing but to cause a Tumult and Confusion in the City, in Order to put that damned hellish Conspiracy for the Destruction of the King and his Brother, and every Man that was honest and loyal in Execution. This is certainly known to you all ; and that there should be such a Parcel of People untowardly linked together in this Matter, not one Man of which that they can pretend to be in any wise a Well-wisher to the Government, or to any that have any share in it : No, they are all Persons that are obnoxious to the Government that had any Hand in it ; but none of them Church of England-men, or Friends to her Established Worship ; notorious Dissenters, or profligate Atheistical Villains that herd together.

This, Gentlemen, is plain English, and necessary to be used upon all these Occasions : So that it remains now upon your Consciences, whether upon all these Circumstances that have been mentioned, you think, the bare obtaining of a Right in a Legal Course, or some worse Thing was designed.

We all know Mr. Papillon to be a wealthy Man, an able Merchant ; one that had rather have minded his Affairs Abroad, or at the Exchange, than

than the expensive, troublesome Office of Sheriff of London; but, that something was to be done to wreak a damned Malice and Revenge upon the Government. And sure, he must think, as his Party it seems did, that they would not be sufficient to subvert the Government, unless he could get into that Office.

This I tell him openly, and let him or his Party make their Remarks upon it as they please. But you are to Judge whether these Things be a sufficient Evidence of Malice, to support the Plaintiff's Action.

There was questionless a *Devilish Malice* fixed in his Heart and Mind, and he wanted an Opportunity to effect it; and he thought it for his own Security to be best to take this Course, and nothing else was in it. For abundance of People have a mind to do Mischief, but want Opportunity and safe Ways to do it in: And, Oh, they rejoyce, if they hit upon a Project, that shall carry a specious Pretence and Colour of Law, for then they think they are safe enough.

As in Case, I have a mind to do any particular Man an Injury in his Reputation and Business; the Business must not be done down-right, by going to every body, and saying, Such an one is Poor, or a Beggar, and do not trust him; but I must cunningly and slyly insinuate it, I am sorry for such a Man, I believe he is an honest Man, but however he oweth Money; and under this Sort of *Sniveling, Canting, Whining, sly rate*, do a Man an Injury whatsoever: And yet forsooth he shall have no Advantage against me for it: I shall strike a Dart into the very Heart of that Man's Credit, and yet he have no Remedy.

So if I have a mind to talk against the Government, I will not do it aloud, and speak what I mean openly; but I will *Whine*, and *Snivel*, and *Cant*, and make People believe I have dreadful Apprehensions of what is designing, and yet not bring my self in any Danger; for I will keep within Bounds all the while, though I do more Mischief than if I dealt fairly and above-board. *Alack-a-day* (as Mr. Pilkington said) *I am for the Preservation of the Liberty and Properties of the Subject, and I am for the Law*; but I find the City is strangely run down in their Rights and Privileges, and there are very Arbitrary Proceedings. And I am a Citizen, and have taken my Oath to preserve the Privileges of the City, and I will rather submit to the Inconvenience of a troublesome Office, than let all run thus: And immediately he sets himself *Cock-a-boop*, as if there were no one that took care of the City besides himself, and he were such a Patriot that there were none like him: And he and Mr. Bethel and Mr. Cornish forsooth, are the only Men of the Times, the only good Men; Men that are for the Liberties and Properties of the Subject, and the Rights of the City: Whereas these are the only Men that have made an Invasion upon them, and done what they could to destroy them; and God knows we might all of us have enjoyed very quietly every Man his own, if these contesting Riorers, and busy *Factionous Fellows* had not come among us. Every honest Man, I tell you, knows this to be true.

Gentlemen, As to the Business concerning the Damages, that, if you find for the Plaintiff, is

left to your Judgments to consider of, and give what you shall think fit upon such an Occasion. It is very true, it is not so easie a matter to ascertain particular Damages in such a Case; nor is it in an ordinary way so easie to prove, that because Sir William Pritchard was in Prison but five or six Hours there, he could suffer so much Damage as comes to ten thousand Pounds. As in the Case of a Person of great Quality and Honour, it is not easie to prove his particular Damage; nor in the Case of any of you, that are wealthy, able, sufficient Citizens, to say you are a Bankrupt, when we all know it is impossible to be true, and so no particular Damage doth ensue that can be proved; yet however, if the thing for which the Action is brought were designed with Malice, tho' the ill Design be not effected, that is no thanks to the Party, nor is to weigh with you, but the malicious Design must govern you.

Now, here I have taken notice to you, that the Malice of this Design here, was not against Sir William Pritchard as such a particular Man, but against my Lord Mayor, that this Clan that met at *Russel's* was an Overflowing of that *Gall* or *Malice* that was in his Heart.

If Mr. Papillon had brought an Action upon a Bond only, certainly it had been nothing but what he might very well do; or if he had pretended to sue for a bad Debt, that if he had staid would have been lost, it had been something: But you see what it was, and it is as apparent why it was, in that Mr. Goodenough said to Keeling, threatening him with the Displeasure of the Party, if he did not do it; and Mr. Goodenough and Mr. Brome were such Strangers to one another, that he must threaten Brome to complain of him, if he did not execute his Writs presently. Do they think all Mankind are so dull or blind, as not to see through such thin artificial Stuff as this?

Gentlemen, this is the Matter, The Government is a Thing that is infinitely concerned in the Case, that makes it so popular a Cause: The Government of the City, the Honour of your Chief Magistrate, and indeed the Honour of the King, whose Substitute he was, is concerned, and that puts a Weight upon your Inquiry into the Damages of this Case. You are to consider you give Damages to the Plaintiff, not as Sir William Pritchard, but as Lord Mayor: And your Severity in this Case, will deter all People from entering into Clans and Cabals, to make Disturbances, and affront the Government.

It is a thousand times better to keep within their own Bounds, mind their Callings and Employments, and concern themselves with their own Affairs, and leave the Administration of the Publick to them to whom it belongs, and is intrusted with. And according as we say in the Law, *Maxime*; so say I to Mr. Papillon and all the Party, *Ad Consilium ne accedas antequam voceris*. And do not be scared with imaginary Dangers, and groundless Jealousies, into tumultuous and disorderly Courses. You had much better keep in your Counting-House, I tell you again, and mind your *Merchandize*. Nay, and I do not doubt but you would much rather have done so, if there had not been some further fetch in it. It was not, I dare say, out of a frank, generous Humour to oblige the City, that Mr. Papillon would

would have spent his Time and Money in the Office of Sheriff; no, I know he had better ways to employ both.

It was not the generous Mind of Mr. Bethel, that called him on to be Sheriff of London, to entitle him to spend his Money; but on purpose to be one of the first that should turn all things upside down in the City, and disturb the Government: And they that succeeded him, carried on the Project, and they that would have been in, but could not, had a mind no doubt to follow so Worshipful an Example as he laid before them.

Then the Jury withdrew to consider of their Verdict, and after half an hour's Stay, returned, and found for the Plaintiff, and assessed Damages to Ten Thousand Pounds, and Costs to Four Marks.

L. C. J. Gentlemen, You seem to be Persons that have some Sense upon you, and Consideration for the Government, and I think have given a good Verdict, and are to be greatly commended for it.



The TRYAL and PROCESS of High Treason, and Doom of Forfaulture against Mr. Robert Baillie of Jerviswood Traitor.

Curia Justiciariæ S. D. N. Regis tenta in prætorio Burgi de Edinburgh vicesimo tertio die mensis Decembris 1684. Per Nobilem & Potentem Comitem Georgium Comitem de Linlithgow, Dominum Livingstoun, &c. Justiciarium generalem totius Regni Scotiæ, & honorabiles viros, Dominos Jacobum Foulis de Colintoun Justiciariæ Clericum, Joannem Lockhart de Castlehill, Davidem Balfour de Forret, Rogerum Hoge de Harcarfs, Alexandrum Seaton de Pitmedden, & Patricium Lyon de Carfs, Commissionarios Justiciariæ dicti S. D. N. Regis.

Curia legitime affirmata.

Intran

Mr. Robert Baillie of Jerviswood Prisoner,

Indited and accused, that where notwithstanding by the Common Law of this, and all other well-governed Nations, the Conspiring to overturn the Government of the Monarchy, or of the Established Government of this Kingdom, or the concealing, and not revealing of any Treasonable Design, Project, or Discourse tending thereto; or the assisting, aiding, or abating such as have any such Designs, does infer the Pains and Punishment of Treason. And by the third Act of the first Parliament of King James I, *The Rebelling openly against the King's Person*; and by the threety seventh Act of His second Parliament, *The Refecting, Maintaining, or doing Favours to open, or notour Rebels against the King's Majesty, is declared Treason, and punishable by Forfaulture.* And by the hundred fourty and fourth Act of the twelfth Parliament of King James VI, *It is declared Treason to Refet, Supply, or Intercommune with Traitors.* And by the first Act of the first Session of His Majesty's first Parliament, *It is declared, That it shall be High Treason for the Subjects of this Realm, or any number of them, less or more, upon any ground*

or pretext whatsoever, to rise, or continue in Arms, to make Peace or War, without His Majesty's special Approbation. And by the second Act of the second Session of His Majesty's said first Parliament, To Plot, Contrive, or Intend Death, or Destruction, or to put any Restraint upon His Majesty's Royal Person, or to Deprive, Depose, or Suspend Him from the Exercise of His Royal Government, or to levy War, or take up Arms against His Majesty, or any Commissionated by Him, or to intice any Strangers or others, to Invade any of His Majesty's Dominions, or to Write, Print, or Speak any thing that may expresse or declare such their Treasonable Intentions, is declared Treason, and punishable as such. Likeas, by the second Act of His Majesty's third Parliament, It is declared High Treason in any of the Subjects of this Realm, by Writing, Speaking, or any other manner of way to endeavour the Alteration, Suspension, or Diversion of the Right of Succession, or debarring the next lawful Successour. Nevertheless, it is of verity that the said Mr. Robert Baillie of Jerviswood, shaking off all Fear of God, Respect and Regard to His Majesty's Authority and Laws; and having conceived most unjustly, a great and extraordinary Malice and Hatred against His Majesty's Person

and Government, and having designed most Traiterously to debar His Royal Highness, His Majesty's only Brother, from His due Right of Succession, did amongst many other Traiterous Acts, tending to promote that wicked Design, endeavour to get himself Elected one of the Commissioners for negotiating the Settlement of a Colony of this Nation in *Carolina*, in one or other of the Days of the Moneths of *January, February, March, April, or May*, One thousand six hundred and eighty three Years; and that he might thereby have the freer and better Access to treat with the Earls of *Shaftsbury* and *Essex*, the Lord *Russel* and others, who had entered into a Conspiracy in *England* against His Majesty's Person and Government, and with Colonel *Rumsey, Walcot, West, and Ferguson*, and others who had likewise Conspired the Murder of his Majesty's Sacred Person, and of the Person of His Royal Highness; and finding that he could not get himself Elected one of the said Commissioners, he resolved to go to *London* upon his own Expences, and declared to severals (whom he took great pains to draw in to be his Accomplices) that his Design was to push forward the People of *England* who did nothing but talk, that they might go on effectually; and after he had settled a Correspondency here, he did go up to *London* in one or other of the saids Moneths, with Sir *John Cockran* and Commissar *Monro*, and did then, and there, transact with the saids Conspirators, or one or other of them, to get a Sum of Money to the late Earl of *Argyle*, a Declared Traitor, for bringing home of Men and Arms, for raising a Rebellion against His Majesty, and Invading this his Native Countrey; and so earnest was he in the said Design, that he did chide those *English* Conspirators, for not sending the same timeously, and lamented the Delays used in it; and perswaded the late Earl of *Argyle* and others in his Name to accept of any Sum, rather than not to engage; and amongst the many Meetings that he had at *London*, for carrying on the said Traiterous Design, there was one at his own Chamber, where he did meet with the Lord *Melvil*, Sir *John Cockran*, and the *Cessnocks* Elder and Younger, and amongst others, with Mr. *William Veitch* a Declared Traitor, and there he did treat of the carying on of the said Rebellion, and of the Money to be furnished by the *English* for *Argyle*, for buying of Arms. And that if the *Scots* would attempt any thing for their own Relief, they would get Assistance of Horse from *England*; and from that Meeting, he or ane or other of them did send down Mr. *Robert Martin* to prevent any rising, till it should be seasonable for carying on of their Designs which Mr. *Robert*, after he came to *Scotland*, did treat with *Polwart* and others, for carving on of the said Rebellion, by securing His Majesty's Officers of State, his Castles and Forces, and by putting his Correspondents here, and their Associates, in readines to assist the late Earl of *Argyle*; and after the said Mr. *Baillie* had engaged many of his Countrey-men in *England*, and had assured his Correspondents here, that the *English* were resolved to seclud His Royal Highness from his due Right of Succession, thereby to encourage them to concur in the said Rebellion, and Exclusion, he flew to that hight, that he did particularly and clossly correspond with Mr. *Robert Ferguson*, Sir *Thomas Armstrong*, Colonel *Rum-*

say, and *Walcot*, who were accessory to that horrid Part of the Conspiracy, which was designed against the sacred Life of His Majesty, and the Life of His Royal Highness, and did sit up several Nights with them, concerting that bloody Massacer; at least the said Mr. *Robert Baillie* of *Ferviswood* was, and is guilty of having Correspondence with the late Earl of *Argyle*, and Mr. *William Veitch* declared Traytors, and of being art and part of an Conspiracy, for assisting of these who were to rise in Arms against His Sacred Majesty, and for Exclusion of His Royal Brother, and of concealing and not revealing the Accession and Proposals of others for that effect. Wherethrow he has committed, and is guilty of the Crymes of High Treason, Rebellion, and others above specified, and is art and part of the same, which being found by ane Assize, he ought to be punished with Forfaulture of Life, Land and Goods to the Terror of others to commit the like hereafter.

His Majesty's Advocat produced an Act, and Warrant from the Lords of His Majesty's most Honourable Privy Council, for pursuing, and insisting against the said Mr. *Robert Baillie* of *Ferviswood*, whereof the Tenor follows: *Edinburgh*, the twenty two Day of *December*, one thousand six hundred and eighty four Years. The Lords of His Majesty's Privy Council, do hereby give Order and Warrant to His Majesty's Advocat, to pursue a Process of Treason and Forfaulture, before the Lords of His Majesty's Justiciary, against Mr. *Robert Baillie* of *Ferviswood*, to morrow at two a Clock in the Afternoon preceisly, and the said Lords do hereby Require and Command Sir *George Lockhart* of *Carnwath*, and Sir *John Lauder* Advocats, to concur, and assist in the said Process with His Majesty's Advocat, from the intenting until the End thereof, as they will be answerable upon their Alledgance. Extract by me, *sic subscribitur*,

Colin Mackenzie, Cls. *Sti. Concilii*.

Pursuers.	Procurators in Defence.
Sir <i>George Mackenzie</i> of <i>Rosbaugh</i> , Our Sovereign Lord's Advocat.	Sir <i>Patrick Hume</i>
Sir <i>George Lockhart</i>	Mr. <i>Walter Pringle</i>
Sir <i>John Lauder</i>	Mr. <i>James Graham</i>
} Advocats.	Mr. <i>Will. Fletcher</i>
	Mr. <i>William Baillie</i>
	Advocats.

The Pannal's Procurators produced ane Act of His Majesty's Privy Council, in their favours, whereof the Tenor follows: *Edinburgh*, the twenty third of *December*, one thousand six hundred eighty four Years, The Lords of His Majesty's Privy Council, having considered ane Address made to them, by Mr. *Robert Baillie* of *Ferviswood*, now indited at the Instance of His Majesty's Advocat, before the Lords Commissioners of Justiciary, of Treason, do hereby Require and Command Sir *Patrick Hume*, Mr. *Walter Pringle*, Mr. *James Graham*, Mr. *William Fletcher*, Mr. *James Falconer*, Mr. *William Baillie* Advocats, to Consult, Compear, and Debate for the Petitioner, in the Process of Treason, mentioned in his Address, without any hazard, as they will be answerable at their Peril; Extract by me, *sic subscribitur*.

William Paterson, Cls. *Sti. Concilii*.

After

After reading of the Inditement, the Lord Justice General required the Pannal to make answer thereto.

The said Mr. Robert Baillie Pannal pleaded Not Guilty.

Mr. *Walter Pringle* Advocat, as Procurator for the said Mr. *Robert Baillie* of *Ferriwood* Pannal, alleadges that he ought not to pass to the knowledge of an Assize; because he had not got a Citation upon fyfteen Days, or at least on a competent time, which is usual, and absolutely necessary in all Actions, and much more in Criminal Pursuits, especially, seeing, if a competent time be not allowed to the Pannal, he is precludit of the Benefit of an Exculpation, without which he cannot prove his Objections against Witnesses, or Assyzers, or any other legal or competent Defences; And by the late Act of Parliament concerning the Justice Court, all Pannals are allowed to raise Precepts of Exculpation, and thereupon to cite Witnesses for proving the Objections against Witnesses, and Assyzers, which necessarily presupposeth, that a competent time must be allowed to the Pannal to execut his Diligence, or otherwise, how is it possible he can prove a Defence of *alibi*, or any other just Defence; and as this is most consonant to that clear Act of Parliament, and to material Justice, and to the Rules of Humanity, so this Point has been already fully and often decided, and lately in the Case of one *Robertson* in July 1673. the Instance whereof is given by His Majesty's Advocat in his Book of Criminals, and Title of Libels, where the Lords found, that albeit *Robertson* got his Inditement in Prison, yet he behoved to get it upon fyfteen Days.

His Majesty's Advocat oppons the constant Traët of Decisions, whereby it is found, that a Person incarcerated may be Tryed upon twenty four Hours; and the late Act of Parliament is only in the Case where a Summons or Libel is to be raised; but here there is no Libel or Summons, but only an Inditement; nor was any Exculpation sought in this Case, before the Tryal, which is the Case provided for by Act of Parliament.

The Lords, Justice General, Justice Clerk, and Commissioners of Justiciary, repel the Defence, in respect the Pannal is a Prisoner, and that it has been the constant Custom of the Court, and that the Pannal made no former application for an Exculpation.

Sir *Patrick Hume* for the Pannal alleadges (always denying the Libel, and whole Members, and Qualifications thereof) that in so far as the Libel is founded upon harbouring, maintaining, and intercommuning with the Persons mentioned in the Dittay, the Pannal ought to be affoylized, because it is *res hæcenus judicata*, he having been formerly pursued before the Lords of His Majesty's Privy Council for the same Crimes, and fined in a considerable Sum; and therefore that Crime cannot now be made use of as a ground of Treason against the Pannal.

His Majesty's Advocat answers, That he restricts his Libel to the Pannal's entering in a

Conspiracy, for raising Rebellion, and for procuring Money to be sent to the late Earl of *Argyle*, for carrying on the said Rebellion; and for concealing, and not revealing; neither of which is referred to his Oath; and consequently was not *res judicata*, there being nothing referred to his Oath; but his Converse and Correspondence with some Ministers, and others within the Kingdom, and his own Gardiner, and his writing Letters to my Lord *Argyle*; and oppons the Decreet of Council it self, and restricts the Libel to all the Crimes not insisted on in the Decreet.

Sir *Patrick Hume* replies, That as to the Corresponding with the late Earl of *Argyle* at any time since his Forfaulture, was expressly proposed as an Interrogator to the Pannal in that Pursuit, at His Majesty's Advocat's Instance against him, before the Lords of His Majesty's Privy Council, and that not only his own Correspondence by himself; but also by Major *Holms*, Mr. *Carstares*, *Robert West*, *Thomas Shepherd*, *Richard Rumbold*, and Colonel *Rumsey*, as the Interrogator bears, as appears by a double of the Act of Council, written by the Clerk of Council's Servant, and is offered to be proven by my Lord Advocat's Oath: And as to any Correspondency with Mr. *Veitch*, it is not relevant, since he was not declared Rebel.

Sir *John Lauder* for His Majesty's Interest, answers, That he oppons the Decreet of Privy Council, where no such Interrogator was put to the Pannal, and the Decreet must make more Faith than any pretended Scroll, and cannot be taken away by His Majesty's Advocat's Oath, to His Majesty's Prejudice; and for Mr. *William Veitch*, he stands expressly Forfault in anno 1667. and the Doom of Forfaulture, is ratified in the Parliament 1669.

Sir *Patrick Hume* oppons the Reply, That as to the Corresponding with Mr. *Veitch*, it does not appear that he is the Person mentioned in the Act of Parliament; and albeit he were, as he is not, he having thereafter come home to Scotland, all the Punishment inflicted upon him was Banishment, not to return under the Pain of Death, which did take off any former Punishment; and it was no Crime in any Person to intercommune with him, especially in another Kingdom; and by the late Act of Council in anno 1683. even the Conversing and Intercommuning with declared Traitors, is restricted to an Arbitrary Punishment.

His Majesty's Advocat oppons the standing Doom of Forfaulture against *Veitch*, and the Proclamation, or Act of Council it self.

The Lords, Justice General, Justice Clerk, and Commissioners of Justiciary, having considered the Libel pursued by His Majesty's Advocat, against Mr. *Robert Baillie* of *Ferriwood*, with my Lord Advocat's Declaration, whereby he restricts the same to the Crimes not insisted on in the Decreet of Council formerly pronounced against the Pannal: They find the same Relevant as it is restricted, to infer the Pain of Treason, and remits the same to the knowledge of the Assize, and repels the remnant Defences

proponed for the Pannal, in respect of the Decreet of Council produced, bearing no such thing as is alleadged, and of the Answers made by His Majesties Advocat thereto.

A S S I S A.

The Earl of Strathmore.	Alexander Miln of Carlin.
The Earl of Belcarras.	Mr. James Elies of Stenbopsmilns.
Sir George Skeen, Provost of Aberdene.	Sir William Drummond of Haltbornden.
Sir James Fleming, late Provost of Edinburgh.	Major Andrew White, Lieutenant of Edinburgh Castle.
Sir John Ramsay of Whitehill.	Mr. David Graham, Sheriff of Wigtoun.
Adam Hepburn of Humby.	Colin Mackenzie, Collector of Ros.
Andrew Bruce of Earleshall.	David Burnet, Merchant.
John Stuart, Tutor of Alpin.	

THE Affize lawfully Sworn, no Objection of the Law in the contrary.

His Majesty's Advocat for Probation adduced the Witneses and Writs aftermentioned; and first,

Walter Earl of Tarras.

Sir Patrick Hume Procurator for the Pannal, objects against the Earl of Tarras, that he cannot be a Witness, because he is *socius & particeps criminis*; and it is clear by the 34. Chap. Stat. 2. Rob. 1. Concerning these that are excluded from bearing of Testimony, that *Socij & particeps ejusdem criminis, vel incarcerati & vinculati*, cannot bear Testimony: As also, the Earl of Tarras being presently under an Inditement of High Treason, and under the Impressions of Fear, and Death, no Person in his Circumstances can be admitted a Witness, as is not only clear from the foresaid Statute; but from the Common Law.

His Majesties Advocat answers, That it is an exception from that Rule, both by the Common Law, and ours, that in the Crime of lese Majestie, and especially that Branch thereof, which we call a Conspiracy, *socius criminis* may be a Witness, and which is introduced very reasonably by Lawyers, to secure the common Interest of Mankind, which is the chief of all Interests; and because Conspiracies cannot be otherways proved, and not to allow this manner of Probation, were to allow Treason, since no Man can prove a Plot, but he that is upon it, and how can a Man object against him as a Witness, whom himself trusted with his Life, his Fortune, and their common Plot, nor is the intenting of the Lybel any stronger Qualification, since every Man that is *socius criminis*, is under the same Impression, and it would rather seem the greater and nearer apprehensions a Man has of Death, he will be the more sincere and faithful; nor has the Earl of Tarras, nor did he ever seek any Security, in order to his deposing. And this has been constantly, and latlie, conform to the Common Law, as may be seen

in the hundreds of Citations set down by Mascard, *de probationibus*, Vol. 4. conclus. 1318. Num. 21. and the contrary Citations prove only, that regularly *socius criminis* cannot be a Witness.

Sir Patrick Hume replies, That the Statutes of Robert the first is opposed, and *non est distinguendum ubi lex non distinguit*, and not only was he *socius criminis*, which is acknowledged, but he is *incarceratus*, and lying under an Indytment of High Treason, and has thrown himself on the King's Mercy, and it is not proper he should be a Witness, seeing he is in the King's Mercy, who may give him his Life or not, and there was never a Person in these Circumstances, that ever was admitted a Witness.

Mr. Walter Pringle adds, That the Earl of Tarras, is not only in the Case of a Person who stands Indytred for High Treason; but must be looked upon, as a Person condemned for the said Crime, seeing he fully, and amply confest the Crime; & *confessus habetur pro convicto*, and never any Lawyer asserted, That *damnatus criminis lese Majestatis* could be admitted as a Witness, and there is nothing more clear, then that by the Common Law, and the Law of all Nations, this Objection ought to be sustained, for the Civil Law is clear, *leg. 11. cod. de testibus* and *Matheus* in his Title, *de probationibus, cap. de testibus*, doth assert positivlie, that the Cryme of lese Majestie, Heresie, and generally all these Crymes *que sine sociis non possunt facile admitti*, are not accepted. And he asserts, that the Lawyers, *viz. Gomefius, & Decianus*, who are of another Opinion, do acknowledge, *nominatum a reo damnandum non esse*, and that they contravert only, *An nominatio rei sit indicium sufficiens ad torquendum nominatum*.

Sir George Lockhart repeats, and oppons the Answer, and the Cryme lybelled, being a Conspiracy of Treason, which of it's own nature is managed, and carried on by Secresie and Contrivance; and which is only known to the Complices of the Treason, and which cannot be committed *sine sociis*, the Law of this Kingdom, and of all Nations, do allow *socios criminis* to be *testes habiles*, and not only are they admitted in the Case of such Conjurations, but generally in *omnibus criminibus exceptis*, amongst which the Crime of *Perduellion*, and lese Majestie is the chief, and it is absolutely impossible, that Plots, and Conspirations of Treason can be otherways proven, then *per socios*, and such as are *participes criminis*, and which is the common Opinion of all Lawyers, as may appear by *Farin. Quest. 45*. And the Authorities cited by him, and which is the inviolable pratique of this Kingdom: And as to that Pretence, That the Earl of Tarras is under a Process of Treason, and has submitted to His Majesties Mercy, and that *confessus habetur pro convicto*, it imports nothing, and infers no more then that he is *socius criminis*, and is still a habil Witness, as to Conjururation of Treason *socius criminis hoc ipso*, that it is acknowledged, or proven, being still under the hazard of Process, or Condemnation, which Law regards not in regard of the Secrecie involved in the nature of the Crime, that either Witnesses *neque actu neque habitu*, can be present, so that the Objection amounts to no less then that

that Conjurations of Treason cannot at all be proven: And as to the Law cited from the Majestie, it imports no more than that the Objection *regulariter procedit*, in Crimes, which of their own nature are not *perdifficilis probationis*, and are not *inter crimina excepta*, such as the Cryme of Conspiracy and Treason is.

Mr. William Fletcher oppons the Objection, and Reply, and further adds, that albeit *crimen læsæ Majestatis* be reckoned *inter crimina excepta*, and so have some Priviledge, as to the qualification of Witnesses; yet it cannot be denied, but there are some Objections competent against Witness adduced for proving Conspiracies, and Treason, *verbi causa*, that a Witness is a Capital Enemy, or that he is *sub potestate accusatoris*, and the Objection now pleaded, being taken complexlie, *viz.* That the Earl of Tarras is not only *socius criminis*, but also, that he is *publico judicio reus*, upon the same Crime, and that as means to procure His Majesties Favour, he has submitted himself, and come in His Majesties Mercy, by an acknowledgment of the Cryme, before the Dyet of Citation, he is obnoxious to a most just Objection, *viz.* That he is *sub potestate*, and by the Submission and Confession, his Life and Estate is now in His Majesties Hands, so that he is not only in the Case of a *reus confessor*, but in the Case of a Witness, who does absolutely depend upon His Majesties Advocate the Pursuer; and as a private accuser could not adduce his own Servants to be Witnesses, because they are *testes domestici*, and depend upon him, so far less ought a Witness to be adduced, who not only depends, as to his Estate, but as to his Life, and the Law gives a very good reason, and which is mentioned by Paulus, *Lib. I. receptarum sententiarum, cap. 12. parag. ult.* in these Words, *De se confessor non est audiendus ut testis, ne alienam salutem in dubium deducat qui de sua desperavit*; and as to the Pretence that a Conjuraton is a Crime so occult, that it must either be proven by such Witnesses, or otherways the guilty Person will escape: It is answered, That in this Case, His Majesties Advocate had an easie Remedy, for he might have pursued the Pannal, before he pursued the Witness, and the Terror and Apprehension of the event of a Proceſs for Treason cannot be constructed otherways, then to have influence upon the Deposition of the Witness; and as to the Citation out of *Farinacius*, it is only in the Case of *socius criminis*, but when he comes to treat *de teste accusato vel carcerato*, *Quæst. 56. articulo quarto*, he says, *Regula sit in accusato quod is pendente accusatione à testimonio repellitur*. And by the second Rule of the same Article, he says, it is a Principle *quod carceratus testimonium ferre prohibetur*, and he gives this reason, *quia præsumitur, quod falsum testimonium diceret pro aliquo qui ei promiserit se liberare à vinculo*, and limits this Rule, that he must be *carceratus propter crimen*.

Sir Patrick Hume adds, That it is a certain Principle, that any Person that is guilty *infamia juris*, cannot be a Witness, no more than a Person that is Convict, and Condemned of Treason; and if he were Convict, and Condemned of Treason, he could not be a Witness, even in the Case of Treason: So neither can the Earl

of Tarras in this Case be received a Witness, for he being adduced a Witness after he received his Inditment, and confessed the Crime, is equivalent as if he had been actually Convict; and whatever may be pretended, that *testes infames* may be admitted; yet it was never asserted by any Lawyer, that a Person Convict of Treason can be admitted a Witness.

Nota, That the Earl of Tarras deponed nothing against Jerviswood, but what the other two Witnesses deponed against himself before the Tryal, and upon which thereafter they being renewed, the Earl was forfeaulted, so that there could be no ground of Suspicion from his Circumstances.

The Lords Repelled the Objection against the Earl of Tarras, and ordains him to be received a Witness.

Walter Earl of Tarras, aged forty Years, married, purged, and sworn; being Interrogat, if about the Time that Sir John Cockram, and Commissar Monro got their Commission from the Carolina Company for London, the Pannal Mr. Robert Baillie of Jerviswood did not desire the Deponent to speak to Commissar Monro, to try if he could get him the said Pannal added to that Commission, Depones affirmative. Being Interrogat, if the said Jerviswood, the Pannal, did not tell the Deponent that he was resolved to go to London however upon his own Expenses, and that his and their going about the Carolina Business, was but a Pretence, and a blind; but that the true Design was, to push forward the People of England, who could do nothing but talk, to go more effectually about their Business, Depones affirmative. Depones that the Pannal did settle a Correspondence with the Deponent whereby he was to give an Account to the Deponent of what should pass betwixt the Countrey Party in England, and the Scotsmen there: And on the other Hand, the Deponent was to write to him what occurred here; Depones that the Pannal did say to the Deponent, if the King would suffer the Parliament of England to sit, and pass the Bill of Seclusion, that that was the only way to secure the Protestant Religion. Depones that the Pannal said to him, that the King might be induced to do so, if the Parliament would take sharp, or brisk Measures with him, or the like. Depones these Words were spoke to him by the Pannal, since the holding of the last Session of this current Parliament; and before the Pannal and Commissar Monro went for London. Depones that after the Pannal went to London, he did give the Deponent an Account by Letters, that Things were in great Disorder there, and that he hoped there would be effectual Courses taken to remeid them. Depones that Mr. Robert Martin did come to Mr. Pringle of Torwoodlies House in May 1683. or thereby, and brought a Letter to the Deponent's Lady unsubscribed, but the Deponent knows it was Jerviswood's Hand-writing, who was then at London, and that Mr. Martin told the Deponent, that Things in England were in great Disorder, and like to come to an hight, and that the Countrey Party were considering on Methods for securing the Protestant Religion. And

And that *Archibald*, sometime Earl of *Argyle*, was to get Ten thousand Pounds Sterling, whereas Thirty thousand Pounds *Stirl.* was sought by the *Scotsmen* at *London*; which was to be sent over to *Holland* to provide Arms; and that the late Earl of *Argyle* was to Land with these Arms in the *West-Highlands* of *Scotland*, and that the Deponent's Friend *Jerviswood* the Pannal, was to be sent over with the Money. Depones that *Philipbaugh* and he went to *Gallowshiels* House, where they met with *Polwort* and *Gallowshiels*, and that it was talked amongst them there, that in case those in *England* should rise in Arms, that it was necessary in that Case, that so many as could be got on the Borders, should be in a readiness to deal with Straglers and seize upon Horses, and that thereafter they should joyn with those that were in Arms on the Borders of *England*. Depones, That in the Case foresaid, it was said, it was convenient the Castle of *Stirling*, *Berwick*, and some other Strengths should be seized upon; and it was likewise spoke amongst them, That some Persons should be employed, to inquire what Arms was in that Countrey. Depones, That it was spoke then, that the best time for *Argyle* was to land in the West, when there was a Stur in *England* or *Scotland*, or Words to that purpose. Depones, That every one desired another to speak to such particular Persons as they could trust, by letting a Word fall indirectly upon supposition, in case of the Rising in *England*, concerning the Affair for preparing of them: And that he was told by *Philipbaugh* thereafter, that there was a Word and Sign to be used amongst them, viz. the Sign was by loosing a Button on the Breast, and that the Word was Harmony. Depones, the Pannal spoke to the Deponent, to advertise *Torwoodlie*, that he might acquaint *Mr. William Veitch* a forfault Traytor, who was in *Northumberland*, that he might keep himself close, and be on his Guard, lest he should be catched; which was since the Pannal was Prisoner in the Tolbooth of *Edinburgh*. And this is the Truth, as he shall answer to GOD.

Sic subscribitur,

Tarras.

Linlithgow. I. P. D.

Alexander Monro of *Bear-crofts*, aged forty five Years, or thereby; *solutus*, solemnly sworn and purged. Depones, That the Earl of *Tarras* proposed to the Deponent, that *Jerviswood* might be made one of the Commissioners for the Affair of *Carolina*, for that he could not safely stay at Home; and that the Deponent's answer was, that he had no Interest in the Affair, and so could not be a Commissioner. Depones, That the Pannal did wait for the Deponent at *Wooler*, and did go alongst with him to *London*, and that by the way he heard him regrave his own hazard and others, because of *Blackwood's* Sentence; and that he heard him regrave the hazard our Laws, and Liberties, and the Protestant Religion were in. Depones, That the Pannal spoke to the Deponent and others, more than once at *London* for getting of Money from the *English*, to be sent to the late Earl of *Argyle*, for bringing home Arms for the said Earl's Use, as he understood, for carrying on an Insurrection and Rebellion

in *Scotland*. Depones, That at the time libelled, in *Jerviswood's* Chamber in *London*, *Mr. William Veitch*, a forfault Traytor was present; and that *Sir John Cochran* did at that Meeting, expressly speak of Money to be sent to *Argyle*, for bringing home Arms for invading the Kingdom of *Scotland*; and that at another Occasion he heard some of them say, That there would betwenty Thousand Men in *Scotland* who would assist the Rebellion, and that he heard *Sir John Cochran* and *Jerviswood* speaking of it, but cannot be positive which of the two said it. Depones, That at the Meeting he heard *Jerviswood* speak, but did not hear him oppose that Treasonable Proposal, or contradict the Overture proposed by *Sir John Cochran*. Depones, That *Mr. Robert Martin* was sent down from that Meeting which was at *Jerviswood's* Chamber, to *Scotland*, to try what the People of *Scotland* would do for their own Safety: And that it was understood that the People of *Scotland* should not rise till there should be a rising in *England*, and that the Commission was granted to *Mr. Robert Martin*, by all the Persons present, whereof *Jerviswood* was one, and that there were present the Lord *Melwill*, *Sir John Cochran*, *Cessnock's* elder and younger, *Mr. William Castares*, *Mr. William Veitch*, *Jerviswood*, and the Deponent; and Depones they did contribute Money for *Mr. Martin's* Journey. Depones, That at his return, he meeting with the Deponent, told him, that Matters were in that Condition in *Scotland*, and that the Countrey was in such a Condition, as little would kindle the Fire in order to the Rebellion. And this is the Truth, as he shall answer to GOD.

Sic subscribitur,

Alexander Monro,

Linlithgow, I. P. D.

James Murray of *Philipbaugh*, aged 30 Years, married, purged and sworn, produces four Leaves of Depositions, emitted by him before the Lords of the Secret Committie; and all written and subscribed with his own Hand, which being publicly read, in Presence of the Justices, and Assize, he adheres thereto, in all Points, whereof the Tenor follows. Upon the 10th Day of *May*, 1683. Upon a Letter from *Mr. Pringle* of *Torwoodlie*, I came to his House in the Morning, and he presently led me to a Chamber, where I found *Mr. Robert Martin*, who was lately come from *London*, with whom we stayed a little, and discoursed of the News, and about the present Condition, and Temper of *England*, and in particular of *London*, which *Mr. Martin* said, was much irritated through some Attempts upon their Priviledges, either as to the Concern of the Sheriffs, or their Charter, but that all honest Men were of good Heart and very brisk, and after some general Discourses to this purpose, *Torwoodlie* and I left him and walked out a little, and he told me, he was expecting the Earl of *Tarras* presently, for he had sent to him; and *Mr. Martin* had a Letter to him from *Jerviswood*, then he told me that there were great Matters in agitation at *London*, and that *Mr. Martin* had come down with a Commission from our Friends there (I do remember he named any) but

but that I behoved not to expect he would impart his Instructions to me, for he was to communicate them only to *Polwart* and himself; (at least for these Shyres) and they were to pitch on such as they thought fit to intrust with the Affair, whereupon he assured me, that he had great Confidence in me, and his Kindness to me obliged him to send for me, to acquaint me that Matters were now come to a crisis, and that he had reason to think *England* would shortly draw to Arms, and stand by them, till they were satisfied anent the Bill of Exclusion, and what other Security they could propose for the Protestant Religion, and their Liberties, and that it was no Project of any considerable Party but a Design through the Kingdom, and that many of the finest Men, and of the greatest Interest and Credit there, had adjusted almost every thing necessary for the purpose, and had concerted Matters with our Friends there, in order to Concurrers from this, and had agreed to advance Money for furnishing Arms here, (I do not remember he told me more Particulars at this time) but said, *Polwart* would be at *Gallow-sheils* that Night, and it would be necessary that the Earl of *Tarras* and I should confer with him fully on the Business, about this time the Earl of *Tarras* lighted, and *Torwoodlie* having left us for a little time, being gone to bring Mr. *Martin*, the Earl of *Tarras* asked me, what News, I told him of Mr. *Martin's* being there, but that he had given me no account of the Design of his down-coming, which perhaps he would acquaint him with, but by what I had heard from *Torwoodlie*, I understood it to be, to engage us to rise in Arms shortly, whereat the Earl of *Tarras* hummed, and said, he would look ere he leapt such a Leap, or some such Expressions, presently Mr. *Martin* came, and the Earl of *Tarras* and he retired a little, after the reading an Letter he gave him, the Contents whereof was (as the Earl of *Tarras* informed me) only an Order from *Ferwiswood*, to deliver some Money to the Bearer, which he had left with him, and the Earl of *Tarras* called for his Servant, and bad him bring up the Money; in the mean time, *Torwoodlie* asked me, if I had acquainted the Earl of *Tarras* with what he spoke to me, and I told him, I had let something of it fall to him, but it was not to be thought, that Persons of Sense and Quality would engage in such Designs at random; so *Torwoodlie* said, that (tho' Mr. *Martin* would not commune with us upon his Commission directly) yet he thought it would be fit we conferred, and without taking notice of his Commission, discoursed of things upon Suppositions, and as our own privat Notions, abstract from any Prospect of a present Design, so after Dinner we four went to a Chamber, and after some general Discourses of the Discontents of both Kingdoms, these Suppositions following were discoursed, (and as I remember Mr. *Martin* started them all, or the most part) viz. What if the Countrey-Party in *England* should have Thoughts of going to Arms (whereof he knew nothing but only supposed such a thing, for discoursing a little freely, and to know our Sentiments, what we thought could be expected here in such a Case) would it not be expedient to have a settled Correspondence betwixt that Party there and here, and might not Matters

be so adjusted; that both Kingdoms should draw out in one day, and might not as many be expected to undertake in these Shires, and about *Edinburgh*, as would serve to surprize, and seize our Rulers (I do not remember any named, but the then Chancellor and Treasurer) and some to joyn with these on the *English* Borders, to assist them to surprize *Berwick*; and if for that effect, any Horse, or Dragoons, that should be in the Bounds might not be surprized, that their Horse and Arms might be gotten to furnish the Country People, and *Stirling* Castle; and if *Argyle* should at the same time land in the *West*, and raise that Countrey, would not these Measures contribute much to the Advancement and Security of the Interest of that Party here, since thereby the Government would be disordered, and such Steps would encourage all that had an Inclination to the Countrey-Party, to draw to them frankly, and scar many of the other side to act against them, and so they might have leasure to joyn from all Places; and might it not be expected, there would be as many in this Kingdom, as would be able to deal with the Forces here, at least divert them from troubling *England*. This is the Sum, as I remember, of what was proposed, and discours'd of, tho' I cannot distinctly say, it was in this Method and Expression, nor was all moved at once, but droped now and then, as the Discourse seemed to give Rise to it; and tho' I cannot fully recount all that was spoke on these Heads, and tell distinctly what this and that Man said; yet I remember these following Answers were giving, and (as I judged) acquiesced to by the whole Company; and they were certainly the Earl of *Tarras* his Sentiments and mine, and every one that spoke, used this or some such Precaution, that if they were concerned, or to give Counsel in any such Case, (as they were not, &c.) 1. As to the settling a Correspondence, it was confess'd to be very convenient for those of a common Interest; but the present Circumstances of Affairs were such (as we thought) that none could be found here who was fit to manage it, and would undertake it. 2. As to the trysting at the same time it could not be done without the devulging the Design to all Ranks of People, which none would undertake, except these already in desperat Circumstances, and they could not have generally much Influence. 3. The thing was not at all adviseable for this Kingdom, since if any of *England's* own Measures miscarried, they would not stir for any such Trust; and the spring of their Motions being always at *London*, there might happen an Interruption near the Appointment, whereof these here could have no timely Notice, and so might keep Tryst, whereby they would be exposed a Prey; and if they should subsist any time, or prevail (which was hardly possible) the multitude that must be employed, are tainted with such wild and unruly Principles, that if once they got the Sword in their Hands, they would never be brought to Order without a greater Force to overawe them; neither would any Expectation of *Argyle's* landing, be a just ground for such a Tryst, considering the Uncertainty of Sea-Voyages; and if *Argyle* were to be the Head, undoubtedly many People would conclude that he were to be suspected of private Designs, and that re-

storing

storing him might lay him aside : As also, that Despair might blind his usual Prudence, and prompt him to unsolid, and undigested Methods ; and so it was to be expected, that few of the Gentry (except such as he had special Influence on, or such as were under hard Circumstances) could embarque with him. 4. As to the surprising Rulers, &c. It was inveigh'd against, as an Action not to be thought of amongst Protestants (especially when the very Design of it was pretended to secure that Religion, which taught its Professors to abhor and detest such Principles as Popish, yea Unchristian) since it could not be effectuat without Bloodshed of People, secure in Peace, which being by all approv'd Divines and Casuists condemned as unlawful, and meer Assassination ; it was not to be doubted, that as such a Practice would cast a blot upon the whole Affair, and quite take off any pretence of Defensive Arms, so it would scar many from joyning. These things were reasoned again and again ; but I do not remember there was any formal Conclusion made, but the Discourse was let fall ; and Mr. Martin told us, if any of us had a mind for a Suit of Armour, he could provide as many as we pleas'd, from one who had made a great many lately to honest Men at London, of a new fashion, very light, and at an easy rate ; so Torwoodlie and I gave him our Measures, Earl of Tarras told he had a Suit already ; then Torwoodlie said to the Earl of Tarras and me, we would meet Polwort at Gallowshells, and desired we might commun with him, anent what we had been discoursing, so we hast'd away, that if possible we might both get home that Night, it being Saturday, and we unfurnished for staying abroad, and Torwoodlie whispered me just as I was mounting (as I think) that he was not clear we should commune before Gallowshells, for he was sometimes too much Good-fellow, or the like ; so the Earl of Tarras and I rod away together, and upon the way we were both of Opinion, that the Suppositions we had discours'd of, were in effect Propositions, and resolv'd if they were insist'd on by Polwort as we suspected, we would adhere to the former Answer, and would undertake nothing in these Methods. When we came to Gallowshells, the Laird was abroad, and Polwort was not come, so we had Thoughts to go away, being both damped with what had pass'd, and inclining to be free of farder meddling ; but the Lady would by no means hear of our going till her Husband came, who, she assur'd us, was about the Doors, and she having sent to call him, he would be in presently ; yet it was so late ere he came, that the Earl of Tarras could hardly have day enough to go home with ; so Gallowshells would not let him go, and he would not stay, unless I stay'd, so we both stay'd ; and not being resolv'd to discourse with Gallowshells on what pass'd, we went to the Tavern, on pretence I might call the Baillie, and seek Horses or Lime, and stay'd there till Polwort came (which seem'd unknown to Gallowshells) then we return'd to Gallowshells House, and after Supper Polwort whisper'd the Earl of Tarras and me, and enquir'd if we had seen Mr. Martin ; and we having told him we had, he enquir'd if we were free to commun on the Affair before Gallowshells, we told, as he thought fit, for

we could trust him ; Then he whisper'd Gallowshells, and (as I understood afterwards) ask'd if he was free to commune on Matters of great Secrecy and Importance with that Company, to which he assented, then we sat down clos together, and as I remember, Polwort began the Discourse ; but since I am not able to follow exactly the Method of our Conference, or keep the very Expressions us'd, or repeat all that was spok'd, or to tell distinctly what was every Man's part of the Discourse ; I shall set down the Heads, and most remarkable Passages thereof, that I remember in some Articles following ; 1. Polwort signified that he was credibly inform'd (but I do not remember he nam'd his Informer) that the Countrey Party in England would draw to the Fields shortly, as he heard before Lambast, wherewith Gallowshells seem'd visibly surpriz'd ; and being ask'd, if his Heart fail'd him already, he said he did love it better truly to be walking in his own Parks in Peace and Quiet, than to be meddling in such Matters ; however he assur'd the Company, that if there came any troublesome World, he would joyn with them firmly ; and the Earl of Tarras said, he wonder'd to hear of any such Resolution in England, for he took it for a Principle amongst that Party there, that they should make no Stir in the King's Life (which the whole Company own'd to be their Opinion and Desire) because that might strengthen the Duke's Interest ; and he suspected it was the Project of the Commonwealth's Men, with whom he believ'd few Scots Gentlemen would joyn ; and he was almost perswaded the Duke of Monmouth would not concur in any Rising during the King's Life, to which it was answer'd by Polwort, That he had indeed heard that Principle had been generally agreed to, but it seem'd they found they behov'd either to do their Business now, or lay aside Hopes of doing it hereafter, which might be, that if the Charter of London were let fall, they would not only lose all safe opportunity of digesting Matters ; but a great part of their Strength, and he heard all things were concert'd mutually, betwixt Monmouth's Friends and the Heads of the Commonwealth Party ; and tho' he heard Monmouth was shy on that account, yet it was hop'd he would engage, for otherways he would be desert'd by that Party. 2. Polwort told us the Suppositions above-written as Overtures concert'd betwixt our Friends at London, and the principal Men of that Party there ; so the Earl of Tarras and I renew'd our former Answers also above-written, and maintain'd them with all our Vigour, wherein Gallowshells joyn'd forwardly with us ; and Polwort assert'd, we went on very good grounds, and he was fully of our Opinion, if things were entire, but referr'd it to be consider'd, whether it were better to comply with some of these Methods, tho' not so proper and justifiable as were to be wish'd, than to disappoint the Business totally, which might be of the best consequence to all the Party, yet we did not condescend as I remember to undertake any of these Methods. And there was a further Argument adduc'd against the trysting above-written, viz. That it was talk'd there was a Day appointed in England latly in Shaftsbury's Time, which did not hold, so they were not to be rely'd upon. 3. It was propos'd to be

be considered what Methods were most proper in the Company's Opinion for *Scotland* to follow in case of *England's* Rising, whereanent it was said, that all that could be expected or desired from *Scotland*, was, that upon the certain News of *England's* being in the Fields, those in the Southern Shyres who would own that Party, should presently rise, and (how soon they could get as many conven'd as would be able to deal with stragling Parties, or any sudden Rising in the Countrey) march to joyn them, and that it would be fit these in the Northern Shyres of *England* waited near the Borders for such, and that they had Officers trysted there to command, and that then it would be seasonable for *Argyle* to land in the *West*, and these Parties on the Borders might divert the Forces till he had time to put himself in a Posture. These things seem'd to be the Sentiments of the whole Company, but were not finally determined till the Opinion of others who were to be communed with by *Polwort* were known: And it was represented, there behoved not to be any wilful and obstinate adhering to our own Thoughts of things, (but an mutual Condescendance to others concerned) otherwise it were not possible to bring a publick Design to any good Issue.

4. All the Company seem'd to agree, that they should undertake nothing or move in that Affair, till they had a full and certain account what *England* propos'd, what Methods they resolv'd to follow there, who were to be their Heads, and that if they design'd any Attempt on the King's Person, or overturning Monarchy, they would not be forward or clear to joyn: And it being here insinuated, that the most they could do (at least for which there could be any plausible pretence to justify) was to draw together, and without any Act of Hostility, send Addresses to His Majesty for Redress of the present Abuses of the Government, and for obtaining sufficient Security against the Hazard they apprehended to their Religion and Liberties. It was said by *Polwort*, that he was apt to think, that was their very Design, for he had heard it was generally believed by that Party in *England*, that if once they were in a Body, the King would be prevail'd with to quite the Duke, to be tryed for Popery, Correspondence with *France*, and Accession to the Popish Plot, and then if the King were once free from the Influence of the Duke's Counsels, they were confident he might be moved to reform their Abuses, and secure their Religions and Liberties for the future to their Contentment.

5. It was resolv'd, that till we got the foresaid Account from *England*, and were satisfisd thereanent, and knew others here (who were to be communed with) their Sentiments of what Methods were most proper for us, in case we should undertake, we should not meddle further; only it was left to the Earl of *Tarras* and me, if we thought fit to acquaint Sir *William Scot* younger with some of the Matter of this Conference overly, without taking notice of our Informers, or such an Conference; and it was recommended to all to be enquiring (at such as they had some Trust in) indirectly about the Affection of our Neighbours, and what Arms there was amongst them; that if we should get an satisfying account, and resolve to joyn, we might know where to seek Men and Arms suddenly; here it was said by *Polwort*, as I think, that if the Earl of *Tarras*,

Torwoodlie, *Gallowshells*, and I once took Horse; he thought the most part of the *West* end of *Tiviotdale* and *Selkirkshyre* would soon come to us, especially, when they heard *England* was risen, then we trysted to meet there against *Midsummer* Fair, betwixt and which the foresaid Account was expected, but in case it came to any of our Hands sooner, we promised to advertise the rest, that we might meet presently, if the Case required; this is the Substance and Sum of what pass'd at the foresaid Conference, that I can now remember; but I remember, I was likewise told these following Particulars in privar, by *Polwort* or *Torwoodlie*, (which of them, I cannot distinctly tell) the Day of the foresaid Conference, or within a short time after.

1. That *Polwort* keepest the Correspondence with our Friends at *London*, I remember not positively of any of them that was named, to be on the Entrigue there, except my Lord *Melvil*, Sir *John Cochran*, *Ferwiswood*, and Commissar *Monro* (for I hardly knew any of the rest) and, as I think, Commissar *Monro* was call'd his Correspondent there.

2. That the Money to be advanced by the *English* Partie to *Scotland* was ready when Mr. *Martin* came from *London*, and it was expected, that within few Days after, it would be dispatched with some Confident to *Holland* (whether by Bills, or in Cash, I cannot say) it was call'd Ten Thousand Pound Sterlin, and was to be employed (as I was told) by that Confident, at *Argyle's* Sight, for buying Arms, providing Ships to transport them with *Argyle*, to the *West* here, and such other Charges.

3. That how soon our Friends at *London* got notice of the safe Arrival of the Confident foresaid, and all other things were finally concluded there (which was expected would be about the middle of *June*, as I remember) they would come home, and, as they pass'd, would give them, or one of them, an particular Account of all Resolutions taken to be communicat to the rest, that it was not to be expected by Letters, that behoved to be under Figures and dark Expressions, and, as I remember, they were written as it were about the *Carolina* Business, or some Household Furniture, as I was told, for I never remember I saw any Letter, either direct to *London*, or sent from it on that Head.

4. I was told there was a Sign and a Word agreed on by that Party, so that Men might know with whom they might use Freedom, the Word, as I remember, was *Harmony*, and the Sign, the opening two Buttons in the Breast-coat and shutting them presently; this I communicat to the Earl of *Tarras*, but does not mind I ever saw it used, except when I visited *Park-Hay* here in Town, about the End of *June*; we discoursing a little freely, he asked if I had the Word and Sign of the *Carolina* Men, and I having given them, he said something to this purpose, that he was afraid that the *Carolina* Business did not go well, for there had been some of the Managers expected here (as I think he named *Ferwiswood* or Commissar *Monro*) these eight Days past, but there was none come, nor could he learn that any of their Friends had heard from them for several Posts. *Polwort*, *Torwoodlie*, and I met at *Gallowshells*, on *Midsummer* Fair, but I mind nothing pass'd but private *Whisperings*. Dated September 15. 1684. and subscribed thus,

James Murray.

Edinburgh, December 23. 1684.

The Deposition above written being read to the said *James Murray* of *Philipbaugh*, in presence of the Justices and Assizers, he adheres thereto in all Points upon Oath.

Sic subscribitur,

James Murray.

Linlithgow, I. P. D.

The said *James Murray* further Depons, That at their meeting at *Gallowshells*, it was resolved, that they should keep up their Cefs unpaid till their next meeting at Midsummer, which was to be at *Gallowshells*, and should deal with all these they had influence upon to do the like, and that upon the Supposition mentioned in his Oath given in. It was spoke amongst them, that the Troopers Horses should be seized upon when they were grazing. And this is the Truth, as he shall answer to GOD.

Sic subscribitur,

James Murray.

Linlithgow, I. P. D.

Hugh Scot of *Gallowshells*, aged 36 Years, married, purged, &c. and sworn. Depons, That the Earl of *Tarras* and *Philipbaugh* did come to the Deponent's House, in *May*, 1683. and *Polwart* came likewise there, where there were Discourses and Proposals, that if the *English* would rise in Arms, their Friends in the South Shires should rise with them; and that they should seize the Horses belonging to the King's Troops where they grazed; and the Town of *Berwick*, and the Castle of *Stirling*: And likewise it was there discoursed anent the late Earl of *Argyle's* coming to invade *Scotland*, but because of the uncertainty of Sea Voyages, there was not much stress laid upon it. Depons, It was also proposed, that some of the South Countrey whom they trusted in should be acquainted with it, and that Endeavours should be used to learn what Arms was in the Countrey. Depons, There was some such Discourse there, as that the Earl of *Tarras*, *Philipbaugh*, *Torwoodlie*, *Polwart*, and some others should draw to Horse with the first when the rising should be in readiness, that it might be expected that the South Parts of *Teviotdale* and *Selkirk* Shire would joyn with them. And this is the Truth, as he shall answer to GOD.

Sic subscribitur,

Hugh Scot.

Linlithgow, I. P. D.

His Majesties Advocat produced other Depositions, emitted by *Gallowshells*, before the Lords of the Secret Committee, whereof the Tenor follows.

Edinburgh, the 14th of September, 1684.

Gallowshells Depons, That the Earl of *Tarras*

and *Philipbaugh*, being in his House in *May*, 1683. Discoursed of an intended rising in *England*, and of Proposals made to *Scotsmen*, to rise with them, and of *London* in particular, and that *Polwart* was present at that Meeting, and told he was sure the *Englishmen* intended so, and that it was Discoursed at that Meeting amongst them, that it were fit to seize *Berwick* and *Stirling*; and that it was talked amongst them of bringing the Duke of *York* to Tryal, and that the King would abandon him.

Sic subscribitur,

Hugh Scot.

Perth Cancel.

Queensberry.

George Mackenzie.

Jo. Drummond.

George Mackenzie.

Edinburgh, October 29. 1684.

Sederunt

Lord Chancellour.

Lord Secretary.

Lord President.

Lord Advocat.

The Laird of *Gallowshells*, Prisoner in the Tolbuich of *Edinburgh*, being called and examined upon Oath, Depons, That in the Moneth of *May*, 1683. The Earl of *Tarras*, *Hume* of *Polwart* Elder, and Laird of *Philipbaugh*, came to the Deponent's House, himself being absent, at his coming Home, they were speaking of the Security of the Protestant Religion; and of a Party in *England*, who would secure, or seize the King or Duke, and that if any should rise in Arms to defend them, or to rescue the King and Duke: There was another Party who would rise in Arms against them; it was proposed, that some Countrey-men should be spoken to, to try their Resolutions, and that the Resolutions of *England* should be told them, to see if they would concur. But the Deponent does not remember that this Proposition was approved, or undertaken to be done by any present; nor does he remember who managed the Discourse. It was likewise proposed, to seize the Officers of State, especially the Chancellour and Thesaurer, and the said Sir *John Cochran* was to come to the West from *England*, for advancement of the Design; and that the Earl of *Argyle* was to land in the West-Highlands, and to raise that Countrey. Of these Matters, all these who were present discoursed, as of an Affair that they were agitating, and wherein themselves were particularly concerned, though at that time they did not conclude what their Carriage should be; The reason why the Deponent cannot be more particular is, because he was sometimes going out, and sometimes walking up and down the Room; and though the Deponent cannot be positive of the very Words; yet he is positive they were either these Words, or Words to that purpose.

Sic subscribitur,

Hugh Scot.

Perth Cancellarius.

Edin-

Edinburgh, December 23. 1684.

Hugh Scot of *Gallowshells*, being solemnly Sworn, in presence of the Justices and Affize, adheres to the Depositions within, and above-written in all Points,

Sic subscribitur,

Hugh Scot.

Linlithgow, I. P. D.

His Majesties Advocat in fortification of the former Probation, adduces the Printed Copy of *Mr. William Carstares* Depositions, emitted before the Officers of State, and other Lords of Privy Council, and leaves the same to the Affize, and uses it as an Adminicle of Probation ; for though it was capitulat, that he should not be made use of as a Witness ; yet it was agreed, that the Deposition should be published : And likewise produces the principal Deposition signed by himself, and the said Lords.

The Lords Justice-General, Justice-Clerk, and Commissioners of Justiciary, admit the Paper produced as an Adminicle, and refers the Import thereof to the Inquest, and ordains the Printed Paper as it is collationed, to be taken in, and considered by the Inquest.

Sir William Paterson, and *Mr. Colin Mackenzie*, Clerks of His Majesties Privy Council being Interrogat, if they heard *Mr. William Carstares* own the Depositions read, Depons they saw and heard him Swear, and own the same upon Oath, and they collationed the Printed Copy with the Original formerly, and now they heard it collationed.

Sic subscribitur,

William Paterson.

Colin Mackenzie.

The Deposition of Mr. William Carstares, when he was examined before the Lords of Secret Committee, given in by him, and renewed upon Oath ; upon the 22d. of December, 1684. in presence of the Lords of His Majesties Privy Council.

Edinburgh-Castle, September 8. 1684.

Mr. William Carstares being examined upon Oath, conform to the Condescention given in by him, and on the Terms therein mentioned ; Depons, That about November, or December, 1682. *James Steuart*, Brother to the Laird of *Cultnefs*, wrote a Letter to him from *Holland*, importing, That if any considerable Sum of Money could be procured from *England*, that something of Importance might be done in *Scotland* : The which Letter, the Deponent had an inclination to inform *Shepherd* in *Ab-Church-Lane*, Merchant in *London* of ; but before he could do it, he wrote to *Mr. Steuart* above-named, to know from him,

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if he might do it ; and *Mr. Steuart* having consented, he communicat the said Letter to *Mr. Shepherd*, who told the Deponent that he would communicat the Contents of it to some Persons in *England* ; but did at that time name no body, as the Deponent thinks : Sometime thereafter, *Mr. Shepherd* told the Deponent, that he had communicat the Contents of the Letter above-named, to *Colonel Sidney*, and that *Colonel Danvers* was present, and told the Deponent, that *Colonel Sidney* was averse from imploing the late Earl of *Argyle*, or meddling with him, judging him a Man too much affected to the Royal Family, and inclined to the present Church-Government ; yet *Mr. Shepherd* being put upon it by the Deponent, still urged, that one might be sent to the Earl of *Argyle* ; but as *Mr. Shepherd* told him, he was suspected upon the account of his urging so much ; yet afterwards he pressed, without the Deponent's knowledge, that the Deponent being to go to *Holland* however might have some Commission to the Earl of *Argyle*, which he having informed the Deponent of, the Deponent told him, that he himself would not be concerned, but if they would send another, he would introduce him ; but nothing of this was done : Upon which the Deponent went over, without any Commission from any body to *Holland*, never meeting with *James Steuart* above-named : He was introduced to the Earl of *Argyle*, with whom he had never before conversed, and did there discourse what had past betwixt *Mr. Shepherd* and him ; and particularly about remitting of Money to the said Earl from *England* ; of which the said *Mr. Steuart* had written to the Deponent, namely of 30000 Pounds Sterling ; and of the raising of 1000 Horse and Dragoons ; and the securing the Castle of *Edinburgh*, as a matter of the greatest Importance : The Method of doing this was proposed by the Deponent, to be one Hour, or thereby, after the relieving of the Guards : But the Earl did not relish this Proposition, as dangerous ; and that the Castles would fall of consequence, after the Work Abroad was done. *James Steuart* was of the Deponent's Opinion for seizing the Castle, because it would secure *Edinburgh*, the Magazines and Arms ; as to the 1000 Horse and Dragoons, my Lord *Argyle* was of Opinion, that without them nothing was to be done ; and that if that number were raised in *England* to the said Earl, he would come into *Scotland* with them ; and that there being so few Horse and Dragoons to meet them, he judged he might get the Country without trouble, having such a standing Body for their Friends to Rendezvous to ; and the said Earl said he could show the Deponent the convenient Places for landing, if he understood ; and as the Deponent remembers, where the Ships could attend. The Deponent remembers not the Names of the Places. The Deponent spoke to the Lord *Stairs* ; but cannot be positive that he named the Affair to him, but found him shy : But the Earl of *Argyle* told him, he thought *Stairs* might be gained to them : And that the Earl of *Lowdown* being a Man of good Reason, and disoblged, would have great influence upon the Countrey, and recommended the Deponent to Major *Holms*, with whom the Deponent had some Acquaintance before, and had brought over a Letter from him to the

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Earl

Earl of *Argyle* ; but the Deponent had not then communicate any Thing to the said *Holms*, *James Steuart* laid down a way of Correspondence by Cyphers and false Names, and sent them over to *Holms*, and the Deponent, for their use (which Cyphers and Names, are now in the Hands of his Majesties Officers, as the Deponent supposes) and did desire the Deponent earnestly to propose the 30000 Pound Sterling abovenamed to the Party in *England*, and did not propose any less ; for as the Earl told the Deponent, he had particularly calculate the Expence for Arms, Ammunition, &c. But *James Steuart* said, that if some less could be had, the Earl would content himself, if better might not be ; but the Earl always said, that there was nothing to be done without the body of Horse and Dragoons above-mentioned. During the time of the Deponent his abode in *Holland*, tho' he had several Letters from *Shephard*, yet there was no satisfactory Account, till some time after the Deponent parted from the Earl of *Argyle*, and was making for a Ship at *Rotterdam*, to transport himself to *England*. *James Steuart* wrot to him that there was hopes of the Money. The next Day after the Deponent came to *England*, he met with Sir *John Cochran*, who, with Commissar *Monro*, and *Jerviswood*, was at *London* before he came over ; and Depons, That he knows not the account of their coming, more then for the perfecting the Transaction about *Carolina* : And having acquainted Sir *John Cochran* with the Earl's Demands of the 30000 Pound Sterling, and the 1000 Horse and Dragoons, Sir *John* carried him to the Lord *Russel*, to whom the Deponent proposed the Affair, but being an absolute Stranger to the Deponent, had no return from him at that time ; but afterwards having met him accidentally at Mr. *Shephard*'s House, where he the Lord *Russel* had come to speak to *Shephard* about the Money above-named, as Mr. *Shephard* told the Deponent. The Deponent (when they were done speaking) desired to speak to the Lord *Russel*, which the Lord *Russel* did, and having reiterate the former Proposition for 30000 Pound Sterling, and the 1000 Horse and Dragoons, he the Lord *Russel* told the Deponent, they could not get so much raised at the time, but if they had 10000 Pound to begin, that would draw People in, and when they were once in, they would soon be brought to more ; but as for the 1000 Horse and Dragoons, he could say nothing at the present, for that behoved to be concerted upon the Borders. The Deponent made the same Proposal to Mr. *Ferguson*, who was much concerned in the Affair, and zealous for the promoting of it. This Mr. *Ferguson* had in *October* or *November* before, as the Deponent remembers in a Conversation with the Deponent in *Cheape-side*, or the Street somewhere there about, said, That for the saving of innocent Blood, it would be necessary to cut off a few, insinuating the King and Duke, but cannot be positive whether he named them or not, to which the Deponent said, that's Work for our wild People in *Scotland*, my Conscience does not serve me for such Things ; after which the Deponent had never any particular Discourse with *Ferguson*, as to that Matter ; but as to the other Affair, *Ferguson* told the Deponent that he was doing what he could to get it effectuate, as particularly that he spoke to one Major *Wild-*

man who is not of the Deponent his acquaintance. *Ferguson* blamed always *Sidney*, as driving Designs of his own. The Deponent met twice or thrice with the Lord *Melvil*, Sir *John Cochran*, *Jerviswood*, Commissar *Monro*, the two *Cessnocks*, *Montgomery* of *Landshaw*, and one Mr. *Veitch*, where they discoursed of Money to be sent to *Argyle*, in order to the carrying on the Affair, and though he cannot be positive the Affair was named ; yet it was understood by himself, and as he conceives by all present, to be for rising in Arms, for rectifying the Government. Commissary *Monro*, Lord *Melvil*, and the two *Cessnocks* were against meddling with the *English*, because they judged them Men that would talk, and would not do, but were more inclined to do something by themselves, if it could be done. The Lord *Melvil* thought every thing hazardous, and therefore the Deponent cannot say he was positive in any thing, but was most inclined to have the Duke of *Monmouth* to head them in *Scotland*, of which no particular Method was laid down. *Jerviswood*, the Deponent, and Mr. *Veitch*, were for taking Money at one of these Meetings. It was resolved, that Mr. *Martin*, late Clerk to the Justice-Court should be sent to *Scotland*, to desire their Friends to hinder the Countrey from rising, or taking rash Resolutions upon the account of the Council, till they should see how Matters went in *England*. The said *Martin* did go at the Charges of the Gentlemen of the Meeting, and was directed to the Laird of *Polwart* and *Torwoodlie*, who sent back Word that it would not be found so easie a matter to get the Gentry of *Scotland* to concur : But afterwards in a Letter to Commissar *Monro*, *Polwart* wrote that the Countrey was readier to concur than they had imagined, or something to that purpose. The Deponent, as above-said, having brought over a Key from *Holland*, to serve himself and Major *Holms* : He remembers not that ever he had an exact Copy of it, but that sometimes the one, sometimes the other keepest it, and so it chanced to be in his Custody, when a Letter from the Earl of *Argyle* came to Major *Holms*, intimating, that he would joyn with the Duke of *Monmouth*, and follow his Measures, or obey his Directions. This Mr. *Veitch* thought fit to communicate to the Duke of *Monmouth*, and for the understanding of it was brought to the Deponent, and he gave the Key to Mr. *Veitch*, who as the Deponent was informed, was to give it and the Letter to Mr. *Ferguson*, and he to shew it to the Duke of *Monmouth* ; but what was done in it, the Deponent knows not. The Deponent heard the Design of killing the King and Duke, from Mr. *Shephard*, who told the Deponent some were full upon it. The Deponent heard that *Aaron Smith* was sent by those in *England* to call Sir *John Cochran*, on the account of *Carolina*, but that he does not know *Aaron Smith*, nor any more of that Matter, not being concerned in it. *Shephard* named young *Hamblen* frequently as concerned in these Matters.

Signed at *Edinburgh-Castle*, the 8th of September, 1684. and renewed the 18th of the same Month.

William Carstairs.
PERTH Cancell. I. P. D.

Edinburgh-Castle, 18th September, 1684.

Mr. William Carstares being again examined, adheres to his former Deposition, in all the Parts of it, and Depones he knows of no Correspondence between Scotland and England, except by Martin before named; for those Gentlemen to whom he was sent, were left to follow their own Methods. Veitch sometimes, as the Deponent remembers, stayed sometimes at Nicolson, Stabler's House at London-wall; sometimes with one Widow Harcastle in Moor-fields. The Deponent did communicate the Design on foot to Doctor Owen, Mr. Griffil, and Mr. Mede, at Stepney, who all concurred in the promoting of it, and were desirous it should take effect; and to one Mr. Fretb in the Temple, Councillor at Law, who said that he would see what he could do in reference to the Money, but there having gone a Report, that there was no Money to be raised, he did nothing in it; nor does the Deponent think him any more concerned in the Affair. Nelsbrop frequently spoke to the Deponent of the Money to be sent to Argyle, whether it was got or not, but the Deponent used no freedom with him in the Affair. Goodenough did insinuate once, that the Lords were not inclined to the Thing, and that before, they would see what they could do in the City. The Deponent saw Mr. Ferguson, and Mr. Rumsay, lurking after the Plot broke out, before the Proclamation, having gone to Ferguson, in the back of Bishopsgate-street, at some new Building, whether he was directed by Ferwiswood, who was desirous to know how Things went. Rumsay was not of the Deponent his Acquaintance before, but they knew as little of the Matter as the Deponent. This is what the Deponent remembers, and if any thing come to his Memory, he is to deliver it in betwixt the first of October. And this is the Truth, as he shall answer to GOD.

William Carstares.

PERTH Cancell. I. P. D.

At Edinburgh, the 22d of December, 1684.

These foregoing Depositions, Subscribed by Mr. William Carstares Deponent, and by the Lord Chancellor, were acknowledged on Oath by the said Mr. William Carstares, to be his true Depositions; and that the Subscriptions were his, in Presence of us Undersubscribers.

William Carstares.

David Falconer.
George Mackenzie.

PERTH Cancell.
Queensberry.
Athol.

His Majesties Advocat for further Probation, adduces the Examinations of Mr. Shephard, taken before Sir Leolin Jenkins, Secretary of State for England, with the Information or Deposition of Mr. Zachary Bourn, relating to the Plot, signed by him and Secretary Jenkins, of which Depositions the Tenors follow.

The Examination of Thomas Shephard of London, Merchant, taken upon Oath, before the Right Honourable Sir Leolin Jenkins Knight, His Majesties Principal Secretary of State, the 23d. Day of December, 1683.

The Deponent saith, That Ferguson told him, on, or about the Moneth of April last, that an Insurrection was intended both in England and in Scotland, and that for the settling that Affair betwixt the two Nations, Mr. Baillie, Mr. Monro, Sir John Cochran, Sir Hugh and Sir George Campbells, with some others (whose Names this Deponent heard not) were come to London.

That the Deponent had some acquaintance with Mr. Baillie, Mr. Monro, and Sir John Cochran, and none at all with Sir Hugh and Sir George Campbells; that Mr. Baillie told the Deponent, that the Earl of Argyle demanded thirty Thousand Pounds of the English to capacitat him to begin the Business effectually in Scotland, and that he the said Baillie likewise told the Deponent, that having concerted Things with the Lord Russell and others, he the said Baillie found an impossibility of raising that Sum; after which the said Baillie had acquainted the Deponent, that they were certainly promised ten Thousand Pounds, which Sum was agreed to be payed into the Deponent's Hands, in order to be remitted into Holland, for the providing of Arms; and that the said Baillie told the Deponent at divers times, that the said Sum, or at least one half of it would be payed such a Day, and such a Day; and sometimes asked the Deponent, if he had received any Part of the said Money, to which the Deponent replied that he had not, and that he the Deponent scarce thought any would be payed.

And the Deponent also saith, that having had some little Conversation with Sir John Cochran, he remembers well, that both of them did sometimes lament the Delays in not paying in the Money, and said, that although the said ten Thousand Pounds were payed in, they, the said Sir John Cochran and Mr. Monro, feared it would be too little; and this Deponent further sayeth not as to any new Matter. But the Deponent being asked to explain what he thought was meant by the Words above-written, viz. to capacitat him (the Earl of Argyle to begin the Business) he, this Deponent sayeth, that he did understand by the Word Business, an Insurrection in Scotland.

Sic subscribitur,

Thomas Shephard.

Jurat coram
L. Jenkins.

The Information of Zachary Bourn, of London, Brewer, taken upon Oath, the tenth Day of December, 1683. before the Right Honourable Mr. Secretary Jenkins.

The Informant Deposeth, and sayeth, That Mr. Baillie set up one Night, if not two, with Mr. Ferguson, and went several times in the Evening

ing with him to the Duke of *Monmouth*, and the chief Managers of the Conspiracy ; That *Ferguson* told the Deponent, that he the said *Baillie* was the chief Man for the *Scots*, next to the Lord *Argyle* ; that the said *Baillie* did sit up the greatest part of one Night with the said *Ferguson* ; at which time this Deponent believeth they were busie in preparing the intended Declaration, which the Deponent has the more reason to believe, in as much as the said *Ferguson* did go about to show him the Deponent such a Paper, wherein the said *Ferguson* was hindered by the coming up stairs of some Person, to speak with the said *Ferguson*, that the said *Ferguson* told the Deponent, that the main Business of the said *Baillie*, in meeting the saids Conspirators, was in order to get from them the ten thousand Pounds, promised for the buying of Arms, for the Insurrection intended in *Scotland*.

That the Deponent saw Mr. *William Carstares* come often to the Lodgings of the said *Ferguson* ; but that the said *Ferguson* never told the Deponent of any Discourse held by him with the said *Carstares* ; and further this Deponent saith not.

Sic subscribitur,

Zac. Bourn.

Jurat' coram
L. Jenkins.

His Majesty's Advocat likewise produced several Warrants, and Papers to prove, that those Depositions are sign'd by Sir *Leolin Jenkins*.

His Majesty's Advocat also produced the Books of Adjournal, bearing Mr. *William Veitch* to be a Forfault Traitor, and the Act of Parliament whereby the Forfaulture is ratified.

His Majesty's Advocat's Speech to the Inquest.

My Lords and Gentlemen,

YOU have now a Conspiracy against His Majesty's Sacred Person and Royal Government, so fully discover'd, that they must want Reason as well as Loyalty, who do not believe the Discovery ; and they must be Enemies to Sincerity, as well as to the King, who do not acknowledge it. Beside, That the Councils of all the three Nations thought the Proof sufficient for Indicting a General Thanksgiving through all these Nations ; and that the Judges of *England* thought the same strong enough to infer Forfaulture of Life and Estate against some of all Ranks there ; you have a Discovery made here from the late Earl of *Argyle's* own Letters, and the Confession of his own Emissaries, the two surest Proofs that Law ever invented, or the Nature of Humane Affairs can allow ; and I am this Day to add to all this, a new

Sett of Proofs in the Process that I now lead against this Pannal, from the Confessions of Noblemen and Gentlemen, who have been engaged in this wicked Conspiracy ; and who, from a Sense of their Guilt, are content freely to depose against their nearest Relation, and their most intimate Friend, in which having thus cleared to you, that there was really such a Conspiracy, I shall, in the next place, proceed to prove this Pannal's Accession to it.

It cannot be imagined, that we would willingly involve our Countrey-men in it, without a Conviction stronger than our Kindness to *Scotland* ; nor did His Majesty's Servants accuse this Pannal, without the Opinion of the ablest Lawyers of the Kingdom, who did with them concur to think that there was not the least occasion of doubting left to the most indifferent Inquest of his Guilt, after they had seriously, and with Reflection read over and pondered the Probation now laid before you.

The Person accused of Accession to this Cryme, is the Ringleader of all those who in this Kingdom concur'd with the *English* Conspirators, as you may see by the Testimonies of all who have deposed ; and it was indeed fit and just to begin with the most guilty, so that if he be not convicted, there should no Man be punished for this Conspiracy ; all the Noise we have heard of it, is but a Cheat, the King's Judges have been Murderers, all the Witnesses have been Knaves, and such as dyed for it have been Martyrs.

The Accession charged on the Pannal, is not an accidental Escape, nor is it proved by Witnesses who can be suspected of Unkindness to his Person, or his Cause, for it is a long Tract of a continued Design, gone about with the greatest Deliberation and Concern imaginable, and proved by his nearest Relations, and Persons so deeply engag'd in that Cause, (for which he suffers,) that they were content with him to venture their Lives and Fortunes in that Quarrel. He is not accused of a Crime that can amount only to a single Murder, tho' that be a dreadful Cryme, but a Rebellion, which was to draw upon us a Civil War, that Murder of Murders, in which hundreths of thousands were to fall ; and to crown all, he was to begin, and to be the chief Promoter of a Rebellion, in which one of the first Steps was to kill His Sacred Majesty, and His Royal Brother ; and one of the chief Witnesses which I have led against him, is *Bourn*, which *Bourn* confessed that he was to kill the King, and who confesses the Pannal sat up several Nights with *Ferguson*, the other Contriver of the King's Murder, and so familiar was he with him, that *Bourn* deposes, that the said Pannal had been with *Ferguson* at the drawing of the *Manifesto*, whereby he was not only to be an Actor, but to be the Justifier of that horrid Villany ; and therefore *Bourn* deposes, that *Ferguson* (the best Judge in that Case) looked upon him as the chief Man, next to *Argyle* ; but because no Man is presumed to go to such a height, without previous Inclination and Motives, I shall, to convince you that this Gentleman was very capable of all that was lybelled against him, remember you, that he is Nephew and Son in Law to the late *Waristoun*, bred up in his Family, and under his Tutor ; about the time of this Plot it was undenyably known, and is now sufficiently proved

proved by two present Witnesses, the Earl of *Tarras* and Commissar *Monro*, that he thought himself desperat, knowing himself to be guilty of Treason by *Blackwood's* Case; and as it's presumable, that a Man that's guilty of one Point of Treason, will commit another; so when a Man is desperat as to his Life and Fortune, he is capable of any thing; he was likewise animated to commit this Cryme, by the Intelligence he had that there was a Plot in *England*, carryed on by Men of so great Parts, Fortune and Influence, and by the too probable Hopes, that they would get all the *Western* Shyres to joyn with them here, because of the common Guilt in which they had engag'd themselves, by their late Extravagances, they made an account of an Assistance of twenty thousand Men; and by *Philiphaugh's* Deposition, that these Gentlemen expected the Concourse of the *Southern* Shyres; and thus I am to prove to you a Cryme, which is in it self so probable and liklie, that it should need little Probation, tho' I have adduced for your Conviction sufficient Evidences, albeit the Cryme were in it self very unliklie.

The Crymes which I hope I have proved, are, That *Ferviswood* the Pannal transacted for Money to the late Earl of *Argyle*, a declared Traitor. 2. That he designed to raise a Rebellion. 3. That he intercommuned with the Earl of *Argyle* and Mr. *Veitch* declared Traitors. 4. That he was present, where it was treated, either that *Argyle* should have Money from the *English*, and Assistance from *Scotland*, or that a Rebellion should be raised, and that he did not reveal the same; and all these being found relevant *separatim*, it is sufficient for me to have proved any one of them. And if a Gentleman was lately found guilty of High Treason by the Opinion of all the Lords of Session, for not revealing, that Sir *John Cockran* sought fifty Pounds *Sterling* from him, tho' he refused the same, and tho' he believed it was sought for a charitable Subsistence to preserve him from starving; what deserves this Pannal, who sought thirty thousand Pounds *Sterling*, to buy him Arms, to invade his Native Countrey?

That *Ferviswood* was designing to carry on a Rebellion, or at least was accessory, or (as our Law terms it) was *Art and Part* thereof, is clearly prov'd; but that in this occult and hidden Crime, which uses not to be prov'd by clear Witnesses, I may lead you thorow all the Steps of the Probation, which like the Links of a Chain, hang upon one another: You will be pleased to consider, that 1. It is proved that he desired a blind Commission to go to *England*, not to manage the Affairs of the *Carolina* Company, as he confess'd, but to push the People of *England* to do something for themselves, because they did only talk and not do; and what he would have them to do, appears too clearly, because he tells the Earl of *Tarras* it was probable, that if the King were briskly put to it by the Parliament of *England*, he would consent to exclude the Duke from the Succession; here is not only a Treasonable Design, (tho' a Design be sufficient in Treason) but here are express Acts of Treason proved, viz. The treating with the Earl of *Tarras* upon this Design, the settling a Correspondence with him for the Prosecution of it, and the writing Letters from *London* to him concerning it, and the sending down Mr. *Martin* to compleat it by a

general Rising; As he design'd to push on the *English*, so he prosecutes closely this Design upon all occasions. On the Road he complains cunningly and bitterly, that our Lives, Laws and Liberties, and the Protestant Religion were in Danger, the Style and Method of all such as design to rebel; after he arrives at *London*, he engages the Conspirators there to assist the late Earl of *Argyle*, a declared Traitor, with Money to buy Arms; this was indeed to push the *English* to do the most dangerous things by the most dangerous Man, and in the most dangerous methods. He enters also in a strict Correspondence with *Ferguson* the Contriver, with *Shepherd* the Thesaurer, and *Carstairs* the Chaplain of the Conspiracy.

Alexander Monro another present Witness, proves that he argued with him that it was necessary to give *Argyle* Money expressly for carrying on the Rebellion, and that they did meet at *Ferviswood's* Chamber where this was spoke of, and from which Mr. *Robert Martin* was sent to their Friends in *Scotland* to know what they would do; and tho' the silly Caution was, that they sent him to prevent their Rising, yet a Man must renounce Common Sense, not to see that the Design was to incite them to Rebellion, and to prevent only their doing any thing in this rebellious Design, by which they might lose themselves in a too early and abortive Insurrection here, till things were ready in *England*. For, 1. This Commission was given him in a place, and by a Company who had been themselves treating immediatly before of sending Money to the late Earl of *Argyle* to buy Arms, and certainly those Arms were to be bought for Men, and not for a Magazine. 2. They were treating how many Men could be raised in *Scotland*. 3. *Carstairs* Deposition bears, that *Martin* was sent to hinder rash Resolutions, till they saw how Matters went in *England*, and the Return to their Embassy bore, that it would not be an easie matter to get the Gentry of *Scotland* to concur; but afterwards better Hopes of their Rising was given, which could not have been, if the true Commission had not been to raise *Scotland*. 4. That Sir *John Cochran* made a Speech to that purpose, is expressly prov'd, and that *Ferviswood* spoke to the same purpose, is prov'd by a necessary consequence; for since it's prov'd that he spoke, and that he did not speak against it, it must necessarily follow that he spoke for it, tho' the Witness is so cautious, that he cannot condescend upon the Words now after so long a time; and it is against Sense to think, that *Ferviswood* who in privat press'd the same so much upon Commissar *Monro*, and who was the Deacon-Conveener here, and who, as Mr. *Martin* their Envoy declared, was the Person who was to be sent for the Arms, should not himself have been the most forward Man in that Design, but above all *exitus acta probat*, this Commissioner, (who being a meer Servant, durst not have propos'd any thing from himself, being a mean Person, and being one, who, as the Earl of *Tarras* deposes, would say nothing, but what was in his Paper :) does expressly declare, that he came from *Ferviswood* and others; and in the meeting with him, a Rebellion is actually formed, and it is resolved, they should seize the King's Officers of State, Garrisons, and Forces, and that they should

should joyn with the late Earl of *Argyle*, and put their own Forces in a Condition to joyn with these Forces that were to come from *England*, and they gave a Sign, and a Word, which uses only to be done in actual War? so here is Treason clearly prov'd, by two present Witnesses, from the first Design to its last Perfection.

Nor can it be objected, that they are not concurring Witnesses, but *testes singulares* upon separat Acts, for in reiterable Crimes, Witnesses deposing upon different Acts, do prove if the Deeds tend to the same end; as for instance, if one Witness should depose, that they saw a Traitor sit in a Council of War, in one place, and in another place, they saw him in Arms, or that one saw him assist at a Proclamation in one place, and saw him in Arms in another; or that one saw him writ a Treasonable Paper, and another saw him use it; These Witnesses are still considered as Confestes, or concurring Witnesses, and ten or twelve Inqueists have so found, and upon their Verdict, Rebels have been lately hang'd. The learn'd Judges of *England* being all met together did expressly find, that one Witness proving, that *A. B.* said, that he was going to buy a Knife to kill the King, and another deposing, that he saw him buy a Knife, without telling for what, that these two Witnesses were Confestes, and prov'd sufficiently the Cryme of Treason, yet there the one Witness prov'd only a remote Design, and the other an Act, which was indifferent of its own nature, and became only Treasonable by the Connexion; but no Witnesses ever deposed upon things so coherent, and so connected together, as these do, for they depose still upon the same Person, carrying on the same Design of a Rebellion; as to which, in one place, he is exciting his own Nephew, and telling him his Resolutions, and settling a Correspondence with him; at another time, he presses Commissar *Monro* to the same Rebellion. At a third, He holds a Meeting at his own Chamber, and speaks concerning it, and from that Meeting he sends a Trusty, who forms the Rebellion. Besides all this, tho' two Witnesses be sufficient, I have adduced Mr. *William Carstares* Chief Conspirator, and who choos'd rather to suffer violent Torture, than to disclose it, he likewise deposes upon all these Steps, and connects them together, and this his Deposition is twice reiterated, upon Oath, after much Premeditation. And I likewise adduce two Depositions taken upon Oath, by Sir *Leolin Jenkins*, who was impower'd by the Law of *England*, and at the Command of the King, and the Council of *England*, upon a Letter from His Majesty's Officers of State here, in which Deposition, *Shepard*, one of the Witnesses, deposes, that *Baillie* came frequently to him, and desired him to advance the Money, and lamented the Delays, and that there was so little to be advanced; and who should be better believed than one who was his own Trusty, and a Person who was able to advance so great a Sum? *Bourn*, another of the Witnesses, deposes, that *Ferguson* told him, that the Pannal spoke frequently to him concerning the same Money, and that he sat up several Nights with *Ferguson* upon the said Conspiracy; and who should be better believed than *Ferguson's* Confident, and one who was so far trusted in the whole Affair,

that he was to take away that Sacred Life, which Heaven has preserved by so many Miracles?

Against these three Depositions, you have heard it objected, that *non testimonia sed testes probant*, especially by our Law, in which, by an express Act of Parliament, no Probation is to be led, but in presence of the Assise and Pannal. To which it is answered, that these Depositions are not meer Testimonies; for I call a Testimony a voluntar Declaration, emitted without an Oath, and a Judge; but these Depositions are taken under the awe of an Oath, and by the Direction of a Judge. 2. *Shepard* was confronted with the Pannal himself, and he had nothing to say against him; whereas the great thing that can be objected against Testimonies (and by our Statute especially) is, that if the Party who emits the Testimony had been confronted with the Pannal; the Impression of seeing a Person that was to die, by his Deposition, would have made him afraid to depose laxly; and the Pannal likewise might, by proposing Interrogators and Questions, have cleared himself and satisfied the Judges in many things depos'd against him: But so it is that Mr. *Shepard* having been confronted with the Pannal, before the King Himself, who is as far above other Judges, in His Reason and Justice, as He is in His Power and Authority; He deposes that the Pannal was the chief Mannager of this Conspiracy, next to *Argyle*, and that he was so passionate to have this Money to buy Arms, that he lamented the Delays; and can it be imagined that Mr. *Shepard* whom he trusted with his Life and his Fortune, and whom all their Party trusted with their Cash, would have depos'd any thing against him that was not true, especially when he knew that what he was to depose, was to take away his Life and his Fortune; or that if the Pannal had been innocent, he would not, when he was confronted with Mr. *Shepard* before the King Himself, have roar'd against Mr. *Shepard*, if he had not been conscious to his own Guilt? There is a Surprise in Innocence, which makes the Innocent exclaim, and it inspires Men with a Courage which enables them to confound those who depose falsely against them; and in what occasion could either of these have appeared, more than in this, wherein this Gentleman was charg'd to have Conspir'd with the greatest of Rascals, against the best of Princes; and that too in Presence of the Prince himself, against whom he had Conspir'd? But Guilt stupifies indeed, and it did never more than in this Gentleman's Case, whose Silence was a more convincing Witness than Mr. *Shepard* could be. Mr. *Carstares* likewise knew when he was to depone, that his Deposition was to be used against *Ferwiswood*, and he stood more in awe of his Love to his Friend, than of the Fear of the Torture, and hazarded rather to die for *Ferwiswood*, than that *Ferwiswood* should die by him: How can it then be imagin'd, that if this Man had seen *Ferwiswood* in his Tryal, it would have altered his Deposition; or that this Kindness, which we all admir'd in him, would have suffer'd him to forget any thing in his Deposition, which might have been advantageous in the least to his Friend: And they understand ill this light of Friendship, who think that it would not have been more nice

nice and careful, than any Advocate could have been: And if *Carstares* had forgot at onetime, would he not have supplied it at another; but especially at this last time, when he knew his Friend was already brought upon his Tryal? And that this renewed Testimony was yet a further Confirmation of what was said against him; and albeit the King's Servants were forced to engage, that *Carstares* himself should not be made use of as a Witness against *Ferviswood*; yet I think this kind scrupulosity in *Carstares*, for *Ferviswood*, should convince you more than twenty suspect, nay than even indifferent Witnesses; nor can it be imagined, that the one of these Witnesses, would not have been as much afraid of GOD, and his Oath at *London*, as at *Edinburgh*; and the other in the Council-Chamber in the Forenoon, as in the Justice-Court in the Afternoon.

3. The Statute founded on; does not discharge the producing of Testimonies, otherways than after the Jury is inclosed; for then indeed they might be dangerous, because the Party could not object against them: But since the Statute only discharges to produce Writ, or Witnesses, after the Jury is inclosed; it seems clearly to insinuat, that they ought to prove when they are produced in Presence of the Party himself, as now they are. And though the Civil Law did not allow their Judges to believe Testimonies, because they were confined to observe strict Law; yet it does not from that follow, that our Juries, whom the Law allows to be a Law to themselves, and to be confined by no Rule, but their Conscience, may not trust intirely to the Depositions of Witnesses, though not taken before themselves, when they know that the Witnesses, by whom, and the Judges, before whom these Depositions were emitted, are Persons beyond all Suspicion, as in our Case. But yet for all this, I produce these Testimonies, as Adminicles here only to connect the Depositions of the present Witnesses, and not to be equivalent to Witnesses in this legal Process; albeit, as to the Conviction of Mankind, they are stronger than any ordinary Witnesses.

When you, my Lords, and Gentlemen, remember, that it is not the revenge of a privat Party, that accuses in this Case; and that even in privat Crimes, such as Forgery, or the murder of Children, &c. many Juries here have proceeded upon meer Presumptions, and that even *Solomon* himself, founded his illustrious Decision, approved by God Almighty, upon the presumed Assertion of a Mother; I hope ye will think two Friends Deposing, as present Witnesses, adminiculated and connected by the Depositions of others, though absent; should beget in you an intire belief, especially against a Pannal, who has been always known to incline this way, and who, though he was desired in the Tolbooth to vindicate himself from those Crimes, would not say any thing in his own Defence, and though he offers to clear himself of his accession to the King's Murder; yet says nothing to clear himself from the Conspiracy entered into with the late Earl of *Argyle*, for invading his Native Countrey, which is all that I here Charge upon him, and which he inclines to

justifie, as a necessary mean for redressing Grievances; I must therefore remember you, that an Inquest of very worthy Gentlemen did find *Ratbillet* guilty, though there was but one Witness led against him, because when he was put to it, he did not deny his Accession: And two Rogues were found guilty in the late Circuit at *Glasgow*, for having murdered a Gentleman of the Guard, though no Man saw them kill him; but the Murderers having been pursued, they run to the Place, out of which the Pannals then accused were taken, none having seen the Face of the Runaways; and the Pannals being accused, and pressed to deny the Accession, shuned to disown the Guilt, but desired it might be proved against them. This may convince you that there are Proofs which are stronger then Witnesses; and I am sure that there were never more proving Witnesses then in this Case, nor were the Depositions of Witnesses ever more strongly adminiculated. Remember the Danger likewise of emboldening Conspiracies against the King's Sacred Life, and of encouraging a Civil War, wherein your selves and your Posterity may bleed, by making the least Difficulty to find a Man Guilty, by the strongest Proofs that ever were adduced in so latent a Crime as a Conspiracy is. And I do justly conclude, that whoever denies that a Conspiracy can be thus proved, does let all the World see, that he inclines that Conspiracies should be encouraged and allowed. Our Age is so far from needing such Encouragements, that on the other hand in this, as in all other Crimes, because the Guilt grows frequent and dangerous, the Probation should therefore be made the more easie, though in this Case, the King needs as little desire your Favour, as fear your Justice. And I have insisted so much upon this Probation, rather to convince the World of the Conspiracy, than you that this Conspirator is Guilty.

Thereafter the Lords Ordained the Affize to inclose, and return their Verdict to Morrow, by Nine-a-Clock in the Morning.

Edinburgh, December 24. 1684.

The said Day, the Persons who past upon the Affize of Mr. *Robert Baillie* of *Ferviswood*, returned their Verdict in Presence of the saids Lords; whereof the Tenor follows. The Affize, all in one Voice, finds the Crimes of Art and Part in the Conspiracy, and Plot Libelled; and of concealing, and not revealing the same, clearly proven against Mr. *Robert Baillie* the Pannal, in respect of the Depositions of Witnesses and Adminicles adduced.

Sic subscribitur,

Strathmore, Chancellor.

After opening and reading of the which Verdict of Affize, The Lords, Justice General, Justice Clerk, and Commissioners of Justiciary, therefore by the Mouth of *James Johnston* Deimpster of Court, Decerned and Adjudged the said Mr. *Robert Baillie* of *Ferviswood* to be taken to the

C c c

Mercat;

Mercat-Crofs of *Edinburgh*, this twenty fourth Day of *December* instant, betwixt Two and Four a Clock in the Afternoon, and there to be hanged on a Gibbet till he be dead, and his Head to be cut off, and his Body to be Quartered in four, and his Head to be affixed on the Nether-bow of *Edinburgh*, and one of his Quarters to be affixed on the Tolbooth of *Fedburgh*, another on the Tolbooth of *Lanerk*, a third on the Tolbooth of *Air*, and a fourth on the Tolbooth of *Glasgow*; and ordains his Name, Fame, Memory, and Honours to be extinct, his Blood to be Tainted, and his Arms to be riven forth, and delate out of the Books of Arms, so that his Posterity may never have Place, nor be able hereafter to bruik, or joyse any Honours, Offices, Titles or Dignities, within this Realm in time coming; and to have Forfaulted, Ammitted and Tint, all and sundry his Lands, Heritages Tacks, Steadings, Rooms, Possessions, Goods and Gear whatsoever, pertaining to him, to our Sovereign Lord's Use, to remain perpetually with His Highness in Property, which was pronounced for Doom.

Sic subscribitur,

LINLITHGOW.

James Foulis.

J. Lockart.

David Balfour.

Roger Hog.

A. Seton.

P. Lyon.

Extracted forth of the Books of Adjournal, by me Mr. Thomas Gordon, Clerk to the Justice Court,

Sic subscribitur,

THO. GORDON.

In pursuance of which Sentence, His Majesties Heraulds, and Pursevants, with their Coats display'd (after sound of Trumpets) did publicly, in face of the Court (conform to the Custom, in the Sentences of Treason) in His Majesties Name and Authority, Cancel, Tear and Destroy the said Mr. *Robert Baillie* his Arms, threw them in his Face, trampled them under foot; and ordained his Arms to be expunged out of the Books of Heraldry, his Posterity to be ignoble, and never to enjoy Honour and Dignity in time coming: And thereafter went to the Mercat-Crofs of *Edinburgh*, and solemnly Tore and Cancelled the said Mr. *Robert Baillie* his Arms, and affixed the same on the said Mercat-Crofs Reverfed, with this Inscription; *The Arms of Mr. Robert Baillie late of Jerviswood Traytor.*



The TRYAL of TITUS OTES.

Die Veneris oct' Maii 1685. in Banco Regis.

De Term. Pasch. Anni Regni Regis Jacobi Primi.

Dominus Rex versus TITUS OTES.



THIS Day being appointed for the Tryal of one of the Causes between our Sovereign Lord the King, and Titus Otes for Perjury; the same began between eight and nine in the Morning, and proceeded in the manner following.

First, Proclamation was made for Silence, then the Defendant was called, who appeared in Person, being brought up by Rule from the King's Bench Prison, where he was in Custody, and was advised to look to his Challenge to the Jury that were impannelled to try the Cause.

Otes. My Lord, I am to manage my own Defence, and have a great many Papers and Things which I have brought in order to it, I pray I may have some Conveniency for the managing my own Tryal.

Sir George Jefferies. L. C. J. Ay, ay, let him sit down there, within the Bar, and let him have Conveniency for his Papers.

Clerk of Cr. Cryer, Swear Sir *William Dodson*.

Otes. My Lord, I except against Sir *William Dodson*.

Mr. At. Gen. What is the Cause of Exception, Mr. Otes? *Sir Robert Sawyer.*

L. C. J. Why do you challenge him?

Otes. My Lord, I humbly conceive in these Cases of Criminal Matters, the Defendant has liberty of excepting against any of the Jurors, without shewing Cause, provided there be a full Jury besides.

L. C. J. No, no, that is not so, you are mistaken in that Mr. Otes.

Otes. My Lord, I am advised so, I do not understand the Law my self.

L. C. J. But we tell you then, it cannot be allowed; if Mr. Attorney will consent to wave him, well and good.

Mr. At. Gen.

Mr. At. Gen. No, my Lord, I know no reason for it, I cannot consent to any such thing.

L. C. J. Then, if you will not have him sworn, you must shew your Cause presently.

Otes. My Lord, I cannot assign any Cause.

L. C. J. Then he must be sworn.

Cl. of Cr. Swear him.

Cryer. Sir William Dodson take the Book, You shall well and truly try this Issue between our Sovereign Lord the King, and Titus Otes; and a true Verdict give according to the Evidence; so help you God.

Cl. of Cr. Swear Sir Edmund Wiseman.

Richard Aley, Esq; [Which was done.
Benjamin Scutt. [Who was sworn.

Otes. My Lord, I challenge him.

L. C. J. For what Cause?

Otes. My Lord, he was one of the Grand Jury that found the Bill.

L. C. J. Was he so, that is an Exception indeed; what say you, Mr. Attorney?

Mr. At. Gen. My Lord, I believe he was upon one of the Indictments, but I think it was not this.

L. C. J. But if he were in either of them, he cannot be so impartial.

Mr. At. Gen. My Lord, we will not stand upon it, we'll wave him.

Cl. of Cr. Thomas Fowlis.

Otes. Pray let me see that Gentleman. [Who was shown to him.

Are you not a Goldsmith in Fleet-street, between the two Temples?

Fowlis. Yes, I am.

Otes. Very well, Sir, I do not except against you, only I desire to know, whether it were you or not.

Cl. of Cr. Swear him. [Which was done.

Thomas Blackmore,
Peter Pickering,
Robert Beddingfield,
Thomas Rawlinson,
Roger Reeves, } Sworn.

Edward Kempe, Sworn.

Otes. My Lord, I challenge him.

L. C. J. You speak too late, he is sworn already.

Otes. My Lord, they are so quick, I could not speak, but he was one of the Grand Jury too.

L. C. J. We cannot help it now.

Mr. At. Gen. I did not know that he was so, but to shew that we mean nothing but fair, we are content to wave him.

L. C. J. You do very well, Mr. Attorney General; let him be withdrawn.

Cl. of Cr. Mr. Kempe, you may take your ease; swear Ambrose Isted. [Which was done.

Henry Collier,
Richard Howard, } Sworn.

Cl. of Cr. Cryer, count these.

Cryer. One, &c. Sir William Dodson.

Cl. of Cr. Richard Howard.

Cryer. Twelve good Men and true, hearken to the Record, and stand together, and hear the Evidence.

Sir William Dodson
Sir Edmund Wiseman
Richard Aley
Thomas Fowlis
Thomas Blackmore
Peter Pickering. } Jur.
Robert Beddingfield
Thomas Rawlinson
Roger Reeves
Ambrose Isted
Henry Collier, and
Richard Howard.

Otes. Before the Counsel opens the Cause, I desire to move one Thing to your Lordship.

L. C. J. What is it you would have?

Otes. My Lord, I have three Witnesses that are very material ones to my Defence, who are now Prisoners in the King's Bench, for whom I moved yesterday, that I might have a Rule of Court to bring them up to Day, but it was objected, that they were in Execution, and so not to be brought; I humbly move your Lordship now, that I may have a Habeas Corpus for them, to bring them immediately hither.

L. C. J. We cannot do it.

Otes. Pray, good my Lord, they are very material Witnesses for me, and I moved yesterday for them.

L. C. J. You did so, but we told your Counsel then, and so we tell you now, we cannot do it by Law, it will be an Escape.

Otes. My Lord, I shall want their Testimony.

L. C. J. Truly we cannot help it, the Law will not allow it, and you must be satisfied.

Cl. of Cr. Gentlemen, you that are sworn of this Jury, hearken to the Record, by Virtue of an Inquisition taken at Justice-Hall in the Old-Bailey, in the Parish of St. Sepulchre, in the Ward of Faringdon without, London, upon Wednesday the 10th of December, in the 36th of the Reign of our late Sovereign Lord Charles II. by the Grace of God, of England, Scotland, France, and Ireland, King, Defender of the Faith, &c. Before Sir James Smith, Knight, Mayor of the City of London; Sir George Jefferies Knight and Baronet, Lord Chief Justice of this Honourable Court; Sir Thomas Jones Knight, Lord Chief Justice of the Court of Common Pleas; William Montague, Lord Chief Baron of the Exchequer; Sir James Edwards Knight; Sir John Moore Knight, Aldermen of the said City; Sir Thomas Jenner Knight, one of His Majesties Serjeants at Law, and Recorder of the same City, and others, their Companions, Justices of Oyer and Terminer, by the Oaths of Twelve Jurors, honest and lawful Men of the City of London aforesaid, who then and there being sworn and charged to enquire for our said Lord the King, and the Body of the City aforesaid, upon their Oaths present, that at the Session of our Sovereign Lord the King, holden for the County of Middlesex, at Hicks's Hall, in St. John's Street, in the County aforesaid, on Monday, to wit, 16 December, in the Year of the Reign of our late Sovereign Lord, Charles II. of England, Scotland, France and Ireland, King, Defender of the Faith, &c. the thirtieth before Sir Reginald Forster, Baronet, Sir Philip Matthews, Baronet, Sir William Bowls, Kt. Sir Charles Pitfield, Knight; Thomas Robinson, Humphrey Wyrley, Thomas Harriot, and William Hempson Esquires, Justices of the said Sovereign Lord the King, to enquire by the Oath of Honest and Lawful Men of the County of Middlesex aforesaid, and by other ways, manners, means, by which they might better know, as well with-

in Liberties, as without, by whom the Truth of the Matter may be better known and enquired, of whatsoever Treasons, Misprisions of Treasons, Insurrections, Rebellions, Counterfeittings, Clippings, washings and false makings of the Money of this Kingdom of *England*; and of other Kingdoms and Dominions whatsoever; and of whatsoever Murders, Felonies, Manslaughters, Killings, Burglaries, and other Articles and Offences in the Letters Patents of our said Sovereign Lord the King, to them, or any four, or more of them therefore directed, specified, as also the Accessaries of the same within the County aforesaid, as well within Liberties as without, by whomsoever, howsoever had, made, done or committed; and the said Treasons, and other the Premises, to hear and determine, according to the Law and Custom of this Kingdom of *England*, being assigned by the Oath of *Ralph Wain, John Vaughan, Richard Foster, Thomas Paget, Robert Newington, Henry Tompkins, Robert Hays, John Greenwood, Peter Stimpson, Josias Crosley, Richard Richman, Augustine Bear, John King, Nathaniel Brett, Francis Fisher, and Samuel Linn*, Honest and Lawful Men of the County aforesaid, sworn, and charged to enquire for our said Sovereign Lord the King, and the Body of the County aforesaid upon their Oaths. It was presented, That *Thomas White*, otherwise *Whitebread*, late of the Parish of *St. Giles* in the Fields, in the County of *Middlesex* Clerk, *William Ireland* late of the Parish aforesaid, in the County aforesaid Clerk, *John Fenwick*, late of the Parish aforesaid, in the County aforesaid, Clerk, *Thomas Pickering* of the Parish aforesaid, in the County aforesaid, Clerk, *John Grove* of the Parish aforesaid, in the County aforesaid, Gent. as false Traytors against the most Illustrious, Serene, and most excellent Prince, our said late Sovereign Lord *Charles II.* by the Grace of God, of *England, Scotland, France and Ireland*, King, Defender of the Faith, &c. Their Supreme and Natural Lord, not having the Fear of God in their Hearts, nor weighing the Duty of their Allegiance, but being moved and seduced by the Instigation of the Devil: The Cordial Love, and True and Natural Obedience, which faithful Subjects of our said Sovereign Lord the King towards him, should, and of right ought to bear, utterly withdrawing, and contriving, and with all their Might intending the Peace and Tranquillity of this Kingdom of *England* to disturb, and the true Worship of God within this Kingdom of *England* used, and by Law established, to subvert, and Rebellion within this Kingdom of *England* to move, stir up, and procure, and the Cordial Love, and true and due Obedience, which faithful Subjects of our said Lord the King, towards him, the said Sovereign Lord the King, should, and of right ought to bear, utterly to withdraw, put out, and extinguish, and our said Sovereign Lord the King, to Death and final Destruction, to bring and put, the four and twentieth Day of *April*, in the Year of the Reign of our late Sovereign Lord *Charles II.* by the Grace of God, of *England, Scotland, France and Ireland*, King, Defender of the Faith, &c. the thirtieth, at the Parish of *St. Giles* in the Fields, in the County aforesaid, falsely, maliciously, subtilely, advisedly, and trayterously did purpose, compass, imagine and intend, Se-

dition and Rebellion within this Kingdom of *England* to move, stir up and procure, and a miserable Slaughter among the Subjects of our said Lord the King to procure and cause; and our said late Lord the King from the Regal State, Title, Power and Government of his Kingdom of *England*, utterly to deprive, depose, cast down, and disinherit, and him our said late Sovereign Lord the King to Death, and final Destruction to bring and put, and the Government of the said Kingdom, and the sincere Religion of God, rightly by the Laws of the said Kingdom established, at their Will and Pleasure to change and alter, and the State of this whole Kingdom of *England*, throughout all its Parts, well instituted and ordained, wholly to subvert and destroy, and War against our said late Sovereign Lord the King; within this Kingdom of *England* to levy, and those their most wicked Treasons, and Traiterous Imaginations and Purposes aforesaid to fulfil and perfect, They the aforesaid *Thomas White*, alias *Whitebread*, *William Ireland*, *John Fenwick*, *Thomas Pickering*, and *John Grove*, other false Traytors to the Jurors not known, the said four and twentieth Day of *April*, in the Year of the Reign of our said late Sovereign Lord the King, the Thirtieth, with Force and Arms, &c. at the Parish of *St. Giles* in the Fields, in the County of *Middlesex*, aforesaid, falsely, maliciously, subtilely, advisedly, devilishly, and traiterously did assemble themselves, unite and meet together, and then and there falsely, maliciously, subtilely, advisedly, devilishly, and trayterously, did consult and agree our said late Sovereign the Lord the King to Death, and final Destruction to bring and put, and the Religion within this Kingdom of *England*, rightly, and by the Laws of the same Kingdom established, to the Superstition of the *Romish* Church, to change and alter, and the sooner to fulfil and perfect their said most wicked Treasons, and Traiterous Imaginations, and Purposes, they, the said *Thomas White*, alias *Whitebread*, *William Ireland*, *John Fenwick*, *Thomas Pickering* and *John Grove*, and other false Traytors of our said late Sovereign Lord the King, to the Jurors unknown, afterwards, to wit, the same 24th Day of *April*, in the said 30th Year of our said late Sovereign Lord the King, at the said aforesaid Parish of *St. Giles* in the Fields, in the County aforesaid, falsely, subtilely, advisedly, devilishly, and trayterously among themselves, did conclude and agree, that they the aforesaid *Thomas Pickering*, *John Grove*, him, the said late Sovereign Lord the King should kill and murder, and that they the said *Thomas White*, alias *Whitebread*, *William Ireland*, *John Fenwick*, and other false Traytors to the Jurors unknown: A certain number of Masses between them, then and there agreed for the Health of the Soul of him the said *Thomas Pickering*, therefore should say, Celebrate and Perform, and therefore should pay unto the said *John Grove* a certain Sum of Money between them, then and there agreed; and the Jurors aforesaid, upon their Oath aforesaid, did further present, That the said *Thomas Pickering* and *John Grove*, upon the Agreement aforesaid, then and there falsely, subtilely, advisedly, maliciously, devilishly and trayterously did take upon them, and did promise to the said *Thomas White*, alias *Whitebread*, *William Ireland*, *John Fenwick*, and other

other false Traytors of our late said Sovereign Lord the King; to the Jurors aforesaid unknown, then and there, falsely, subtilly, advisedly, maliciously, devilishly, and traiterously, did promise that they the said *Thomas Pickering* and *John Grove* would kill and murder our said late Sovereign Lord the King, and they, the said *Thomas White*, alias *Whitehead*, *William Ireland*, *John Fenwick*, *Thomas Pickering*, *John Grove*, and other false Traitors of our said late Sovereign Lord the King afterwards, to wit, the said four and twentieth Day of *April*, in the thirtieth Year aforesaid, at the said aforesaid Parish of *St. Giles* in the Fields, in the County of *Middlesex* aforesaid, subtilly, advisedly, maliciously, devilishly, and traiterously, did severally every one of them give their Faith each to the other, and upon the Sacrament then and there traiterously did swear and promise, to conceal, and not to divulge their said most wicked Treasons and traiterous Compassings, Consultations and Purposes so between them had, him, our said late Sovereign Lord the King, traiterously to kill and murder, and the *Romish* Religion in this Kingdom of *England* to be used, to introduce, and the true Reformed Religion in this Kingdom of *England* rightly, and by the Laws of the same Kingdom established, to alter and change; and that the said aforesaid *Thomas Pickering*, and *John Grove*, in Execution of their traiterous Agreement aforesaid afterwards, to wit, the same four and twentieth Day of *April*, in the thirtieth Year aforesaid; and divers other Days and Times after, at the said aforesaid Parish of *St. Giles* in the Fields, in the County aforesaid, Muskets, Pistols, Swords, Daggers, and other offensive and cruel Weapons, him, the our said late Sovereign Lord the King to kill and murder, falsely, subtilly, advisedly, maliciously, and traiterously did prepare, and obtain for themselves, had and kept, and that they the aforesaid *Thomas Pickering* and *John Grove* afterwards, to wit, the said four and twentieth Day of *April*, in the thirtieth Year aforesaid, and divers Days and Times afterwards, with Force and Arms, &c. at the Parish aforesaid, in the County aforesaid, and in other Places within the County of *Middlesex* aforesaid, falsely, subtilly, advisedly, maliciously, devilishly and traiterously did lie in wait, and endeavour our said late Sovereign Lord the King to murder, and that the said *Thomas White*, alias *Whitebread*, *William Ireland*, *John Fenwick*, and other false Traitors to the Jurors unknown, afterwards, to wit, the same four and twentieth Day of *April*, in the thirtieth Year aforesaid, at the Parish aforesaid, in the County of *Middlesex* aforesaid, falsely, subtilly, advisedly, maliciously, devilishly and traiterously did prepare, perswade, excite, abet, comfort and counsel four other Persons, Men to the Jurors unknown, and Subjects of our said late Sovereign Lord the King, him our said late Sovereign Lord the King, traiterously to kill and murder against the Duty of their Allegiance, against the Peace of our said late Sovereign Lord the King, his Crown and Dignity, and against the Form of the Statute in that Case made and provided, and thereupon it was so far proceeded, that afterwards, to wit, at the Court of Goal-delivery of our Sovereign Lord the King, of *Newgate*, at Justice-Hall in the *Old Bailey*, in the Suburbs of the City

of *London*, in the Parish of *St. Sepulchre*, in the Ward of *Faringdon* without, *London* aforesaid, the seventeenth Day of *December*, in the thirtieth Year aforesaid, before the Justices of our said Lord the King, then and there being present, held by Adjournment for the County of *Middlesex* aforesaid, before whom the Indictment aforesaid was then depending, came the aforesaid *William Ireland*, *Thomas Pickering*, and *John Grove* under the Custody of *Sir Richard How*, Kt. *Sir John Chapman* Knight, Sheriffs of the County of *Middlesex* aforesaid, into whose Custody, for the Cause aforesaid before that were committed, being there brought to the Bar in their proper Persons, and immediately being severally spoken unto concerning the Premises above charged upon them, how they would acquit themselves thereof; the aforesaid *William Ireland*, *Thomas Pickering*, and *John Grove* did say that they were not thereof guilty, and for the same, for good and bad, they severally put themselves upon the Country, and by a certain Jury of the Country on that behalf, in due manner impannel'd, sworn and charged, then and there, in the same Court before the Justices of Goal-delivery aforesaid were tryed, and that upon that Tryal between our said late Sovereign Lord the King, and the aforesaid *William Ireland*, *Thomas Pickering*, and *John Grove* at *London* aforesaid, to wit, at Justice-Hall in the *Old Bailey* aforesaid, in the Parish and Ward aforesaid, the Defendant *Titus Otes*, by the Name of *Titus Otes*, late of the Parish of *St. Sepulchre* aforesaid, in the Ward aforesaid, Clerk, was a Witness produced on the behalf of our late Sovereign Lord the King upon the Tryal aforesaid, and before the aforesaid Justices of Goal-delivery in the Court aforesaid, then and there held, upon the Holy Evangelists of God, to speak and testify the Truth, the whole Truth, and nothing but the Truth, of, and in the Premises between our said late Sovereign Lord the King, and the aforesaid *William Ireland*, *Thomas Pickering*, and *John Grove*, put in Issue, was duely sworn, and that he, the aforesaid *Titus Otes*, then and there, in the Court of Goal-delivery aforesaid, upon his Oath aforesaid, upon the Indictment aforesaid, at the Parish and Ward aforesaid, by his own proper Act and Consent, of his most wicked Mind, falsely, voluntarily, and corruptly did say, depose, swear, and to the Jurors of the Jury aforesaid, then and there sworn, and impannel'd to try the Issue aforesaid, between our said late Sovereign Lord the King, and the aforesaid *William Ireland*, *Thomas Pickering*, and *John Grove*, did give in Evidence, that there was a traiterous Consult of Jesuits that were assembled at a certain Tavern, called the *White Horse* Tavern in the *Strand*, (in the *White Horse* Tavern in the *Strand*, in the County of *Middlesex* aforesaid, meaning) upon the four and twentieth Day of *April*, in the Year of our Lord 1678. At which Consult, *Whitebread*, *Fenwick*, *Ireland*, (the aforesaid *Thomas White*, alias *Whitebread*, *John Fenwick*, and *William Ireland*, meaning) and he the said *Titus Otes*, were present, and that the Jesuits aforesaid did separate themselves into several lesser Companies, and that the Jesuits aforesaid came to a Resolution to murder the said our late Lord the King, and that he, the said *Titus Otes*, did carry the Resolution aforesaid from Chamber to Chamber, and

and did see that Resolution signed by them (the aforesaid Jesuits meaning) whereas in truth and indeed, the aforesaid *Titus Otes* was not present at any Consult of the Jesuits at the *White Horse Tavern* aforesaid in the *Strand*, in the County of *Middlesex* aforesaid, upon the 24th of *April*, in the Year of our Lord 1678. nor did carry any Resolution to murder our said late Lord the King, from Chamber to Chamber by any Persons to be signed; and so he, the aforesaid *Titus Otes*, on the 17th Day of *December*, in the thirtieth Year aforesaid, at the *Justice-Hall* aforesaid, in the Court aforesaid, upon the Tryal aforesaid, upon the Indictment aforesaid, between our said late Lord the King, and the aforesaid *William Ireland*, *Thomas Pickering*, and *John Grove*, so as aforesaid, had by his own proper Act and Consent, and of his most wicked Mind, falsely, voluntarily, and corruptly in Manner and Form aforesaid, did commit voluntary and corrupt Perjury, to the great Displeasure of Almighty God, in manifest Contempt of the Laws of this Kingdom of *England*, to the Evil and Pernicious Example of all others in like case offending, and against the Peace of our said late Sovereign Lord the King, his Crown and Dignity. Upon this Indictment he has been arraign'd, and thereunto hath pleaded not Guilty, and for his Tryal hath put himself upon the Country, and His Majesty's Attorney General likewise, which Country you are, your Charge is to enquire, whether the Defendant be guilty of this Perjury and Offence whereof he is now indicted, or whether not guilty: If you find him guilty, you are to say so, if you find him not guilty, you are to say so, and no more, and hear your Evidence. *Cryer*, make Proclamation.

Otes. Hold, Sir, I beg one Favour of your Lordship, to give me leave to have that part of the Record, wherein I am said to have sworn such and such things, read distinctly in Latin.

L. C. J. Let it be read in Latin.

Cl. of Cr. *Juravit & jur' jurat' prædict' ad tunc & ibidem jurat' & impanelat' ad triend' exitum prædict' inter dict' Dn'um nostrum Regem & præfat' Will'm Ireland, Thomam Pickering, & Johannem Grove in Evidentiis dedit, quod fuit proditoria Consultatio, Anglice, Consult' Jesuit' qui Assemblat' fuer' apud quandam Tabernam, vocat' the White Horse Tavern in le Strand, (Le White Horse Tavern in le Strand in Com' Mid' prædict' innuendo) super vice-simum quartum diem April' Ann. Dom. millesimo sexcentesimo septuagesimo octavo, ad quam quidem Consultationem, Whitebread, Fenwick, Ireland prædict' Thomam White alias Whitebread, Johannem Fenwick, & Will'm Ireland innuendo) & præfat' Titus Otes fuer' præsent' & quod Jesuitæ prædict' sese separaver' in sepeales minores Conventus quodque Jesuitæ prædict' venerunt ad Resolutionem ad murdrand' dictum Dn'um Regem, & quod ipse idem Titus Otes portavit Resolutionem prædict' à Camerâ ad Cameram, & videbat Resolutionem illam signat' per ipsos (præfat' Jesuitas innuendo.) That is the Perjury that you are said to have sworn.*

Otes. Pray go on, Sir, *Ubi revera*——

Cl. of Cr. *Ubi revera & in prædict' Titus Otes non præsens fuit ad aliquam Consultationem Jesuit' apud le White Horse Tavern prædict' in le Strand, in Com' Mid' prædict' super vice-simum quartum diem Aprilis Anno Domini millesimo sexcentesimo septuagesimo*

octavo, nec portavit aliquam Resolutionem ad dict' Dn'um Regem murdrand' à Camerâ ad Cameram per aliquas Personas signand'.

Mr. Just. Withins. Now, you have read it, go on, Sir, to make your Proclamation.

Cl. of Cr. *Cryer*, make an Ho-yes.

Cryer. Ho yes, If any one can inform our Sovereign Lord the King, the King's Serjeant, the King's Attorney General, or this Inquest now taken concerning the Perjury and Offence, whereof the Defendant *Titus Otes* stands indicted; let them come forth, and they shall be heard, for now he stands upon his Discharge.

Mr. Phipps. May it please your Lordship, and you Gentlemen of the Jury——

Otes. My Lord, I desire your Lordship and the Court would be of Counsel for me in one thing, which I take to be a Fault and Error in my Indictment.

L. C. J. Look you, *Mr. Otes*, Whatever you have to say of that nature, you must not speak to it now, you will have your time as to that hereafter, in case you be Convicted.

Otes. My Lord, I have but one small Exception to open to you.

L. C. J. We are now upon the Fact only.

Otes. My Lord, I beg you would give me leave only to tell you of a Mistake in the Indictment, which I hope, when I have opened, will satisfy your Lordship, that it ought not to be put upon me or the Court to try this Cause; or to be sure, if there should be a Conviction, I hope I may move an Arrest of the Judgment.

L. C. J. So I tell you you may, but not now.

Otes. Good my Lord, hear me but a few Words, the Indictment charges me to have given such and such Evidence, that there was such a Consult of the Jesuits at the *White Horse Tavern* in the *Strand*, the 24th of *April* 1678. that the Jesuits did afterwards divide themselves in several lesser Companies, that they came there to a Resolution to murder the late King, and that I swore that I carried that Resolution from Chamber to Chamber, and saw the Resolution signed by them, so the Word is, *Signat'*; now the Perjury assigned is, that I was not present at that Consult, nor did carry the Resolution from Chamber to Chamber to be signed, and there the Word is *Signand'*; now I conceive if *Signat'* be the Word, that is used in setting forth the Oath that I made, The Assignment of the Perjury ought to follow that Form, and the Word there ought to be *Signat'* too, being *Signand'*, I take that to be an Error.

L. C. J. Look, that is not proper at this time, as I told you at first, but wisth I do not think there is any great Matter in what you say.

Mr. At. Gen. Either I do not understand *Mr. Otes*, what he means by the Objection, or he will find himself much mistaken in it.

L. C. J. Well, well, We have nothing to do with that now, go on with the Cause.

Mr. Phipps. May it please your Lordship, and you Gentlemen of the Jury, this is an Indictment against *Titus Otes* for Perjury, which Indictment sets forth, that *Thomas White*, alias *Whitebread*, *William Ireland*, *John Fenwick*, *Thomas Pickering*

Pickering and *John Grove*, the 16th of *December* in the thirtieth Year of the late King, at the *Old Bailey*, were indicted of High Treason for Conspiring the Death of the King, and that *Ireland*, *Pickering*, and *Grove* were tryed the 17th of *December* in that Year, and upon that Indictment *Titus Otes* was produced as a Witness on the behalf of the King against the said *Ireland*, *Pickering* and *Grove*, being sworn to give Evidence to the Jury that were impanelled and sworn to try that Cause; he did swear and give in Evidence that there was a treasonable Consult of the Jesuits at the *White Horse Tavern* in the *Strand*, meaning the *White Horse Tavern* in the *Strand*, in the County of *Middlesex*, the 24th of *April*, 1678. at which Consult, *Whitebread*, *Fenwick*, and *Ireland*, and the said *Titus Otes* were present, and that they separated themselves into several lesser Clubs, and came to a Resolution to murder the King, and that he, the said *Titus Otes*, carried the said Resolution from Chamber to Chamber, to be signed by them, meaning the Jesuits; whereas in truth and in fact, he, the said *Titus Otes*, was not present at any such Consult, the four and twentieth of *April*, 1678. nor carried any such Resolution from Chamber to Chamber to be signed, and he, the said *Titus Otes*, the 17th Day of *December*, in the thirtieth Year aforesaid, at the *Old Bailey* aforesaid, upon the Tryal aforesaid, on the Indictment aforesaid, between the King, and the said *Ireland*, *Pickering*, and *Grove*; so as aforesaid had by his own proper Act and Consent of his most wicked Mind, falsely, voluntarily and corruptly in manner and form aforesaid, did commit wilful and corrupt Perjury, and this is laid to be to the Dishonour of God, in Contempt of the Law, to the evil Example of others in the like case offending against the King's Peace, Crown and Dignity; to this he has pleaded not Guilty, and that is the Issue that you are to try; if we prove him Guilty, we question not but you will find him so.

Mr. At. Gen. May it please your Lordship, and you Gentlemen that are sworn, I am of Counsel in this Cause for the King, and our Case stands thus; The Defendant stands indicted for corrupt and wilful Perjury, for what he swore at the Tryal of *Ireland*, and that which he swore was this, in order to convict the Prisoners then at the Bar of the High Treason they were accused of; *Otes* did swear, that upon the 24th of *April*, 1678. there was a Consult of Jesuits held at the *White Horse Tavern* in the *Strand*, where *Ireland* and several other Jesuits were present, and their Business was to consult how they might murder and destroy the King, and subvert the Government, and there they came to a Resolution that *Pickering* and *Grove* should kill the King; and he was present at the Debate, and he carried the Resolution from Chamber to Chamber, where they had separated themselves in lesser Numbers; and there he saw the Resolution signed; and this is the Matter that he swore, upon which this Indictment is founded. And, Gentlemen, we do charge that this was a false Oath, and in a point expressly to the Matter then in Controversy before that Court, for we shall prove he was beyond Sea at that time, and on that day, and in order to his Conviction we shall make

out by clear Evidence to you as full and plain as ever was given, that from *Christmas* before, which was in *December*, 1677. till *Midsummer* after, which was the latter end of *June*, 1678. *Otes*, that swears this Consult in *April*, was at *St. Omers*, and in all that time was not absent from the College there above 24 Hours, and that but once only, which was in *January* when he played Truant, and went to *Watton*, which is about two Miles from *St. Omers*, but otherwise he was all along in the College. And, my Lord, that we may give such a satisfactory Evidence as may make it undeniably plain to the Jury, I desire your Lordship, and you Gentlemen of the Jury, would please to observe some particular Periods of Time, that I shall open for the better clearing our Evidence methodically; and the first Period of Time is from Mr. *Hilsley's* leaving *St. Omers*; now he left *St. Omers* the 14th of *April* Old Stile, which is the 24th of *April* New Stile, and then when he came away, he left *Otes* there at *St. Omers*; Mr. *Hilsley*, when he came into *England*, in *Kent* in his Journey to *London*, meets one Mr. *Burnaby*; this was I say in Mr. *Hilsley's* Return into *England* from *St. Omers*, which he left ten Days before the time assigned by *Otes* for this Consult, at the *White Horse Tavern* in the *Strand*, and the next Period is, Mr. *Burnaby* was going to *St. Omers*, and there he arrives in Time the 21st of *April* Old Stile, and there he finds Mr. *Otes*, who swore he was then in *London*; and by the Evidence you will hear, that Mr. *Otes*, according to his usual Custom, and according to that Virtue he is endowed with, very boldly insinuates himself into this Gentleman's Company, as he uses to do with all new Comers; and you will hear from Mr. *Burnaby* himself, and many others, that from the time of his coming to *St. Omers*, which was the 21st of *April*, he convers'd with Mr. *Otes* several Days, every Day till after the 24th of *April* Old Stile at *St. Omers*. Then, my Lord, another Period of Time that I would desire you to observe, is, from Mr. *Pool's* coming from *St. Omers*, which was in Time the 25th of *April* Old Stile, the very Day after the Day that this Consult was sworn to be on, and when he came from *St. Omers*, you will hear from many Witnesses that he left *Otes* there, and there he stayed. For, my Lord, we shall, besides these particular times of these Gentlemen's coming over who left him there, prove the very Day when he left *St. Omers*, and that was the end of *Midsummer-day* following, which was the 23d of *June*; then was the time when *Otes* came first from *St. Omers* to *England*, and we shall prove he took his leave of them then: My Lord, We have many other Circumstances that will unanswerably strengthen this Evidence, and shew that our Witnesses testify nothing but the Truth; one particularly is this; this Gentleman being a Novice of the House, was Reader in the *Sodality*, as they call it, we shall prove that, for every *Sunday* and *Holiday* throughout all *April* and *May*, he did officiate in that place, and did read to the Society according as the Custom there is; and we shall prove another particular thing, that upon this 24th of *April* he was in the College, by a particular Circumstance, and that by several Witnesses; so that, Gentlemen, not to detain you with any long Opening of the

the Matter, if we prove this that I have opened, as we shall with a Cloud of Witnesses, it will make an end of the Question. We shall first call our Witnesses to prove that he swore at that Tryal, that such a Consult was, and he was at it, and then if we prove that he was at another Place beyond Sea, at such distance that it is impossible for him to be here; I do not doubt but the Court and the Jury will conclude, he hath wilfully and corruptly forswore himself; the said effects of which we are all Witnesses of; it was to take away the Lives of his fellow Subjects wrongfully; and it will appear to the World, he has been one of the greatest Impostors that ever did appear upon the Stage, either in this Kingdom, or in any other Nation.

Mr. *Finch*. Mr. *Sol. Gen.* We will now go on with our Evidence, and prove all the Parts of the Indictment, and first produce the Record of the Tryal of *Ireland*, and then by Witnesses, *Viva voce* that were present at that Tryal, we shall prove what he swore, and then prove that Oath of his to be false; swear Mr. *Swift*.

[Which was done.

Where is the Record of *Ireland's* Tryal?

Mr. *Swift*. Here it is, my Lord.

Mr. *Recorder*. Is that a true Copy, Sir?

Mr. *Swift*. Yes, I examined this from the Record, it is a true Copy.

L. C. J. Read it.

Mr. *At. Gen.* If Dr. *Otes* does desire the whole may be read, let it be so; otherwise a Word of it may serve, it being only an Inducement.

Otes. Yes, I desire it may be all read.

L. C. J. It must be read, if he will have it.

Mr. *Sol. Gen.* Well I submit it, I did only offer it to save the time of the Court.

Otes. I would save the time of the Court too, all that I can; but I think it may be material for me to have the whole read.

L. C. J. In God's name let it be read, we will not hinder you in any thing that may be for your Defence.

Cl. of Cr. Memorandum quod—

Mr. *At. Gen.* Now this long Record in Latin is read, I would fain know whether it be to any great purpose, but only to spend Time?

L. C. J. Nay, I think it has not been very edifying to a great many; do you think, Mr. *Otes*, that the Jury, who are Judges of this Fact, do understand it?

Otes. I cannot tell, may be they may, my Lord.

Mr. *Just. Withins*. Do you understand it yourself, Mr. *Otes*?

Otes. That's not any Question here; but to oblige the Court and the Jury, I desire it may be read in English too.

L. C. J. No, the Court understands it well enough, and they can tell the Jury what it is, it is only the Copy of a Record, to prove that *Ireland* was tried for High Treason at the Old Bailey, the 17th of Dec. 1678.

Mr. *Sol. Gen.* Now, my Lord, we will call our Witnesses, to swear what *Otes* did at that Tryal swear: Pray swear Mr. *Foster*.

[Which was done.

Mr. *At. Gen.* Pray Mr. *Foster*, will you acquaint the Court and the Jury, whether Dr. *Otes* was produced as a Witness at *Ireland's* Tryal, and

what he did there depose about a Consult in April 78.

Mr. *Foster*. My Lord, I was so unhappy as to be one of that Jury, by whom Mr. *Ireland*, Mr. *Pickering*, and Mr. *Groves* was try'd.

Jury men. My Lord, we desire that Mr. *Foster* would lift up his Voice, for we cannot hear him.

Mr. *Foster*. Truly my Lord, I have been very sick of late, and am not now very well, and therefore cannot speak louder than I do.

L. C. J. Go nearer the Jury, and speak as loud as you can.

Mr. *Foster*. My Lord, I say, I did see Mr. *Otes* produced as an Evidence at the Sessions in the Old Bailey, where I was so unhappy as to be a Jury-man, when Mr. *Pickering*, Mr. *Ireland*, Mr. *Grove*, and Mr. *Whitebread* were try'd.

Mr. *At. Gen.* When was that?

Mr. *Foster*. It was in December 78.

Mr. *At. Gen.* And what did *Otes* then swear?

Mr. *Foster*. I did see Mr. *Otes* sworn as an Evidence there, in behalf of the King, against the Prisoners; and he did then swear, that there was a Meeting of several Jesuits at the *Whiteborse* Tavern in the Strand, upon the 24th of April 78. and that Mr. *Whitebread*, Mr. *Ireland* and Mr. *Fenwick* were present at the Meeting, and there they did consult the Death of the King, and the altering of the Religion; and some went away and others came; at last they reduced themselves into several smaller Companies or Clubs, and they came to a resolution, that *Pickering* and *Grove* should go on to assassinate the King, for which the one was to have 1500 Pound, and the other 30000 Masses, and that this Resolution was drawn up by one *Mico* (if I am not mistaken in his Name) I have it in my Notes I then took of the Evidence; and he swore further, that he himself went with this Resolution to several of their Chambers, he went to *Whitebread's* Chamber, and saw *Whitebread* sign it, he went to *Fenwick's* Chamber, and saw *Fenwick* sign it, and went to *Ireland's* Chamber, and saw *Ireland* sign it, and this was upon the 24th of April 78. My Lord, I am positive in this, for I had the good hap to take the Notes at the Tryal, for my own help, being a Jury-man, and I never looked upon those Notes afterwards, till the printed Tryal came out, and then I compared my Notes with the Print, and found them to agree, and I have kept them ever since by me, and this is all under my own Hand as I have testified.

Otes. My Lord, may I ask this Gentleman a Question?

L. C. J. Ay, if the King's Counsel have done with him.

Mr. *At. Gen.* Yes, my Lord, we have done with him.

Mr. *Foster*. Pray my Lord, give me leave to sit down, for I am not able to stand.

Otes. My Lord, I desire you to ask that Gentleman, whether in the Oath that I took, I called it a Consult, or I called it a Traiterous Consult.

Mr. *Foster*. Truly I think you called it both, if I am not mistaken, but if your Lordship please, I will look upon my Notes.

L. C. J. You may look upon your Notes to refresh your Memory, if you will.

Mr. *Just.*

Mr. *Just. Withins*. Truly I think if it were a Consult to murder the King, it must be a traitorous one without doubt.

Otes. Sir, that is not to the Purpose, my Question is, what I swore it was.

L. C. J. He tells you, he believes you did swear both ways.

Mr. *Foster*. At that Consult he said such a Resolution was taken, and I think he called it a Traiterous Consult.

Otes. If you please, I'll tell your Lordship the Reason, why I asked that Question.

L. C. J. No, you may save your self the trouble of that, you best know the reason of your own Questions; he has given you a satisfactory Answer.

Otes. Then if your Lordship please, ask him this Question, whether I swore that all these three Jesuits were present at one time, or how many of them?

L. C. J. You hear the Question, what say you to it?

Mr. *Foster*. Sir, you swore that *Ireland*, *Fenwick* and *Whitebread* were at that Consult, but whether they were all three of them there at one time, I cannot tell, or which of them were together; but this you did swear, that they were there, and came to such a Resolution, and you carried it to all their Chambers, and did see them sign it.

Mr. *Just. Withins*. He gives you a plain Account, what you did swear, I think, Mr. Otes.

Otes. Very well, my Lord, I would ask him a third Question, if you please.

L. C. J. Ay, in God's Name ask him as many Questions as you will.

Otes. Whether did I swear that it was resolved to kill the King at the *White Horse Tavern*, or whether that Resolution was made after they separated themselves into lesser Clubs?

L. C. J. Mr. *Foster*, this is his Question, whether you did apprehend by what he swore, that he affirmed, the Resolution to kill the King was made at the *White Horse Tavern*, or afterwards when they were divided?

Mr. *Foster*. They came to a Resolution, you said, at the *White Horse Tavern*, and the Resolution was there drawn up by one *Mico*, I think, and it was carried by you, for every one to sign it from Chamber to Chamber; for I remember you were asked the Question, whether you saw them sign it, and you answered that you did carry it, and saw them sign it.

Mr. *Just. Withins*. He speaks very plain, Mr. Otes.

L. C. J. He answers your Question very fully.

Otes. Ay, my Lord, so he does, I am glad of it.

L. C. J. Have you any more Questions to ask him?

Otes. I would ask him another Question; whether I did swear, that I did carry this Resolution from Chamber to Chamber to be signed, or that I carried it from Chamber to Chamber and saw them sign it?

Mr. *Foster*. You did swear, that you carried the Resolution from Chamber to Chamber, and saw them sign it.

Otes. But did you remember it so particularly, as to say which you swore, whether I did carry

it to be signed, or carried it, and saw them sign it?

Mr. *Foster*. You said, you carried it to be signed, and you saw it signed.

L. C. J. He tells you for a Satisfaction in that Point, that he does remember you did swear it both ways.

Otes. He does say so indeed, but whether it was so or no, is a doubt.

L. C. J. That will be a Question by and by it may be, if he be in the wrong, I suppose you can rectify him.

Otes. We are now my Lord upon my Oath, and therefore it concerns me to enquire whether I swore as is laid in the Indictment.

L. C. J. You say right, it does so.

Otes. And I the rather ask these Questions, my Lord, because it is six Years ago since that Tryal.

L. C. J. I hope you have not forgot what you swore, have you?

Otes. My Lord, I think it is fair for me to ask the Witnesses what they remember after so long a time.

L. C. J. 'Tis very fair, no body says any thing to the contrary.

Otes. Then my Lord, I hope I may ask this Gentleman how he comes to remember all this after so long a time?

L. C. J. He has told you already, but tell it him again Mr. *Foster*.

Mr. *Foster*. Truly it is so long ago, that had I not taken all these Notes at the Tryal, I had not been able to have given so good an Account.

L. C. J. 'Tis a very good reason.

Otes. 'Tis so my Lord, I have subpoena'd others of the Jury, and they will, I suppose, give you as good an Account.

L. C. J. Have you done with him then?

Otes. I have one Question more to ask Mr. *Foster*, and that is, whether I swore they met all in one Room, at the *White Horse Tavern*, or in more than one?

Mr. *Foster*. You swore they were in several Rooms.

Otes. Then I would ask him this Question, my Lord, whether he were then satisfied that *Ireland* was guilty of the High Treason he was then indicted?

L. C. J. The meaning of the Question is, I suppose, whether you did believe Mr. Otes at that time.

Mr. *Foster*. Yes, my Lord I had no reason to the contrary.

L. C. J. But I would ask you a Question then Mr. *Foster*. Do you believe him now? Do you think, Mr. Otes, he would have found him guilty, if he had not believed the Evidence against him?

Otes. We know how Juries have gone alate.

L. C. J. Ay, very strangely indeed, Mr. Otes, and I hope so as we shall never see them go again.

Mr. *Foster*. My Lord, I have lived so long in the City of *London* without any Blemish, that I hope it will not be thought I would give corruptly a Verdict against my Conscience.

Otes. My Lord, I speak of later Times than *Ireland's* Tryal.

L. C. J. He is an honest Man, I know him.

Otes. Good my Lord, be pleased to hear me.

L. C. J. Nay, you shall hear me, as well as I shall hear you; I'll assure you that, *Mr. Otes* in plain *English*, ask as many Questions of the Witnesses as you will, that are proper to be asked; but I'll have no Descants, nor Reflections: I know him, and he is very well known in the City of *London*, he is a Man of very considerable Quality, and very good Repute.

Otes. I beseech your Lordship to forgive me, if I mistake in my Questions, I do assure you I design no Reflections on *Mr. Foster*.

L. C. J. Ask what Questions you will, but do not reflect.

Otes. I desire to ask *Mr. Foster* one Question more, and that is, that he would be pleased to tell the reason why at the beginning of his Evidence he said, it was his unhappiness to be a Jurymen at that time?

Mr. Foster. Really Sir, I think it not a happiness for any Man to be of a Jury, where the Life of a Man is in Question. I assure you for my self, I never accounted it so, and if I could have avoided it, I should have been very glad to have been excused.

Otes. I have done with *Mr. Foster*.

Mr. At. Gen. My Lord, thus we prove what *Mr. Otes* swore at the Tryal, which *Mr. Otes* himself will not deny, for the Fact, *Mr. Otes* has printed in his Narrative, as we have now proved it.

Otes. I intend to produce some others of the Jury-men by and by.

Mr. Sol. Gen. Now we shall call our Witnesses to prove, that what he then swore was false.

Mr. At. Gen. We call no more to the Point, what he did swear; but go on to disprove what he did then swear.

Otes. My Lord, I would put this Question to the Court, Whether this be a Proof sufficient for this Point?

L. C. J. I leave that to the Jury, it is a Point of Fact that they are to try.

Otes. I beseech your Lordship, that the Court would be pleased to give me an Answer.

L. C. J. If you ask impertinent Questions, the Court is not obliged to answer them. Go on *Mr. Attorney*.

Mr. At. Gen. Call *Martin Hilsley*, Esq; and *Henry Thornton*, Esq; Swear *Mr. Hilsley*. *[Which was done.]*

Come *Mr. Hilsley*, pray acquaint my Lord and the Jury what time you came from *St. Omers*, in the Year 78.

Mr. Hilsley. My Lord, I came from *St. Omers*, the 24th of *April* New Stile, where I left the Prisoner, *Mr. Otes*.

L. C. J. From whence did you come, say you?

Mr. Hilsley. From *St. Omers* the 24th of *April*, New Stile.

L. C. J. What Year?

Hilsley. In the Year 78. that is the fourteenth of *April* here, and the three and twentieth of *April* New Stile; I saw the Prisoner at *St. Omers*, and went to School with him, and on the four and twentieth I came from *St. Omers*, and went to *Calais*, and from thence into *England*; but he was never in my Company all the while I was coming, for *England*, though he swore he came over with me.

L. C. J. The three and twentieth of *April* you say you saw him?

Mr. Hilsley. Yes, I was with him, that was the Day before I came from *St. Omers*.

L. C. J. You left him there the Day before you came away, you say?

Mr. Hilsley. I did not see him that Morning that I came away, but here are others that did.

Mr. At. Gen. Was he a Scholar there?

Mr. Hilsley. Yes, my Lord, he was.

Mr. At. Gen. Did you know him very well?

Mr. Hilsley. Yes, my Lord, I did.

Mr. At. Gen. Did he come over into *England* with you?

Mr. Hilsley. My Lord, I came from *St. Omers* to *Calais*, and never saw him, from *Calais* to *Dover*; I never saw him from *Dover* to *London*, I never saw him all the way, and I am confident, he was not in the same Ship I came over in, for I should have seen him if he had.

Mr. At. Gen. Was he for some time before that constantly at *St. Omers*?

Mr. Hilsley. We went perpetually to School together.

L. C. J. What time did you take shipping after you went from *St. Omers*?

Mr. Hilsley. The very next Day; the Day I went from *St. Omers* was on the *Sunday* morning: On *Monday* I took shipping from *Calais* to *Dover*, and I arrived at *England* at Ten of the Clock the same Night.

Otes. When does he say he arrived in *England*?

L. C. J. He says, he went from *St. Omers* on the *Sunday*, he came that Night to *Calais*, and the next Day went on Board from *Calais*, and came that Night to *Dover*, that was *Monday* night.

Mr. Hilsley. Yes, I came that Night to *Dover*, and I lay there that *Monday* night, the next Day was the 26th of *April* New Stile.

Mr. At. Gen. Where came you then, from thence?

Mr. Hilsley. I came as far as *Bockton-street*, and there I lay 4 or 5 Days, and then I came to *Cittenbourn*, and by long Sea from thence to *London*.

Mr. At. Gen. Where did you meet *Mr. Burnaby*?

Mr. Hilsley. I met him hard by there, at a Relations of mine.

Mr. At. Gen. Do you remember what Day you met him?

Mr. Hilsley. I think it was a Day or two before I came away from thence to *London*.

Mr. Just. Withins. Had you any Discourse with *Mr. Otes*, about your coming into *England*?

Mr. Hilsley. Nothing at all, *Sir Francis*, that I remember.

L. C. J. What time did you come to *London*?

Mr. Hilsley. I came within a few Days to *London*, I stayed 4 or 5 Days there by the way; and I saw *Mr. Burnaby* within 4 Days, I think, after I came into *England*. It was about *Monday* seven-night after I came from *St. Omers*, that I came to *London*.

Mr. At. Gen. That was *May* New Stile.

Mr. Hilsley. That is their Stile. It was so.

Mr. Sol. Gen. In our Stile it was the 21. of *April*.

Mr. Hansfys. Pray did you give an account to any body, after you came to *London*, that

that you left Otes at St. Omers when you came away.

Mr. *Hilsley*. What say you, Mr. *Hanseys*, I did not well understand your Question.

L. C. J. Then mind me, Sir, It was asked of you whether you had any Discourse with any body, after you came hither, that you had left Mr. Otes behind you at St. Omers?

Mr. *Hilsley*. I did tell some Persons I left an English Parson there, at the same time I came away.

L. C. J. Did you not name him, who it was?

Mr. *Hilsley*. Yes, I named him by the Name he went by there, and that was *Sampson Lucy*.

Mr. *At. Gen.* To whom did you tell it?

Mr. *Hilsley*. To one Mr. *Osbourne*.

Mr. *Sol. Gen.* Did he go by that Name of *Sampson Lucy* in the College?

Mr. *Hilsley*. Yes, he did sometimes, he had three or four Names, he was called sometimes *Titus Ambrosius*.

Otes. Now, my Lord, I desire I may ask that Gentleman a Question or two.

L. C. J. Ay, if they have done with him.

Mr. *At. Gen.* We have, my Lord.

L. C. J. Then ask him what you will.

Otes. I desire, my Lord, that you would be pleased to ask that Gentleman what Religion he is of; for it is a fair Question, and an equitable one, and that which very nearly concerns me; and I desire to know where he lives.

L. C. J. What Religion are you of, Sir?

Mr. *Hilsley*. I am a Roman Catholick.

L. C. J. Where do you live?

Mr. *Hilsley*. I live in London, I am of the Inner Temple.

L. C. J. He says that he is a Roman Catholick, and Lives in London.

Otes. Pray be pleased, my Lord, to ask him when he went to St. Omers first, and how long he stayed there?

Mr. *Hilsley*. My Lord, I was there about six Years, I presume it was about the Year 1672. when I went there first.

Otes. Pray ask him what he did there, what was his Business?

Mr. *At. Gen.* That is not a pertinent Question at all, with submission, my Lord.

Otes. I beseech you, Mr. Attorney, give me leave to ask my own Questions.

L. C. J. Ay, but you must ask fair and pertinent Questions.

Otes. My Lord, I would know what was his Employment there at St. Omers?

Mr. *Hilsley*. I know not my self of any particular Employment I had, any more than any of the rest that were there.

L. C. J. But, Mr. Otes, you must not ask any such Questions; what know I, but by asking him the Question, you may make him obnoxious to some Penalty, you must not ask him any Questions to ensnare him.

Otes. My Lord, It tends very much to my Defence to have that Question truly answered.

L. C. J. But if it tends to your Defence never so much, you must not subject him to a Penalty by your Questions.

Otes. The nature of my Defence requires an Answer to that Question.

L. C. J. But shall you make a Man liable to Punishment, by ensnaring Questions? If a Man

should ask you what Religion you are of, —

Otes. My Lord, I will tell you by and by my Reason; and I hope a good one; why I ask it.

L. C. J. I do not believe you can have any Reason, but to be sure we must not suffer any such entangling Questions to be asked.

Otes. Pray ask him, my Lord, when I came to St. Omers?

L. C. J. When did Otes come to St. Omers?

Mr. *Hilsley*. As well as I remember, he came to St. Omers either the latter end of November, or the beginning of December, in the Year 1677. I think it was that Year.

Otes. I desire you would ask him, whether they were not Priests and Jesuits that govern'd that House?

L. C. J. What a Question is that, I tell you 'tis not fit to be asked.

Otes. I demand an Answer to it, upon the Oath he has taken.

L. C. J. And I tell you, upon the Oath you have taken, you are not bound to answer any such Question.

Otes. Good my Lord, let my Questions be answered.

L. C. J. No, Sir, they shall not: How now, do not think to put Irregularities upon us, if you will behave your self as you ought to do, and keep to that which is proper, well and good?

Otes. If your Lordship pleases, I think this very proper for me.

L. C. J. What, to ask such improper Questions as these are?

Otes. Truly, my Lord, I think they are fit Questions to be asked.

L. C. J. But we are all of another Opinion.

Otes. My Lord, I desire to know, whether they are not set on by their Superiours to do this?

L. C. J. That is not a fair Question neither.

Otes. Give me leave to make my Defence, my Lord, I beseech you.

L. C. J. Ay, in God's Name; but I pray you then make it in a regular and becoming way; for I know of no Privilege you have more than other People, to use Witnesses as you do.

Otes. My Lord, I look upon my self as hardly used in the Case.

L. C. J. I care not what you look upon your self to be, if you will ask Questions, ask none but fair Questions, and while you keep within Bounds you shall be heard as well as any of the King's Subjects; but if you will break out into Questions that are impertinent, extravagant, or ensnaring, we must correct you, and keep you within proper Limits.

Otes. Then, my Lord, I ask whether he was not a Witness at the Tryal of the five Jesuits, and at *Langborn's* Tryal?

L. C. J. Ay, that is a proper Question, what say you to't, Sir?

Mr. *Hilsley*. I was so, Sir.

Otes. Pray, my Lord, ask him what Credit he received at those Tryals?

L. C. J. What a Question is that to ask any Man!

Otes. My Lord, I think it is a fair Question.

L. C. J. No, indeed, it is not a fair one at all.

Otes. My Lord, I desire to know what induces him to come here as a Witness now, since it appears that now he comes to give an Evidence that he gave six Years ago, and was not believed?

Mr. Hilfley. My Lord, I am subpoena'd.

L. C. J. He has given you an Answer to the Question, tho' I think it was an idle Question, and not at all to the purpose.

Otes. It may be he may have some particular reason to induce him to it now.

L. C. J. Well, he tells you he came because he was subpoena'd, and that is sufficient: He is not compellable to be a Witness, unless he be subpoena'd; but if a Man will come without a Subpoena, and give Evidence in a Cause; that is no Objection to his Testimony.

Otes. My Lord, I desire to know of him, whether he is to have any Reward for swearing in this Cause?

L. C. J. What say you, Sir, are you to have any Reward for your Evidence?

Mr. Hilfley. None at all as I know of, my Lord, I assure you.

Mr. Just. Withins. He is not paid for his Evidence, *Mr. Otes.*

Otes. If he be or be not, I cannot tell, nor do I know who ever was paid for it.

L. C. J. Have you any more Questions to ask him?

Otes. Pray my Lord, I desire to know what was the occasion of his coming away from St. Omers?

Mr. Hilfley. I had finished my Studies.

Otes. Pray, my Lord, be pleased to ask him, if he never heard of any Consult of the Jesuits here in England, in the Month of April 78. and from whom he did hear of it?

Mr. Hilfley. I did hear of it among the rest of the Students of the College.

L. C. J. What did you hear of?

Mr. Hilfley. I did hear of a Consult of the Fathers in April 1678.

Mr. At. Gen. Yes, there was, but not such an one as *Mr. Otes* speaks of, nor was he at it.

Mr. Just. Holloway. For what was that Consult, I pray you?

Mr. Hilfley. It was nothing but a Triennial Congregation about the Affairs of the Society.

L. C. J. What were they to do there?

Mr. Hilfley. My Lord, I was informed among them there, that it was only what they used to have once in three Years for ordinary Affairs.

Otes. My Lord, He pretends to tell when I came thither, I desire to know of him from what time it was he saw me there, and how often?

Mr. Hilfley. Generally every day, as near as I can remember, I think, *Mr. Otes*; you and I, *Mr. Otes*, went to School in the same place.

Otes. Pray, how many Days was I absent from thence in that time you were there?

Mr. Hilfley. You were there generally as often as I, I do not know whether ever you miss'd a Day or no.

Otes. Pray, my Lord, will you ask this Gentleman one Question more, whether he can particularly tell that he did see me every Day

at St. Omers? For 'tis not enough for him to swear that he saw me there; but he ought to give an account how he comes to know it by some particular Circumstances.

L. C. J. He has given you several Circumstances of his Knowledge, for he says he was there all the while from your coming, till the 23d of April New Stile, that he came for England; he says he was a Scholar in the same Form and Class with you, and because he does not remember himself to have been absent, he does not remember you to be absent neither.

Mr. At. Gen. And he swears particularly to the very time he came over, which was April the 14th Old Stile.

Otes. Well, I have no more Questions to ask this Gentleman.

L. C. J. Then call another.

Mr. Sol. Gen. Cryer, Call Mr. John Dorrel.

[Who was sworn.]

L. C. J. Look ye, Mr. Attorney, you did open things at the first for Method's sake by Periods of Time; the first was *Hilfley's* coming over, the next was the meeting with *Burnaby*, now pray observe that Method, and call that *Burnaby* next.

Mr. At. Gen. My Lord, We shall call him by and by; but we have not done with this Business about *Hilfley*, we have some Witnesses that will give an Evidence to strengthen and back his Testimony. Come, *Mr. Dorrel*, What have you to say to this Matter?

Mr. Dorrel. My Lord, In April 1678. I came from Brussels to England, where presently after I came, I was with one *Mr. Osbourn* and my Mother, and there was a Discourse between my Mother and him about Religion.

L. C. J. Where was that?

Mr. Dorrel. It was here in England.

Mr. At. Gen. Now tell the time when that was.

Mr. Dorrel. As near as I can guess, it was the 15th or 16th of April Old Stile, in the Year 1678.

Mr. At. Gen. Well, Sir, go on with your Story.

Mr. Dorrel. My Mother was laughing at his Religion, and telling him some ridiculous Stories, and he replied, there are a great many that are so ignorant, that are bred up in the Religion of the Church of England, that they are forced to be sent to the Colleges abroad to be taught, even some of the Clergy of that Church, and particulariz'd in one *Sampson Lucy* aliàs *Otes*, that was a Scholar at that time at St. Omers, as he was assured by a Gentleman that was newly come from thence: My Mother is now sick, or else she would have been here, and would have testified the same I now do.

Mr. Sol. Gen. This Gentleman is a Protestant, *Mr. Otes.*

Otes. What is your Name, Sir, I pray?

Mr. Dorrel. My Name is John Dorrel, Sir.

Otes. Were you never at St. Omers a Student there?

Mr. Dorrel. I was there, but before your time, Doctor; I had not the Happiness to be there, while you were there.

Otes. I pray, Sir, what Religion are you of?

Mr. Dorrel. I am a Papist now.

Otes.

Otes. I desire, my Lord, the Court would be pleased to take notice of it, he owns he was reconciled to the Church of Rome.

Mr. Dorrel. Mr. Otes, To satisfy you, I went over when I was a Child of 12 or 13 Years old, and so was bred in that Perswasion.

L. C. J. Well, well, We all observe what he says.

Mr. Sol. Gen. Pray swear Mr. Osbourn.

[Which was done.]

Mr. At. Gen. My Lord, We call'd this Person only to this Matter. Pray, Sir, will you give the Court and the Jury an account what Discourse you had with Mr. Hilsey about Otes, and pray, Sir, tell the time when it was.

Mr. Osbourn. My Lord, I went out of Town the 30th of April, the Year before the pretended Plot was discovered by Mr. Otes, and I met with Mr. Hilsey two or three Days before, and enquiring of him about the Affairs of St. Omers, he told me of a Minister of the Church of England that was come thither to be a Student there, who went under the Name of Sampson Lucy, but his right Name was Otes; I asked him what he pretended to; did he intend to be of that Order? He told me, he did believe that he would not be admitted for his irregular and childish Behaviour, and that he had left him in the College; and this I afterwards in Discourse told to Madam Dorrel, who is a Protestant, and to my Mother, who is since dead?

Mr. At. Gen. Will Mr. Otes ask this Gentleman any Questions?

Otes. I only ask him what Religion he is of?

L. C. J. What Religion are you of, Sir?

Mr. Osbourn. I am a Roman Catholick, my Lord.

Mr. Sol. Gen. Now, my Lord, we come to call Mr. Burnaby. Pray swear him.

[Which was done.]

Mr. At. Gen. Mr. Burnaby, Pray will you acquaint my Lord and the Jury, of the time when you came from St. Omers to England; and when you met with Mr. Hilsey?

Mr. Burnaby. I met with Hilsey on the 18th of April Old Stile, in the Year 78. then I pursued my Journey the following Day to St. Omers.

L. C. J. Where did you meet him?

Mr. Burnaby. Between Cittenbourn and Canterbury, and afterwards I pursued my Journey from Canterbury to Dover, from thence to Callis, and from thence to St. Omers. I arrived at St. Omers the 21st of April Old Stile, which was the 1st of May New Stile, upon the 2d of May Mr. Otes was in my Company, I was walking in the Garden, and he came into my Company.

L. C. J. When was it?

Mr. Burnaby. The 2d of May New Stile, and the 3d of May again I went into the Garden, and there he was with me again, and the 5th of May I saw him again.

L. C. J. Where?

Mr. Burnaby. In the Rhetorick Form.

L. C. J. But where, in what place?

Mr. Burnaby. At St. Omers.

L. C. J. You speak of your own Knowledge, you are sure you saw him there at those times?

Mr. Burnaby. Yes, in the Rhetorick School and in the Garden.

Mr. At. Gen. What more do you know of him?

Mr. Burnaby. I saw him again the 8th of May New Stile, that is the 28th of April Old Stile; I mean by New Stile, that Stile which was used in the Place where I was then.

Mr. At. Gen. How long was he there before he went away?

Mr. Burnaby. I know he was there from the 2d of May, the Day after I came thither, to the 20th of June, and then I went away, or thereabouts.

L. C. J. Did you see him daily all that time?

Mr. Burnaby. Yes, from Day to Day he was not out of the House.

L. C. J. Were you a Scholar there with him?

Mr. Burnaby. Yes, I was.

L. C. J. What Year was that?

Mr. Burnaby. In the Year 78.

Mr. At. Gen. Mr. Otes may ask him what Questions he will.

Otes. My Lord, He says he went away; I desire to know whether he did go?

Mr. Burnaby. I went away the 20th of June from St. Omers, it is no matter whither I went.

Otes. I desire he may give an account what Religion he is of.

Mr. Burnaby. I am a Roman Catholick.

Otes. My Lord, I desire to know whether he be not of that Order?

L. C. J. That I will not ask him, I'll assure you.

Otes. Truly, my Lord, I think it is a very hard matter for me to have Jesuits admitted as Witnesses in such a Cause against me.

L. C. J. I have told you already, you are not to ask any Questions of any Witnesses that may subject them to any Penalty, or make them accuse themselves of any Crime.

Otes. My Lord, I humbly desire he would give an account, whether he were not admitted into the Society.

L. C. J. I tell you, he is not to be ask'd that Question.

Otes. He has own'd it before.

L. C. J. Do you take your Advantage of it, if you can prove it.

Otes. Then, my Lord, I desire to ask him, whether or no he did appear as a Witness at the Tryal of the five Jesuits?

Mr. Burnaby. No, my Lord, I did not.

Otes. Pray, my Lord, ask him whether he was not summon'd to appear then?

Mr. Burnaby. No, I was not.

Otes. Pray, my Lord, ask him what Reward he is to have for coming, and giving this Evidence?

L. C. J. Are you to have any Reward for being a Witness in this Cause?

Mr. Burnaby. None, my Lord, that I know of.

L. C. J. That was a proper Question to be asked, and you have a fair Answer to it.

Otes. Pray, Mr. Burnaby, by what Name did you go at St. Omers?

Mr. Burnaby. By the Name of Blunt.

Mr. At. Gen. And what Name did he go by there?

Mr. Burnaby. Who, Sir?

Mr. At. Gen. Mr. Otes.

Mr. Bur.

Mr. Burnaby. By the Name of Sampson Lucy.

Otes. My Lord, I desire you to ask him whether he did know of any Consult that was to be held here in London, in April 78. and by whom he knew it?

L. C. J. What say you, Sir, did you know of any Consult?

Mr. Burnaby. No, I neither heard of it, nor knew any thing of it.

Mr. At. Gen. Now my Lord, we shall go on to another Period of Time, and that is concerning Pool. Swear Mr. Pool. [Which was done.

Mr. Sol. Gen. Pray will you acquaint my Lord and the Jury, whether you knew Mr. Burnaby at St. Omers.

Mr. Pool. Yes, I did, Sir.

Mr. Sol. Gen. Do you know the time when he came to St. Omers?

Mr. Pool. No, I do not remember it.

Mr. At. Gen. When did you come over from St. Omers?

Mr. Pool. The 25th of April.

Mr. At. Gen. What Stile?

Mr. Pool. Old Stile.

Mr. At. Gen. In what Year?

Mr. Pool. In the Year 78.

Mr. At. Gen. Did you know Mr. Otes at St. Omers?

Mr. Pool. Yes, I did know that Gentleman there.

Mr. At. Gen. Was he at St. Omers that time you were there?

Mr. Pool. Yes, he was.

Mr. Sol. Gen. Did you leave him there when you came away?

Mr. Pool. Yes, I did leave him there when I came away.

Mr. Sol. Gen. Pray tell the Court some particular Thing why you remember it, and upon what account you came away.

Mr. Pool. Upon the Occasion of my Brother's Death I came over, and I can tell several Particulars of my Journey, I came away upon the Thursday, and I came to London upon the Sunday following.

Mr. At. Gen. You are sure you left Mr. Otes there then?

Mr. Pool. Yes, I am sure I did leave Mr. Otes there when I came away, and I came away thence the Fifth of May New Stile, the Twenty Fifth of April Old Stile.

Mr. Sol. Gen. Pray how long did you know Mr. Otes there?

Mr. Pool. I knew him there from Christmas before that.

L. C. J. You were of the Colledge, were you not?

Mr. Pool. Yes, I was a Student there.

L. C. J. You are sure he was there all the while?

Mr. Pool. I do not remember he was a Day absent, and if he had gone away, particular notice would have been taken of it.

L. C. J. Did you see him there two or three Days before you came away.

Mr. Pool. I saw him that Morning I came away.

L. C. J. And what time before?

Mr. Pool. I saw him two or three Days before that.

L. C. J. Can you name any particular Days?

Mr. Pool. I saw him the first of May, and the

second of May, and the fifth of May, which was the 25th of April Old Stile; and then I came away.

L. C. J. Are you sure you left him there, then?

Mr. Pool. I am sure I left him there, I can swear it without any Difficulty at all.

L. C. J. What do you ask him, Mr. Otes?

Otes. I desire to know what Religion he is of?

L. C. J. What Religion are you of?

Mr. Pool. I am a Roman Catholick.

Otes. I desire your Lordship would ask him, whether he was a Witness at the Tryal of the 5 Jesuits, or at Langhorn's Tryal?

Mr. Pool. No, I was never an Evidence before in my Life.

Otes. Pray my Lord ask him, whether he was not admitted into the Sodality of the Virgin Mary?

L. C. J. No, indeed, I shall ask him no such Question.

Otes. Pray my Lord, let him answer it.

L. C. J. Prove what you can when it comes to your Turn, but ask him no entangling Questions.

Otes. He has made himself liable to a Penalty by being in that Seminary.

L. C. J. I hope a Man may be at St. Omers, and yet not be punished for it, Mr. Otes.

Otes. It is my Defence to disable the Witnesses against me.

L. C. J. But they must not be asked what may make them accuse themselves.

Otes. My Lord, it is hard that the Witnesses shall not be made to answer my Questions.

L. C. J. Pray Sir be quiet, we have told you often enough already, you must not think to govern us, it must not be allowed.

Otes. My Lord, I desire he may be asked then, what Reward he has to come, and swear in this Cause?

Mr. Pool. My Lord, I do not know that I am so much as to have my Charges born.

L. C. J. Are you to have any Reward?

Mr. Pool. No, my Lord, that I know of.

Otes. Pray my Lord, I desire he may be ask'd, what was the Occasion of Mr. Hilsley's coming away from St. Omers?

Mr. Pool. Indeed I did not examine into the Occasion at all, for I was never a Man that meddled or made on any Side, but lived quietly in the Colledge, and minded my Studies.

Otes. My Lord, I desire your Lordship to ask him whether he did know of any Consult of the Jesuits in April 78. and from whom he knew it?

Mr. Pool. I know not of any particular Consult, I heard something in general of a Triennial Congregation, but I cannot speak any thing of my own Knowledge.

Otes. My Lord, I desire to know of him, if he can tell when I came to St. Omers?

L. C. J. Do you know when Otes came to St. Omers?

Mr. Pool. About Christmas, as near as I can remember, it was the latter end of November.

Otes. How much before or after Christmas was it?

Mr. Pool. I cannot tell exactly.

Otes. What Year was it in?

Mr.

Mr. Pool. In the Year 77.

Otes. I desire to know of him, my Lord, whether he saw me every Day at St. Omers at Dinner?

Mr. Pool. I cannot say, that ever I knew he was absent any one Day, never three Days I think I may affirm, but only when he was in the Infirmary.

Mr. At. Gen. That's the Place where they go when they are sick?

Otes. Pray, my Lord, ask him by what Name he went, when he was there in the College.

Mr. Pool. By the Name of *Killingbeck*.

Mr. Sol. Gen. By what Name did he go by, I pray you?

Mr. Pool. By the Name of *Sampson Lucy*.

Mr. Sol. Gen. Swear Mr. *Henry Thornton*.

[Which was done.]

Mr. At. Gen. Mr. *Thornton*, Pray where were you in the Year 78?

Mr. *Thornton*. At St. Omers, my Lord.

Mr. At. Gen. Do you remember Mr. Otes there, do you know him?

Mr. *Thornton*. Yes, I know him very well.

Mr. At. Gen. When did he come thither?

Mr. *Thornton*. He came there about *Christmas* 77.

Mr. At. Gen. How long did he continue there?

Mr. *Thornton*. He staid there till St. *John Baptist's* Eve in *June* 78.

Mr. At. Gen. *Midsummer* you mean?

Mr. *Thornton*. Yes, the Eve of St. *John Baptist*.

Mr. At. Gen. What *Stile*?

Mr. *Thornton*. New *Stile*.

Mr. Sol. Gen. Did you see him there all the while?

Mr. *Thornton*. Yes, I did see him every Day, I believe, in the Refectory at Dinner time, and at Night in the Dormitory, where all the Collegians have their Beds: I lay over against him every Night, I saw him particularly upon the Day of *Hilsley's* Departure, which was the 24th of *April* New *Stile*, and I saw him the 1st of *May* New *Stile*, upon the coming of Mr. *Burnaby* to the College; and particularly again I remember him there the 2d of *May*, when my Schoolfellows exhibited an Action or Play.

Mr. At. Gen. Was Mr. Otes there then?

Mr. *Thornton*. Yes, I saw him present at it, and I know it by this particular Circumstance, there was a Scuffle between him and another about a Place to see the Play.

Mr. *Jones*. Did you see him the 23d of *April* Old *Stile*, that is, the 3d of *May* New *Stile*, which was the Day after your Play, that you remember?

Mr. *Thornton*. I do not remember that I did see him that Day, by any particular Circumstance, tho' I believe I did.

Mr. *Jones*. Do you remember when Mr. Pool came away from St. Omers?

Mr. *Thornton*. Yes, I do.

Mr. *Jones*. When was that?

Mr. *Thornton*. The 5th of *May* New *Stile*.

Mr. *Jones*. Was Otes at St. Omers at that time?

Mr. *Thornton*. Yes, he was there then, I am sure.

Mr. At. Gen. Was not he Reader there in the College?

Mr. *Thornton*. He was Reader in the Sodality,

and to my knowledge, he did not miss once from the 24th of *April* New *Stile*, to the 24th of *May* New *Stile*, from being there, and reading in the Sodality.

L. C. J. What did he use to read?

Mr. *Thornton*. Some spiritual Book or piece of Divinity, or the like, as it was usual to have read every *Sunday* and *Holiday*.

L. C. J. And that is one reason why you conclude he was there all that while, because every *Sunday* and *Holiday* he was to read, and did read.

Mr. *Thornton*. Yes, my Lord.

Otes. Pray, my Lord, be pleased to ask this Gentleman, what Religion he is of?

Mr. *Thornton*. A Roman Catholick.

Otes. Where does he live?

L. C. J. Where do you live, Mr. *Thornton*?

Mr. *Thornton*. I am a *Northumberland* Man, that's my Country.

Otes. My Lord, I desire to know of him, when he did come from St. Omers?

Mr. *Thornton*. I came from St. Omers, my Lord, about two Years after that Otes went away from thence.

Otes. Pray, my Lord, be pleased to ask him, who it was that was Rector or Governour of that House or College?

Mr. *Thornton*. It was one Mr. *Richard Ashby*.

Otes. Pray, my Lord, be pleased to ask him, what School he was in there?

Mr. *Thornton*. I was in *Syntax*, my Lord.

Otes. Then, my Lord, I would ask him another Question, and that is this, whether he was not a Witness in behalf of the five Jesuits and Mr. *Langborn*?

Mr. *Thornton*. No, I was not, my Lord.

Otes. My Lord, I desire to know, if he can tell the occasion of Mr. *Hilsley's* coming away from St. Omers?

Mr. *Thornton*. It never concerned me at all, and I never enquired into it.

Otes. Then, my Lord, I would ask him this Question, why he is so precise as to his Remembrance of what was done in *April* and *May*, when he does not give any account of any other time, nor did the other Witnesses?

L. C. J. Yes, but they do; they give you a particular account from the time of your coming thither, which was about *Christmas*, some say the latter end of *November*, or the beginning of *December*, they are not positive to any particular time, but thereabouts, and so from that time all along till *June*.

Otes. I beg your Lordship's Pardon, I did not hear that he said any such thing.

L. C. J. If you will, I'll ask him that Question again for your satisfaction.

Otes. If you please, my Lord.

L. C. J. Then mind what is said; Do you remember that Otes was there in *March* before, and in *February* before?

Mr. *Thornton*. Yes, I particularly remember in *March* before, he did read a ridiculous Book in the Sodality, and he was remarkable in the House by twenty ridiculous Passages.

Otes. I do acknowledge I did in *March* read a pleasant Book, called, *The Contempt of the Clergy*.

L. C. J. By whose Order did he read that Book in the Sodality?

Mr. *Thorn-*

Mr. Thornton. I do not know, whether it was by his own Election that he was Reader there, or by the Command of the Prefect of the Studies, that has the Care of the Students, and appoints them their Business.

Otes. Pray, my Lord, be pleased to ask him how long he was resident at St. Omers?

Mr. Thornton. I was there seven Years.

L. C. J. You said he was there in June till Midsummer Eve.

Mr. Thornton. Yes, he was so.

Otes. I own that I was there in June, but that was after I returned from England.

L. C. J. When do you say he left the College first?

Mr. Thornton. He never left the College from the time of his coming thither first till Midsummer Eve, only one time that he was at Watton, and that was but a Day or two at most, which is not a League out of Town.

L. C. J. Do you remember him there about Christmas time?

Mr. Thornton. Yes, my Lord, very well.

L. C. J. When was it he went to Watton?

Mr. Thornton. About the latter end of January, as I do remember, and in February above Shrove-tide I remember him particularly to be there.

L. C. J. Now, Mr. Otes, you see he speaks to other times besides April and May, and he brings, upon my Word, very notable Circumstances.

Otes. He says he went to School with me there, I think, my Lord?

Mr. Thornton. No, I say he was in the same College.

L. C. J. But not in the same Classis, for it seems you were in the Rhetorick Form, and he in the Syntax.

Mr. Thornton. My Lord, He went there by reason of his Age, and upon no other account; he might have gone elsewhere with us who were of a lower Form, for any great Store of Learning he had.

L. C. J. You hear him, I suppose, Mr. Otes, he gives no great Commendation of your Scholarship.

Otes. That is nothing to this Question; but pray, my Lord, be pleased to ask him, whether he did not hear of a Consult of the Jesuits held here in England in April 78?

L. C. J. What say you, Sir? Did you hear of any such Consult?

Mr. Thornton. Yes, my Lord, I did hear of a Triennial Congregation, such as used to be held by them, but that did not belong to me to enquire into it.

Otes. My Lord, I desire to know of whom he did hear it?

L. C. J. How do you know there was such a Consult, who told you of it?

Mr. Thornton. I heard of it in the House, and I had read that it was the Custom of that Society of People, to have such a meeting once in three Years.

Mr. At. Gen. Pray for what purpose did they so meet?

Mr. Thornton. As I have been told, It was to send a Procurator to Rome, and for their managing their other Affairs, which concern'd their Society.

Mr. Sol. Gen. Have the Jesuits usually such a Consult once in three Years, Sir?

Mr. Thornton. I was never present at any such Congregation, I was not capable of it.

L. C. J. But was it us'd to be said so?

Mr. Thornton. Yes, my Lord, I have heard it said so, and read of it.

L. C. J. Mr. Otes, Will you ask him any more Questions?

Otes. No, my Lord.

L. C. J. Well then, go on Mr. Attorney, and call another Witness.

Mr. At. Gen. Swear Mr. William Conway.

[Which was done.]

Mr. Sol. Gen. Mr. Conway, Pray will you give my Lord and the Jury an account where you were in the Year 1677, and in the Year 1678.

Mr. Conway. I was then at St. Omers, my Lord.

Mr. Sol. Gen. Do you remember Mr. Otes there at any time?

Mr. Conway. Yes, my Lord, I do.

Mr. Sol. Gen. Pray, at what time was he there, as you remember?

Mr. Conway. He came in December before Christmas 1677, and did not go away till June 1678.

Mr. Sol. Gen. What time in June did he go away?

Mr. Conway. About the twentieth of June, I think.

Mr. Sol. Gen. Were you there all that Year?

Mr. Conway. Yes, I was there a Scholar in the College.

Mr. Jones. Was he all the time you speak of in the College?

Mr. Conway. He lay out one Night.

Mr. Sol. Gen. What time was that?

Mr. Conway. In January, to the best of my remembrance.

Mr. Sol. Gen. Could he be out of the College any time and not be miss'd?

Mr. Conway. No, my Lord, he could not.

Mr. Sol. Gen. Did you miss him at any time?

Mr. Conway. No, my Lord.

Mr. Sol. Gen. Was he there in April 1678?

Mr. Conway. Yes, my Lord.

Mr. Sol. Gen. Can you tell any particular Passages that can make you remember it?

Mr. Conway. Yes, my Lord, I can.

Mr. Sol. Gen. Tell my Lord and the Jury how you can remember it.

Mr. Conway. I remember Mr. Hilsey's Departure, which was the 24th of April New Style, and soon after Mr. Burnaby came, but I do not know the time exactly, I was desirous to know of Mr. Burnaby whether he met Mr. Hilsey upon the way, and he told me he did meet him, and the next Day I saw Mr. Otes and Mr. Burnaby walking together very familiarly, and I took particular notice of it at that time, Mr. Burnaby being but newly come, so that I took him to have known Mr. Burnaby before, or else I concluded him to be a little impudent by his intruding into his Company.

Mr. Sol. Gen. Do you remember him in March before?

Mr. Conway. Yes, Sir.

Mr. Sol. Gen. What Particulars do you remember of his being there then?

Mr. Conway. I remember him to be there on the Thursday in Mid-Lent, the Scholars in the College had a particular Recreation, which they

they call, *Sawing of the Witch*, and Mr. Otes was among them, and I was one of them that broke a Pan about his Head for Recreation.

Mr. Sol. Gen. Do you remember the 1st of May, that there was in your College a Play acted?

Mr. Conway. As for the Play, I remember what Part Esquire *Pool* acted in it, but I remember not any Particulars that can make me so sure as to swear that Otes was there.

Mr. At. Gen. Do you remember any scuffling for a Place there?

Mr. Conway. I do not remember it of my own Knowledge, I heard of it afterwards.

Mr. Sol. Gen. You say that you saw Mr. *Burnaby* and him walking together the next Day after he came.

Mr. Conway. Yes, I did so, Sir.

Mr. Sol. Gen. Did Otes use to read in the *Sodality*?

Mr. Conway. My Lord, There was another chosen according to the Custom to read, but Mr. Otes took the Book, and did read.

Mr. Sol. Gen. Did he read constantly?

Mr. Conway. I did never miss him any *Sunday* or *Holiday* all the time.

L. C. J. From what time to what time did he read?

Mr. Conway. From a little after *Easter* till he went away.

Mr. At. Gen. Is it usually taken notice of in the College when any Person who is a Student goes away from the College?

Mr. Conway. There is nothing more discoursed of among Scholars, than that when it happens any one goes out of the College.

L. C. J. And pray when did he go away?

Mr. Conway. In *June*, about the twentieth, as near as I can remember.

Mr. Sol. Gen. Did you observe him at Dinner there constantly?

Mr. Conway. Yes, he sat by himself.

Mr. Sol. Gen. How came that to pass?

Mr. Conway. He sat at a little Table in the Hall by himself, for he pretended, being a Man in Years, he could not diet as the rest of the young Students did, and therefore obtained leave to sit alone at a little Table by himself, and he sat next to the Table of the Fathers, to which all the Students were to make their Reverence before they sat down.

L. C. J. He was a very remarkable Man by his sitting by himself; Did he sit there always?

Mr. Conway. He changed his Table once, and I took notice that he sat on the other side of the Refectory.

Mr. Sol. Gen. When was that I pray, can you remember?

Mr. Conway. That was a little after *Easter*.

Mr. At. Gen. Will Mr. Otes ask him any Questions?

Otes. Pray, my Lord, will you ask this Gentleman what Religion he is of?

Mr. Conway. I am a Roman Catholick.

Otes. Pray, ask him where he lives?

L. C. J. Where do you live, Sir?

Mr. Conway. Where now at present, my Lord?

L. C. J. Where do you usually live?

Mr. Conway. I am a *Flintshire* man, my Lord?

Otes. Pray, ask him what Name he did go by at *St. Omers*?

Mr. Conway. By the Name of *William Parry*.

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Otes. Pray ask him by what Name he gave his Evidence in at the five Jesuits Tryal?

L. C. J. Were you a Witness at the Tryal of the five Jesuits?

Mr. Conway. Yes, I was.

L. C. J. By what Name did you give your Evidence there?

Mr. Conway. By the Name of *Parry*.

Otes. Then I desire the Court to take notice he represented himself by a feigned Name in a Court of Record.

Mr. Conway. I went by both Names, my Lord.

L. C. J. Well, make what Advantage you can of it by and by.

Otes. Pray, my Lord, ask him, if ever he heard of any Consult of the Jesuits held here in England in April 1678?

Mr. Conway. Yes, I did.

Otes. Pray, my Lord, ask him, who inform'd him of that Consult?

Mr. Conway. I heard it among the rest of the Scholars, and seeing some of the Fathers go over to it, I was told so.

Mr. At. Gen. Is it an usual thing for them to have such Meetings?

Mr. Conway. They have a Congregation ordinarily once in three Years.

Mr. Sol. Gen. Does it go by the Name of a Consult, or what Name has it?

Mr. Conway. Some call it a Congregation, and some a Consult.

Mr. Sol. Gen. What is the end of such Meeting, as you have heard?

Mr. Conway. They say it was to chuse a Procurator to send to *Rome*, and give an account of the Province.

Otes. My Lord, I would ask him another Question, whether he is to have any Reward for giving this Evidence here?

Mr. Conway. No, not that I know of, but what I expect from Almighty God.

Otes. Pray, ask him how long he lived at *St. Omers*?

Mr. Conway. Five Years.

Otes. My Lord, I have done with him.

Mr. Sol. Gen. Then call Mr. *Haggerstone*, and swear him. *[Which was done.]*

Mr. At. Gen. Mr. *Haggerstone*, Pray will you acquaint my Lord and the Jury, were you at *St. Omers* in the Year 1678 with Mr. Otes?

Mr. *Haggerstone*. Yes, I was, my Lord, I had the Honour to be of the same Bench with the Doctor of *Salamanca*.

L. C. J. You mean you were of the same Class with him.

Mr. *Haggerstone*. Yes, my Lord, of the same Class.

L. C. J. In what Year was it?

Mr. *Haggerstone*. In the Year 1678.

Mr. At. Gen. In what Form were you?

Mr. *Haggerstone*. In the same Bench with Dr. Otes in the Rhetorick Form.

Mr. At. Gen. Do you remember Mr. Otes in April 1678?

Mr. *Haggerstone*. Yes.

Mr. At. Gen. What time?

Mr. *Haggerstone*. He spoke unto me on the 25th of April.

Mr. At. Gen. What Stile do you mean?

Mr. *Haggerstone*. New Stile, Sir; to avoid Confusion, I speak of the Stile of the Place where

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where I was; he asked me concerning our School-fellow Mr. *Hilsley*, who was then gone from the College, whether I had heard any thing from him since he went away, and he spoke of an Indisposition he had, for which he prescribed him a Medicine of Poppy, and he thought it would do his Business effectually.

L. C. J. Who said so?

Mr. *Haggerstone*. The Doctor of *Salamanca*, he was called *Sampson Lucy* in the College, and likewise he forbid him to chew Tobacco, which he us'd to do very much; he was called *Titus Ambrosias*, he had twenty Names.

Mr. At. Gen. Was he there all *April*, Sir?

Mr. *Haggerstone*. Yes, he was, Sir.

Mr. At. Gen. Did you know him in *March* before?

Mr. *Haggerstone*. Yes, he was there all *March* before.

Mr. At. Gen. Was he there in *February*?

Mr. *Haggerstone*. Yes, as near as I can remember, he was absent but one Day, and then he went to *Watton* in *February*, or else in *January*.

L. C. J. Do you remember when he came thither first?

Mr. *Haggerstone*. Yes, my Lord, he came in *December* near *Christmas*, as I remember.

L. C. J. Was it about that time, upon your Oath?

Mr. *Haggerstone*. I speak it upon my Oath, it was.

L. C. J. When did he go away?

Mr. *Haggerstone*. About the latter end of *June*.

L. C. J. Was he absent any time between *December* and *June*?

Mr. *Haggerstone*. I do not remember that he was absent, save only in *January* or *February*, and that was not for above a Night, when he went to *Watton*.

L. C. J. Might not he be absent, and you not mind it, or know it?

Mr. *Haggerstone*. Sure if he had been absent, we could not but have known it.

L. C. J. How so, pray you?

Mr. *Haggerstone*. If any goes away, 'tis so publick, that it cannot be without notice being taken of it.

Mr. At. Gen. Can you remember by any particular Token he was there in *April* or *May*?

Mr. *Haggerstone*. He spoke to me on the 29th of *April* New Stile, and told me, that there was a Craving Englishman had been there to beg an Alms, and there was a Collection made for him among the Scholars, but he said he would give him nothing, for he told me he had been cheated by such an one of some Pieces of Eight in *Spain*; this I remember was the 28th or 29th of *April* New Stile, I saw him there the 1st of *May*, upon the 2d of *May* there was an Action of the Scholars, and he was present at it; the 5th of *May* I was at School with him, when Mr. *Pool* went away for *England*, and I heard him about that time preach a pleasant Sermon, for he would undertake sometimes to preach, and he said in it, That the late King *Charles II.* halted betwixt two Opinions, and a Stream of Popery went between his Leggs.

L. C. J. Was this in *May*?

Mr. *Haggerstone*. Yes, just after Mr. *Pool* went

away for *England*, and he had some pretty Reflections in his Sermon about *Toby's Dog* wagging his Tail.

L. C. J. Well, Do you ask this Witness any Question, Mr. *Otes*?

Otes. Pray be pleased to ask him, my Lord, what Religion he is of?

Mr. *Haggerstone*. I am a Papist, my Lord, I am not ashamed of it.

Otes. Pray, my Lord, ask where he lives?

Mr. *Haggerstone*. At *London*.

Otes. Pray ask him what Country-man he is?

Mr. *Haggerstone*. I am a *Northumberland*-man, my Father is Sir *Thomas Haggerstone*, a Man better known than your Father, Dr. *Otes*.

L. C. J. Nay, nay, do not be in a Passion, Man.

Otes. Pray ask him, how long I was with him at *St. Omers*?

Mr. *Haggerstone*. For half a Year at least.

Otes. My Lord, I desire to know, how long he stayed there himself?

Mr. *Haggerstone*. I studied my whole Course of Humanity there.

L. C. J. How long were you there in all?

Mr. *Haggerstone*. Seven Years.

Otes. Pray, my Lord, ask him, whether he knows of any Consult held, or to be held here in *England* in *April*, 1678?

Mr. *Haggerstone*. Yes, my Lord, I saw two of the Fathers go from *St. Omers* to the Congregation, and was there at their Return, but all that time I frequented Dr. *Otes's* Company, and he remained in the College.

Otes. Pray, who were these two Fathers?

Mr. *Haggerstone*. Mr. *Williams* and Mr. *Marsh*; and when they return'd, *Otes* asked me about it, whether they had been at the Consult, and I told him there was such a thing, but he never knew it till afterwards; but this I am sure of, he was never missing all the while, I sat on the same Bench with him.

Otes. Pray, my Lord, ask him, what Name he went by at *St. Omers*?

Mr. *Haggerstone*. I went by the Name of *Harry Howard*, my Mother was a *Howard*, Doctor.

Otes. Pray ask him, whether he came into *England* when he went away from thence?

Mr. *Haggerstone*. No, I went and studied my Philosophy at *Doway*.

Otes. I desire to ask him one Question more.

Mr. *Haggerstone*. Twenty, if you please, Doctor.

Otes. I desire to know of him the occasion of Mr. *Hilsley's* coming away?

Mr. *Haggerstone*. I do know it, but truly I cannot tell whether it be fit for me to speak of it, it was upon some unhandsome account, but I must not blemish any Gentleman, I think.

Otes. My Lord, I will ask him one Question more, whether ever he was admitted into the Society?

L. C. J. I will not ask him that Question, how often have I told you no such Questions are to be ask'd? Must I make him liable to Penalty? No, ask Questions that are fair, and you shall have a fair Answer.

Otes. My Lord, I have done then with him.

Mr. Sol. Gen. Then swear Mr. *Robert Beeston*.
[Which was done.]

Mr. At. Gen. Pray, Sir, were you at *St. Omers* in the Year 77 and 78?

Mr. *Beeston*.

Mr. *Beefston*. Yes, my Lord, I was.

Mr. *At. Gen.* Did you see Mr. *Otes* there then? Do you know him?

Mr. *Beefston*. Yes, I know him very well, I did see him there.

Mr. *At. Gen.* What Months did you see him there?

Mr. *Beefston*. He came there in *December*, the beginning as I remember, and he stayed there to *June* the latter end.

Mr. *At. Gen.* What Year was that in?

Mr. *Beefston*. He came in 77, and went away in 78.

Mr. *At. Gen.* Did you observe him to be there in *April* and *May* 78?

Mr. *Beefston*. The latter end of *April*, and the beginning of *May* I did.

Mr. *At. Gen.* Tell the Court particularly how you remember it.

Mr. *Beefston*. My Lord, I saw him the 1st of *May* at *St. Omers*, where he played at *Nine-pins*, and I laid a *Wager* upon the same side that he did, and lost my *Money* as well as he.

L. C. J. Do you remember any other time?

Mr. *Beefston*. I saw him the 2d of *May*, by the same token that I met him in the *College* that *Day*, when our *School* exhibited an *Action* in the *Hall*, and I met him after *Supper*; now in this *Action* I had both acted and sung, and they came and congratulated me for my singing; Mr. *Otes* said, If I had paid for learning to sing, I had been basely cheated; and then in the *Morning* I was chosen *Reader* in the *Scholarship*, the 25th of *April*, or thereabouts, for a *Fortnight*, and Mr. *Otes* by his own *Submission* was admitted to read, only with this *Condition*, that if ever he were wanting, I was to read again; but this I say, I never supplied the *Place*; therefore I am sure he did continue there all the while, and if he had been out, I must have been called upon to read.

L. C. J. Were you in the *College* all the time he was there?

Mr. *Beefston*. Yes, my Lord, I was.

L. C. J. Did you miss him at any time?

Mr. *Beefston*. No, I never miss'd him.

L. C. J. Are you sure he was not away all that time?

Mr. *Beefston*. I am sure, as much as a *Man* can be certain of one that is of the same *Family* with himself; nay, I am as sure of it, as that I was there my self.

L. C. J. Can you speak any thing particularly of his reading?

Mr. *Beefston*. My Lord, I was to have read, if he was absent, but I was never called upon to read, and therefore I may well conclude he was there all the while.

L. C. J. He gives a material Evidence.

Mr. *Sol. Gen.* Was Mr. *Otes* such a remarkable *Man* that he must be miss'd?

Mr. *Beefston*. He was very particular, both for *Age*, and that he had a particular *Table* to eat at.

Mr. *Sol. Gen.* Can you remember any thing else?

Mr. *Beefston*. I remember too, that when Mr. *Burnaby* came first, he was often with him the 2d, 3d, and 4th of *May*, I saw him there with Mr. *Burnaby*, and I took particular notice of the *Friendship* between them, which I thought strange between *Persons* that I supposed never saw one another before.

L. C. J. Have you any Questions to ask this *Man*, Mr. *Otes*?

Otes. My Lord, I desire to ask this Gentleman what Religion he is of?

Mr. *Beefston*. I am a *Roman Catholick*.

Otes. Pray, my Lord, be pleased to ask him, when he went to *St. Omers*, and when he came away from thence, and how long he was resident there?

Mr. *Beefston*. I know not exactly what Year it was I came, but I stayed the greatest Part of seven Years there.

Otes. Pray, my Lord, ask him, what Jesuits went from *St. Omers* to the *Consult* of *April* 78?

Mr. *Beefston*. There was some that pass'd by, I did not take much notice of them.

Otes. Pray, my Lord, ask him, who it was informed him of that *Consult*?

Mr. *Beefston*. I do not know who particularly, I only heard of such a Rumour.

Mr. *At. Gen.* Was it an extraordinary thing?

Mr. *Beefston*. No, it was but an ordinary thing as they used to have once in three Years.

Otes. You say you saw me every Day there?

L. C. J. He says he believes he might, because you were *Reader* in his stead, and if you had been absent, he must have been called upon to read, which he was not, he says.

Otes. Very well, my Lord, I desire you would ask him, whether he does not remember such a thing as an *Eight-day's Exercise*, wherein those that perform the Exercise, are separated from all *Company* during that time.

Mr. *Beefston*. Yes, my Lord, I do remember that he was once in that *Eight-day's Exercise*, and during the eight Days I saw him walk in the *Garden* several times.

Otes. Pray, my Lord, ask him, if he were an Evidence at the Tryal of the five Jesuits, or *Langhorn*, and whether he gave this Evidence long ago?

Mr. *Beefston*. No, I did not, I was not there.

Otes. Pray, my Lord, ask him what Reward he is to have?

L. C. J. Are you to have any Reward for your Testimony, Mr. *Beefston*?

Mr. *Beefston*. No, my Lord.

Otes. My Lord, I desire to know of him, how he comes to be pick'd out among the rest of the Students there, to come here, and be an Evidence in this Cause?

Mr. *Beefston*. My Lord, I was subpoena'd by His Majesty, if I knew any thing of this Matter, that I should come here and testify my Knowledge.

Otes. Pray, by what Name did he go by at *St. Omers*?

Mr. *Beefston*. By the Name of *Beefston*, as I do now.

Otes. And is that his own Name?

Mr. *Beefston*. Yes, my Lord.

L. C. J. Pray, go on, Mr. Attorney.

Mr. *At. Gen.* Swear *Clement Smith*.

[Which was done.]

Mr. *Sol. Gen.* Pray, Sir, were you at *St. Omers* in the Year 77 and 78?

Mr. *Smith*. Yes, I was.

Mr. *Sol. Gen.* Do you remember Mr. *Otes* there at that time?

Mr. *Smith*. Yes, I was in the same Class with him.

Mr. *At. Gen.* Pray when came he thither, and how long did he stay there?

Mr. *Smith*.

Mr. Smith. He came a little before *Christmas*, and stayed till *June*.

Mr. At. Gen. Was he not absent at any time all that while?

Mr. Smith. No, he was not, except one Day.

Mr. At. Gen. Do you remember *Watton's* Business, his going thither in *January*?

Mr. Smith. He told me of it, and that he design'd to ask the Rector leave to go.

L. C. J. Was he absent any other time till *June*?

Mr. Smith. No, my Lord, for I will tell you, I every Day dined with him, eat a Collation with him in the Afternoon, and breakfast and sup'd in the same Refectory, during all that time, except when he or I was in the Infirmary.

L. C. J. When ever he was absent, he was in the Infirmary, was he?

Mr. Smith. Yes, my Lord.

L. C. J. Did not he miss his Breakfast at any time all that while?

Mr. Smith. If he did, we us'd to enquire after him.

Mr. At. Gen. Pray when were you in the Infirmary?

Mr. Smith. The 21st of *April* New Stile, I fell sick, and I remained sick till *May* the 7th, and was in the Infirmary, and then he visited me almost daily, or every other Day in the Infirmary; and on the 2d of *May* I saw him and one Mr. *Burnaby* together, and on the Day Mr. *Pool* departed, which I take to be the 5th of *May*, Mr. *Otes* came to me as soon as he was gone out of the House, and told me of it; and he did the same too that Day that Mr. *Hilsley* went away, which was the 24th of *April* New Stile.

Mr. At. Gen. Was not he in the Infirmary himself?

Mr. Smith. Yes, during this time he came into the Infirmary, and was sick there.

Mr. At. Gen. When was that?

Mr. Smith. A Day or two after Mr. *Hilsley* went away, and continued there two or three Days, and I remember it particularly by this Circumstance, that he propos'd a Question to the Physician about himself in Latin, and spoke a Sollecism, which was this, he said, *Si placet Dominatio vestra*.

Otes. Who did say so?

L. C. J. You did, he says, speak that false Latin to the Doctor.

Otes. That's false Latin indeed.

L. C. J. We know that, but it seems it was your Latin.

Mr. At. Gen. When came he away from St. *Omers*?

Mr. Smith. About the 20th of *June*, something after the 20th of *June*, as I remember.

L. C. J. Are you sure he was not out of the College so long as to make a Journey to *London*, and back again?

Mr. Smith. No, I am sure he could not without being miss'd; and going to School with him, and eating Dinner and Supper with him constantly always at the same place, I must needs know if he had gone.

Otes. When went I away from St. *Omers* does he say?

Mr. Smith. After the 20th of *June* 78.

L. C. J. He is your old Acquaintance and

School-fellow, Mr. *Otes*; you visited him when he was sick.

Otes. What Religion is this Gentleman of, my Lord, I would know?

Mr. Smith. I am a Roman Catholick.

Otes. I desire your Lordship to ask him how long he liv'd at St. *Omers*?

Mr. Smith. Above six Years.

Otes. Pray ask him, when he came away?

Mr. Smith. A little after Dr. *Otes* came away.

Otes. Did he come directly for *England*?

Mr. Smith. No, I did not.

Otes. Whither did he go then?

Mr. Smith. I went about a little. —

Otes. Where, my Lord?

Mr. Smith. I went about to take some Turns in the Low-Countries; I went to *Watton*, and up and down.

Otes. He is a Jesuit, my Lord, and that the World knows, and must know.

L. C. J. I know nothing of it, I do assure you.

Otes. Pray, my Lord, be pleas'd to ask him, whether he did not hear of a Consult of Jesuits in *April* 78, and what Jesuits went from St. *Omers* to it?

Mr. Smith. I heard it as a Rumour in the College, that there was to be a Congregation at that time, but I know not where particularly it was to be kept; but I know that then there pass'd by St. *Omers* two Fathers, Mr. *Marsh*, and Mr. *Williams*.

Otes. What were they?

Mr. Smith. Jesuits.

L. C. J. He told you they were Fathers.

Mr. At. Gen. Pray, was it an extraordinary, or an ordinary Meeting that?

Mr. Smith. They us'd to say in the College, that it was an ordinary thing to have such a Congregation every three Years.

Mr. Sol. Gen. Pray, swear Mr. *Edward Price*.
[Which was done.]

Mr. At. Gen. Pray, Mr. *Price*, will you give my Lord and the Gentlemen of the Jury an account, whether you were at St. *Omers* in the Year 77, and 78.

Mr. *Price*. I was there both these Years.

Mr. At. Gen. Do you remember Mr. *Otes* there?

Mr. *Price*. Yes, my Lord, I do.

Mr. At. Gen. When did he come, and when did he go away?

Mr. *Price*. He came there about *December* 77, and he continued there till *June* 78.

Mr. At. Gen. Was he absent from St. *Omers* at any time all that while?

Mr. *Price*. Never, that I know of, but one Night at *Watton*, when he came back the following Day, and that was in *January*.

Mr. At. Gen. Do you remember particularly that he was there in *April* and *May* 78?

Mr. *Price*. I remember Mr. *Hilsley*, according to the foreign Stile, left St. *Omers* upon the 24th of *April* 78. I was told the following Day that Mr. *Otes* went into the Infirmary, which was *Monday* the 25th, and stayed there a Day or two, and upon *Wednesday* the 27th I saw him going to *Mals*; then upon the Sunday following, which was the 1st of *May* New Stile, came Mr. *Burnaby* to St. *Omers*, and I saw him in *Otes's* Company that Day, and I saw him on *Monday*

Monday again the 2d of *May* in his Company; I saw him the 3d of *May* at the Table, which I particularly remember, because it was the Feast of the Invention of the Holy Cross; the 4th of *May* I have no Circumstance to remember him by; but the 5th of *May* I saw him take his leave of Mr. *Pool*, and I likewise saw him the 10th or 11th of *May* at another of our Actions, wherein Mr. *Watson* had a Quarrel with him, and beat him; I should have mis'd him above any other Man, because he was so noted a Man.

Mr. *At. Gen.* What was he noted for? For any thing else but his distinct Place in the Refectory?

Mr. *Price.* Yes, he was very absurd, and always quarrelling with the Students there.

L. C. *J.* Do you remember him read in the Sodality?

Mr. *Price.* I was not of that Bench that he was of.

Otes. My Lord, I desire to know what this Gentleman's Religion is?

L. C. *J.* What Religion are you of, Sir?

Mr. *Price.* If your Lordship please to know, I am a Roman Catholick.

Otes. My Lord, I desire to ask him; when he went first to St. *Omers*, and when he came away?

Mr. *Price.* I was six Years at St. *Omers*; I was there a twelve-month before Mr. Otes came thither, and came from thence about three Years ago.

Otes. Did you come directly to England when you came away?

Mr. *Price.* My Lord, I went to *Leige* to study Philosophy, and I live now with my Father at home.

Otes. My Lord, I desire to ask him, whether he did not hear of a Consult to be held in April 78?

Mr. *Price.* I did hear there was a Congregation which was their usual Triennial Meeting, and particularly I remember about that time there came Mr. *Williams*, and Mr. *Marsh*, and it was reported that they were going to the Congregation.

Otes. I desire to ask him, if he was not a Witness at the Tryal of the five Jesuits, or at the Tryal of *Langborn*?

Mr. *Price.* No, I was not.

Otes. Pray, what Name did he go by at St. *Omers*?

Mr. *Price.* By my own Name, which is *Edward Price*.

Mr. *Sol. Gen.* Then swear the next, that is, Mr. *James Doddington*.

Mr. *At. Gen.* Pray, Sir, were you at St. *Omers* in the Year 77, and 78?

Mr. *Doddington.* Yes, Sir, I was.

Mr. *At. Gen.* Did you know that Gentleman Mr. Otes there?

Mr. *Doddington.* I know him very well.

Mr. *At. Gen.* What time did he come to St. *Omers*, and how long did he stay there?

Mr. *Doddington.* He came about *Christmas*, and stayed about the latter end of *June*.

Mr. *At. Gen.* How do you remember he stayed there so long, what Circumstances have you to make you remember it?

Mr. *Doddington.* In general his Conversation and Canting Stories after Dinner and Supper,

and times of Recreation, made him so remarkable, that no body could miss him all the time he was there.

Mr. *At. Gen.* Did you observe him to be in the Hall, or at the Exercises?

Mr. *Doddington.* Yes, I saw him several times.

Mr. *Sol. Gen.* Do you remember the time Mr. *Hilsey* went away?

Mr. *Doddington.* Yes, it was a little after *Easter*, and I do remember that two or three Days after I went into the Infirmary, and saw Mr. Otes there, and had Discourses with him.

Mr. *At. Gen.* Do you remember Mr. *Burnaby's* coming to St. *Omers*, and when was it?

Mr. *Doddington.* Yes, the 1st of *May* Mr. *Burnaby* came to St. *Omers*, and the next Day I saw Otes with him, and for ten or twelve Days successively they were in one another's Company, and then of a sudden the Correspondence broke off, but I know not upon what account.

L. C. *J.* Was he Reader there, as you remember?

Mr. *Doddington.* I do remember he did read in the Sodality.

L. C. *J.* When was that?

Mr. *Doddington.* I remember he read at *Shrove-tide*.

Otes. Did you hear me read there?

Mr. *Doddington.* Yes, that I did, Sir.

Otes. Were you of the Sodality?

Mr. *Doddington.* Yes, I was, Sir.

Mr. *At. Gen.* Do you remember the time he came away from St. *Omers*?

Mr. *Doddington.* It was about *Midsummer*, my Lord.

Mr. *At. Gen.* Were you out of the College your self at any time when he was there?

Mr. *Doddington.* No, I was not.

L. C. *J.* Come, I will ask you a plain Question; Was he so long at any time out of the College as to come to *London* and stay here two or three Days, and come back again?

Mr. *Doddington.* My Lord, He was so remarkable by his Stories and ridiculous Actions, and falling out with every one of the College, that if he had been absent, we must needs have missed him.

L. C. *J.* Did you miss him at any time?

Mr. *Doddington.* My Lord, I never mis'd him but one Day.

L. C. *J.* When was that?

Mr. *Doddington.* They said he was gone to *Watton*.

L. C. *J.* What time was that?

Mr. *Doddington.* In *January*, about six Weeks after he came first.

Otes. Pray, my Lord, ask him what Religion he is of?

Mr. *Doddington.* I am a Roman Catholick.

Otes. And a Scholar of St. *Omers*.

L. C. *J.* Make your Remarks by and by.

Otes. Pray, my Lord, ask him what Name he went by at St. *Omers*?

Mr. *Doddington.* By the Name of *Hollis*, my Lord.

Otes. Pray, my Lord, ask him how long he was resident there?

Mr. *Doddington.* Near upon five Years.

Otes. Pray, my Lord, ask him the occasion of his coming over at first?

Mr. *Doddington.* I had Business in *England*, and I had a mind to see my Friends.

Otes. Pray, my Lord, ask him, whether he did not pretend at the five Jesuits Tryal, that he came over upon the King's Proclamation, to call home those that were in the Seminaries?

L. C. J. Were you at the Tryal of the five Jesuits?

Mr. Doddington. Yes, I was; but if I came over upon the King's Proclamation, what Hurt is there in that?

L. C. J. None at all, as I know of.

Otes. Pray, my Lord, ask him, whether he did return again to St. Omers, or no?

Mr. Doddington. My Lord, I pass'd by St. Omers once, but I never stay'd a Day in the College since.

Otes. Pray, my Lord, be pleas'd to ask him, whether he ever heard of a Consult of the Jesuits in April 78?

Mr. Doddington. I did hear of a Congregation.

Otes. Call it a Consult or a Congregation, it is all one.

L. C. J. He says he did hear of it.

Otes. Ask him by whom he did hear of it?

Mr. Doddington. I saw the Provincial when he came back from England.

Otes. Who was that Provincial, what was his Name?

Mr. Doddington. Mr. Whitebread.

Otes. Was not Mr. Whitebread a Resident sometimes at St. Omers?

Mr. Doddington. Yes a while he was.

Otes. Pray, was not that House under his Government?

Mr. Doddington. My Lord, I can give no account of that, but it is generally under the Government of the Rector of St. Omers.

Mr. Hanseys. Pray, Sir, give me leave to ask you one Question; Mr. Otes speaks of Mr. Whitebread; Pray, how did Mr. Whitebread use Otes, when he came back from England?

Mr. Doddington. I heard say, he did check him very severely for his many Miscarriages.

L. C. J. He heard it, he says, but he does not know it of his own Knowledge; that is no Evidence.

Mr. Sol. Gen. Pray swear Mr. William Gerrard.
[Which was done.]

Mr. At. Gen. Were you at St. Omers, Mr. Gerrard, in the Years 77 and 78?

Mr. Gerrard. Yes, I was.

Mr. At. Gen. Did you know Mr. Otes there?

Mr. Gerrard. Where is he, Sir?

Mr. At. Gen. There he is in that Corner, do you know him?

Mr. Gerrard. Yes.

Mr. At. Gen. When came he to St. Omers?

Mr. Gerrard. He came to St. Omers in the Year of our Lord 77, and he went away in June 78.

Mr. At. Gen. Was he there all the time?

Mr. Gerrard. I never remember'd to have mis'd him, but only once when he went to Watton for a Night.

Mr. At. Gen. By what Tokens do you remember him at any time there in April or May?

Mr. Gerrard. The 2d of May we had a Play, and he was there then, and I remember the 26th of May he was confirm'd, and so was I, it being St. Augustin's Day, and in the Refectory he had a Table by himself, and I used always at Meal-times to pass by that Table and make

a Bow to the Fathers above before I sat down at Table; and I do not remember that ever he was absent, and if he had, I should surely have mis'd him.

L. C. J. When was St. Augustin's Day, that you say you and he were confirm'd?

Mr. Gerrard. It was the 26th of May.

Mr. At. Gen. Do you remember him in April there?

Mr. Gerrard. I cannot tell any particular Circumstance in April, but I do not remember to have mis'd him at all in April.

Mr. Sol. Gen. But you saw him there the 2d of May, you say?

Mr. Gerrard. Yes, I did so, and the 26th of May.

Otes. The 26th of May Old Stile I was there, my Lord.

L. C. J. Ay, but he says the 26th of May New Stile.

Otes. I was not there then, my Lord.

L. C. J. He swears you were.

Mr. Sol. Gen. Pray, between the 2d and 27th of May New Stile was he absent from St. Omers at any time?

Mr. Gerrard. I never remember to have mis'd him at all in that time.

Mr. At. Gen. Do you remember Mr. Pool's and Mr. Hilsley's going away?

Mr. Gerrard. I do remember Mr. Hilsley's and Mr. Pool's going away, but I cannot speak particularly and exactly what time that was.

L. C. J. Is it usual to have Scholars go away without being mis'd?

Mr. Gerrard. No, my Lord, and he had a particular Place by himself.

Otes. Pray, ask him, my Lord, how he came to know that I went away in June?

Mr. Gerrard. We mis'd him in his Place then, and 'twas discours'd of all over the Town, that when the Provincial came he was to be dismiss'd.

Otes. I desire to know what Religion this Gentleman is of?

Mr. Gerrard. My Lord, I am a Roman Catholick.

Otes. Pray, my Lord, ask him what Name he went by at St. Omers?

Mr. Gerrard. By the Name of William Cловell.

Otes. Pray, my Lord, ask him, when he went to St. Omers, and how long he was resident there?

Mr. Gerrard. I came there about two Years before he came, and was there about two Years after he went away.

Otes. Pray, my Lord, ask him, whether he came directly for England when he left St. Omers?

Mr. Gerrard. No, my Lord, I was four Years in Low Germany and France, and came into England the last Year.

Otes. Pray, Sir, were you a Witness at the five Jesuits Tryal, or at Langborn's Tryal?

Mr. Gerrard. No, I was no; I came but last Year to England, I tell you.

Otes. Pray, my Lord, ask this Gentleman, whether he did not know or hear of a Consult of Jesuits that was to be in April 78, and from whom he heard it?

Mr. Gerrard. My Lord, I know it is the Custom of the Fathers of that Order to have a Congregation.

gregation once in three Years, about the Affairs of their Society, but then no Person is admitted to be one of that Congregation, but them that have been eighteen Years Jesuits, and he not having been so much as a Novice, I know not how, if he had been here, he could have been present at it.

L. C. J. He says, that there us'd to be a Triennial Congregation for the Business of the Society, but you could not be present at it, because you had not been eighteen Years a Jesuit.

Mr. Gerrard. *An. decimo octavo Currente*, is the Word of the Rule.

Otes. Pray my Lord ask him this Question, how he knows that to be the Rule?

Mr. Gerrard. You or any Man may read them in their Books.

L. C. J. It seems he has read them, and he says, you must pass through eighteen Years before you be admitted of the Congregation, and he believes you were not there, for you were not capable of so much as a Noviceship.

Otes. I desire your Lordship to ask him, whether or no he heard me Read in the Sodality?

Mr. Gerrard. Yes, I did.

Otes. Were you of the Sodality?

Mr. Gerrard. Yes, I was.

Otes. Pray my Lord, ask him, what Oaths are there taken before they be admitted into the Sodality?

L. C. J. No, by no means, I will not do it.

Otes. Why my Lord, may not I ask it, to shew what kind of Men these are?

L. C. J. No, indeed, it is but the same Question again, that I told you before is not to be asked, for it may make him liable to a Penalty; if you come to be a Witness, no Man should ask you a Question that might make you obnoxious to a Penalty, no more must you ask them any such Questions.

Otes. I have done with him, my Lord.

Mr. Sol. Gen. Where is my Lord Gerrard of Bromley?

Lord Gerrard. Here I am, Sir.

Mr. At. Gen. Pray my Lord, do you remember Mr. Otes at St. Omers in the Year 77, and 78?

Lord Gerrard. He was disguised in another Habit, and another colour'd Perriwig, the Hair was blacker than that he has on now, but I remember his Face very well, and know him again by the Tone of his Voice, which was very remarkable, but I never remember that he was absent from St. Omers after he came thither. I remember his Coming exactly, which was about Christmas; nor did I ever hear that he was absent till June 78. New Stile, when he went away.

Mr. Sol. Gen. Do you remember, my Lord, when Mr. Burnaby came?

Lord Gerrard. I do remember Mr. Burnaby's coming, but what time it was I cannot exactly tell.

L. C. J. Is my Lord Gerrard sworn?

Mr. Sol. Gen. I think so.

Lord Gerrard. No, my Lord, I am not sworn.

L. C. J. You must be sworn, my Lord. *[Which was done.]*

Now if you be pleased to ask my Lord any Questions, do.

Mr. At. Gen. My Lord, we desire to know of my Lord Gerrard of Bromley, whether he knew Mr. Otes at St. Omers?

Lord Gerrard. My Lord, I remember he came in 77. as I take it, it was the beginning of December, and never heard he was absent or miss'd till June 78. I remember particularly upon the 25th of March, there was a new Lector to be Reader of the Sodality, and Mr. Otes desiring it, he was appointed to Read; I was there myself, and I never missed him; I heard him Read, that I do remember several Sundays and Holidays, and never knew him absent any one; however, for five or six Weeks he was constant at Reading, and I can the better remember it, because he had a particular Cant in his Tone, which all Men may know which ever conversed with him.

Mr. Sol. Gen. If Otes please to ask my Lord Gerrard any Questions, he may.

Lord Gerrard. Pray my Lord let me speak a Word or two more.

L. C. J. Ay, my Lord, pray go on.

Lord Gerrard. I remember I heard Mr. Otes was at the Confirmation, which was upon St. Austin's Day, there was a Confirmation by a Catholick Bishop about the 26th of May, New Stile, I remember I heard Mr. Otes was there, and the Bishop did particularly note him as a Person of elder Years than the rest of the Students.

L. C. J. Do you know this, my Lord, of your own knowledge?

Lord Gerrard. I do, my Lord.

L. C. J. Because you say you heard it.

Lord Gerrard. My Lord, further I remember this, when the News of the Plot being discovered by Otes, came to St. Omers, where he went by the name of Sampson Lucy, and sometimes Titus Ambrosius, it was wondered by all the Scholars that knew him there, how he came to be so impudent to pretend that he was at such a Consult the 24th of April 78. when all the College saw him every Day, in April and May at St. Omers, as much as a Man can be seen in a Family, and was never known to be absent so much as one Day; besides, my Lord, 'tis a thing as generally noted as a thing can be; that no Scholar goes away from, or comes to the College of St. Omers, but it is particularly known to the whole House; it is the common News and Discourse as much as any new Occurrences are here about the Town.

Mr. Sol. Gen. If Otes be pleased to ask him any Questions, he may.

Otes. My Lord, I desire this Noble Lord may be asked a Question or two; I do not remember his Lordship there.

Lord Gerrard. I do very well remember the Man by particular Remarks.

Otes. Yes, my Lord, you have occasion to remember me, and so have your whole Party. Pray my Lord, let my Lord Gerrard be asked what Name his Lordship went by at St. Omers?

Lord Gerrard. Mr. Otes, I am not difficult in telling the Name I went by there. It was Clovel.

Otes. Pray, my Lord, I desire to know what Religion his Lordship is of?

Lord Gerrard. Neither am I ashamed to own my Religion, Mr. Otes, I am a Catholick.

Otes. Pray, my Lord, if you please, because this Noble Lord pretends he heard me Read, I desire to know of him whether he was of the Sodality?

Lord Gerrard. I remember you particularly by your Voice, and that is one thing that particularly brings you to my Remembrance now.

Otes. Pray ask this Noble Lord, if he was a Witness at the Jesuits Tryal?

Lord Gerrard. No, I was never a Witness in my Life before; By the Oath that I have taken.

L. C. J. 'Tis very well, my Lord.

Otes. Pray my Lord, ask this Nobleman, whether he did not know of a Consult in April 78. and from whom he knew it.

Lord Gerrard. No, I know of none, nor heard of any but by Rumour, after that you pretended to discover such a thing.

Otes. Did his Lordship see me every Day, does he say?

Lord Gerrard. I cannot say every Day, but I saw him at the Refectory generally, and I remember it particularly, because he sat at a Table by himself; I believe he could not be absent without being miss'd, because we knew every Person that came in and went out.

Mr. Sol. Gen. Then Swear Mr. Samuel Morgan.

[Which was done.

Mr. At. Gen. Mr. Morgan, were you at St. Omers in 77, and 78?

Mr. Morgan. I was my Lord.

Mr. At. Gen. Did you observe Mr. Otes to be there at that time?

Mr. Morgan. Yes, I did.

Mr. At. Gen. Pray give an account when he came, and when he went away.

Mr. Morgan. He came 14 or 15 Days before Christmas, as I remember, and went away in June.

Mr. At. Gen. What Christmas do you mean, Mr. Morgan?

Mr. Morgan. Christmas 77.

Mr. At. Gen. And when did he go away?

Mr. Morgan. In June 78. he went away.

Mr. At. Gen. Was he absent any time during that space?

Mr. Morgan. My Lord, I know not that he was ever absent above one Night in all that time.

Mr. At. Gen. What time was that one Night?

Mr. Morgan. Truly my Lord I cannot tell what Month it was very exactly.

Mr. At. Gen. Whither was he gone that Night?

Mr. Morgan. He went to Watton, three miles off from St. Omers.

Mr. At. Gen. Do you remember the time when Mr. Hillsley came away, and when Mr. Burnaby came to St. Omers?

Mr. Morgan. Yes I do, my Lord, very well.

Mr. Sol. Gen. Was Mr. Otes there when Hillsley went away?

Mr. Morgan. He was there then.

Mr. Sol. Gen. Was he there when Mr. Burnaby came?

Mr. Morgan. He was there when Mr. Burnaby came thither.

Mr. Sol. Gen. Was he there when Mr. Poole came away?

Mr. Morgan. Yes, my Lord, he was so.

Mr. Sol. Gen. I will ask you this short Question, do you believe in your Conscience that he was absent any particular time all that while?

Mr. Morgan. No, my Lord, I have no reason to believe so.

Otes. Pray my Lord, ask him what Religion he is of?

Mr. Morgan. I am of the Church of England.

Otes. When were you reconciled to the Church of England?

Mr. Morgan. Five Years since.

Otes. I desire to know of him, what induced him to be reconciled to the Church of England?

L. C. J. That is not a pertinent Question, nor fit to be asked. Is he to give an account of his Faith here?

Mr. Just Withins. It seems Mr. Otes is angry when the Witnesses are Papists, and when they are Protestants too.

Otes. When was it that I came to St. Omers do you say?

Mr. Morgan. You came thither in December, 77.

L. C. J. So he told you before, why do you repeat Things over and over again?

Otes. When was it I went away from thence, say you?

Mr. Morgan. In June 78.

Mr. Sol. Gen. Do you remember the 24th of April Old Stile, that Year?

Mr. Morgan. Yes, my Lord, I do remember it very well.

Mr. Sol. Gen. Do you remember him to be at St. Omers that Day?

Mr. Morgan. Yes, I do, by this Circumstance.

Mr. Sol. Gen. Ay, pray tell my Lord and the Jury that Circumstance, how you come to remember it.

Mr. Morgan. We had the Tryal of Ireland brought over to us soon after it was printed, and there we found mentioned, that Mr. Otes had deposed, That the 24th of April, 78. there was a Consult of the Jesuits, and they met at the White Horse Tavern; where they resolved to kill the King, and he carried that Resolution from Chamber to Chamber, and he did nominate the Day, and having it then fresh in my Memory, though he swore that he was the 24th of April Old Stile in London at that Consult; yet I found him to be at St. Omers by a very particular Circumstance: My Lord, I was playing at Ball that Day, and struck it over into a Court, into which I could not get over my self, but I saw Mr. Otes then walking in the Court, and I came and borrowed his Key, and so went in, and there passed between us Words of Friendship.

L. C. J. When was this, do you say?

Mr. Morgan. The 24th of April 78. Old Stile.

Otes. I desire to let his Orders be seen.

L. C. J. No, he shall not be put to shew any such thing.

Otes. He is a Minister of the Church of England, my Lord.

L. C. J. Sir, we tell you, we will not do it, what ado is here with your impertinent Questions, have not I told you, you shall not ensnare the Witnesses?

Otes. He was a going to pull out his Orders himself.

Mr. At. Gen. My Lord, Mr. Otes may see them if he will, he is a Beneficed Minister of the Church of England.

L. C. J.

L. C. J. Does he mean those Orders?

Mr. At. Gen. Yes, he does, and here they are.

L. C. J. Let him see them.

[Which was done.]

Otes. My Lord, I desire to know of this Gentleman, what Name he went by at St. Omers?

Mr. Morgan. By the Name of Morgan.

Mr. Sol. Gen. Swear Mr. Arundel.

[Which was done.]

Mr. At. Gen. Pray Sir, will you give an account in short, whether you were at St. Omers in 77, and 78. and the Time when Otes came thither, and when he went away.

Mr. Arundel. I was there when Dr. Otes came, and when he went away.

Mr. At. Gen. When was that?

Mr. Arundel. Sir, I cannot be positive to the Time exactly, but I think it was about January 77. that he came there, and he went away about June 78. I cannot be positive to the time exactly.

L. C. J. He does not particularly remember the Time, but he thinks it was about January 77, he came thither.

Mr. Arundel. I beg your Lordship's Pardon, he came there about December.

Mr. At. Gen. Do you remember any particular Circumstances, that you saw him there at any particular time?

Mr. Arundel. Upon St. Augustine's Day I saw him Confirm'd.

Mr. Sol. Gen. What Day is that?

Mr. Arundel. The 26th of May according to the foreign Account.

L. C. J. Did you know him there, then?

Mr. Arundel. Yes, my Lord, I say I saw him Confirm'd.

Mr. Sol. Gen. Do you remember Mr. Hilsley's going away?

Mr. Arundel. I do not remember the time particularly, but I do remember Mr. Otes was actually there then.

Mr. Sol. Gen. Do you remember when Mr. Burnaby came to St. Omers?

Mr. Arundel. No, I do not remember the time, but he was there then too.

Mr. Sol. Gen. Do you remember when Mr. Pool went away?

Mr. Arundel. No, I cannot tell what Day it was, but he was there at the time of his going away, upon my Oath.

Mr. Sol. Gen. Can you tell any other particular time?

Mr. Arundel. The 11th of May New Stile, there was an Action exhibited in the College.

L. C. J. Was Otes there then?

Mr. Arundel. To the best of my remembrance he was.

L. C. J. He does not affirm any Particular, but only speaks in general.

Otes. Are you a Protestant too, Sir?

Mr. Arundel. No, Doctor, I am not.

Otes. Pray, my Lord, I desire to know what Religion he is of?

Mr. Arundel. I am a Papist, my Lord.

Otes. Pray ask him by what Name he went at St. Omers?

Mr. Arundel. I believe you know that as well as I Doctor Otes.

L. C. J. You must answer his Question.

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Mr. Arundel. I went by the Name of Spencer, my Lord.

Otes. I do remember him, my Lord, to have been there.

Mr. Arundel. Sir, your humble Servant.

Otes. It is almost seven Years ago, my Lord, and I may not so well remember them as they do me, but I desire to know when he went to St. Omers first, and how long he was there?

Mr. Arundel. I was there seven Years.

Otes. Pray, my Lord, ask him, whether he was of the Sodality?

Mr. Arundel. Yes, my Lord, I was.

L. C. J. Was he Reader of the Sodality?

Mr. Arundel. Yes, my Lord, in my time he was Reader.

Otes. Then my Lord, I desire to ask him, whether ever he heard of a Consult of the Jesuits, that was to be held in England, in April 78. and from whom he heard it?

Mr. Arundel. Yes, my Lord, I did hear in the College of a Congregation.

Mr. Sol. Gen. Was that an extraordinary one, or of course?

Mr. Arundel. It was only of course, as they told us, once in three Years they have one.

Otes. Pray my Lord, be pleased to ask this Gentleman what Studies he followed at St. Omers?

L. C. J. He was of the Sodality, he says.

Mr. Arundel. My Lord, I studied to the end of Rhetorick.

Otes. My Lord, I desire to know whether when he came from St. Omers, he did come directly for England?

Mr. Arundel. No, I went from thence to Paris, my Lord.

Mr. Sol. Gen. Swear Mr. Christopher Turberville.

[Which was done.]

Mr. At. Gen. Pray Mr. Turberville, will you acquaint my Lord and the Jury, whether you were with Mr. Otes at St. Omers, and when?

Mr. Turberville. Yes, my Lord; he went by the Name of Sampson Lucy there, and there I saw him, and there I was with him all the time; I was there before him, and I remained there after he went away.

Mr. At. Gen. What time did he come to St. Omers, I pray you?

Mr. Turberville. Before Christmas.

L. C. J. In what Year?

Mr. Turberville. In the Year 77.

Mr. At. Gen. What time was it he went away?

Mr. Turberville. In June 78.

L. C. J. Were you there all that while at St. Omers?

Mr. Turberville. Yes, I was.

L. C. J. And to the best of your apprehension, you think he was there all that while?

Mr. Turberville. Yes, I do so, my Lord.

Mr. Sol. Gen. Can you speak of any particular Days you can remember?

Mr. Turberville. Yes, I do remember him upon the 4th, 5th, and 6th of May, for two or three Days together; for my Lord, I do remember this Circumstance, Mr. Pool about that time went away, and that very Day Mr. Pool went from the College, I changed my Lodging, and went into his Lodging, and that Day I saw Doctor Otes in the Chamber, and by the Chamber Door.

Mr. At. Gen. Did he continue in the College from the time he came about *Christmas* to the time he went away in *June*?

Mr. Turberville. Yes, he did, all the while except it were one Night in *January* when he went to *Watton*.

L. C. J. What time in *June* did he go away?

Mr. Turberville. I am not positive, but I am morally sure he went away the 23d of *June*, as near as I can remember.

Otes. I was there in *June* that is very well known.

L. C. J. What do you remember of his reading in the College?

Mr. Turberville. I do remember he was Reader there on *Sundays* and *Holidays* for a great while; I cannot swear upon what *Sunday* he began, but he left off the *Sunday* before he went away.

L. C. J. As near as you can remember, when did he begin to read?

Mr. Turberville. It was the beginning of *April*, or latter end of *March*, I cannot justly swear which it was.

Mr. Molloy. Did he read on *Holidays* as well as *Sundays*?

Mr. Turberville. Yes, he did.

Otes. I must ask this Gentleman one Question, if your Lordship please, and that is this, what Name he went by at *St. Omers*?

Mr. Turberville. I went there by the Name of *Farmer*.

Otes. Pray you, my Lord, ask him what Religion he is of?

Mr. Turberville. It is a hard Question to answer that.

Otes. Nay, my Lord, I desire to know what is his Religion?

Mr. Turberville. I am, my Lord, a Roman Catholic.

Otes. Ask him when he went to *St. Omers* first, and how long he stayed there?

Mr. Turberville. I was there seven Years very near.

Otes. I desire to know whether he did come away directly to *England* when he came from *St. Omers*?

Mr. Turberville. No, my Lord, I went into *Italy*.

Otes. Pray you, my Lord, I desire to know whether he did go to *Rome*?

L. C. J. What if he did, what then? That is not at all to the purpose, he went into *Italy*.

Otes. Pray, my Lord, be pleas'd to ask him this Question further, Was he a Witness on the behalf of the five Jesuits, or of *Langhorn* at their Tryals?

Mr. Turberville. No, my Lord, I was not.

Otes. Pray, my Lord, be pleas'd to ask him then what Reward he has been promis'd, or is to have for giving this Evidence?

Mr. Turberville. None at all, my Lord.

Otes. Pray, my Lord, ask him, whether or no he heard of any Consult of the Jesuits in *April* 78, and from whom?

Mr. Turberville. There was a Congregation, as I heard, but I do not remember that any of the Fathers went from the College to it; several came by there, and lodged there as they went, and as they came back.

Otes. Pray, my Lord, ask him how he came here to be a Witness in this Cause?

Mr. Turberville. I was subpoena'd.

Otes. Who serv'd the Subpoena upon him?

Mr. Turberville. The Managers; it was sent to me by the King's Counsel, I suppose; a Man brought it to me.

L. C. J. 'Tis no matter who brought it you, you were subpoena'd, that's enough.

Mr. Sol. Gen. Swear Mr. Anthony Turberville. [Which was done.]

Mr. At. Gen. Were you at *St. Omers* in 77 and 78?

Mr. A. Turberville. Yes, my Lord, I was.

Mr. At. Gen. Did you observe the Defendant Mr. Otes there at that time?

Mr. A. Turberville. Yes, I observ'd him all the while he was there.

Mr. At. Gen. When did he come to *St. Omers*?

Mr. A. Turberville. In the Year 77, about *Christmas*.

Mr. At. Gen. When went he away?

Mr. A. Turberville. A Gentleman who was formerly sworn, (Mr. Thornton) and I were at Breakfast with him the self same time when he went away.

L. C. J. When was that?

Mr. A. Turberville. I suppose about the latter end of *June* 78.

Mr. At. Gen. Did you observe him to be there in *April* or *May* 78?

Mr. A. Turberville. He was not absent above one Night in *January* that I can remember from his first coming thither, for it was impossible he should be absent and not mis'd, he sitting at a distinct Table by himself, and his Conversation being so remarkable for a great many ridiculous Actions, and a great many pretty Jestts that he us'd, so that he was like a silly Person, as I may call him, that us'd to make sport, and no body could be mis'd so soon as he; And I saw a little Boy in the College beat him up and down with a Fox's Tail. Indeed, my Lord, all his Actions were very remarkable: I see him very much abusive to Persons that liv'd with him in the College; and Mr. Otes could not be a Person of this Note, but all the World must take notice of him, and all that knew him must mis him, if he were away.

L. C. J. You hear him, Mr. Otes; he gives you a particular Character; he says you were a very notorious Person in many Instances.

Mr. A. Turberville. My Lord, I was a Person then the youngest in the whole Company, and Mr. Otes being very abusive to me, I did what became me to right my self upon him.

Otes. Pray, my Lord, be pleas'd to ask this Gentleman what the Name was he went by at *St. Omers*?

Mr. A. Turberville. By my Grandmother's Name, which was *Farmer*.

L. C. J. Do you remember the time when Mr. Hilsey went away from *St. Omers*?

Mr. A. Turberville. He went away upon a *Sunday*. Mr. Otes remain'd afterwards there: I am positive I saw him several Days after.

L. C. J. Do you remember when Mr. Burnaby came thither?

Mr. A. Turberville. Yes, my Lord; and Mr. Otes was there then.

L. C. J. Will you ask him any Questions? If you are not ready, I will ask him some for you. Come, what Religion are you of?

Mr.

Mr. A. Turberville. I am a Roman Catholick, my Lord.

L. C. J. Well, and how long were you at St. Omers?

Mr. A. Turberville. Six Years and upward, my Lord.

L. C. J. When you came away from thence, did you come directly for England?

Mr. A. Turberville. I took a Circumference round.

Otes. My Lord, I do find my Defence is under a very great Prejudice.

L. C. J. Why so? Because we won't let you ask impertinent Questions, or such as may render the Witnesses obnoxious to a Penalty.

Otes. No, my Lord, it is not fit they should, for there is a Turn to be serv'd.

L. C. J. What do you mean by that? Ay, and a good Turn too, if these Witnesses swear true: 'Tis to bring Truth to light, and perjur'd Villains to condign Punishment.

Otes. Good my Lord, be pleased to hear me.

L. C. J. If you behave not your self with that Respect to the Court as you ought, pray get you gone. Do you think you shall give such Language as this in a Court of Justice?

Otes. My Lord, I did not design—

L. C. J. If you behave your self as you should, you shall have all due Regard; but if you fly out into such abusive Extravagancies, we'll calm you as you ought to be calm'd.

Otes. I would vindicate my self, I meant it not of the Court.

L. C. J. So you had need. Don't think we sit here to let you asperse the Justice of the Court and of the Nation, as if the Judges sat here to serve a Turn.

Otes. I say, these Men do come to serve a Turn; but I laid no Asperision upon the Court, nor meant it of them.

L. C. J. Behave your self as you ought, and you shall be heard with all the Fairness can be desir'd.

Otes. I did perceive your Lordship and the Court made your selves pleasant with my Questions.

L. C. J. I did not make my self pleasant with your Questions, but when you ask impertinent ones you must be corrected: You see we do the same thing with them; I find fault with nothing but what is not to the purpose.

Otes. My Lord, I desire it may be observ'd, that these Men that come now, are the same Witnesses that appeared at the Old Bailey, and were not believed there.

L. C. J. Observe what you will by and by.

Mr. At. Gen. No, they are other Men, but they bear the same Testimony indeed.

Mr. Sol. Gen. Swear Mr. Clavering.

[Which was done.]

Mr. At. Gen. Come, Sir, I'll ask you a short Question: Were you at St. Omers with Mr. Otes, and when?

Mr. Clavering. Yes, I was: I came the 10th of December 77 to St. Omers, he told me he came thither that Day too, and I liv'd there all the time that he was there, which was till towards the middle of Summer: I do not remember that he ever was absent, but once at Watton.

Mr. At. Gen. Do you remember Mr. Burnaby's coming thither?

Mr. Clavering. Mr. Otes was there when Mr. Burnaby came there.

Mr. Sol. Gen. Was he there when Pool came away?

Mr. Clavering. He was there when Mr. Pool went away, and likewise I remember his being there at the time of the Congregation.

Mr. At. Gen. Pray tell the Circumstance how you know he was there then?

Mr. Clavering. There came a Gentleman there that desir'd a Charity of the Students, and I was the Person that made the Collection for him in the House; and I remember he did ask if there was any one that was a Student there that had been in Spain: We told him there was one, and describ'd him, upon which he knew the Gentleman in Spain; upon that I told Mr. Otes, that there was one there that knew him, but he deny'd to come and speak with him. Now I remember that it was the time of the Congregation, for some made Enquiry why he got so little Money at Watton, and it was said it was because the Fathers were gone to the Congregation in England. And he ask'd me particularly, what was done at the Congregation in England?

L. C. J. Did Otes ask that Question?

Mr. Clavering. Yes, my Lord, he did.

L. C. J. Whom did he ask it of?

Mr. Clavering. Of me.

L. C. J. When was that?

Mr. Clavering. I think it was about the time of the Congregation.

L. C. J. How came he to enquire after it?

Mr. Clavering. I was talking with him, and said he to me, *Know you nothing what the Business is that they are to do at the Congregation?* Said I, *Mr. Lucy, I know not what they do; I think not much: For I hear at those Meetings many times they stay an hour or two, and have done when they have chosen their Procurator.*

Mr. Sol. Gen. And you believe he was there all the time?

Mr. Clavering. Yes, my Lord, I do believe it.

Otes. Pray, my Lord, let me ask him a Question or two.

L. C. J. Ay, what you will.

Otes. What Religion is this Gentleman of?

Mr. Clavering. I am a Catholick.

Otes. A Roman Catholick you mean, I suppose?

Mr. Clavering. Yes, I always understood it so, Mr. Otes.

Otes. My Lord, I desire to know how he came not to be produc'd at the Jesuits Tryal, to give this Evidence he gives now?

Mr. Clavering. I can give a very good Reason perhaps: I was then, my Lord, in Germany.

L. C. J. That's Reason good enough of all Conscience.

Mr. Just. Witbins. That was a new Question, and you have a satisfactory Answer, I think.

Mr. Sol. Gen. Swear Mr. John Copley.

[Which was done.]

Mr. At. Gen. Were you at St. Omers in 77 and 78?

Mr. Copley. Yes, I was.

Mr. At. Gen. Was Otes there then?

Mr. Copley. I saw him all the time he was there.

Mr. Sol. Gen. When did he come thither?

Mr. Copley. He came a little before Christmas, to the best of my Remembrance.

Mr. Sol. Gen. When went he away?

Mr. Copley. In 78.

Mr. Sol.

Mr. Sol. Gen. In what Month in 78?

Mr. Copley. In June 78.

Mr. Sol. Gen. Was he absent any part of that time?

Mr. Copley. I was there, and he was there too.

Mr. Sol. Gen. Was he absent any part of the time from Christmas to June?

Mr. Copley. Nay, I am sure he was there all the time, except that Night that he was absent at Watton, and that was in January.

Otes. Pray, my Lord, ask him what Religion he is of?

Mr. Copley. Does your Lordship ask me that Question?

L. C. J. Yes, I do ask you, Mr. Otes would know it.

Mr. Copley. I am a Roman Catholick, my Lord.

Mr. Sol. Gen. Swear, Mr. Cook:

[Which was done.

Mr. At. Gen. Did you know Mr. Otes at St. Omers, and when?

Mr. Cook. He came there a little before Christmas 77.

Mr. At. Gen. How came you to know him there?

Mr. Cook. I liv'd in the House then.

Mr. At. Gen. Was he there all April and May?

Mr. Cook. Yes, he was till the latter end of June.

Mr. At. Gen. Did you see him every Day?

Mr. Cook. Yes, I did.

Mr. At. Gen. Can you tell any particular time?

Mr. Cook. I am positive he was the 30th of April.

Mr. At. Gen. What Stile?

Mr. Cook. New Stile.

L. C. J. How do you know he was there then?

Mr. Cook. It is a remarkable time; there is a Procession that they keep there on that Day from the Sodality to the Church, and I saw him go among the rest at the latter end among the Rhetoricians.

L. C. J. What say you, was he there on that Day Mr. Hilsley went away?

Mr. Cook. I do not remember that.

L. C. J. Do you remember Burnaby?

Mr. Cook. I was there when Mr. Burnaby went away.

L. C. J. But when he came was Otes there?

Mr. Cook. I cannot speak particularly to that.

Mr. At. Gen. What was your Place in the College?

Mr. Sol. Gen. My Lord, He is a Lay-man be sure.

Mr. Cook. I was a Servant in the House.

Otes. In what Place do you serve?

Mr. Cook. I was a Taylor.

Otes. I do not remember him.

Mr. Cook. But I remember you.

Mr. Sol. Gen. Swear Jo. Wright, Esq;

[Which was done.

Mr. At. Gen. Do you remember Otes at St. Omers?

Mr. Wright. Yes, I do.

Mr. At. Gen. When was it?

Mr. Wright. The Winter before the notice of the Plot was.

Mr. At. Gen. What Year was it in?

Mr. Wright. In the Year 77.

Mr. At. Gen. What Month in that Year did he come thither?

Mr. Wright. I cannot tell, it was Winter-time.

Mr. At. Gen. When did he go away?

Mr. Wright. He went away in Summer, I cannot tell just the time.

Mr. At. Gen. Was he absent at any time, from his coming in Winter, to his going away in Summer?

Mr. Wright. The Scholars said he was once at a Place call'd Watton.

L. C. J. Come, this says nothing to the purpose.

Mr. Sol. Gen. My Lord, We leave it here.

L. C. J. What say you to it then, Mr. Otes?

Otes. Has Mr. Attorney done?

Mr. At. Gen. Yes, we have done for the present.

L. C. J. Then are you to make your Defence.

Otes. My Lord, Here is an Indictment brought against me for Perjury; and this Indictment sets forth, *That I should upon the 17th of December appear at the Old Bailey, and there swear, That there was a Treasonable Consult of the Jesuits met at the White Horse Tavern in the Strand, and that this Treasonable Consult did divide it self into lesser Companies and Meetings, and that I carried about a certain Resolution, which the Jesuits came to, concerning killing the King, from Chamber to Chamber to be sign'd.* My Lord, I have a great Exception to make to this Indictment, and that is, my Lord, as to the Form. For, by your Lordship's Favour, I think the Perjury is not well assign'd, and according as I am advised I offer this to your Lordship's Consideration. It says in the Assignment of the Perjury, *Ubi revera & in facto prædictus Titus Otes non præsens fuit ad aliquam Consultationem Jesuitarum apud le White Horse Tavern prædict' in le Strand in Com' Midd' prædict' super vicesimum quartum diem April' anno Dom' Millicesimo.*

L. C. J. How Millicesimo?

Otes. My Lord, It is Law-Latin, I suppose it may serve in a Court.

L. C. J. No, it is true Latin there.

Otes. I cannot tell how to read it better.

L. C. J. I do believe that.

Otes. It is written in such a Hand, I cannot read it; but the Substance of it is, it says here, *That I did not carry any Resolution from Chamber to Chamber signand'.* Now, the Evidence charged upon me to be given, is, *That I did not see it signat'.* So that the Assignment of the Perjury does not pursue the Oath as it is set forth; for if it be *signat'* in the Evidence that was given, it ought to be *signat'* in the Perjury that is assigned; and I humbly crave the Opinion of your Lordship and the Court upon this Point.

L. C. J. Look you, Mr. Otes, That you offer'd before, and I gave this Answer, which I must now repeat, That now we are upon the Fact, and this Exception will be sav'd to you for its proper time, if you be convicted. It is not proper now; but suppose there were that thing which you say is an Objection, yet you must know, that there are two Perjuries that are assign'd; the one is upon the first part of your Oath, which was, that you were present at a Consult

Consult of the Jesuits the 24th of April 78, at the *White Horse Tavern* in the *Strand*, *Ubi revera* you were not there. Now, Do you admit in the first place, that you were forsworn in that particular.

Otes. No, my Lord, I do not.

L. C. J. If the Jury find that you were forsworn in that first Point, that you were not there, it will be easily believed you swore false in the other Point, that you did not carry the Resolution from Chamber to Chamber.

Otes. But, my Lord, it is not well assign'd, I think.

L. C. J. That will be sav'd to you after the Verdict, I tell you, if there be occasion for it.

Otes. My Lord, I suppose the Proof ought to be according to the Record, and the Record makes the Perjury differ from the Oath.

L. C. J. I tell you that is to the Form, and that will be sav'd to you after the Verdict one way or the other.

Otes. Then will your Lordship be pleased to consider there was a Record brought in, which is almost the same with that I am to offer to be read on my behalf, and which is the first Proof that I have to offer of the Consult that was held in *London* in April 78. And I desire Mr. *Perciville* may be called, I forget his Christian Name, and Mr. *Vaughan* who is my Solicitor: But pray, my Lord, let me first have the Opinion of the Court, whether they did prove the Words that I am said to swear as they are laid in the Indictment.

L. C. J. Yes, very fully, we think so; but the Jury are to try that, that is a Point of Fact; but if you will, you shall have our Thoughts about it; We think they are fully proved.

Cryer. Here is Mr. *Perciville*.

Otes. Pray swear him. [Which was done.]

L. C. J. What do you ask him?

Otes. Mr. *Perciville*, You examin'd the Conviction of Mr. *Ireland*, pray put it in: Is it a true Copy?

Perciville. Yes, it is.

Otes. My Lord, I desire that the Conviction and Attainder of Mr. *Ireland* may be read.

Mr. *At. Gen.* It has been read already.

Otes. My Lord, I will not take up the Court's time any more than is necessary for my Defence.

L. C. J. Nay, do as you will, as long as you offer things pertinent and decent, the Court will hear you with all Patience, and you may take what time is necessary for you.

Otes. I thank your Lordship: I design'd nothing at all of Reflection upon the Court, but a Reflection on the Witnesses that came in against me.

Cl. of Cr. This is a Copy of the same Record that was before read.

Otes. Well, if that be allowed for Evidence for me, I am contented to spare the time of the Court, not to read it again; but, my Lord, I offer this, and desire to have Counsel assign'd me to argue this Point in Law; that is, Whether or no the Convictions and Attainders of *Ireland*, *Whitebread*, and the rest of them, of a Treasonable Consult of the 24th of April 78. where it was resolved to murder the late King, ought not to be taken as a sufficient Legal Proof of the Fact, so long as those Attainders remain of Force? And whether the Averment

of that being false, is to be received against those Records?

L. C. J. There is no difficulty in that at all in the World, Mr. *Otes*.

Otes. My Lord, I do not know the Law, and therefore I pray I may have Counsel assign'd to argue that Point.

L. C. J. There is no question in it. God forbid, if a Verdict be obtain'd by Perjury, that that Verdict should protect the perjurd Party from being prosecuted for his false Oath. There were no Justice in that; nor is it an Averment against a Record, for this is not a Writ of Error in Fact that will reverse it, but the Record remains a good Record and unimpeached still: But tho' it be a good Record, yet it is lawful to say this Verdict was obtain'd upon the Testimony of such an one, that forswore himself in that Testimony, and for that particular Perjury he may surely be prosecuted.

Otes. Is not that Attainder an uncontrollable Evidence of the Fact, till it be revers'd?

L. C. J. Yes, it is against the Party attainted; but if that Attainder was founded upon a Verdict that was obtain'd by Perjury, God forbid, but he should be told so that did perjure himself.

Otes. Well, my Lord, if your Lordship rules that for Law, then I will go on; and I must now observe to the Jury in the opening the Evidence two things. First, That the Indictment upon which *Ireland* was try'd, was found the 16th of December 78, and on the 17th of December, the next Day *Ireland* was try'd at the *Old Bailey*; and then I find this Indictment brought against me for Perjury, is found at the *Old Bailey* six Years after the Fact by special Commission. Now, I submit it to your Lordship's and the Jury's Consideration, why the Presentment and the finding of this Bill for Perjury has been so long delay'd, since it appears by the Evidence, that the Witnesses that have been produc'd to prove the Perjury, were either at the Tryal of the five Jesuits, or might have been produced then; and tho' they are not all the same Persons, yet they all bear the same Testimony that was then offered, but were not credited; and I hope when my Evidence is heard, they will have the same Reputation with this Jury that they had with those others. My Lord, I must acquaint your Lordship and this Court, That in this Indictment for which Mr. *Ireland* was convicted, Mr. *Whitebread* and Mr. *Fenwick* did undergo part of the Tryal, and did hear the whole Body of the Evidence that the Witnesses testified against them; but there being but one Witness against them two at that time, which was my self, (Mr. *Bedloe* being then upon an Intrigue, as your Lordship may remember) my Lord Chief Justice *Scroggs*, who was then the Mouth of the Court, did discharge the Jury of Mr. *Whitebread* and Mr. *Fenwick*, and remanded them to Prison, which Mr. *Whitebread* six Months after did remark to the Court, and urg'd it as a Plea for himself to be discharged; but that being over-ruled by the Court, he was try'd. Now, he had six Months time to provide himself with new fresh Evidence to asperse me, and to endeavour to falsify that Testimony I gave in against *Whitebread* and *Fenwick*, when *Ireland* was try'd, and so he knew what it was. I must further ob-

serve to you, my Lord, and Gentlemen of the Jury, That my Case is very hard, that since the Substance of my Testimony was with Credit receiv'd, and the Jury upon convicting them were acquainted, " That they had found an " unexceptionable Verdict; That all the Ob- " jections against the Evidence were then fully " answer'd; That there was nothing that the " Prisoners had been wanting in to object, " which could be objected; and that the thing " was as clear as the Sun. And yet after six Years time, I must come to be called to an account for Perjury in my Testimony of that part of the Popish Plot, with which the King and Kingdom, four successive Parliaments, all the Judges of the Land, and three Juries were so well satisfied. I shall therefore offer to your Lordship and the Jury's Consideration the unanimous Votes of three Houses of Commons; I shall offer the Proceedings of the House of Lords, that is the highest Judicature in the Kingdom; I shall prove what I have open'd by the Testimony of several Noblemen that are here, who will testify this for me. My Lord, I shall prove, that several Attempts have been made to baffle this Testimony, as that of the Murder of Sir Edmundbury Godfrey, who took my Depositions, the Contrivance of Paine, Farewell, and Thompson, made in the Year 81 or 82, I forget which; I shall then produce Evidence that I was actually here in Town at the time in question; and then upon the whole I shall submit it to your Lordship and the Jury. But to prepare your Lordship and the Jury the better for my Evidence, I would again urge the strangeness of this Prosecution, and the Hardship that is put upon me, to be try'd for Perjury in an Evidence given six Years ago, and formerly very industriously, tho' not successfully, endeavour'd to be falsified by sixteen St. Omers Youths that were produced and examined before all the Judges in the Kingdom, and that not only once at Whitebread's Tryal, but a second time at Langborn's Tryal, in neither of which would the Jury believe them, because of their Religion and Education, and the Persons under whom they were educated, who were Men of known Artifice. Then, my Lord, I would argue this: If at that time my Evidence were true, it must be true still; for Truth is always the same; and if it were then true, and I can prove it to be true, it will be thought a hard thing without all doubt, that this should be put upon me. Then, my Lord, I would fain know from my Prosecutors, Why this Indictment of Perjury has been deferred so long? Why these Witnesses that come now to testify this Matter, and could then have been brought, did not come before, to justify at the Tryals of these Persons what they now say, which might have sav'd their Lives, if true, and had been credited. Then I shall offer to your Lordship what I desire You and the Jury would please to observe, That tho' the King's Counsel are now against me, yet they are also against themselves, for they were of Counsel for the King in those Cases; particularly Mr. Solicitor at Langborn's Tryal, Sir Robert Sawyer at Sir George Wakeman's Tryal: They were of Counsel before for the Truth of my Testimony; they are now against it: I only mention that, and pass it over. But this is not the first Attempt that has been made

to discredit the Testimony of the Popish Plot, as I told you before. Now, can it be supposed that the Love and Desire of Publick Justice can be the Cause of this Attempt to falsify my Evidence after so many Tryals, in which it has been credited and confirmed? Can any thing, my Lord, more plainly tend to destroy and subvert the Methods of Justice, to frighten all Witnesses from henceforth from ever appearing to discover any Conspiracies? And does it not tend to expose and vilify the known Understanding and Justice of the late King of ever Blessed Memory, to arraign the Wisdom of His Privy Council, His Great and Noble Peers, His Loyal Commons in three successive Parliaments, His Twelve Judges, and all those several Juries that were upon those Tryals? Had not those Juries Sense? Had they not Honesty? Had they no Consciences? And the Judges before whom those Conspirators were try'd, were they Men of no Justice, nor Honour, nor Integrity, nor Conscience, nor Understanding? Shall those Juries be said to have drawn the innocent Blood of these Men upon their own Heads and the Nation? As, if I were perjur'd it must be innocent Blood that was shed upon it.

L. C. J. No, no, that goes a great deal too far, Mr. Otes: The Jury have no share, nor the Judges neither, in that Blood which was shed by your Oath.

Mr. Just. Withins. No, that is your own most certainly, and not theirs.

Otes. But this, I say, makes it most plain: The Evidence was then true, and I hope I shall make it as evidently plain 'tis as true now; and I do not question, but upon the Evidence I shall now give, both positive and collateral, the Jury will believe me, and acquit me of this foul Accusation. Pray, my Lord, be pleased to consider, that when the Jury brought in Ireland guilty of the High Treason of which he was accused, and convicted him, Pickering and Grove; says my Lord Chief Justice Scroggs (that then was) to them, " Gentlemen, you have done like very " good Subjects, and very good Christians, that is, " like very good Protestants; and now much good may " do them with their Thirty Thousand Masses; as I shall prove he did say. Then I insist, in the second place, That Whitebread's Conviction does reinforce the Conviction of Ireland, because of the Attempt by the St. Omers Witnesses to have overthrown my Evidence: But since I am attack'd again in the same kind by the Violence of the Popish Interest, and by the Malice of my Popish Adversaries, I am contented to stand the Test with all my Heart. And then, to conclude all, I shall shew the Court, That 'tis in vain for the Popish Party to expect and think to wipe their Mouths, with Solomon's Whore, and say, they have done no wickedness: No, I question not but thousands of Protestants in this Kingdom are fully satisfied and convinced of the Truth of the Popish Plot, all and every part of it. Now, my Lord, if you please to give me leave to proceed on in my Evidence, I shall beg that these Records of Conviction may be read, which are my first Proof of the Consult; and I shall then bring Witnesses, *viva voce*, and shall make it appear, that what I did swear at those Tryals was true.

L. C. J. Not to interrupt you in your Defence, or the Method you will take for it, I would put you upon that which is proper for you to apply your self to, because the Question now is not, Whether there was a Consult or Congregation of the Jesuits here upon the 24th of April 78? But the Question that toucheth you is, Whether you were present at any such Consult here in London the 24th of April 78? These Gentlemen, some of them, do say, there was a Consult, and others that they heard of it, and believe there was such an one, because it was usual to have a Triennial Congregation for some particular Purposes: But the Question is, Whether you have sufficient Proof to prove your self to be here on the 24th of April 78, at which time it is agreed of all Hands there was a Consult?

Otes. But will your Lordship be pleased to take notice of the drift of the Evidence, how they are consistent one with another? These Gentlemen that have now been sworn to prove that I was not at this Consult, do attempt to prove that I was at St. Omers: Now, to answer this, I shall not go about to prove that I was not then at St. Omers, but that I was actually then, and about that time, here in London; and then all that Proof that Mr. Attorney General has brought, must be laid aside.

L. C. J. You say well; prove that.

Otes. Now, my Lord, to introduce and prepare the Jury for this, it will be necessary, I humbly conceive, to read the Records of the Conviction of *Whitebread* and *Ireland*.

L. C. J. Well, go your own way. We are not to direct you: I only tell you where the Question lies.

Otes. Sir *Samuel Astrey*, Pray be pleased to read them in *English*, that the Jury may understand them. First read *Ireland's* Record.

[Which was done.]

Otes. Now read *Whitebread's* Record: Read but the Attainder, I will not trouble the Court with the whole Record.

Cl. of Cr. "Thomas *White* alias *Whitebread*, William *Harcourt* alias *Harrison*, John *Fenwick*, John *Gaven*, and *Anthony Turner*, were found guilty of High Treason, and attainted, and Execution awarded against them upon that Attainder.

Otes. Does not the Record say, The Jurors say upon their Oaths they are guilty.

L. C. J. Yes, I'll warrant you.

Cl. of Cr. It is *Dicunt super sacramentum suum*.

Otes. Very well. These, my Lord, I do produce as my first Evidence, to prove that there was a traitorous Consult, held upon the 24th of April 78, at the *White Horse* Tavern in the Strand, it having been believed and affirmed by two Verdicts. Now give me leave to offer but this to the Court, That at the Tryal of Mr. *Ireland* I gave so full and ample a Testimony against *Whitebread* and *Fenwick*, accompanied with all the Circumstances of Time and Place, That my Lord Chief Justice *Scroggs* said, The Evidence might be sufficient to have satisfied a private Conscience, tho' it was not a legal Proof then to convict him, there being but one Witness against them: And for this I call Mr. *Robert Blayney*.

Mr. At. Gen. Pray swear Mr. *Blayney*.

[Which was done.]
L. C. J. What do you ask Mr. *Blayney*?

Otes. Mr. *Blayney*, Have you your Notes of *Ireland's* Tryal here?

Mr. *Blayney*. Yes, Sir; I have.

Otes. Pray, will you look into what my Lord Chief Justice *Scroggs* said when he discharged the Jury of *Whitebread* and *Fenwick*.

Mr. *Blayney*. Whereabouts is it, Sir, in the Printed Tryal?

Otes. It is Page 55.

Mr. *Blayney*. I have found the Place, what is it you would ask me about it?

Otes. Whether my Lord Chief Justice *Scroggs* did not use these Words to the Jury? "I do acknowledge that Mr. *Otes* has given a very full and ample Testimony accompanied with all the Circumstances of Time and Place, against them all; That may go far with you, all things considered, to believe there is a Plot: Yet I do not think they have proved it against *Whitebread* and *Fenwick* by Two Witnesses, tho' the Testimony be so full as to satisfy a private Conscience, yet we must go according to Law too. It will be convenient from what is already proved, to have them stay till more Proof come in; 'Tis a great Evidence that is against them, but it not being sufficient in Point of Law, We discharge you of them. It is not a legal Proof to convict them by, whatsoever it may be to satisfy your Consciences.

Mr. *Blayney*. I have look'd upon my Notes, and I cannot find exactly those Words.

L. C. J. He says he cannot find that Passage as it is there.

Mr. *Blayney*. There is something to that purpose, my Lord.

Otes. Pray, Sir, will you look into your Notes in the very same place, what my Lord Chief Baron said: "You must (speaking to the Jaylot) understand they are no way acquitted: The Evidence is so full against them by Mr. *Otes's* Testimony, that there is no Reason to acquit them; it is as flat as by one Witness can be.

Mr. *Blayney*. There is such a Passage, I find, in my Notes.

L. C. J. He says there is such a Passage.

Otes. Then I desire Mr. *Blayney* would look into his Notes, what my Lord Chief Justice *Scroggs* said in his summing up the Evidence against *Ireland*? He mentions the Evidence of Sir *Dennis Ashburnham*, who was produced to discredit me, and then he adds, "When the Matter is so accompanied with so many other Circumstances which are material things, and cannot be evaded or deny'd, it is almost impossible for any Man either to make such a Story or not to believe it when it is told:— It is *Ireland's* Tryal, page 72.

Mr. *Blayney*. My Lord, I do find such a Passage in my Notes.

L. C. J. He says there is such a Passage in his Notes.

Otes. Then I would ask Mr. *Blayney* another Question at the bringing in the Verdict of the Jury against *Ireland*, *Pickering* and *Grove*, my Lord Chief Justice *Scroggs* (that then was) had this Expression: You have done, Gentlemen, like very good Subjects, and very good Christians, that is to say, like very good Protestants; and now much good may their 30000 Masses do them.

Mr. *Blayney*. Yes, my Lord, there is in my Notes such an Expression of my Lord Chief Justice *Scroggs*.

Otes. Pray you, Mr. *Blayney*, have you *Whitebread's* Tryal? The Tryal of the five Jesuits, I mean.

Mr. *Blayney*.

Mr. Blayne. My Lord, When I received a Sub-pœna from Mr. Otes to be here this Day, and to bring my Notes of Ireland, Whitebread and Langhorn's Tryals, I did (as I did before upon another occasion, make a Search for all my Notes, but could not find any but those of the Tryal of Ireland and Langhorn, and those I have brought here, but have not Whitebread's.

L. C. J. He says he has not the Notes of Whitebread's Tryal; he cannot find them.

Otes. Then I must desire, my Lord, that the Printed Tryals may be read.

L. C. J. No, they are no Evidence: If you can prove what was said at any of them, you may by Witneses, but not by the Printed Books.

Otes. Then will your Lordship be pleased to give me leave to mention what was said by your Lordship at that time, when you were Recorder of London, about your Satisfaction with the Evidence?

L. C. J. Ay, with all my heart, and whatever I said, I will own, if I can remember it.

Otes. Will your Lordship be pleased to be sworn then?

L. C. J. No, there will be no need for that; I will acknowledge any thing I said then.

Otes. Then, if your Lordship pleases, I will read those Passages out of the Books.

L. C. J. Ay, do so.

Otes. Says Mr. Recorder of London, (in particular to that part of the Prisoners Defence, at the Tryal of the five Jesuits, and the full Scope given them of making Objections to the Evidence) when he gave Judgment of Death upon these five Jesuits and Langhorn, (for I now speak of your Lordship in the third Person) "*Your several Crimes have been proved against you; you have been fully heard, and stand convicted of those Crimes you have been indicted for.*"

L. C. J. I believe I might say something to the same purpose as you have read now.

Otes. I thank your Lordship for that Acknowledgment.

L. C. J. Ay, I'll own any thing I did say.

Otes. My Lord, I have one Passage more to urge, and that was, my Lord, after the Jesuits had been convicted, when the Jury brought in their Verdict, and found Whitebread, Fenwick, Harcourt, Gaven, and Turner guilty, your Lordship applying your self to the Jury, said thus to them; "*Gentlemen, you of the Jury, there has been a long Evidence given against the Prisoners at the Bar; they were all indicted, arraigned, and tried, for High Treason depending upon several Circumstances: They can none of them say the Court refused to hear any thing they could say for themselves, but upon a long Evidence, and a patient Hearing of the Defence they made, they are found guilty, and for any thing appears to us it is a just Verdict you have given.*"

L. C. J. I believe I might say something to that purpose too at that time; and no doubt the Jury did (as the Case then stood) find an unexceptionable Verdict.

Otes. There is another place, my Lord, that I would instance in, for your Lordship's Opinion of the Evidence of the Popish Plot, and that is this: Now, my Lord, I bring your Lordship as you were of Counsel for the King at Mr. Colledge's Tryal at Oxford, the 17th of August 81. There you, my now Lord Chief Justice,

directing your self to the Jury, had this Expression; "*We come not here to trip up the Heels of the Popish Plot, by saying that any of them who suffer'd for it did die contrary to Law; for if Mr. Dugdale was not a Person fit to be believed, or if the rest of the Judges who try'd Gaven were out in the Law, then that Man died wrongfully; for he had as much right to be try'd according to Law as any other Person whatsoever.*" This was your Lordship's Opinion of the Matter then, and your Lordship, as Counsel for the King, did there deliver the Law as well as Fact to the Jury. If then they went against Law that would go to trip up the Heels of the Popish Plot——

Mr. Just. Withins. We are got into an endless Wood of Sayings of People, I know not where and when; and when all is done, it is to no purpose.

Otes. My Lord, it is a part, and a great part of my Defence, to shew what credit has been given to the Evidence of the Popish Plot.

L. C. J. Ay, but what Counsel says at the Bar, or what Judges say in the Court of their Opinion, is no Evidence of a Fact, of which the Jury are Judges only.

Otes. My Lord, Every Judge is upon his Oath, and delivers his Judgment according to his Oath.

L. C. J. Not as to the Fact, but only in Points of Law, so as to tell the Jury what the Law is, if the Fact be so and so.

Otes. My Lord, It goes a great way with the Jury to have the Judge's Opinion.

L. C. J. Mr. Otes, Deceive not your self; all this you have insisted on hitherto, has not been to the purpose, nor is any sort of Evidence in this Case; and therefore do not run away with an Opinion of this as Evidence; a Judge's Opinion is of Value in Points of Law that arise upon Facts found by Juries, but are no Evidence of the Fact; for Judges only do presume the Fact to be true, as it is found by the Jury; and therefore say they, Out of that Fact so found, the Point of Law arising is thus or thus. Then in case, after a Jury has given a Verdict of the Fact, a Judge's Opinion of the Fact, (which may be perhaps contrary to the Verdict) should be an Evidence as to that Fact, that would be to overthrow and nullify the Jury's Verdict: No, that is not the Judge's Province. Surely you would not have a Judge's private Opinion, that Twelve men have found a Verdict against the Fact, to be an Evidence as to that Fact: No; but admit the Fact to be so or so, then the Person convicted of the Fact ought to suffer so or so. And by the same reason as this, a Jury of honest Gentlemen here, when I tell them here is a plain Fact either to convict you or to acquit you upon this Indictment, are not bound to go by what I say in Point of Fact, but they are to go according to their own Oaths, and according to the Evidence and Testimony of the Witneses: It is not my Opinion that is to weigh at all with them, whether you are guilty of this Perjury, or are innocent, but the Evidence that is given here in Court. Therefore what my Lord Chief Justice Scroggs said at any of those Tryals; or what I said, or any other Person, that either was of Counsel, or a Judge on the Bench, said as our Opinions, is but our Opinions on the Fact as it occurred to our present Apprehensions, but is no Evidence nor

nor binding to this Jury. I must tell you, there is no doubt but that those Juries did every one of them believe the Evidence you gave, or they would not have convicted the Prisoners. Do you think they would have found a Verdict against their own Belief, and being upon their Oaths to make true Deliverance between the King and the Prisoners, have perjured themselves to hang others? If they had so done, they had committed wilful Murder, and the worst of Murders too, being under colour of the Process of Law; but yet all this is no Evidence. I do not discommend you for insinuating these things as introductive and preparative to what Evidence you have to offer; but it is no Evidence one way or other. Alack-a-day! how many times have we Causes here in *Westminster-hall*, wherein we have Verdict against Verdict? And yet no Imputation to either of the Juries, which might give different Verdicts upon different Grounds. There was a notable Case lately of my Lady *Ivies* at this Bar: We all thought upon the first Tryal, that she had as good a Title to the Land as could be; all the Judges and the Counsel went away (I believe) satisfied with the Jury's Verdict for her: But when the Cause came to be heard again, we found all the Witnesses to prove her Title, were guilty of notorious Perjury, and the same Persons which did believe before that she was in the right, and the Jury had done well, when they heard the second Tryal did believe she was in the wrong, and accordingly the second Jury found it so; and we believe that last Verdict to be good, without any Reflection on the Credit of the first Jury, because the Evidence was as strong on her side then, as it was afterwards against her. In these Cases we give our Opinions always according to the present Testimony that is before us.

Otes. Then, my Lord, I offer this to your Consideration, That those Men that were thus charged by me with High Treason, were Priests and Jesuits most of them, and particularly Mr. *Ireland*, in whose Tryal I am said to have committed this Perjury, and you shall find him to have been by others proved a Priest and a Jesuit, and actually engaged in a Design against the Life of the King: If I then do prove that *Ireland* was engaged in a Design against the late King's Life, and was a Priest and a Jesuit, I desire to know, Whether this be not a Collateral Evidence to render me of Credit sufficient, and support my Testimony?

L. C. J. By no means upon this Indictment. It's true it may give some Credit to your Testimony, but is not of it self sufficient: Nay, I'll go a great way further than that; I will suppose that there was a Consult of the Jesuits upon the 24th of April 78, at the *White Horse Tavern* in the *Strand*, where those you say were present, were all present, *Ireland*, and *Whitebread*, and *Pickering*, *Grove* and *Fenwick*, were all there, and that they did there come to a Resolution to destroy the late King: Suppose all this to be true, and yet you all this time are not innocent of the Fact imputed to you, because you swore directly, That you were there at that Consult too, which you were not, if these Men swear true, for then you were at *St. Omers* at that time; and therefore give us some sort of Testimony to satisfy us that you were here, and

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then you will set all right again. If the Jesuits and Priests did plot, that is nothing to make your Evidence true, if you swore that which you did not know of your own Knowledge.

Otes. Shall it be allow'd then that *Ireland* was a Jesuit and a Papist?

L. C. J. If it should, that will be to very little purpose for your Turn.

Otes. There is the Evidence of a Record for it, my Lord; but if that be not sufficient, I can call Witnesses to prove it. Pray call Mr. *Miles Prance*.

Which was done, but he did not appear.

Cryer. He is not here.

Otes. He was *subpœna'd*, my Lord, to come hither.

L. C. J. I can't help it, if he will not come; but I'll tell you, for method's sake, not to prescribe to you, but to tell you what I think may be more for your Advantage than any of these Inferences that you are making. If you did call two or three Witnesses to prove that you were in Town the 22d, 23d, or 24th of April, it would be the best Defence you can make, and would give the best Answer to all that is objected against you.

Otes. I will do that, my Lord, then, and follow your Directions.

L. C. J. Do so, that is the best way.

Otes. Cryer, call *Cecilia Mayo*.

Cryer. Here she is.

Otes. Swear her.

[Which was done.]

L. C. J. Well, what do you ask this Witness?

Otes. Pray, Mrs. Mayo, give my Lord and the Jury an account, whether you did see me in London the latter part of April or the beginning of May 78? For that is the Question now before the Court.

L. C. J. Ay, what say you? When did you see him in 78?

Mrs. Mayo. My Lord, I saw him the latter end of April: He came to Sir *Richard Barker's* House, where I did then live, and afterwards he came again thither within a few Days. By this Circumstance I remember it; Sir *Richard Barker* my Master was sick all the Month of April, and in the Country, only he came now and then home for a little while, and went again; Now Mr. Otes came there when he was absent, and a young Man that lived in the House came to me, and told me, There was Mr. Otes in the strangest Disguise that ever was. Says he, I think he is turn'd Quaker; No, said I, he is no Quaker, for they were no Perriwigs, and I rebuk'd the young Man for saying so. As for Mr. Otes, I never saw his Face before that time that I know of.

L. C. J. How do you know that to be Mr. Otes then?

Mrs. Mayo. The Family knew him, and they told me it was he: That is the Gentleman there. I speak now nothing but that which I testified seven Years ago, and it is all Truth, and nothing but the Truth.

L. C. J. Ay, no doubt of it, thou swearest nothing but the Truth.

Mrs. Mayo. My Lord, He came three or four Days afterwards again to the House, and then the young Man came to me, and told me, That Parson Otes was turn'd Jesuit; and thereupon I said to him, Good Lord! Why dost thou concern thy self with him? Canst not let him alone? I look'd upon him, and saw him at

that time : And when he came that time, he went to Sir Richard's Lady's Sister, who is now in *Wales*, and coming to her, said she, Mr. Otes, I hear you are turn'd Jesuit, and we can have no Society with you now : At last, he stay'd to Dinner with them, and stay'd most of the Day there. Then he comes the latter end of *May* ; *Whitsuntide* was in *May* that Year, and I know he came before *Whitsuntide* by this Token ; I speak of the second time of his Coming : Our Custom in the House was to wash and scowre before the time, and I was sending for a Woman to come and help to wash and scowre, and then he was walking in the Garden ; and the young Man came and told me Otes was there : He came into the Pantry to me, Look, said he, he is come again, and he is turn'd Jesuit by his Disguise : Why Benjamin, said I, what hast thou to do with the Man ? Can'st not let him alone ?

L. C. J. What was the Name of that young Man you speak of ?

Mrs. Mayo. Truly, my Lord, he is dead, or he would have testified the same thing.

L. C. J. But what was his Name ?

Mrs. Mayo. Benjamin ; I can't tell his other Name.

L. C. J. Well, go on.

Mrs. Mayo. Said I to him, Why dost thou scorn this Man ? Prithee get out of the Room, I am not able to hear it : So he walk'd the space of an Hour in the Garden.

L. C. J. Is Sir Richard Barker living ?

Mrs. Mayo. Yes, my Lord, he is, but he is not well.

L. C. J. Was he at home when Otes was there ?

Mrs. Mayo. No, my Lord, I think not.

L. C. J. Who din'd with him, do you say, when he din'd there ?

Mrs. Mayo. My Lady's Sister.

L. C. J. What is her Name ?

Mrs. Mayo. Madam Thurrel.

L. C. J. And who else ?

Mrs. Mayo. And her Sons.

L. C. J. Where are they ?

Mrs. Mayo. They are both dead.

L. C. J. And who else was there ?

Mrs. Mayo. One Dr. Cocker.

L. C. J. Where is he ?

Mrs. Mayo. He is in *Wales* too, my Lord.

L. C. J. 'Tis a great Misfortune to have so many dead, or so far remote.

Otes. My Lord, Six Years time makes a great Alteration in a Family.

L. C. J. Was there any body else there ?

Mrs. Mayo. There were two of the Daughters, and they could all come and testify the same thing.

L. C. J. Where are they, and what is become of them ? Why are they not here ?

Mrs. Mayo. They are living in *Lincolnshire*, my Lord, I think.

L. C. J. What else have you more to say ?

Mr. At. Gen. Pray, Mrs. Mayo, let me ask you a Question : What colour'd Cloaths had he on when you saw him first ?

Mrs. Mayo. He had a whitish Hat, and colour'd Cloaths.

Mr. Sol. Gen. What time of the Day was it you saw him ?

Mrs. Mayo. In the Morning.

L. C. J. Did he go publickly ?

Mrs. Mayo. Yes, he went publickly.

Mr. Sol. Gen. Did he come often to the House ?

Mrs. Mayo. He was there frequently, my Lord.

Mr. Sol. Gen. Then it seems he was so disguis'd that he could walk publickly in the Streets of *London* at Noon-day, and was frequently in the Family.

Mrs. Mayo. Yes, my Lord.

L. C. J. Now tell me who was in the Family ?

Mr. At. Gen. Mrs. Mayo. —

L. C. J. Pray, give me leave to ask her the Question : Who was there at that time ?

Mrs. Mayo. Sir Richard Barker's Lady's Sister, Madam Thurrel, and his two Daughters, and two of his Kinsmen, and two of the Servants, one is here a Witness now.

L. C. J. Who is that that is a Witness now ?

Mrs. Mayo. One that belongs to Sir Richard Barker, and the other is now dead, and those two Kinsmen are dead.

L. C. J. What is become of the two Daughters, say you ?

Mrs. Mayo. They are in *Lincolnshire*, as I take it, my Lord.

L. C. J. When did you hear from them ?

Mr. At. Gen. My Lord, It is half a Year ago almost since Mr. Otes had notice of this Tryal.

L. C. J. Where is Sir Richard Barker himself ?

Mrs. Mayo. I was with Sir Richard Barker, and he purposed to have come hither ; but being a crazy Man, and ancient, it seems he could not, and desired to be excus'd, for he had a bad Night, and was not well ; but he desired that the Court should know, if he were well, he would be there.

Mr. At. Gen. Were you sworn at a former Tryal about this Matter, Mrs. Mayo ?

Mrs. Mayo. Yes, Sir, I was.

Mr. At. Gen. Do you remember what you swore then ?

Mrs. Mayo. The same I do now.

Mr. At. Gen. Then I ask you this Question, How long before *Whitsuntide* was it that you saw Mr. Otes at Sir Richard Barker's ?

Mrs. Mayo. A pretty while before, twice.

Otes. Mrs. Mayo, I'll put you a fair Question, Whether or no it might not be a Fortnight before *Whitsuntide*, you think ?

Mrs. Mayo. The last time I saw you was a Week before *Whitsuntide*.

L. C. J. How can you tell it was but a Week ?

Mrs. Mayo. 'Twas but a Week, because at that time I had sent the Boy for the Woman to scowre and wash there.

L. C. J. Was that the last time you saw him ?

Mrs. Mayo. Yes : I saw him several times before, and it was all before *Whitsuntide*.

L. C. J. How long before that was the first time that you saw him ?

Mrs. Mayo. He would be away for three or four Days, and come again.

L. C. J. But how long before the last time, was the first time you saw him ?

Mrs. Mayo. He came still to and again.

L. C. J. When was the time that you saw him next before the Week before *Whitsuntide*, which, as you say, was the last time you saw him ?

Mrs. Mayo.

Mrs. Mayo. I am not able to say that.

L. C. J. Did you believe it was within the compass of a Week before?

Mrs. Mayo. To the best of my remembrance it was.

L. C. J. When was the first time you saw him?

Mrs. Mayo. 'Twas in the beginning of May.

L. C. J. You said at first it was at the latter end of April.

Mrs. Mayo. Pray, my Lord, let me a little think; I am unwilling to be mistaken, I would say nothing but the Truth.

L. C. J. No, I would not have thee; but for God's sake, let us have the Truth, that is that we look for.

Mrs. Mayo. I say, the Coach-man saw him there as well as I, and he can tell you better than I.

L. C. J. But I ask you this Question positively, Was it in May or April?

Mrs. Mayo. To the best of my remembrance it was the beginning of May.

L. C. J. Was it within a Week of May?

Mrs. Mayo. I believe it was, I cannot tell exactly to a Day.

Mr. Sol. Gen. Was it so or not?

Mrs. Mayo. I cannot be positive to a Day; it is now six Years time since I was first examined about it.

Mr. At. Gen. But you can remember what you swore then, can't you?

Mrs. Mayo. I declare it, I speak not a Syllable, but I will aver to be true, before the great God.

Mr. Sol. Gen. Can you swear it was within the first seven Days of May?

L. C. J. You see, Mr. Solicitor, she says she cannot.

Mr. At. Gen. Did not you say at that Tryal, that you did never see his Face till a Week before *Whitsuntide*, or a little after?

Mrs. Mayo. I did swear the same that I do now, to the best of my remembrance, and that is the Truth.

Mr. At. Gen. But did not you swear so?

Mrs. Mayo. I never saw him before that first time he came to Sir *Richard Barker's*, and after the last time that he came, I saw him not till after the Plot was discovered.

Mr. Sol. Gen. How long was that after he had been at your Master's House?

Mrs. Mayo. It was a good while, I cannot tell how long.

L. C. J. Was it within a Month, or two Months?

Mrs. Mayo. It was more, my Lord.

L. C. J. Where was Sir *Richard Barker* at that time?

Mrs. Mayo. He was at *Putney*.

L. C. J. Then he did not see him?

Mrs. Mayo. Not then he did not.

L. C. J. Did he afterwards?

Mrs. Mayo. Yes, he did see him afterwards.

L. C. J. How long afterwards was it?

Mrs. Mayo. I can't tell how long afterwards it was, my Lord.

L. C. J. About what time was it?

Mrs. Mayo. After the Plot was discovered he was up and down in the Family.

L. C. J. You never knew Mr. Otes before that time he came in a Disguise, and you did not

know him then, but as they told you it was he?

Mrs. Mayo. No, I did not, but as they told me then; and this is the Man, I'll swear it.

Otes. Call *John Butler*.

Cryer. Here is *John Butler*.

Otes. Swear him.

[Which was done.]

My Lord, if you please I will propose my Questions to your Lordship; and my first Question is this, I pray your Lordship would ask him, Whether he gave in any Evidence at the five Jesuits Tryal, or *Langborn's* Tryal, about my being in Town in April or May, 78?

L. C. J. Did you give any Evidence at the Five Jesuits Tryal?

Butler. Yes, I did.

L. C. J. Did you give any Evidence at *Langborn's* Tryal?

Butler. Yes, my Lord, I was a Witness there.

Otes. My Lord, it is so long ago, that ignorant People that come innocently without design, may not be so ready in their remembrance, as those that conn'd their Lesson for so long time together.

L. C. J. Well, well; what do you ask him next, Whether he will stand by that Evidence he gave then?

Butler. That is all I have to say, my Lord: I did testify the Truth then, and will abide by it.

L. C. J. But he must give the same over again here, or it will signifie nothing.

Otes. My Lord, it is now six Years since, and this Question was not thought to be stirr'd so long after: Therefore I beg so much Favour, that the Evidence he did give at Mr. *Langborn's* Tryal may be read to him.

L. C. J. O by no means.

Otes. My Lord, it is such a distance of time—

L. C. J. Look ye, if he has any Notes himself, he may look on them to refresh him.

Otes. My Lord, he comes raw hither, without any Instruction at all.

L. C. J. So should every Witness: God forbid we should countenance the instructing of Witnesses what they should swear.

Otes. I beg your Pardon, my Lord, I did hope this Favour might be granted: I will then ask him some Questions.

L. C. J. Ay, ay, do, Refresh his Memory by Questions as much as you can. Come, I'll ask him some Questions for you: Do you remember you saw Mr. Otes at any time in the Year 78?

Butler. If it please your Lordship, as near as I can remember, I saw him in May before the Plot was discovered.

L. C. J. That was the Year 78.

Butler. I am sure I did see him about that time.

L. C. J. Where did you see him?

Butler. I was a Servant to Sir *Richard Barker*, and Mr. Otes I had been acquainted with before he went to Sea; he used to come to my Master's House frequently, and divers times he din'd at the Table, and I waited upon my Master there.

L. C. J. When was it that he din'd there at the Table?

Butler. A Year before that time in May that I spoke of before: It was before he went to Sea.

L. C. J.

L. C. J. When did you see him again?

Butler. After he came from Sea, I saw him at my Master's House.

L. C. J. When was it that he went to Sea?

Butler. It was a Year or two, before the *May* that I saw him disguis'd coming to my Master's House.

Mr. At. Gen. Ay, what Disguise did he come in?

Butler. His Hair was cut off, close cropt to his Ears, and an old white Hat over his Head, and a short gray Coat over like a Horse-man's Coat.

L. C. J. How came you to take such notice of him at that time, as to be able to swear when this was?

Butler. I was call'd presently after for a Witness.

L. C. J. How long after this was it, that you were call'd to be a Witness?

Butler. It was when the Tryals were at the *Old Bailey*.

L. C. J. Was this the first time you had recollected these Circumstances?

Butler. Yes, my Lord, that was the first time.

L. C. J. Then how came you a Year and an half's time afterwards to remember the precise Month of *May*, when you did not know you should be call'd to question about it, and yet you cannot remember the time particularly when *Otes* went to Sea, but take the Compass of a Year or two?

Butler. I guess it was a Year before, I cannot exactly tell.

L. C. J. When you can but guess at the time of such a remarkable Passage, within the Compass of a Year or two, how can you pitch upon the very Month for such a thing as this is, a Year and an half's time after?

Otes. No, my Lord, it was not so long as a Year and an half.

L. C. J. Pray, Sir, have patience.

Otes. My Lord, The Records shew, that *Ireland's* Tryal was the 17th of *December* 78, and the five *Jesuits* Tryal was the 15th of *June* 79.

L. C. J. Then it is a full twelve-month's time and more from the *May* that he says he saw you at *Sir Richard Barker's*, to *Whitebread's* Tryal, in which he was examin'd the first time. Now that which I desire of him is, to give me a reason why he remembers it was in the *May* was twelve-month before?

Butler. My Lord, The Lady whom I did serve, died in *February* before, that Year.

L. C. J. But give me some reason of your Remembrance so long after.

Butler. My Lord, I do as well as I can.

L. C. J. Well, what is it?

Butler. My Lady was buried in *February*, and he comes into the Yard where I was cleaning my Coach, in *May* following that *February*, which was *May* before the Discovery of the Plot. He ask'd me what Alteration was in the Family? I told him my Lady was dead, and the Escutcheon was over the Door for her. He ask'd for *Dr. Tongue* when he came first in the House.

L. C. J. Why should he ask for *Dr. Tongue*?

Butler. My Lord, *Dr. Tongue* lodged there, and he did ask for him: I come to justify the

Truth; upon my Salvation what I say is true.

L. C. J. Well, when he ask'd whether *Dr. Tongue* was within, what said you?

Butler. I told him no; but he went into the Room where *Dr. Tongue* us'd to lie; but found him not there: So he went out again; that was the same time *Mrs. Mayo* saw him.

L. C. J. But, Friend, prithee mind what I ask thee, because thou must give me satisfaction how thou com'st to remember this, so as to be able to swear it; for his going to ask for *Tongue*, or the Escutcheon being over the Door, neither of those can be a Reason for you to remember that this was in *May*, for the Escutcheon may be up in *June*, or in *July*, or in *August*, or in any other Month after the time you speak of: But how came you to take notice of this Business that it was in *May*?

Butler. *Sir Richard Barker* my Master was then sick at *Putney*, which was in *May*, tho' I cannot speak to a Day or a Week particularly.

L. C. J. Then prithee let me ask thee this Question, How long had your Master been sick before that?

Butler. He had never been well since my Lady died.

L. C. J. When was it that your Lady died?

Butler. In *February* before.

L. C. J. How long after that did your Master *Sir Richard Barker* continue sick?

Butler. Half a Year, I believe.

L. C. J. Why then, suppose your Master fell sick immediately after your Lady died, and he continued sick half a Year after, yet all this while *Otes* might come during his Sicknes even in the Month of *June* or *July*, when 'tis acknowledged he was in Town, and not be here in *February*, which is testified by a great many Witnesses.

Butler. My Lord, I tell your Lordship the Truth, it was in *May*.

L. C. J. But how dost thou come to take notice it was in the Month of *May*, so as to be able to swear it?

Butler. My Lord, I tell your Lordship my Lady was dead, and the Escutcheon was over the Door.

L. C. J. So it might be, tho' he came in *June* or *July*, I tell ye.

Butler. My Master was sick at *Putney* at that time.

L. C. J. How long did he lie sick at *Putney*?

Butler. He was sick there a Fortnight, my Lord.

L. C. J. Then prithee when did thy Master go to *Putney*?

Butler. I cannot tell to a Day.

L. C. J. In what Month was it that he went?

Butler. It was the latter end of *April*, my Lord, as I remember.

L. C. J. How long continued he sick at *Putney*?

Butler. The matter of a Fortnight.

L. C. J. Was not your Master sick, when your Lady died, at *Putney*?

Butler. No, he was not there then.

L. C. J. When did he go to *Putney*, say ye?

Butler. He went not thither till the latter end of *April*, my Lord.

L. C. J. And did he continue at *Putney* but a Fortnight?

Butler.

Butler. Not at a time, but he continued going and coming a quarter of a Year.

L. C. J. But this was the first time of his going, was it?

Butler. Yes, as I do remember.

Otes. My Lord, He is my Witness, and I desire I may examine him.

L. C. J. Hold there, Mr. *Otes*; he is mine too: All the Witnesses are mine to satisfy me in the Truth of the Fact.

Otes. And to satisfy the Jury too, my Lord.

L. C. J. Yes, and to satisfy the Jury too; but I must and will sift out the Truth, for both our Satisfaction.

Otes. My Lord, It is now, come the next Month, six Years ago since the Evidence of this Matter was first given by these Witnesses.

L. C. J. Then, Mr. *Otes*, I'll come a little rounder to you, and I'll put you into a certain way of clearing this Business. I'll tell you what you shall do; You had a Lodging in Town, as well as Diet, and as well as you did eat at Dr. *Barker's* sometimes, so you eat and lay sometimes elsewhere. You were here in Town a great while together, if your own Assertions be true; for you were from *April* till *June* in Town. Now come and give us account by some Witnesses, if you can, where did you lodge at that time, and where did you diet? For it seems you had but one Meal at Sir *Richard Barker's*.

Otes. Is that the Question, Sir, here in hand?

L. C. J. Ay indeed is it, and the main one too.

Otes. I beg your Lordship's Pardon if I mistake, but I think that is not now in question; for these *St. Omers* Men do swear, That I was all *April* and *May* at *St. Omers*: Then if I do prove that in *April* and *May* I was not at *St. Omers*, but here in *London*, it is Argument good enough against them that their Evidence is false. And indeed, can your Lordship or the Jury expect that I being then engag'd among and for the Papists, and afterwards an Evidence against them to discover their Treasons, can bring any of them to testify for me now? No, they will as certainly forswear themselves, as these young Fellows have all done.

L. C. J. Let me ask you a shorter Question: Did you always lie in a Papist House, all the two Months you say you were here?

Otes. My Lord, I lay at several Houses.

L. C. J. Tell me the Names of those Houses, or any of them.

Otes. It is not to the Point in question here, my Lord.

L. C. J. Yes it is very much; but I perceive it is a Secret, and let any body judge why.

Otes. My Lord, They that have by the Principles of their Religion, Liberty to affirm or deny any thing, and can have Dispensations for the Violations of Oaths and Sacraments, certainly are not to be admitted as Witnesses in such a Case as this.

L. C. J. Talk not to me of Dispensations and I know not what; I speak from a plain demonstrative Proof: Can it be believed that you should be here in *England* so long, and as they say, publickly, and no Person living see you that we can hear of, but an Old Woman that never saw you, nor knew you before, and a Coachman that tells a wild Story without reason: If you will not tell me where you lay,

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can you tell me where you did eat all that time?

Otes. I can tell where I did lie that time.

L. C. J. Do so then. Let us hear it, that will be your best Defence.

Otes. Is that the Point, my Lord, in question?

L. C. J. Ay upon my Word is it the main Point in this Case.

Otes. If it should go upon that Foot, my Lord, it is impossible for me now to prove it; for 'tis well known, I lay sometimes with Mr. *Whitebread*, and sometimes with Mr. *Mico*, neither of which can I have to testify for me; and besides, I must insist upon it, these things were in question at *Whitebread's* Tryal, nor do I believe that Mr. *Whitebread*, if ask'd at his Death, would have justified, and stood by it, that I was not here then.

L. C. J. Well, This I must certainly say, I cannot help it, but it will stick with me till better answered. I can never be satisfied, that if you were here so long, there should no better Evidence be produced to prove you here.

Otes. My Lord, Nor can I help your Dissatisfaction, but I am to satisfy all that hear me this Day, that it is a very hard Case that is put upon me; I have taken the most effectual Course that I could, to provide for Evidence to make my Defence; and I think, by your Lordship's good Leave, those that I have produc'd, do prove me here in Town in *April* and *May* 78. And if your Lordship has done with this Witness, I'll call another.

L. C. J. Well, go on as you will. I tell you what sticks with me.

Otes. Pray call Mr. *Philip Page*.

Mr. Sol. Gen. Hold, Sir, a little, I would ask these Witnesses a few Questions before they go away. You *Butler*, Let me ask you, pray, the first time you saw Mr. *Otes* at the time you speak of, was it in *April* or *May*?

L. C. J. He swore it was the beginning of *May*.

Butler. To the best of my Knowledge it was the beginning of *May*.

Mr. Sol. Gen. Who did you tell first, that there was Mr. *Otes* at that time?

Butler. I told it Mrs. *Mayo*.

Mr. Sol. Gen. Consider, Friend; what you say now, you are upon your Oath, and consider what you said at the former Tryal, when you were upon your Oath too.

Otes. Pray, my Lord, I desire my Witnesses may be examined without Threatnings.

L. C. J. It is not a Threatning, it is an Admonition not to go beyond the Truth.

Mr. Sol. Gen. Be sure you be in the right in what you say, and now I ask you upon your Oath, when was the first time you saw Mr. *Otes* when he came in that Disguise you speak of?

Butler. I told you it was in *May*, Sir.

Mr. Sol. Gen. How far in *May*, consider well what you say.

Butler. To the best of my Remembrance, it was the beginning of *May*.

Mr. Sol. Gen. Do you think it was within a Week, or the first Ten Days of *May*?

Butler. I cannot tell that, as well as I remember, it was the beginning of *May*.

Mr. Sol. Gen. When you saw him first in *May*, who else, as you remember, was by?

K k k

Butler.

Butler. Mrs. Mayo.

Mr. Sol. Gen. And no body else?

Butler. Yes, One Benjamin Turbet, who is since dead.

Mr. Sol. Gen. But consider your Oath, Friend, once more, and recollect your self, Do you swear positively Mrs. Mayo was by, and did see him at the same time?

Butler. I see her look out of the Window into the Yard, and I believe she did see him.

Mr. Sol. Gen. Well then, Let us examine her Evidence and yours together, and see how they agree.

Otes. My Lord, These are not Questions tending to satisfy the Jury at all, as to the Point in question.

L. C. J. Are they not, methinks they are, whatsoever you think.

Otes. After six Years time, to ask such poor ignorant People such trifling Questions!

L. C. J. Pray, Sir, be contented, and let the King's Counsel examine the Witnesses.

Otes. My Lord, He says I was here in May, that's enough.

L. C. J. Well, Sir, I know what he says.

Mr. Sol. Gen. And you shall hear Mr. Otes, how your Witnesses agree.

L. C. J. Go on, Mr. Solicitor, and do you sit still and be quiet.

Mr. Sol. Gen. Then, my Lord, I would ask him this Question more, the first time you saw Otes come to Sir Richard Barker's, what Habit, pray you, was he in?

Butler. He was in a Disguise.

Mr. Sol. Gen. Ay, what Disguise?

Butler. He had a white Hat flapping over his Ears; his Hair cut short, close to his Ears, and a grey short Coat.

Mr. Sol. Gen. Had he never a Perriwig on?

Butler. No, his Hair was cut short to his Ears.

Mr. Hanses. Was he in such a Disguise, that a Man might not ordinarily know him, that had known him before?

Butler. Truly, my Lord, I did not know him when he first came in, till he spoke to me, and asked me, how do you, John? and then I recollected who he was, that it was Mr. Otes.

Mr. Sol. Gen. Was he always in the same Habit, when he came thither?

Butler. The next time he came, he had a Cinnamon-coloured Suit, and a long black Perriwig that was curl'd down thus far, and a black Hat with a green Ribbon and green Cuff-strings about his Wrists.

L. C. J. Did you ever see Otes dine there?

Butler. Yes, I did.

L. C. J. When was that?

Butler. After my Master came home from Putney.

L. C. J. Who was there besides?

Butler. One Sir William Thurrell and Madam Thurrell.

L. C. J. How often did he dine there?

Butler. Several times.

L. C. J. Who else was there?

Butler. My Master and his Daughter.

L. C. J. And who else?

Butler. Mrs. Mayo.

L. C. J. What is become of your Master's Daughter?

Butler. I beg your Pardon for that, my Lord.

L. C. J. Where is she, Man?

Butler. She is at home, I suppose.

L. C. J. What dost thou beg my Pardon for then?

Butler. My Lord, I call to mind she did not dine with them.

L. C. J. Did she dine at any time with him there?

Butler. Yes, I remember several times, but not then.

L. C. J. When did you see your Master's Daughter last?

Butler. I have not seen her this Quarter of this Year.

L. C. J. Where is she now?

Butler. At home at Putney, my Lord, I believe.

L. C. J. And she was several times there when he din'd there?

Butler. Yes, she was at home.

L. C. J. Did Mrs. Mayo see him at Dinner there?

Butler. Yes, I believe she did.

L. C. J. How often did he dine there about this time you speak of?

Butler. Several times.

L. C. J. Do you think seven times?

Butler. I do think he might have din'd there seven times.

L. C. J. Did he more than seven times do you think?

Butler. I cannot number how many times it was.

L. C. J. Now come in Mrs. Mayo again.

Mrs. Mayo. Here I am, my Lord.

L. C. J. Mrs. Mayo, Give me leave to ask you a Question or two.

Mrs. Mayo. Yes, my Lord, what you please.

L. C. J. You say (if I do not mis-remember; if I do, I beg your Pardon, and you'll correct me) a Week in May was the first time you saw Mr. Otes, and that was at Sir Richard Barker's.

Mrs. Mayo. I think it might be about the beginning of May.

L. C. J. Had he been in the House before?

Mrs. Mayo. Not at that time that I know of, but as they told me.

L. C. J. Who told you?

Mrs. Mayo. That Coach-man there John Butler, and one Benjamin who liv'd in the House.

L. C. J. Then you did not see him the first time he came; what say you, Butler?

Butler. She did see him out of the Window in the Yard.

L. C. J. Well, let that pass then, come I'll ask you another Question upon your Oath, How often have you seen him dine there?

Mrs. Mayo. I saw him dine that time that I spoke of.

L. C. J. Did not he dine there above once?

Mrs. Mayo. No, he did not.

L. C. J. What say you Butler?

Butler. He did dine there several times with them.

L. C. J. Then one of you two must be mistaken, I am sure.

Otes. My Lord, If your Lordship would please to give me leave to speak, I would set it right.

L. C. J. Good Sir, Let them set themselves right if they can, we need none of your Instructions.

Otes.

Otes. My Lord, I desire——

L. C. J. Why, how now; pray, Sir, be at quiet. Mrs. Mayo, Pray what Habit had Otes when you saw him first?

Mrs. Mayo. He was in a grey Hat and a grey Coat.

L. C. J. Was his Hair short or long?

Mrs. Mayo. He had on a kind of a short Wigg.

Mr. Sol. Gen. You are sure it was a Wigg.

Mrs. Mayo. Yes, a kind of a brown Perriwig.

L. C. J. And he says his Hair was cut short to his Ears,

Otes. These things are very lean stuff to perjure a Witness upon.

Mr. Sol. Gen. When he came the second time what Cloaths had he on?

Mrs. Mayo. Afterwards he came in black Cloaths and a long Perriwig.

Mr. Hanfes. What coloured Perriwig was that, a black or a white one?

Mrs. Mayo. Not a black, but a brown.

Mr. Sol. Gen. You say it was long?

Mrs. Mayo. Longer than his other, yet not very long neither.

L. C. J. Here are I know not how many Contradictions in these Witnesses Testimonies.

Otes. Truly, my Lord, I do not find in the Examination of the St. Omers Witnesses, you were so strict, or bore half so hard upon them, as you do upon my Witnesses; what does it signify, my Lord, whether the Wigg were long or short, black or brown?

L. C. J. We have no other way to detect Perjuries, but by these Circumstances; and 'tis the Duty of a Judge to enquire into all Particulars; as in a Controversy about Words, were they spoken in Latin or in English, and so to all Places and Postures of sitting, riding, or the like; as you know the Perjury of the Elders in the Case of *Susanna*, was by their different Testimony in particular Circumstances discovered.

Otes. My Lord, I will ask her but one short Question, by the Oath you have taken, Mrs. Mayo, to speak the Truth, the whole Truth, and nothing but the Truth, as you expect the Face of God with Comfort in another World; Did you see me at Sir Richard Barker's at any time in May 78. the May before the Plot was discovered? For that is the main Question.

Mrs. Mayo. Yes, I did, and I speak nothing here, but what I speak as in the Presence of the Lord.

L. C. J. Prithee, Woman, dost thou think we ask thee any thing that we think thou dost not speak in the Presence of the Lord; we are all of us in the Presence of the Lord always.

Mrs. Mayo. And shall answer before him for all that we have done and said, all of us, the proudest and the greatest here.

L. C. J. But I would not have so much to answer for as thou hast in this Business for all the World.

Mr. Sol. Gen. Well, we have done with her now, she may go away.

L. C. J. Where does she live now?

Cryer. Mrs. Mayo, Where do you live now?

Mrs. Mayo. In Leaden-ball-street, my Lord.

L. C. J. When did you see Sir Richard Barker's Daughter?

Mrs. Mayo. About a Fortnight ago.

L. C. J. Where?

Mrs. Mayo. In Barbican in London.

L. C. J. Do you live with Sir Richard Barker now?

Mrs. Mayo. I do not live with him now.

L. C. J. Did his Daughter use to be at the Table at Dinner?

Mrs. Mayo. She was often in the Country, my Lord.

L. C. J. Did she eat at his Table at that time when Otes was there?

Mrs. Mayo. I am not able to say whether she did or not; she used to be in Wales at Sir Thomas Middleton's sometimes, and with Madam Thurrell her Aunt, who was her Mother's Sister, and her two Daughters.

L. C. J. In Wales dost thou say, where?

Mrs. Mayo. My Lord, In your own Country, at one Dr. Cocket's; I know your Lordship, tho' your Lordship does not know me.

L. C. J. I am very glad of it, good Woman; but prithee did ever Sir Richard Barker dine with Mr. Otes?

Mrs. Mayo. I cannot say he did; he went to and fro.

L. C. J. Well, have you any more Witnesses?

Otes. Cryer, Call Philip Page.

Cryer. Here he is, Sir.

Otes. Pray swear him. (*Which was done.*) Pray be pleased to give my Lord and the Jury the best account you can of my being in Town. But, Mr. Page, the Question that I first ask you, is whether I was here in April or May, and in what Year it was that you did see me at your Master's House?

L. C. J. When did you see Mr. Otes at your Master's House? You mean Sir Richard Barker to be his Master, I suppose?

Otes. Yes, my Lord.

L. C. J. What do you say to it?

Page. Truly, I cannot be positive to the Year, but to the best of my remembrance it was 78.

Otes. Pray tell my Lord and the Jury some Circumstances in that Year that did happen to you, that makes you believe it was 78.

Page. Sir, I'll give you the best Satisfaction I can to the best of my Knowledge; he came to Sir Richard Barker's one Evening, and there he enquired for Dr. Tongue: He was in a Disguise, in a light-coloured Coat, something like to Frize, but it was not Frize; the Term that they give it, I cannot so readily tell. He had his Hair cut short almost to his Ears, and he had a broad-brim'd Hat on, and a small Stick in his Hand, walking melancholly about the Hall: I happening to be the first body he met with, as I suppose, he asked me if Dr. Tongue was within; I told him no, I had not seen him of a considerable time: He then asked me where Sir Richard Barker was? I told him he was ill now at Putney; says he, when will he be here? I told him I could not tell.

L. C. J. Did he see any body there but you?

Page. That I cannot tell, my Lord; not that I know of.

L. C. J. What time of the Year was it?

Mr. At. Gen. And what Month?

Page. What Year and what Month it was, I am not able to say, my Lord.

L. C. J. What became of him after that?

Page.

Page. He went out of our Gates then, Sir; he was walking up and down melancholly, and not finding any one, as I suppose, to answer him, he continued walking in the Patient's Hall, where they used to wait on Sir Richard Barker, that came to discourse with him about Physick; and upon my Answer to his Question he went away.

L. C. J. Did you ever see him any other time near to that time?

Page. No, I did not.

L. C. J. Did you use to wait on Table?

Page. No, I did not.

L. C. J. What Service were you then engaged in at Sir Richard Barker's?

Page. I made up the Physick, my Lord.

L. C. J. Did you not acquaint the Coachman, nor Mrs. Mayo, nor Sir Richard Barker with it?

Page. I think Sir Richard Barker was in Town soon after, and I did acquaint him with it.

Otes. But can't you tell what time this is, Sir?

Page. I can say no other than I have said; I believe it was in 78.

L. C. J. Was this in June, July, or May, or when?

Page. I cannot say punctually what Month it was, my Lord; but to the best of my Knowledge and Remembrance, it was in the beginning of May.

Otes. Had not your Master a Patient at Islington at that time, that was sick of a Fever?

Page. Yes, he had.

Mr. Just. Withins. Why, would Mr. Otes have given the Patient Physick?

Page. No, my Lord, but 'twas about that time that the Patient was under my Master's Cure.

Otes. Indeed the St. Omers Men do swear thorough-flitch, but my honest Witnesses are cautious, it being so long ago; and he that is a Minister of the Church of England (as they say) speaks to a very day, upon a much slighter Circumstance: Pray call Mr. William Walker.

Cryer. Here he is.

Otes. Swear him. (Which was done.) Be pleased, Walker, to give my Lord to understand, when 'twas you saw me here in London in Disguise, and when it was you swore six Years ago at the Old Bailey, that you saw me here in London: Sir, the time in Controversy is this: I came here to discover a Plot of the Papists against the King's Life and the Religion, and I swore—

L. C. J. You must not ask Questions in that manner. It is properest for you to propose your Questions to the Court, and they will ask the Witnesses.

Otes. Then I will not ask him, but propose it to your Lordship.

L. C. J. Ay, propose what Questions you please, and if they are fair, I'll ask them.

Otes. Then, my Lord, I would ask Mr. Walker this Question; when 'twas he met me with a Disguise, in what Year and what Month?

Mr. Walker. My Lord, I have been interrogated in former times upon this Point, six or seven Years ago, and I do confess I did see the Man, and met him between St. Martin's lane and Leicester-fields; and truly, my Lord, I think I may say it was my Unhappiness to meet with

him; for I have had a great deal of Trouble by it since, Subpœna upon Subpœna, Trouble after Trouble, that I am even weary of it; for I am an old Man: But I do say I did meet him at that end of the Town, between St. Martin's-lane and Leicester-fields in a strange Disguise; he was just like a Vagrant, a very Rascal, and that's true, I believe, my Lord.

Mr. At. Gen. Did you know him before?

Mr. Walker. Yes, or I had not known him then.

L. C. J. When was this?

Mr. Walker. My Lord, I'll tell you; my Lord Chief Justice Scroggs, when I was at the Old Bailey, asked me if I knew what time it was I saw him thus; said I, my Lord, 'tis almost a Year and an half since I saw him; and I being an old Man, little thought it worth the while to lay up the particular time in my Memory; but I'll cast about in my Thoughts to make the best Conjecture I can; for now I will not be upon my Oath, it being but Conjecture.

L. C. J. But now you are upon your Oath, remember that, Man.

Mr. Walker. My Lord, I am speaking what I said to the Court at that time.

L. C. J. Pray do not tell us an old tedious Story of the Questions and Answers in the Old Bailey, but mind what is said to you here, my Question is now, what time you saw Otes disguised between St. Martin's-lane and Leicester-fields, as you say you did.

Mr. Walker. My Lord, I cannot prescribe the time; but I'll guess as near as I can with the best probability, and that is, upon this Circumstance; when I went forward into Leicester-fields, in the Court before the House, I saw the Elm-Trees budded forth as big as an Hazle Nut; so that I did conjecture by that Token, it might be between Lady-day and the latter end of April; that was the time as near as I could guess.

L. C. J. In what Year was it?

Mr. Walker. I cannot very well tell what Year it was.

L. C. J. Was it in 77 or 78?

Mr. Walker. Truly, my Lord, I never thought it worth so much taking notice of, to fix the particular time in my Memory.

Otes. Whether was it that Year the Plot was discovered, or the Michaelmas following?

Mr. Walker. I cannot tell when the Plot was discovered, or whether it be found out yet or no?

Otes. But was it the Year before you were examined?

Mr. Walker. To answer you, Mr. Otes, when it was exactly, I cannot say; truly I would give you the best Satisfaction I could, and do you as much Right as I would do my self; I think if that time when I was examined, were in 77 or 78, it was near a Year and a quarter before I did see you.

L. C. J. Well; what can you make of this?

Otes. 'Tis not to be supposed he is a very willing Witness, but yet he says, 'twas a Year and a quarter before the Tryal in which he was examined, which must be in April 78.

L. C. J. I would know this Question of you: Were you present at the Old Bailey, when the five Jesuits were tryed?

Mr. Walker. I was there, my Lord.

L. C. J.

L. C. J. Were you at any Tryal but one ?

Mr. Walker. I was not Examined at any time but one.

L. C. J. Have you any more Questions to ask him ?

Mr. Walker. My Lord Chief Justice that then was, did ask me, if I knew any of the Prisoners at the Bar, and I look'd upon all of them, and I said I knew not either of them.

Otes. Pray my Lord, ask him whether he was not produc'd, when the St. Omers Men were produc'd, and gave his Evidence as to my being in Town at that time ?

L. C. J. He hears the Question, let him answer it ?

Mr. Walker. I am not able to answer you, because you put several Questions together ; but this I say, I was never Examined but once, though I have been Subpœna'd often, to my great torment and trouble.

Otes. Did you give Evidence at that Tryal, that you saw me in April 78 ?

Mr. Walker. I testified that I saw you, and by such Circumstances, it must be about such a time as well as I could suggest ; but I could not, nor cannot speak positively.

Otes. Now my Lord, I shall go on to another part of my Evidence, and call some other Witnesses, and first of all, I come to Mr. Serjeant Maynard, and I desire he may be sworn. [*Which was done.*]

L. C. J. What do you ask my Brother, Maynard ?

Otes. I call Mr. Serjeant Maynard to give an Account of the Proceedings of the House of Commons upon my Discovery of the Popish Plot.

L. C. J. We will not admit that to be any Evidence at all ; nor can it be by Law.

Otes. My Lord, Mr. Serjeant Maynard was one of the Committee of the House of Commons that managed the Impeachment, and can give an Account of the Evidence and Records that were produced at the Tryal of the late Viscount Stafford.

Mr. Serj. Maynard. I know nothing truly, nor can remember any thing of it now.

L. C. J. He says, he remembers nothing.

Mr. Serj. Maynard. If Mr. Otes had told me before hand, when he Subpœna'd me, what time, and what particular things he would have Examined me to, probably if I was there, I have Notes that I then took, but I can never swear to my Memory, for any Cause so long ago.

Otes. My Lord, I am very sorry Mr. Serjeant Maynard's Age should so impair his Memory.

L. C. J. I dare say, you are not more sorry than he is for his Age.

Otes. Well, my Lord, I cannot help it : Then I desire Mr. Blaney may be ask'd whether he has his Notes of my Lord Stafford's Tryal ?

Mr. Blaney. No, my Lord, I have them not here ; Mr. Otes by his Ticket of his Subpœna, desir'd only the Notes of Ireland, Whitebread and Langborn's Tryal.

L. C. J. But I must tell you, Mr. Otes, if those Notes were here, they could be of no use to you without the Record of my Lord Stafford's Attainder ; if you ask any thing upon another Tryal, you must produce first the Record of that Tryal, and then you may examine to what was given in Evidence at the Tryal.

Otes. My Lord, it is of Record in the House of Lords.

L. C. J. But that we are not to take notice of, without the Record be brought in Evidence before us : We must go according to the course of Law in all Cases.

Otes. Then, my Lord, I must betake my self to another Part of my Defence, and that is to prove the frequent Attempts made to baffle the Discovery of this Popish Plot, and to stifle the Murder of Sir Edmundbury Godfrey, and to sling it upon a Protestant Peer.

L. C. J. But that is no Evidence neither.

Mr. Just. Holloway. Surely that is very Collateral Evidence.

L. C. J. Nay, it is no Evidence at all in this Case ; we must not admit of any such Evidence to be given.

Otes. Good my Lord, if this had not been true, which was sworn by Witnesses that had discovered the Plot, why should these Men appear to suborn Witnesses (and they have been Convicted of Subornation, and endeavouring) to baffle the Discovery, particularly as to Justice Godfrey's Death.

L. C. J. Mr. Otes. I must keep you to Evidence that is proper ; we are upon our Oaths to go according to Law, and the Jury are upon their Oaths to Try this Cause according to their Evidence ; and we are bound to give them this Advice in Point of Law, that nothing must weigh, or have any Consideration with them, that you offer, if it be not legal and proper Evidence : If you can say and prove that any of the Witnesses that have been produc'd this Day against you, have been tamper'd with ; or that they have tamper'd with any of the former Evidence, that is a good Evidence against them ; but it must not be by any means admitted that the time of the Court be taken up, or the Jury enveigled by that which has not a natural tendency to the Business before us.

Otes. But if your Lordship please, this Consult in April 78. was discovered to the House of Commons, among the other parts of the Discovery of the Treasons of several Noble Men and Gentlemen : Now upon the Discovery of the Plot, I would desire that I might give in Proof the Proceedings of the House of Commons.

L. C. J. No, no, you cannot.

Otes. Pray my Lord, is not the Journal of this House of Commons Evidence ?

L. C. J. No, we say it is not at all.

Otes. Is that the Opinion of the whole Court, my Lord ?

L. C. J. Yes, undoubtedly, there is no Question of it.

Otes. Is any Record of the House of Lords Evidence ?

L. C. J. Yes, I tell you it is, and that because it is a Record ; but there is a vast difference between the Records of the House of Lords, and the Journals of the House of Commons.

Otes. The Journals have been delivered in as Evidence before now.

L. C. J. I cannot tell what they have been, but I am sure they ought not to be, and whatever they have been elsewhere, they cannot be here ; and I'll tell you a plain reason for it, because they have not so much Power in the House of Commons as to give an Oath : But the House of Peers is a Court of Record, and therefore their Proceedings are Evidence as the Proceedings of the Kings Bench here ; or any Court of Record are.

Otes. Then my Lord, if that part of my Evidence be over-rul'd ; before I come to sum up my Evidence, I desire to offer this thing. My

Lord, I can produce several Members of the House of Commons in the several Parliaments, that can remember how they proceeded against the Lords in the Tower, and the Popish Traitors upon my Discovery, and what Credit I had in the House of Commons ; Will that be Evidence, pray my Lord ?

L. C. J. No, it will not, if you will produce any one that you told this to before the publick Discovery, that may be Evidence such as it is, and is often allow'd ; but what the House of Commons did upon the Discovery, that's not any Evidence at all.

Otes. Then my Lord, suppose I can prove, that I gave an early and timely Account to any of the House of Lords of this Conspiracy, and did acquaint them with the Consult in April as part of it ; I desire to know whether in producing any of those Lords, I shall give that which is Evidence ?

L. C. J. Call whom you will that you told any thing to, that is a sort of Evidence, I tell you ?

Otes. Then I call my Lord of Devonshire.

L. C. J. Here is my Lord of Devonshire.

Otes. My Lord, I beg your Pardon for the trouble I put your Lordship to ; but your Lordship sees the necessity of it : It is for the justification of the Truth, to which I will give my Blood for a Seal if I be call'd to it.

L. C. J. My Lord of Devonshire, your Lordship must be sworn. *[Which was done.]*

Otes. Will your Lordship please to acquaint the Court and the Jury (your Lordship being at that time a Member of the Commons House) what Account I gave there of this particular Consult (to keep to that Point that is here in question) before the Court this Day, and with what Credit I was received in all these Parliaments ; for my Credit and the Credit of the Parliament is now in question.

Earl of Devonshire. My Lord, all I can say to it is this ; you Mr. Otes gave a long Account of a Consult and Conspiracy among the Jesuits : But I cannot remember any Particular, it is so long ago.

L. C. J. Every body knows this, you gave a long Narrative into the House of Commons and House of Lords too.

Otes. Ay, and it was a true one ; but my Lord of Devonshire, I desire your Lordship would be pleased to give the Court and the Jury an Account, with what Credit I was received in those three Parliaments your Lordship sat as Member in.

Earl of Devonshire. I remember that the two Westminster Parliaments after the long Parliament, were so satisfied with the Discovery, that they passed a Vote in the House of Commons——

L. C. J. The Votes of the House of Commons are no Evidence at all.

Otes. They show what Opinion the Parliament was of.

L. C. J. Many Votes that have been made of late, I hope will neither be Evidence for, nor put in practice again.

Earl of Devonshire. My Lord, it is well known to all the World the Vote I speak of.

L. C. J. Nay, my Lord, I speak not to your Lordship ; for we all know those Votes that I speak of were not according to your Lordship's Mind : But we only say thus in general, that

because the House of Commons cannot give an Oath, therefore what is done there, is not an Evidence here, or in any Court of Record.

Otes. But my Lord, that I must urge, I do perceive that in the time of Parliament, and during the Sitting of the House of Commons, Votes have been brought in as Bars to the Proceedings of Inferior Courts ; and this Court does not look upon it self as Superior to the Great Court of Parliament, and then if they may be brought——

L. C. J. Which they cannot be, nor never were, nor I am sure ought to be ; nor I hope never will be as long as there is any Justice in the Nation.

Otes. But my Lord, you will allow the Records of the House of Lords to be Evidence ?

L. C. J. Yes, I tell you, I will, and for that reason, because they are Records out of a Court of Record : An Order of Court Baron is no Evidence, because it is no Court of Record ; but a Judgment of a Court Leet is Evidence, because it is a Court of Record ; and there's the difference.

Otes. My Lord, I call in the next place my Lord of Anglesey, if he be in Court.

L. C. J. No, he is not here.

Otes. Pray will you give me leave to call my Lord Keeper then ?

L. C. J. See in the Court of Chancery, whether my Lord Keeper be there.

Cryer. No, my Lord, he is not ; he is gone.

Otes. He was Subpœna'd, my Lord, and I can have Affidavit made of it : He was a material Witness for me.

L. C. J. I cannot help it ; he is not here.

Otes. Pray call my Lord Chief Baron.

L. C. J. Go one of you into the Exchequer, and see if my Lord Chief Baron be there, and tell him, Mr. Otes calls for him as a Witness.

Otes. And Mr. Justice Levins.

Cryer. The Courts are both up ; and they are all gone.

Otes. They were subpœna'd I am sure to be here ; well, go and see, whether they are or no.

L. C. J. In the mean time do you call some other Witnesses.

Otes. I call my Lord Chief Justice Jones.

L. C. J. The Cryer is gone to look for the Judges.

Otes. Then I call my Lord of Clare.

L. C. J. Here is my Lord of Clare.

Earl of Clare. My Lord I can remember nothing, it is so long time ago.

L. C. J. My Lord of Clare says, he can remember nothing.

Otes. I only call my Lord of Clare to ask him one Question which I hope his Lordship will remember.

L. C. J. Swear my Lord of Clare. *[Which was done.]*

Well, what is it you ask my Lord ?

Otes. My Lord of Clare, the Question I would ask your Lordship is, with what Credit I was received in the House of Lords upon my Discovery ; and that you will to the best of your Memory, give my Lord and the Jury an Account, how the House of Peers proceeded upon my Evidence ?

Earl of Clare. Truly, my Lord, I cannot give any Account ; it is of so long standing.

Otes.

Otes. It is a great while ago, my Lord, and therefore it is hard measure that I must be brought to this Tryal so long after.

L. C. J. If it be a long time, we cannot help it: We cannot force People to prosecute sooner than they will do.

Otes. I desire Mr. Baron Gregory may be called.

L. C. J. He is not here, but see and call my Brother Gregory; I hear they are altogether in the Treasury.

Otes. Then I call Mr. Williams that was Speaker in the House of Commons.

L. C. J. Here is Mr. Williams. [He was sworn.]

Otes. I desire, Mr. Williams, because you were then Speaker of the Commons House of Parliament, you would be pleased to tell what you remember concerning the Credit I received in that Parliament in which you were Speaker, upon the Discovery I made of the Popish Plot; and particularly as to the Consult of Jesuits to kill the late King in the Month of April 78?

Mr. Williams. My Lord, my Memory is never very good; but especially in a Case that is at such a distance of time, and which consists of so many Particulars as this, I mean Mr. Otes's Discovery. But this my Lord I do remember; he was examin'd at the Bar of the House of Commons, and gave a long Account: But it is more than any Man can do to tell every Particular that is said in that House.

L. C. J. Was he upon his Oath, Mr. Williams, at the Bar of the House of Commons?

Mr. Williams. My Lord, he was as other Men are that are examin'd in the House of Commons.

L. C. J. We all know it could not be upon Oath, they have not Power to give an Oath.

Mr. Williams. What Reputation he was of, I cannot say so well as what their Proceedings did testify.

L. C. J. Nor in case they did believe him never so much, is it any thing to this Question, which is, whether he swore true or false at Ireland's Tryal?

Mr. Williams. My Lord, when a Person is brought to the Bar, there to be a Witness in any Cause, every body is silent, and the Witness is heard what he has to say; and so was Mr. Otes: When he had done he withdrew; but what the Opinion of the House was upon it, I must submit to their Votes and Resolutions.

L. C. J. Which you know, Mr. Williams, are no Evidence.

Mr. Williams. That I must submit to the Court.

Otes. I desire my Lord of Clare would be pleased to tell, if he remembers, what Credit the House of Lords gave me upon my Discovery?

Earl of Clare. My Lord, I do not well hear Mr. Otes's Question.

Otes. My Lord, my Question is this, when I was brought to the Bar of the Lords House, whether I did not receive the Thanks of the Lords House for my Discovery?

Earl of Clare. Truly, Sir, at the beginning of the Discovery of the Popish Plot, I was not in Town, nor in the House.

L. C. J. But now Mr. Otes I hope you are satisfied by the Answer that is given by your own Witness, that what is done in the House of

Commons, is no Evidence; and I would have you remember that is the Reason of it, because they are no Court of Record, and because they cannot so much as give an Oath.

Otes. My Lord, I see my Lord of Huntingdon is here; and though I did not Subpœna his Lordship, nor designed to have troubled him; yet being here, I desire his Lordship would give an Account what Credit I had in the House of Lords upon my Discovery.

L. C. J. Swear my Lord of Huntingdon. [Which was done.]

Earl of Huntingdon. I do believe my Lord, Mr. Otes's Discovery found a good reception in the House of the Lords; but it was grounded upon the Opinion, that what he said was true, and that he was an honest Man: For so the House then accounted him to be; and upon this it was their Lordships gave Credit to his Testimony; and indeed had the Matter been true, it was of high Importance to have it thoroughly examined: But since that time it being apparent there were so many, and great Contradictions, Falsities, and Perjuries in his Evidence; upon which so much innocent Blood hath been shed, I believe a great many Persons who were concerned in the Tryals of those unfortunate Men, are heartily afflicted and sorry for their share in it: And I do believe most of the House of Peers have altered their Opinion, as to this Man's Credit; and look upon his Evidence as I do, to be very false.

L. C. J. Do you hear him, Mr. Otes?

Otes. No, my Lord, I do not very well.

L. C. J. Then my Lord of Huntingdon turn your Face to the Jury; and say what you said to us over again.

Which his Lordship did to the same Effect.

Otes. Very well, my Lord.

Mr. Just. Withins. There's your Credit with the House of Lords, Mr. Otes.

Otes. My Lord, I call'd you in to answer my Question, as to somewhat that is past, and to give your Judgment how you are inclined to believe now.

L. C. J. Nay, but with your Favour, it was to declare what Opinion the House of Lords had of you; and he says very well, and that this is in truth the same Answer that must be given, for the Judges and the Juries that try'd the People upon your Evidence: Says my Lord of Huntingdon at first, truly I did believe Mr. Otes did swear true, and he had Credit with me, and so he had with others; but now upon further Examination into Things, and in process of time Discoveries have been made of the Truth, and that what he swore is false; so that now I believe in my Conscience he is actually forsworn, and has drawn innocent Blood upon the Nation; and no body will believe a Word he says.

Otes. Well, my Lord, I have done with my Lord of Huntingdon.

Mr. Just. Withins. And he has done with you, as I perceive.

L. C. J. Yes, truly, methinks ye shake hands, and part very fairly.

Mr. Just. Holloway. There's my Lord Chief Baron; what say you to him, Mr. Otes?

L. C. J. Is my Lord Chief Baron sworn?

Cryer. Yes, my Lord, he is.

L. C. J. Then what do you ask him?

Otes. My Lord, I call'd your Lordship, because your Lordship sat as a Commissioner of Oyer and Terminer in the Old Bailey, at Ireland, Whitebread and Langborn's Tryals; and that which I call your Lordship for, is to give an account to my Lord and the Jury, of the Satisfaction your Lordship received concerning the Fulness and Fairness of the Evidence then deliver'd by me in those Tryals?

L. C. Baron. My Lord, I cannot charge my Memory with it.

L. C. J. He says he cannot remember.

L. C. Baron. No, not in particular; but in general I remember there were a great many Persons that gave Evidence in those Tryals on the one side and the other: There were a great many Persons that came from St. Omers, that gave Evidence there of Mr. Otes being at St. Omers, when he said he was in Town.

Otes. And what Credit were they of at that time, pray, my Lord?

L. C. Baron. I think they were Persons of very good Credit; they were Gentlemen of good Families many of them.

Otes. Did the Jury believe them at that time?

L. C. Baron. I cannot tell what the Jury did.

L. C. J. Nor is it any matter at all what they did: But I would ask you, my Lord, but one Question: Have you heard this Evidence that has been given here to day?

L. C. Baron. No, my Lord, I have not.

L. C. J. If you had, I would then have ask'd you, whether you believe him now or not?

L. C. Baron. Truly, my Lord, I never had any great Faith in him, I do assure you, as to my self.

Mr. Just. Withins. You hear what he says, Mr. Otes; you had never any great Credit with him.

Otes. My Lord, I am not at all concern'd at this; I value my self more upon my own Innocency and Integrity, than any Man's good or bad Opinion whatsoever.

L. C. J. Ah! your Innocency is very great!

Otes. Then, my Lord, I will conclude my Evidence.

Mr. At. Gen. My Lord, Before Mr. Otes goes to sum up his Evidence, we have some other Evidence to give.

L. C. J. What say you, Mr. Otes? Will you call any other Witnesses to this point?

Otes. My Lord, If they bring any other Evidence, I hope I may have my turn to answer it.

L. C. J. Ay, truly, if they bring any new Evidence that you have not applied to already, God forbid that you should not be heard; but if it only gives an Answer to the Evidence that has been given, then you must not retort on them; for they are to have the last Word; but it is not fit withal, that you should be denied any thing that is necessary or really of advantage to you.

Otes. If they offer any new Evidence to my Disreputation, the Question is, whether I may have a time allotted me to make my Defence against that Evidence?

L. C. J. Ay, ay, in God's Name by all means.

Mr. At. Gen. This is the usual Method of Proceedings; but I would know if Mr. Otes has any more Witnesses to examine to this Point, that he has examin'd to already?

Otes. My Lord, I think I have no further Evidence at present, till I hear what they further say.

Mr. At. Gen. Then may it please your Lordship, and you Gentlemen of the Jury——

Otes. I hope when your Lordship summs up the Evidence, you'll remember what has been said by the Witnesses.

L. C. J. You may assure your self, I will remember whatsoever has been said on the one side and t'other, as near as I can: The Gentlemen of the Jury are Men of Understanding, and I see they take Notes, and I'll give them all the Assistance I can.

Otes. Truly, my Lord, I have some more Witnesses to the same purpose, if your Lordship please to spare time to hear them.

L. C. J. Ay, ay, We sit here to hear the Witnesses, call whom you will.

Otes. Is my Lord Lovelace here?

L. C. J. I cannot tell, I do not see him here; but you did call my Brother Gregory, there he is, what say you to him?

Otes. Mr. Baron Gregory was Speaker of the House of Commons in one of the Westminster Parliaments.

L. C. J. Swear my Brother Gregory.

[Which was done.]

Otes. I desire your Honour would be pleased to give this Court and the Jury an account, you being Speaker of the House of Commons, what Credit I received there in that House upon my Discovery of the Popish Plot?

Mr. Bar. Gregory. My Lord, That is a pretty general Question, it is not possible for me to remember the Proceedings in the House of Commons so long ago.

L. C. J. But, Brother, I tell you what he means by it: He would have you to answer this Question, whether he was of good Credit in the House of Commons or not?

Mr. Bar. Gregory. I know not what Answer to make about the Credit he there had; any Member of the House of Commons may give as good and better an account in that Matter than I; and truly I do not remember that Mr. Otes was before the Bar of the House when I was Speaker: I believe it was before I was Speaker, that he was examined at the Commons Bar.

L. C. J. Well, he can remember nothing of it.

Otes. Is my Lord Lovelace there?

Cryer. He has been called, but he is not here.

Otes. Call my Lord of Stamford.

Cryer. He is not here.

Otes. Call Sir Francis Winnington.

Cryer. He is not here.

Otes. Call Silas Titus, Esq;

Cryer. He is not here.

Otes. Call Sir George Treby.

Cryer. He is not here.

Otes. Call Sir Francis Pemberton: These have been all subpoena'd.

Cryer. He is not here.

Otes. Is my Lord Bishop of London?

L. C. J. Here is my Lord Bishop of London, pray swear my Lord Bishop of London.

[Which was done]

Otes. I beg your Lordship, if you can, would give an account of your Remembrance in this Matter: Your Lordship was often in Committees of the House of Peers about this Business, and from first to last you were in the Committee for further Examination of the Popish Plot; and you were not only of the Committee, but you also sat as a Baron in the House. I humbly beg your Lordship would please to tell as far as you can charge your Memory, what Reputation I had in the House of Lords, where I was upon my Oath, and in particular, whether your Lordship remembers that I received the Thanks of the House for the Service I had done for the King and Kingdom in the Discovery.

Mr. Just. Holloway. It is a long Question, my Lord.

L. B. of London. It is so, my Lord; but my Answer will be very short: For it is a very little I can remember after so great a distance of Time, and the Transactions have been publick; nor can I acquaint the Court with any thing, but what is known already; and that is this, I remember that the Plot was discovered by him, and his Discovery was receiv'd as Evidence at the Bar of the House of Lords, and believ'd, and the Thanks of the House were given him at that time for it.

L. C. J. There's Sir George Treby, What do you ask him? But first let him be sworn.

[Which was done.]

Otes. Pray be pleas'd to ask Sir George Treby, who was Chair-man of the Committee of Secrecy, and was Manager in the Tryal of the Lord Viscount Stafford, that he will be pleas'd to tell what Credit I had in both Houses upon that Tryal.

L. C. J. I told you before, you must urge nothing of that Tryal, unless you have the Record here.

Otes. Then, my Lord, I desire Sir George may give an account what he knows of the Correspondencies between Mr. Coleman and the See of Rome?

L. C. J. No, that will not be any Evidence at all in this Case; for that is not at all here in question.

Otes. Then, my Lord, I desire Sir George Treby may speak what he knows of my Credit in the House of Commons.

L. C. J. Ay, what says he to that?

Sir George Treby. My Lord, I can answer for nothing but my own Judgment; I cannot tell what Credit he had with any particular Member of the House of Commons; I do remember indeed, he was there several times at the Bar, but not upon Oath, but as others usually are there; and concerning the Discovery, there was a Vote all the Kingdom knows of, that they were satisfied there was a Plot, but whether that Vote was grounded altogether upon his Evidence, or how far upon his Evidence, I cannot tell, nor what any Man thought of it besides my self.

Otes. I desire Mr. Serj. Pemberton might be call'd again.

Cryer. He is not here.

Otes. Then pray call Sir William Dolben.

Cryer. He is not here neither.

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Otes. Then I call Sir Edward Atkins.

Cryer. He is not here.

Otes. Call Mr. Richard White.

Cryer. He is not here.

Otes. My Lord, These were all subpoena'd, but they will not come; they are frighted away.

L. C. J. We know nothing of that, they may come if they will.

Otes. Call Mr. Thomas Cox.

Cryer. He is not here; but here is Mr. White.

Otes. I pray he may be sworn. [Which was done.] I desire to know of him, whether he were not a Jury man upon the Tryals of Ireland and Whitebread?

Mr. White. No, I was not.

Otes. Then I am mistaken, I beg your Pardon for this Trouble.

L. C. J. Well, there's my Brother Dolben come now. What say you to him? Swear my Brother Dolben.

[Which was done.]

Otes. May it please you, Sir William Dolben, you sat as a Judge upon the Tryals of Mr. Ireland, Mr. Whitebread, and Mr. Langborn; and I call you, Sir William Dolben, to give an account to my Lord and the Jury, what Credit my Evidence had at those Tryals, and how the Jury was satisfied with it.

L. C. J. There is the Verdict, Man, that finds the Persons you speak of guilty.

Otes. If that be Evidence enough, I am satisfied, my Lord.

L. C. J. Is not that better than his Opinion to shew how the Jury was satisfied? Ay, certainly: Better than the Opinion of all the Twelve Judges; for that point they would not have Convicted them, except they had been satisfied with the Evidence.

Sir William Dolben. Have you done with me, Sir?

Otes. I have, Sir.

L. C. J. Have you called all your Witnesses, or will you call any more?

Otes. No, my Lord, I will call no more at present.

Mr. At. Gen. Then, my Lord, we'll go on with another Part of our Evidence. Gentlemen, you see Dr. Otes, to support his Credit, has given two sorts of Evidence; the one is, some Records of Tryals at the Old Bailey, wherein he had the good hap to be believed; the other is, several noble Persons, and other Gentlemen, as to the Credit he has had given to his Evidence before. What they have said I shall not meddle with at all at this time, but leave the Observations that are to be made thereupon, till we come to summ up the Evidence for the King. But as to the first part of his Evidence, that is, as to the Records produced, and the Verdicts therein given, and the Opinions of the Judges, we have this to say in point of Evidence as an Answer. 1. We shall produce to you several Records, wherein he has not been believed; as that of Sir George Wakeman, and my Lord Castlemain; and not only so, but we shall actually prove that he was perjur'd in them; that what he swore against them was utterly false, and you will hear this was not the first time that he had sworn false; for in an Accusation that he gave at a Tryal at Hastings, we shall prove he swore Buggery upon a Person which was prov'd false.

Otes. Can you produce any such Record, Mr. Attorney?

Mr. At. Gen. Yes, we shall.

L. C. J. Do not interrupt the King's Counsel; let them go on; you shall be heard quietly in your time.

Mr. Hanfes. Nay, Mr. *Otes* need not be so hasty; as to ask for the Records, by degrees we shall produce Records enough against him.

Mr. At. Gen. We shall prove also by the Journals of the Lords House, that he did forswear himself; for after he had there made a long Narrative of the Plot, being ask'd whether he had any more to accuse, than those Persons that he had nam'd, and this upon his Oath; he did there swear that he had no more Persons to accuse.

Otes. That were Members of that House, it was.

L. C. J. Sir, You must be quiet till they have done.

Mr. At. Gen. But soon after he bethought himself, and accuses the Queen and His Royal Highness the Duke, our now present Sovereign of being in the Plot.

Otes. What Plot did I accuse them of?

L. C. J. Nay, you must sit down and be quiet; how now, will you not let the King's Counsel speak? You were heard quietly, and so shall they be too.

Otes. Well, my Lord, I will be quiet.

Mr. At. Gen. These things, my Lord, will shew of what Credit he was of at that time: Another thing we say to these Records, is this; There were two other Witnesses, Mr. *Clay* and Mr. *Smith*, besides those that were now produced, which were the Home-Witnesses, that did positively swear, that in April and May 78. *Otes* was here in Town; he did then indeed make use of those other canting Witnesses, for I cannot call them any otherwise, that beat so about the Bush, and speak of Uncertainties, and contradict one another; but those that I name, *Clay* and *Smith*, were Home-Witnesses, and there lay the Credit of his being in Town, when the Witnesses which came from St. *Omers*, say he was beyond Sea.

Otes. My Lord, I beg I may ask one thing; whether my Lord Bishop of London be there still?

L. C. J. No, my Lord of London is gone.

Otes. I am sorry for it, because he could have given an account of this *Smith*, for he knows him.

L. C. J. I cannot help it, you should have desired him to stay while he was here; go on, Mr. Attorney.

Mr. At. Gen. I will, my Lord; and this which I am going to say, as an Answer to his Evidence, which will give a full Answer to that other Objection which he made; which was, what was the Reason, when he had given such an Evidence so long ago, it should be delayed so long e'er it was prosecuted. I'll give your Lordship a Reason, and a satisfactory one, till those Discoveries were made that have lately been made: The Evidence these Witnesses gave, carried a Probability of Truth in it; and Sir *Richard Barker* himself added his Testimony to it, tho' he does not think fit now to come and confirm it: I say hitherto it had some semblance of Truth, and so did ballance the other Testi-

mony of them that came from St. *Omers*: But when we had discover'd that it could be testified by twenty Persons, that had not been at any of the former Tryals, that he was certainly all that time at St. *Omers*; and when we had discover'd the Tampering and Practices of Mr. *Otes*, in suborning these Witnesses to swear as corruptly as he swore at first; which we shall shew you palpably to be true that he did so; that gave us Encouragement to go on to make Enquiry into the Matter; but this was not discover'd till half a Year ago, or thereabouts. Now as to one of those Witnesses, that is Mr. *Clay*, the Case stands thus; indeed I expected he would have brought the same Witnesses he did then; for I presume they are all about Town, but he has not thought fit to do that: This *Clay* was then a Priest, and a Prisoner in the Gate-house for that very reason as being accused for being a Romish Priest; while he was there a Prisoner, Mr. *Otes* comes and threatens him, and solicits him to swear that he was here in Town in May 78. that he might be provided with Proof against what the Boys of St. *Omers* (as he call'd them) would come to testify; and threaten'd him if he did not, he would hang him, for he could swear him to be a Priest; and this was about three or four Days before the Tryal of the five Jesuits: At length they came to a Bargain and Agreement, as you will hear, that he should come and swear this; when Mr. *Otes* cannot pretend that the Evidence of *Clay* was known at all by any of the Committees that were concern'd in the Management of his Discovery; or that he was so much as thought of for a Witness. But we shall prove how it came to pass; and I believe, if Mr. *Otes* would call him now (as I do not question he knows where to have him) *Clay* would not be so hardy now, as to affirm his former Testimony. Then as for Mr. *Smith*, his Case stands thus: Mr. *Otes* had sworn him into the Plot, as you will find in his Narrative that he gave in upon Oath, which is upon Record, and enter'd in the Journals of the Lords House. He was a School-master in *Islington*, and *Otes* swears High Treason against him, and thereupon Warrants went out to take this *Smith*, and Mr. *Otes* was very violent in the Pursuit of him but two or three Days before the Tryal; and then, when all these Witnesses from St. *Omers* were come, as he knew very well, he was in some Doubt his Design would have fail'd, and then does he prevail with *Smith* to become a Witness for him. And 'tis evident he did tamper with him, from that which was done by him at that time: For now he gives him under his Hand, (to shew the Impudence, as well as Villany of the Man) as it has been evident enough in all his Carriage) a Paper that should give him Authority to go free from all Process and Arrests, upon any Warrants; and this Protection under Mr. *Otes*'s Hand, is directed to all the King's Officers, thereby commanding them to take notice that this Mr. *Smith*, whom before he had accus'd of being in the Plot, was an honest Man, and employed in great Service for the King at that time. This Paper, when produc'd, will shew the time when it was made; and then it will appear, that two Days after *Smith* comes and swears that he din'd with him the first Monday in May 78. This was what

Smith

Smith swore then; and upon my mentioning of this Practice, if he have any shame in him, it must put him in some Confusion: For we are prepared to prove by undeniable Testimony, that *Mr. Otes* did not dine with this *Mr. Smith* that Day: We shall prove it by the whole Family; but the first time ever *Mr. Otes* came there; was in July after, when he came into England from *St. Omers*, which these Witnesses say, was the latter end of June. Then it was that he was with *Mr. Smith*, and came to his House, and not before. And we shall prove by several Witnesses, that upon the Questions being asked of *Mr. Smith*, how he came to testify such a thing, his Answer was, I must have died for it, if I had not don't, 'twas only a mistake in point of Time: But he threatened me, and so did some others too, that he would have me hang'd for being in the Plot, if I did not comply with him, and swear this for him. My Lord, I shall offer this Evidence that I have open'd, and then I hope we shall satisfy the Jury, and all that hear this Tryal, that he is one of the most notorious Villains that liv'd upon the Earth; to be sure that ever was known in this Kingdom.

Mr. Sol. Gen. First, my Lord; we'll produce our Records, where is the Record of *Sir George Wakeman*?

Mr. Swift. This is the Record of *Sir George Wakeman*, and this is a true Copy, I examin'd it.

Mr. Sol. Gen. Pray *Sir Samuel Astry*, read a Word or two of it.

Cl. of Cr. Here is an Indictment against *Sir George Wakeman* for High Treason; he pleaded not Guilty; and here is an Acquittal by the Jury.

Mr. At. Gen. He being acquitted, I desire he may be sworn. [Which was done.]

Mr. Sol. Gen. Pray *Sir George Wakeman*, was *Mr. Otes* sworn against you at the Tryal?

Sir George Wakeman. Yes, *Mr. Solicitor*, he was.

Mr. Sol. Gen. Do you remember what he swore against you at that Tryal?

Sir George Wakeman. Yes, I do Sir.

Mr. Sol. Gen. Was that true that he swore, by the Oath you have taken?

Otes. Is that a fair Question? I desire the Opinion of the Court?

L. C. J. Ah! why not?

Otes. He was legally accus'd; he cannot swear himself off.

L. C. J. But he is legally acquitted too; we have a Record for that here.

Otes. Ah! My Lord, he was acquitted; it's well known how.

Mr. Sol. Gen. Come Sir, was That he swore against you at your Tryal, true?

Sir George Wakeman.

L. C. J. What do you say, Sir?

Sir George Wakeman. 'Twas false upon my Oath, my Lord.

Mr. Sol. Gen. What Particulars did he swear against you?

Mr. Pollexfen. Ah! Pray tell the Particulars as near as you can what he swore against you.

Sir George Wakeman. My Lord, if your Lordship please, I will give a little Account what he swore against me before the King and Council.

Mr. Sol. Gen. That will not do, *Sir George Wakeman*, we do not ask you that.

L. C. J. No, it must be only the Evidence that was given upon this Acquittal, which is the Record here produc'd before us; what did he swear against you then?

Sir George Wakeman. He swore at that Tryal, as near as I can remember, that I undertook for a certain Sum of Money; 15000 l. as I think it was, to poyson the King, and I was to do it by the means of the Queen. I was to provide this Poyson by for her, and she was to give it to the King. This he swore at my Tryal, which God forbid it should be true; nothing can be more false.

L. C. J. I ask you by the Oath you have taken, you are now quitted, and so in no danger; and being upon your Oath, ought to speak the Truth, without Malice or ill Will to him that did accuse you; was that he swore true or false?

Sir George Wakeman. False, false, upon my Oath; I speak it without any Malice against the Man in the World.

Mr. At. Gen. Then swear my Lord *Castlemain*. [Which was done.]

Sir George Wakeman. My Lord, I'll be bound to make it appear, that all he swore against me was false.

Mr. At. Gen. And so was it he swore against my Lord *Castlemain* and others that were acquitted at the same time with *Sir George Wakeman*.

Mr. Sol. Gen. First read the Record of my Lord *Castlemain's* Acquittal.

Cl. of Cr. Here is the very Record it self: It was in this Court my Lord *Castlemain* was Indicted of High Treason, and Tried and Acquitted.

Mr. At. Gen. My Lord *Castlemain*, pray what did *Otes* swear against you at your Tryal? And pray tell the Court whether that was true or false.

Earl of Castlemain. My Lord, as near as I remember, *Mr. Otes* did swear at my Tryal, that he met me in *Lincolns-Inn Fields*, and that he went with me somewhere to *Mr. Fenwick's* Chamber in *Dukes street* in *Covent-garden*, where he said I did talk a great deal of Treason, and a great Discourse of that kind he said there was, and he swore that I was in several Cabals in relation to the King's death: I was afterwards acquitted by the Jury that Try'd me, as appears by the Record; and here I do declare, as in the Presence of God, and with all the Imprecations of divine Vengeance to fall upon me, if I speak any thing but the Truth, that not only that which he swore was false, but that I never had any thoughts in my Heart, much less did ever declare in my Words of any injury or hurt against the late King. And besides, that I never saw the Face of *Otes* in my life, till after I was put in Prison upon his Accusation of me.

Otes. My Lord, I desire to know what Religion that Noble Lord is of?

Earl of Castlemain. I am a Roman Catholick, my Lord.

L. C. J. We all know what Religion my Lord is of, you need not ask that Question.

Otes. That's not the Point, my Lord, I must have it declar'd in Evidence.

L. C. J. I wonder to see any Man that has the Face of a Man, carry it at this rate, when he

he hears such an Evidence brought in against him.

Otes. I wonder that Mr. Attorney will offer to bring this Evidence, Men that must have Malice against me——

L. C. J. Hold your Tongue ; you are a shame to Mankind.

Otes. No, my Lord, I am neither a shame to my self or Mankind : What I have sworn is true, and I will stand by it to my last Breath, and seal it if occasion be with my Blood.

L. C. J. 'Twere pity but that it were to be done by thy Blood.

Otes. Ah ! Ah ! my Lord, I know why all this is, and so may the World very easily too.

L. C. J. Such Impudence and Impiety was never known in any Christian Nation.

Otes. But this will not do the Work to make the Plot to be disbelieved ; Things are not to be done by great Noises : I will stand by the Truth.

L. C. J. Can you think to out-face such Evidence as this with your Impudence ?

Otes. But I hope you'll give me leave to make my Defence.

L. C. J. Then carry your self as becomes you in the Court.

Otes. My Lord, I will do so.

L. C. J. If you do not, we know how to make you do it, you shall not think to Domineer here.

Otes. My Lord, I hope I do behave my self as I ought.

L. C. J. No, you do not.

Otes. Ill Language may provoke any Man's Passion, my Lord.

L. C. J. Keep your self within Bounds, and you shall be heard ; but we'll suffer none of your Extravagancies.

Otes. My Lord, if I had been aware of this, I could have produc'd Evidence that would have supported my Testimony in these Matters.

L. C. J. Go on with your Proofs, Mr. Attorney.

Mr. Attorney. We will do so, my Lord.

Earl of Castlemain. Have you done with me, Sir ?

L. C. J. Have you any other Questions to ask my Lord Castlemain ?

Mr. At. Gen. No, my Lord.

L. C. J. Then your Lordship may sit down again where you were.

Mr. At. Gen. Now my Lord, we shall show the Lords Journal where it is Recorded, that he swore he could accuse no body else but those that he nam'd, and then we shall give an Account, that soon after, he accus'd our present Sovereign, and the Queen Dowager.

Mr. Sol. Gen. Where is the Clerk of the Parliament ?

Mr. Swift. Here he is, Mr. Walker.

Mr. At. Gen. Swear him. [Which was done.

Mr. Sol. Gen. Mr. Walker, Is that the Journal of the House of Lords ?

Mr. Walker. Yes, my Lord, it is.

Mr. Sol. Gen. Deliver it in to the Clerk, and let him read it.

L. C. J. Then you must direct to the time, or else it will be to no purpose.

Mr. Swift. Sir Samuel Astry, pray turn to Friday the 29th of November 78.

Cl. of Cr. Reads, Die veneris decimo nono Novem-

bris 1678. Titus Otes being call'd in at the Bar, desired to be heard a few Words before he was sworn——

L. C. J. Mr. Attorney, I doubt this will not be Evidence: It is only a Paper of what he said, taken before the Lords ; but now whether that was upon Oath or no, is the Question, nay it appears it was not upon Oath ; but says, it was before he was sworn.

Mr. At. Gen. My Lord, I desire it may be read all out.

Cl. of Cr. Reads, Titus Otes being called in at the Bar, desired he might be heard a few Words before he was sworn to speak to the main Business, which being granted to him, he complained of the Restraint he is under, and being debarr'd of the liberty of his Friends coming to him, and of conversing with any body in private, and that no Englishman ought to be restrained, unless accused by one or more Witnesses ; and pray'd that the Restraint might be taken off, that he might be enabled to give his Evidence more cheerfully, and that the House would be pleased to Address to the King for that purpose, and that his Pardon may be renewed, because he is under misprision of Treason, to which the Lord Chancellor told him, that the House would take his Condition into Consideration, and then being sworn, he was told by the Lord Chancellor, that the Lords have received an Address from the House of Commons in part upon Evidence by him given there, and that the House expects he should give an Account what that is, which has begot such Astonishment in the House of Commons as is expressed in the Address, upon which Titus Otes said, that in July last, he saw a Letter from Sir George Wakeman——

L. C. J. Is this Evidence, Mr. Attorney ?

Mr. At. Gen. My Lord, the use we make of it is to prove that he did accuse the Queen.

L. C. J. What is the Accusation of the Queen to this purpose ?

Mr. At. Gen. My Lord, we say he had sworn several Days before that he had no other Persons to accuse.

L. C. J. You should produce that first that he swore so.

Mr. At. Gen. My Lord, we should so, I think, and I thought it had been so done.

L. C. J. This is no Evidence, for it is not upon Oath ; it does not say so.

Mr. At. Gen. Yes, it does my Lord, but we will go on in order.

L. C. J. Come then, let us see what was sworn about his having no more Persons to accuse.

Mr. At. Gen. Pray Sir Samuel Astry, look the 30th of October 78.

Cl. of Cr. Reads, Die Mercurii 30. Octobris 1678. Titus Otes, being called in, was sworn at the Bar, and required to answer to what he is now called in for concerning his Discourse with the Lord Annesley last Night, about the Duke of York.

L. C. J. I doubt this will not be Evidence neither ; for we are now speaking only about what shall be Evidence: We are not now meddling with the methods of the House in their Examination of Witnesses, but what is Evidence here ; suppose an Oath be administred to me for a particular purpose in the House of Lords, that I shall answer to what is asked me concerning a Discourse that I had with a third Person.

Mr. At. Gen.

Mr. At. Gen. Pray Sir Samuel Astry look the next Day ; for there my Lord, he is examin'd upon the general.

Sir Samuel Astry Reads, *Die Jovis 31 Octobris 1678.*

Mr. At. Gen. But first read the latter end of the former Day's Proceedings, beginning at those Words, Upon consideration.

Cl. of Cr. Reads. Upon consideration of what Titus Otes had said, he was call'd in again, and told by the Lord Chancellor that the House has directed he shall be heard again to Morrow at Nine a Clock, and the Lords do expect that by the Oath he hath now taken, he should go thorow with what he hath to say, and therefore he should prepare himself to deliver the whole Truth of what he knows concerning the Design against the King's Person, and the Government of this Kingdom.

L. C. J. But still Mr. Attorney, we are but where we were ; for supposing upon my Examination upon Oath given me in the House of Lords to a particular purpose, That my Lord Chancellor should tell me here ; my Lords intend to Morrow, that you by vertue of the Oath now given you, should come and give them Satisfaction as to other Questions, I doubt that would not be Evidence in *Westminster-Hall* : Let us not stretch any thing further than it should be upon any Account whatsoever : For suppose I give you an Oath to make true Answer to such Questions as I shall ask you concerning what was said at the Sessions-house at such a Tryal, and then I come after and ask you upon the Oath you have taken, what do you say concerning such a Business 7 Years ago, would that be Evidence ?

Mr. At. Gen. With Submission, my Lord, if a Man be told he is upon his Oath, to say all he knows of such a Design, what he says upon that Oath, is Evidence.

L. C. J. You say very true, Mr. Attorney, if I give him a general Oath ; but what he says concerning any other Matter than that particular Thing which he was sworn to give an Account of, can never be Evidence.

Mr. Sol. Gen. Truly, my Lord, I think we need not labour in such a thing as this is.

L. C. J. Truly, Mr. Solicitor, I think it is no Evidence at all, if you can prove he was sworn to his whole Narrative, and can bring any thing out of that, you say something.

Mr. At. Gen. We desire that my Lord of Berkeley may be sworn. [Which was done.]

L. C. J. What do you ask him ?

Mr. At. Gen. Pray, my Lord, will you give the Court and the Jury an Account, whether Mr. Otes was not sworn to his Narrative, and delivered in his Evidence at your Lordship's Bar upon Oath.

L. C. J. My Lord of Berkeley, let me ask you this Question ; Was every thing that he gave an Account of at the Bar of the Lords House, given in upon Oath ?

Earl of Berkeley. I cannot remember that my Lord.

L. C. J. It is impossible that he should.

Earl of Berkeley. All I can testify is but what I answered to the Question which was asked me at my Lord Stafford's Tryal.

L. C. J. But that is not material, now my Lord, because the Record of that Tryal is not here.

Earl of Berkeley. The same thing is entered here particularly.

Mr. At. Gen. My Lord, we desire it may be read again.

L. C. J. Read it again with all my Heart.

L. C. J. This is a particular Oath to a particular pose ; and shall I help it by intendment, that he was afterwards sworn to the general Matter ? No, I will not : Suppose any thing had happened afterwards that it should have been thought fit to prosecute Otes ; could the Man have been convicted of Perjury for this ? Certainly he never could.

Mr. Sol. Gen. Well, my Lord, we submit it to you ; but we will now go on to prove that which Mr. Attorney opened, that Otes did suborn these Witnesses to swear what they did swear : You have had one part of the Evidence that was then given ; now we shall prove that Clay was sworn at *Whitebread's Tryal*, and what he did there testify about Otes being in Town.

Otes. I own it, he was sworn then.

Mr. At. Gen. Do you own that you suborned him ?

Otes. No, I think not, Mr. Attorney.

Mr. Sol. Gen. Then we will prove that you did tamper with him, and by threatenings prevail'd with him to swear for you.

Mr. At. Gen. Nay, we will prove that he was mistaken in what he did swear a whole Year. Pray call Mr. Charles Howard.

Otes. My Lord, I desire I may have leave to ask the Court a Question, and I beg the Opinion of the Court in it, whether a Popish Recusant Convicted, may be a good Witness ?

L. C. J. We are not bound to answer your Question ; for we see no ground why you should ask it : If you have any occasion to object against any Witness, and can produce any Record against him ; then we will tell you more of our Minds.

Otes. Pray then let me ask you another Question, my Lord.

L. C. J. Prithee do not trouble us with thy Questions, let them go on with their Evidence.

Otes. My Lord, I desire to know, whether a Man confessing himself a Popish Priest—

L. C. J. We do not sit here to answer every idle Question ; 'tis nothing at all to the purpose : When you ask a proper Question, we will answer it.

Otes. Yes, 'tis my Lord, and you are of my Counsel in Matter of Law.

L. C. J. I am not so.

Otes. Yes, my Lord, the Court is always of Counsel for the Prisoner.

L. C. J. That were well, indeed, if we were bound to give Advice in every Case, where a Man is Prosecuted at the King's Suit ; indeed in those Cases where a Man can have no Counsel allowed him, the Court is of Counsel for him ; but where he may have Counsel, the Judges are not of Counsel for him.

Mr. Just. Holloway. Besides, We are not here putting of Cases, but trying of a Cause.

Mr. Sol. Gen. Here is Mr. Charles Howard, swear him. [Which was done.]

Mr. At. Gen. My Lord, we bring this Gentleman Mr. Charles Howard only to this part of our Evidence ; to prove that Mr. Clay was mistaken a whole Year, mistook 78, for 77.

L. C. J. But, Mr. Solicitor, if you take this confused Method, we shall never be at an end, and for my part I cannot make any thing of it; it is impossible for me to retain these things in Memory, so as to give any Direction to the Jury, if there be not a Method used; for do you think that it is possible for any Man to retain in his Head a hundred things huddled up and down without any Order?

Mr. Sol. Gen. We beg your Lordship's Patience but a little while, and we shall have it in very good Order. Swear *Higgins*.

[Which was done.]

L. C. J. Pray what do you ask him?

Mr. At. Gen. The Matter we examine him to is this; for I would open to you the Nature of our Evidence. 1. He swore *Smith* into the Plot, and then gave him a Certificate, that he was an honest Man.

L. C. J. Is that *Otes's* Hand?

Mr. At. Gen. We shall prove it to be so.

L. C. J. You must first prove what he swore of *Smith*.

Mr. At. Gen. My Lord, We desire that we may read his Narrative.

L. C. J. But first prove it, Mr. Attorney.

Mr. At. Gen. It is upon Record in the House of Lords.

L. C. J. Was that delivered in upon Oath to the House of Lords? Or else we shall be but where we were.

Mr. At. Gen. For Proof of that we call my Lord *Bridgwater*.

L. C. J. Here he is. Swear my Lord.

[Which was done.]

Mr. At. Gen. My Lord *Bridgwater*, Do you remember the Narrative that *Otes* gave in to the House of Lords, and was it upon Oath? But first of all, if you please, I desire my Lord may see the Book, whether any thing be there under his Hand, and then whether it be enter'd to be upon Oath, and whether this be the Journal agreeing with the Paper deliver'd him?

L. C. J. This is a Narrative, my Lord, that he himself deliver'd in, and I would ask my Lord *Bridgwater* this one Question: Was not this Journal compar'd with the Narrative given in upon Oath by Order of the Lords House?

Earl of *Bridgwater*. Yes, I must say I was one of the Committee appointed to take care of the Journal, and here is my Hand to it among other Lords, and that is a Copy of what Mr. *Otes* did deliver in as his Narrative which was inserted upon a Report of the Committee into the Journal-Book by Order of the Lords, and we did examine the Narrative with the Book.

L. C. J. But what is all this to our purpose now? Do not mistake me, my Lord *Bridgwater*, I do not speak to you now, but to Mr. Attorney: What does this prove as to the Matter in hand?

Mr. At. Gen. Pray, my Lord *Bridgwater*, did you see the Narrative brought in by *Otes*?

Earl of *Bridgwater*. That Narrative was delivered to us by the Clerk of the Parliament.

L. C. J. But, my Lord, do you know that Narrative was given in upon Oath?

Earl of *Bridgwater*. I know no other, but that the Clerk of the Parliament brought it to us.

Mr. At. Gen. Here is the Clerk of the Parliament will tell you that *Otes* was sworn to it.

L. C. J. Prove it if you can; but hitherto I see nothing that looks like Evidence.

Mr. At. Gen. Really, my Lord, I should take it to be as much Evidence as any that ever was offer'd in the World.

L. C. J. Pray, Mr. Attorney, let us reason the Point a little; suppose you bring an Answer in Chancery; except the Man be sworn to it, can you read his Answer; and yet I ever look'd upon an Answer in Chancery as Evidence?

Mr. At. Gen. In that Case the Record proves it self, and so it should here; and therefore we desire it may be read.

L. C. J. But surely you would not allow an Answer to be Evidence, unless you prove it to be sworn.

Mr. At. Gen. Truly, my Lord, I always took it, that we need not come to prove a Man was actually sworn to his Answer; but if it be once enter'd upon Record in Chancery, it proves it self.

L. C. J. It is true, Mr. Attorney, if it appears upon Record that the Answer was sworn.

Mr. At. Gen. My Lord, If this Journal of the House of Lords is a Record, then that which is enter'd into it, is a Record; this is a thing recorded as a Deed inrolled is, and proves it self.

L. C. J. Mr. Attorney, Either we mistake one another, or we do not differ in Opinion: If you could make it appear that *Otes* brought this thing in the House of Lords, and deliver'd it upon Oath, that were Evidence; otherwise I cannot see how you can make Evidence of it.

Mr. At. Gen. I always thought, my Lord, that a Record out of a Court of Record, would have that Credit in another Court of Record, as to be read.

L. C. J. My Lord *Bridgwater* tells you, it was deliver'd to them by the Clerk of the Parliament.

Mr. At. Gen. Pray, my Lord, let the Clerk read what is at the end thereof.

Cl. of Crown. Reads, Hitherto examined the 3d of December, 1678. The Narrative and Examinations of *Titus Otes*, being first inserted according to the Order of the House, of the 21st of November last, by us *Anglesey*, &c.

Mr. At. Gen. Pray read the Order of the 21st of November.

Cl. of Cr. Reads, *Die 21st of November, 1678.* Upon Report made by the Earl of *Bridgwater*, from the Lords Sub-Committees for the examining the Journal of this House; That upon Examination thereof, their Lordships find, that the Narrative made upon Oath by *Titus Otes* at the Bar on the 31st of October last, of the horrid Design against His Majesty's Person and Government; is only mentioned in the Journal, but not enter'd at large in such manner as he then related it; and that therefore their Lordships desire the Direction of the House concerning this Matter: It is thereupon ordered, that the said Narrative made by *Titus Otes* on the said 31st of October, shall be enter'd at large, and inserted in the Journal, as the part of the Business of that Day.

L. C. J. Now you make it Evidence; for it appears that he was sworn, and gave his Narrative upon Oath.

Mr. At.

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Mr. At. Gen. Then now, my Lord, I hope we may read it.

L. C. J. Ay, read it.

Mr. At. Gen. Read the 54th Article.

Cl. of Cr. Reads, This is the Narrative of Titus Otes, the 54th Article. That one Matthew Medborne, a Player in the Duke's Theatre; one Mr. Penny, Mr. Mannock, Mr. Sharpe, and Mr. Seddon, and one William Smith a School-master at Islington, and one Edward Everard and others, meeting in a Club on Thursday Nights and Sunday Nights, with one Jones a Priest, and one Key-mash within-mentioned; and all these Persons are employed by the Jesuits, to vilify the House of Commons, and to go about the City to incense the People against them, and against the Bishops of the Nation; and they deliver this Treasonable Position, That the Commons assembled in Parliament are the Devil's Representatives, and not the Nation's; with treasonable and detestable Words the Deponent did hear at the said Club, which is kept at Fuller's Rents near Grey's Inn. And in the Month of August the Deponent was ordered by the Jesuits in London, to give the said Persons great Respects, and in their Names to thank the Club for their Faithfulness to them in that Particular.

Mr. At. Gen. Thus you see what he had sworn against him; now we shall shew how he dealt with him. Is that Mr. Otes's Hand?

Witness. It is; yes I believe it is.

Mr. At. Gen. I believe he will hardly deny it himself.

Otes. Let me see it, I pray you, Mr. Attorney.

Mr. At. Gen. Show it him. (Which was done.) Is that your Hand?

Otes. I cannot say it is my Hand; nor do I believe it to be so.

L. C. J. He does not own it to be his Hand.

Otes. I do not say it is not my Hand; but I do not remember any thing of it.

Mr. At. Gen. Read it, Sir, pray you.

L. C. J. What is it you would read?

Mr. At. Gen. A Certificate under Otes's Hand of Mr. Smith's Honesty, not three Days before the Tryal of the five Jesuits.

L. C. J. Read it, let us hear what it is.

These are to certify that William Smith is no Papist; and that he is upon good Service at this time for his King and Country; of which, I hope, those that are Inquirers after Recusants, will take notice.

Witness my Hand this 3d Day of June 1679.

Titus Otes.

L. C. J. What Harm is there in all this? I must needs say, I cannot comprehend what you would make of it.

Mr. At. Gen. This Protection was given Mr. Smith by Mr. Otes three Days before the Tryal; but after he had sworn him into the Plot in his Narrative.

L. C. J. I see not any Plot, for my part, that he swore him into, unless you mean Treason against the House of Commons: For that is the Accusation he made, that he spoke such Words of the House of Commons. Pray read it again. (Which was done.)

L. C. J. Well, and what is all this?

Mr. At. Gen. Is not this a swearing him into the Plot?

L. C. J. No, not that I see: It only gives an ill Character of him.

Mr. At. Gen. But he is accused as a Confederate with the Priests and Jesuits.

Otes. Did I charge him, Mr. Attorney, with having any Hand in the Plot against the King's Life?

Mr. At. Gen. I only offer this as an Evidence that there was tampering.

L. C. J. You call it a being in the Plot; I see no such thing.

Mr. At. Gen. And then he comes and gives him an Acquittal under his Hand, and then produces him as a Witness.

L. C. J. There can be no great matter in this, Mr. Attorney.

Mr. At. Gen. Then, my Lord, we'll call Mr. Smith himself, and he will tell you how Otes drew him in: Swear Mr. Smith. (Which was done.) Pray acquaint my Lord and the Jury, how you came to swear at the former Tryal; by whom you were perswaded, and how you varied from the Truth.

L. C. J. That is very nauseous and fulsome, Mr. Attorney, methinks in a Court of Justice.

Mr. At. Gen. What did you swear in the former Tryal? And was that true you did swear then?

L. C. J. I tell you truly, Mr. Attorney, it looks rank and fulsome; if he did forswear himself, why should he ever be a Witness again?

Mr. At. Gen. 'Tis not the first time by twenty that such Evidences have been given.

L. C. J. I hate such Presidents in all times; let it be done never so often. Shall I believe a Villain one Word he says, when he owns that he forswore himself?

Mr. At. Gen. Pray, my Lord, give me leave; I must pursue my Master's Interest.

Mr. Sol. Gen. My Lord, It was ever Testimony allowed to be given, to detect a Subornation.

L. C. J. I am sure 'tis not fit to be allow'd at any time: If he did forswear himself in a Court of Record, in my Opinion he is not to be received as a Witness any more.

Mr. Sol. Gen. We do only make this use of him, to prove that Otes did suborn him.

L. C. J. Pray call some other Witnesses, if you have them, to contradict him; but do not offer to bring a Man to swear that he did forswear himself before.

Mr. Sol. Gen. My Lord, We give Evidence here of a Man's being produced by Otes, to swear he was here in May 78. and he did make such an Oath: Now I hope, with Submission, my Lord, it is Evidence to contradict that Oath, if we can prove that he has confessed he was forsworn, and mistaken in his Oath; such Evidence perhaps will be of little value, yet Evidence it is.

L. C. J. Make it what you will, Mr. Solicitor; I think it is of no value at all, nor to be admitted for the Man to come and swear it himself: Prove what you can by others.

Mr. Sol. Gen. Surely, my Lord, this Confession of his to others is of less value than when we bring the Man himself to confess his Fault; that Man himself coming and owning the thing, that he was mistaken, with great Sorrow for it, sure is a good Evidence.

L. C. J. Argue the Matter as long as you will, Mr. Solicitor, you will never convince me, but that he that has once forsworn himself, ought not to be a Witness after that in any Cause whatsoever. If any Man tell me otherwise till Doomsday, I cannot be convinced of it.

Mr. Sol. Gen. I go but to ask him this Question, Whether or no what he swore were true?

L. C. J. Mr. Solicitor, We are all of another Opinion, that it is not Evidence fit to be given.

Mr. Sol. Gen. My Lord, I must submit it to you.

L. C. J. I tell you, Mr. Solicitor, if you should call him to know what it was he swore, and it does appear by any Evidence, or by his own Confession, that it was false, you ought not to believe what he says even in that Matter. And I think truly, for Example's sake, it ought not by any means to be admitted.

Mr. Sol. Gen. My Lord, I must submit it to you, but then I humbly conceive, it will be in very many Cases impossible to detect a Perjury or Subornation, if the Party suborn'd cannot be admitted to be a Witness.

L. C. J. What good will the admitting him to be a Witness do? For either what he swore then, or what he swears now, is false; and if he once swears false, can you say he is to be believ'd?

Mr. North. My Lord, If a Man come and swear——

L. C. J. Look ye, Sir, you have our Opinion; it has been always the Practice heretofore, That when the Court have delivered their Opinion, the Counsel should sit down, and not dispute it any further.

Mr. At. Gen. Then we will go about the Business of *Clay*, and for that we will call *Lawrence Davenport*.

L. C. J. 'Tis certainly against the Law to admit a Man that has once forsworn himself to be a Witness again in any Cause.

Mr. At. Gen. Swear *Lawrence Davenport*. (Which was done.) Pray give my Lord and the Jury an account how *Clay* came to be a Witness, and by whom he was wrought upon to be so.

Davenport. May it please you, my Lords and Gentlemen of the Jury, Mr. *Otes* came to the Prison, I being then a Prisoner at that time in the Gate-house at *Westminster* my self, and having no other Employment I had the Government and Care of some of the Prisoners for a Livelihood, being in Custody; and at that time Mr. *Otes*, as I said, when old *Clay* was in Prison, did come there to visit this *Clay* at several times; and coming there to visit this *Clay*, up stairs he went to his Chamber, and desired to speak with him; and I did desire your Worship, Mr. *Otes*, that you would go in to him, and you did go into his Chamber, and there these Words you did speak to him before the Tryal of the five Jesuits, That if he did not swear what you put to him, he should be prosecuted as a Priest, which you did believe he would die for.

L. C. J. What is this Man's Name?

Mr. At. Gen. *Lawrence Davenport*.

L. C. J. Did you hear him say so?

Davenport. Yes, my Lord; upon my Oath I

did hear him say so, and Sir *William Waller* was with him; and then he replied and said, with a Proviso That you would give him his Gold and Silver that was taken from him, being then a Prisoner under my keeping in the Gate-house, and wanting his Money; if you would do that, he said, he had been a Rogue before, and he could not say what he might do.

L. C. J. Now make it appear that this *Clay* was sworn at the Tryal.

Davenport. My Lord, Afterwards I was Keeper to him under the other Keeper, and he had a Keeper to wait on him to *Newgate Sessions* at the *Old Bailey*; wherefore this Gentleman that is standing there, Mr. *Otes*, comes to us, says he, Do not you trouble your self about this Prisoner; let him alone with me, I'll see him at home again; and then the Jesuits there did take their Tryals; how it was I cannot tell: For we could not come into the Court. Afterwards they went to the Fountain Tavern by *Newgate* to Dinner, and Mr. *Otes* and he went to Dinner together; we were below in the House waiting there till it was Night, and still thinking that he should come down again; but away went he home, and left us in the lurch; but indeed he did come home to the Prison very honestly and civilly, because he was civilly guarded.

Mr. At. Gen. Now, my Lord, we'll give you an account, That the next Morning after this Discourse betwixt *Otes* and *Clay* at the Gate-house, this Witness told it to another that was a Prisoner there then too.

Otes. My Lord, I would ask this Man a Question, whether he had the sole Keeping of *Clay* without any other Keeper with him?

Davenport. There was no Keeper in the House, but my self, where he lay, which was in *Margaret's-lane*, not in the Prison, but in the House.

Otes. Pray ask this Gentleman, why he did not come in and testify this Discourse he speaks of, when *Clay* was a Witness?

Davenport. I was not by when he was sworn.

Otes. Did he not know he was a Witness?

L. C. J. No, he says he did not go into the Court with you, he was not suffered to go in.

Davenport. My Lord, I am a poor Tradesman, and know nothing what belongs to the Law.

Mr. At. Gen. Come, pray swear this Man, Mr. ——— [Which was done.]

Mr. Sol. Gen. Pray tell what *Davenport* told you, and when.

Mr. ——— He came and told me the next Day in the Prison, where I was then, what Mr. *Otes* and Sir *William Waller* had been tampering with *Clay* about, to make him swear for Mr. *Otes*.

L. C. J. What were the Words he told you they said to him?

Mr. ——— It was, That he must swear that Mr. *Otes* dined at Mr. *Howard's House* such a Day of the Month, and Mr. *Clay* did say he knew nothing of the Matter; but then Sir *William Waller* and Mr. *Otes* did reply to him again, here's your Choice; if you will not swear this, we will try you for a Priest, and hang you, and so *Clay* agreed; if he might have his Money restored that was taken from him, he had been a Rogue before, and did not know what he might do.

Otes.

Otes. Is this Evidence, my Lord ?

L. C. J. Yes, doubtless, very good Evidence.

Otes. 'Tis only upon Hearsay that he speaks.

L. C. J. But that establishes the other Man's Testimony, this being told the very next Morning ; for he would not conceal it, it seems.

Mr. At. Gen. Now that Clay was sworn at the Tryal, you admit, Mr. Otes.

Otes. Yes, I do, he was so.

Mr. At. Gen. Then I think here's a plain Proof of a Subornation.

L. C. J. You must observe how they apply this Evidence : They say, you are an ill Man, not only as to swearing false your self, but as to suborning others to swear more than they knew ; and particularly as to this Clay, that you and Sir William Waller did threaten him, you would hang him up for a Priest, if he would not swear as you would have him ; and by your Threatnings he was prevailed with to swear.

Otes. Is Mr. Clay in Court, my Lord ?

L. C. J. Nay, I cannot tell where he is.

Mr. At. Gen. He was your Witness, Mr. Otes ; we expected you would have brought him.

Otes. I cannot tell where to find him, my Lord, now truly.

Mr. At. Gen. Call Mr. Howard.

Crier. Here he is, Sir, he is sworn.

L. C. J. Mr. Attorney, You have not proved what he swore.

Mr. At. Gen. We are now about it, my Lord. Mr. Howard, pray were you at the Tryal of the five Jesuits, or at Langborn's, when Clay was sworn as a Witness for Dr. Otes ?

Mr. Howard. Yes, I was at Langborn's Tryal, my Lord.

Mr. At. Gen. What was the Effect of his Testimony there ?

Mr. Howard. He did swear, That he was with me and Mr. Otes at Dinner at my House, in May, in the Year 77.

Mr. At. Gen. 77 did he say, or 78 ?

Mr. Howard. Stay, I will look upon my Notes I took at that time.

L. C. J. Ay, do so, to refresh your Memory, Mr. Howard.

Mr. Howard. It was May 78, my Lord.

Mr. Sol. Gen. Pray thus, Sir, Was he then at your House with Otes ?

Mr. Howard. No, he was not there in May ; Mr. Clay was with me and Mr. Otes both together in July 78, after the 4th Day of July.

Mr. At. Gen. That is after the time he came to London from St. Omers.

L. C. J. You say very well ; Have you any more Witnesses ?

Mr. Sol. Gen. My Lord, We must desire that the 28th Article of Mr. Otes's Narrative may be read.

Cl. of Cr. Reads, That in order to this Command on April 24. 78. Father Warren, Rector of Leidge, Sir Thomas Preston, Baronet, Father Marsh, Rector of Gaunt, and Father Williams, Rector of Watton, and Master of the Novices, Sir John Warner, Baronet, Richard Ashby, Rector of the English Seminary at St. Omers, being sick of the Gout could not go. But out of the said Seminary went Sir Robert Bret, Baronet, Father Pool, Edward Neville. There were in all with the Deponent nine or ten, who met in London in Consult with Thomas Whitebread, Father Harcourt Senior, and Father Har-

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court Junior, John Fenwick, Basil Langworth, William Morgan, John Keimes, Father Lovel, Father Ireland, Father Blundel, Richard Strange, Father Mico, Father Grey, and others to the Number of fifty Jesuits met at the White Horse Tavern in the Strand, where they plotted their Designs for the Society, and ordered Father John Carey, who was also there, to go Procurator for Rome ; at which Consult thus held in the Month of May, the Deponent was present to attend the Consultors and deliver their Concerns from Company to Company ; and then a little after they left the White Horse Tavern, and divided themselves into several Clubs and Companies ; some met at Mr. Saunders's House in Wild-street ; others at Mr. Fenwick's at Aireses his House in Drury-lane ; others at Mr. Ireland's in Russell-street near Covent garden, and in other places. All which, tho' in several Companies, five or six in a Company, did contrive the Death of the King ; and in order to which, there were Papers sent from Company to Company, which the Deponent did carry containing their Opinions of the timing their Business, and the manner how it was to be done, and within three or four Days after the Deponent went to St. Omers with the Fathers that came from the other side of the Water.

Mr. At. Gen. My Lord, We produce this to overthrow their Witnesses, that speak his being here a Week in May. Now Mr. Otes in this Narrative, says, that the Consult ended the 24th of April, and that three or four Days after, he returned back to St. Omers.

L. C. J. Pray read that over again, where the Names are, for the Witnesses for the King swear, That Mr. Williams came over from St. Omers, but he here says he did not, I think.

It was read again.

L. C. J. I thought it had been otherwise ; 'tis darkly penn'd.

Mr. At. Gen. My Lord, I my self heard him declare in many Tryals here, and at the Old Bailey, That all was finished in that Day, and he went in a few Days.

Otes. Mr. Attorney, You are mistaken : For if you please, my Lord, the Consult was not dissolved in six or eight Days, tho' they were not sitting or acting every Day.

Mr. At. Gen. 'Tis not a difference of six or eight Days that is contended for, but it is, Either Mr. Otes or his Witnesses do not swear true. If it were as Mr. Otes says, That six or eight Days were allow'd after the 24th of April, then it must be the 5th or 6th of May that he went to St. Omers ; and then his Witnesses, that say he was here the latter end of May, cannot swear true. And our Witnesses say he was all April and May, until the 23d of June at St. Omers.

Otes. My Lord, Mr. Attorney does not apprehend the Evidence aright.

L. C. J. Well, you may make your Remarks by and by, and set him right if you can.

Mr. At. Gen. We have done our Evidence, my Lord.

L. C. J. Have you any more Witnesses, Mr. Otes ?

Otes. No, my Lord, I have not.

L. C. J. Then you must conclude, and say what you have to say to the Jury.

O o o

Otes.

Otes. My Lord, I have one thing more, and that is, A Copy of the Record out of the House of Lords. It is in the Journal the twenty fifth of March, seventy nine.

Mr. Walker. My Lord, I have not the Book here, it was not spoke for.

Otes. But do you know this Hand ? Shewing him a Copy.

Mr. Walker. Yes, and I believe it is a true Copy.

L. C. J. Read it.

Cl. of Cr. Reads, Tuesday the 25th of March, 1679.

Otes. It is the last Clause in the Journal of that Day.

Cl. of Cr. Reads. Resolved, Nemine Contradicente, by the Lords Spiritual and Temporal and Commons in Parliament assembled, That they do declare that they are fully satisfied by the Proofs they have heard, That there now is, and for divers Years last past hath been a Horrid and Treasonable Plot and Conspiracy contrived and carried on by those of the Popish Religion, for the Murthering of His Majesty's Sacred Person, and for subverting the Protestant Religion, and the Ancient and Established Government of this Kingdom.

Otes. There is an Order to have that Vote printed and inserted before the Form of Prayer for the Fast. Pray, Sir, read the next Page.

Cl. of Cr. Reads. Die Lunæ 25. Oct. 1680.

Upon Report from the Lords Committees for examining Matters relating to the Discovery of the late Horrid Plot and Conspiracy, That Captain Thomas Bickley hath lately wilified Dr. Titus Otes at a publick Meeting at Chichester to the prejudice of His Majesty's Evidence, for the further Discovery of the said Plot : It is thereupon ordered by the Lords Spiritual and Temporal in Parliament assembled, That the said Thomas Bickley be, and is hereby required to appear before their Lordships, in the Lord Privy-Seal's Lodgings, near the House of Peers, on Wednesday the third Day of November next, at eight of the Clock in the Forenoon. And it is further ordered that Alderman Exon, and Alderman William Bury of Chichester aforesaid, who were then present at the said meeting, do likewise attend their Lordships at the time aforesaid, to give Evidence of what they know concerning this Matter.

L. C. J. What of all this ? We know hereupon Bickley was turned out of Commission, and now Bickley is in again. But it seems as you had Credit with some then, so you had not with others. Well, have you now done all ?

Mr. At. Gen. Yes, my Lord.

Mr. Sol. Gen. If Mr. Otes will Sum up his Evidence, then I will do the same for the King, when he has done.

L. C. J. Well, what say you, Mr. Otes ?

Otes. Now, my Lord, here is an Indictment, preferr'd against me for Perjury, and the Evidence they have given for the King, is this, 1. They have called Mr. Foster, and he tells you, that I was produced at the Sessions-house in the Old Bailey, where he was summoned as a Jurymen, upon the Tryal of Ireland ; and he says, That when I was produced at the Sessions in the Old Bailey as a Witness, and sworn (if I do remember Mr. Foster aright in what he says) he did hear me swear, That there was a Treasonable Consult of Jesuits upon the twenty fourth of April 78. at the White-Horse Tavern in the

Strand ; and he does further say, That I said those Jesuits afterwards came to a Resolution to kill the King ; and that they separated themselves into lesser Clubs ; the Resolution being drawn up by one Mico ; and that I carried it from Chamber to Chamber to be signed, and did see it signed. My Lord, I did ask Mr. Foster, Whether I in my Evidence called it a Consult, or a Traiterous Consult. Now, my Lord, 'tis true, I did call it a Traiterous Consult ; it is as true that I did swear there was such a Consult ; and it is as true that I did swear this Consult did divide it self into lesser Companies ; it is as true that I did say I did carry that Resolution about from Chamber to Chamber, and saw them sign that Resolution for murdering the King, I do not mean of this King, but of the late King. My Lord, the Evidence I think I nor no honest Man shall need to be ashamed of ; I am not ashamed to own that I repeated this Evidence several times, nor that I gave that Evidence upon Oath ; for it is Truth, my Lord, and nothing but Truth, and I resolve by the Grace of God to stand by it and confirm it with my Blood, if there be occasion. My Lord, to Conviſt me of Perjury, they have brought a parcel of St. Omers Witnesses, and these do swear that which they would have sworn six Years ago ; but then the Court thought them not fit to be sworn, not only because the Law will not allow them, but because of their Religion, that can dispense with false Oaths, if it were for a good Cause, and that was the Remark my Lord Chief Justice Scroggs then made of it. I shall not insist much upon what they have sworn, for that I suppose your Lordship and the Jury do very well remember : But I have five Things to object to their Evidence ; and I hope the Jury will take notice of my Objections, and make their Remarks upon them ; for since you have heard the Evidence that is brought against me, it will be necessary for your Lordship to weigh the nature of these Witnesses, and the Value that the several Juries of London and Middlesex had for them. 'Tis true, there are several brought here now, that never were Witnesses before ; there are indeed other Men, but of the same Religion and the same Interest, and therefore their Testimony must be of the same Value ; I think your Lordship will allow me that : Therefore I begin with their Religion, and that I take notice to be a great Objection to their Evidence, as I am advis'd by those that are learn'd in the Law. And I must appeal to the Court, whether a Papist in Case of Religion may be believed and received as a good Witness ?

L. C. J. We must not hear any of these idle Expressions.

Mr. Just. Withins. Do you think you are come here to preach, Mr. Otes ?

L. C. J. I'll tell you, a Papist, except you'll prove any Legal Objection against him, is as good a Witness in a Court of Record as any other Person whatsoever.

Otes. But if 'tis your Lordship's, I'll tell you my Lord Cook's Practice was not to admit them as good Witnesses.

L. C. J. Do not tell me of my Lord Cook's Practice ; the Law is otherwise ; keep to the Business that you have here in hand ; the Question before us, Whether you were forsworn in Ireland's Tryal or not ? Answer that if you can ;

can ; but you must not run out into Clamours and idle Extravagancies.

Otes. My Lord, I demand it as my Right to be heard what I have to except against the Witnesses.

L. C. J. I tell you, you shall be heard when you speak properly : But are you to determine what is right, or what is wrong ?

Otes. I am to determine my own Right now in this Point, and I insist upon it, and demand it.

L. C. J. It may be presently you'll tell us we have no right to judge of it.

Otes. Yes, my Lord, you have ; but I hope I have right to urge it.

L. C. J. Urge what you will that is to the Purpose, but then you must keep to the Matter in hand, and not make such idle Excursions as these are.

Otes. I will keep to the Matter, my Lord, if you will hear me.

L. C. J. So you shall, we'll make you keep to the Matter, or we will not hear you at all : Do not think your Impudence shall storm us out of our Senses.

Otes. My Lord, I do insist upon it, that these Mens Religion is an exception to their Testimony, and a Papist is not a good Witness in a Cause of Religion ; and I desire I may have leave to argue that as a Point of Law in my own Defence.

L. C. J. No, Sir, it is no Point of Law at all.

Otes. Then I appeal to all the hearers, whether I have Justice done me.

L. C. J. What's that, why you impudent Fellow, do you know where you are ? You are in a Court of Justice, and must appeal to none but the Court and the Jury.

Otes. I do appeal to the hearers.

L. C. J. Take him away there ; if you will not behave your self as you ought, I can assure you, the Court will do what they ought to do, and stop your Mouth.

Otes. What you please, my Lord, I must make my own Defence as well as I can.

L. C. J. You are here in Judgment before us, and are to appeal to us ; we'll suffer none of your Common-wealth Appeals to your Mobile ; keep within the Bounds of Decency, and say what you can for your self.

Otes. My Lord, this I move to the Court as one of my Objections to this Evidence given against me, That their Religion makes them no good Witnesses ; especially in this Cause.

L. C. J. I tell you that is nothing to the purpose, what their Religion is.

Mr. Just. Holloway. Mr. Otes, we come not here to dispute Points of Religion, we come to try a bare Matter of Fact, whether you are perjured, or no.

L. C. J. I tell you a Papist is a good Witness without a Legal Exception.

Mr. Just. Withins. Pray, Mr. Otes, is not a Papist as good a Witness as a Dissenter ?

Otes. My Lord Cook would not admit a Papist to be a good Witness in any Cause.

Mr. Just. Withins. How, not in a Cause of Meum and Tuum ?

Otes. No, my Lord, not in any Cause between Party and Party.

L. C. J. Where is that Opinion ?

Otes. I'll cite you the Case, if you please, my Lord.

L. C. J. Pray let us hear it.

Otes. It is in *Bulstrode's Reports*, the Second Part, 155. A Popish Recusant is not to be admitted a Witness between Party and Party.

Mr. Just. Withins. May a Presbyterian be a good Witness, Mr. Otes ?

Mr. Just. Holloway. Or would Mr. Colledge have been a good Witness, Mr. Otes ?

Otes. I tell you this was my Lord Cook's Practice.

L. C. J. You have our Opinion, and be satisfied with it ; That Book says it was my Lord Cook's Practice, and we think if that was his Practice, his Practice was against Law.

Otes. Then another thing I object to their Testimony, is their Education.

L. C. J. That's no Objection at all neither.

Otes. My Lord, they are bred up in a Seminary against Law, and for which their Friends are to be punished.

L. C. J. So is every Man living that's bred a Dissenter, bred up against Law.

Otes. My Lord, I have not offered any Dissenter as Evidence for me.

L. C. J. No, they are all no doubt of it very good People. Good-wife Mayo, and her Companions, excellent Protestants without all question.

Otes. My Lord, I humbly offer a Statute to your Lordship : And that is Law sure.

L. C. J. Yes, a Statute is Law. What Statute is it ?

Otes. It is 27^o of Eliz. Cap. 2. The Law says there—

L. C. J. Come we will see what the Law says. Read the Statute he speaks of.

Cl. of Cr. *It is Intituled an Act against Jesuits, Priests, and other such like disobedient Persons.*

Otes. My Lord, I desire that the Preamble of the Act may be read.

Cl. of Cr. *Whereas divers Persons called and professed Jesuits, Seminary Priests, and other Priests, which have been, and from time to time are made in the Parts beyond the Seas, by or according to the Order and Rites of the Romish Church, have of late come, and have been sent, and daily do come, and are sent into this Realm of England, and others the Queen's Majesty's Dominions—*

L. C. J. This is nothing to this Business before us at all.

Mr. Just. Withins. Does this Statute say they are no good Witnesses ?

Otes. They own themselves to be Educated at St. Omers, and that is against this Law expressly.

L. C. J. What then, Do they own themselves to be in Orders, Jesuits and Priests, then you might say somewhat to them upon this Law ; but do not spend our Time in such Trifles.

Otes. I do not spend your Time in Trifles, my Lord. It is my Defence.

L. C. J. Mr. Attorney, do you go on ; for we will not sit here to spend our Time for nothing.

Otes. Pray, my Lord, let me but shew this, I only purpose one Statute more to your Lordship's Consideration.

L. C. J. You may propose to read the whole Statute-Book.

Otes. Pray, my Lord, hear me out.

L. C. J. Speak then to the Business in hand.

Otes. It is the Statute made in the 3^d of King Charles 1: Chap. 2.

L. C. J. It is nothing to the purpose.

Otes. I am advis'd 'tis very material for me.

L. C. J. I tell you it is not, and we'll not let your Importunity prevail upon us to spend our time for nothing: There has been a great deal of Time spent to no purpose already.

Otes. Then if you will over-rule it, my Lord—

L. C. J. We do over-rule it: For it signifies nothing to this purpose.

Otes. Pray, my Lord, be pleas'd to give me leave to offer their Judgments in Cases of Conscience, whereby they own they have Dispen-sations to swear Lies for the promoting of the Cause.

L. C. J. That is no Evidence neither.

Otes. This is very hard in such a Case as this.

L. C. J. No, it is not hard, that what is no Evidence in Law, should not be suffer'd to be given in Evidence.

Otes. It is Evidence against the poor Dissen-ters, my Lord.

L. C. J. Indeed, Sir, it is not Evidence against any one body in the World; if you will take my Word for it, if you will not, I cannot tell how to help it.

Otes. Then I offer you one thing more, my Lord, and that is what was said and done in the Case of the Earl of *Shaftsbury*, when he was charged with High Treason, and committed to the Tower of *London*, at several Sessions in the *Old Bailey* and at *Hicks's Hall*; they did move that they might have liberty to bring in an Indictment of Perjury against the Witnesses which did accuse him of Treason, but now the Court there over-ru'd those Motions, and would not suffer my Lord of *Shaftsbury's* Friends to bring Indictments of Perjury against him, because they would not have the King's Evidence Indicted of Perjury, nor the Popish Plot called in question; This is a Matter of Fact in the *Old Bailey*.

L. C. J. And this is all idle too.

Otes. Pray, my Lord, will you hear me?

L. C. J. But pray, Sir, will you hear me too? I tell you this is nothing to the purpose neither.

Otes. My Lord, I desire to speak but these few Words then, as to my own Witnesses I have produced. And the first is *Cicely Mayo*; and, my Lord, though it be your Lordship's Pleasure, not to have that good Opinion of her, as I think the poor Woman does deserve, yet I hope her Evidence, will have its due Weight and Con-sideration with your Lordship and the Jury; she says, she saw me in Town in the Month of *May*: Now indeed she could not be positive, what *May* it was, but she said it was the *May* before the Popish plot broke out, that is, be-fore the Rumour of that Plot was spread Abroad, and she believes the Plot broke out in '78. But this she says positively, she saw me in the Month of *May* here; my Lord, she comes to give this Evidence freely and voluntarily; a Man that is a Knave, is a Knave for something, ei-ther out of Malice, or for Gain or Interest; but she has no Reward given her, nor can hope

for any; but in Love to Justice, without any By-end or particular Interest, she came here to testify the Truth, about her seeing me in *Lon-don*, in *May* '78. The next Witness is Mr. *Butler*, he was then Sir *Richard Barker's* Coachman. He lived some Years with him, as his Servant; but he is now set up for himself, and he says, that when he was about his Master's Business in the Coach-yard, and sitting the Coach for to fetch his Master home from *Putney*, I came in, and this was in the beginning of *May*, in a Disguise; and he says, he saw me a second time in another Disguise. Then comes a third Wit-ness that I called, and that is *Page*, and he came into the Hall, where the Patients use to wait for his Master, and there he met me, and spoke with me. Then I called *Walker*, the Minister, but it happens his Memory is not so good now, as it was heretofore; and indeed I cannot tell how to blame him; for 'tis so long since, that it is impossible for any body to remember the Cir-cumstances of Times and Places, that in some short time after the Fact might have been re-membred with far greater Ease. I expected Sir *Richard Barker* might have been here, being Sub-pœna'd to justify the Evidence of these People; and I did expect that Mr. *Smith* would have been examined; but I perceived the Court tender of that Point, as knowing it would then easily have been seen upon which Side it was, that he was suborned, that is, to make such a Con-fession as Mr. *Attorney* would have hinted at.

L. C. J. Have you a mind to examine him, Mr. Otes; with all my Heart. If you consent to it, he shall be examined.

Mr. *Just. Withins*. If you will, he shall be ex-amin'd, it was for your sake he was not.

Mr. *Just. Holloway*. It was to do you Right, that he was refus'd to be sworn before.

Otes. Good Mr. Justice *Holloway*, are very sharp upon me.

Mr. *Just. Holloway*. No, I am not sharp upon you; I think the Court did you a great deal of Justice, you have no reason to complain.

Otes. But, my Lord, this I say, The Evidence upon which I am now indicted of Perjury is the same which was delivered six Years ago at the *Old Bailey*, at *Whitebread's* Tryal first, and then at *Langborn's* Tryal, where were sixteen Witnesses then produced and heard against me: But then, my Lord, what Credit did they re-ceive at *Whitebread* and *Langborn's* Tryals? Now if this Evidence that I gave was then to be be-lieved, though oppos'd by so many Witnesses, what new Objection does rise against it, which was not then hinted, and received an Answer? For as to all the Records that are brought out of the House of Lords, they have not amount-ed to a Charge sufficient to diminish any Man's Evidence in the World; for as to the Narra-tive that is entered there in the Journal; I think I and any Man else, that were concern'd as I was, may very well defend the Truth of it; and I do avow the Truth of the Popish Plot, and will stand by it as long as I have a Day to live, and I do not question but the Jury, upon Consideration of those Protestant Witnesses that I have here brought against these Popish Semi-naries, will acquit me of this Perjury. I leave it to your Lordship and the Jury to judge, and I hope those Passages of Heat, that have fallen from me in Court, shall not make me fare at all

all the worfe in your Judgment. I have called some Noble Lords to testify for me ; but I find, either the distance of time has wrought upon their Memories, or the Difference of the Season has chang'd their Opinion, so that now they disbelieve that which they did believe before, and perhaps for as little Reason as —

L. C. J. As they believed you at first.

Otes. Yes truly, my Lord, for as little reason as they believed me at first ; for I cannot expect that a Man, who believes without a Principal, should not recant that Belief without a Reason.

L. C. J. What do you mean by that ?

Otes. I name no body.

L. C. J. But the Nobility that are here, and that have been Witnesses in this Cause, are all Persons of that Honour, that the Court is bound in Justice to take notice of, and vindicate them from your scandalous Reflections ; but only I think that a Slander from your Mouth is very little Scandal.

Otes. Nor from some body's else neither.

L. C. J. But, Sir, you must be taught better Manners.

Otes. I find, my Lord, I am not to be heard in this Cause with Patience.

L. C. J. I think you do not deserve to be heard at all.

Otes. I cannot tell how to help it, if you will not hear me.

L. C. J. Can't you say what you have to say for your self without Reflections and running out into such Extravagances ?

Otes. My Lord, You will suffer me to offer nothing that is material for my Defence.

Mr. Just. Walcot. Do you think it decent for this Court to suffer Persons of Honour, that by your own Desire were sworn to give Testimony in this Cause, should lie under the Reproach of your Tongue ?

Otes. Good Mr. Justice *Walcot*, Was there ever any Man dealt with as I am, or had such Evidence offer'd to be given against him ? Here they offer to blacken me with the Imputation of that foul, infamous Crime of Perjury ; and who are the Witnesses to prove it, but Youths out of a Seminary ? Sir *George Wakeman*, and my Lord *Castlemain*, known Papists, and perhaps Popish Recusants, Convict too ; as for my Lord *Castlemain*, the Record of his Acquittal is brought as a Charge against me, to prove that I was forsworn, and not believed at his Tryal ; when all the World knows, it was because there was but one Witness against him that he came off, and that was the Reason that was urged by my Lord Chief Justice *Scroggs* at that very time, who would not admit *Dangerfield* to be a Witness, and reflected not at all upon my Testimony, but directed the Jury, for want of another Witness, to acquit him : Then, my Lord, here is *Wakeman* brought and his Acquittal too ; he swears all I said against him was false ; whereas, had it not been for two dishonest Persons, one I have now in my sight, I shall not name any Names, we could at that time have proved five thousand Pounds of the Money paid to him, and that he gave a Receipt for it ; but, my Lord, this I am sure of, if I had been brought in as a Witness in the Case of those that suffered lately for the Presbyterian Fanatic Plot (as they call it) I had never been

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call'd in question, if my Evidence had been false ; but it is apparent the Papists have now a Turn to serve, and these Papists are brought in, the *St. Omers* Youths, to bear this Testimony on purpose to falsify my Evidence, and to bring off the Popish Lords that now stand impeach'd of High Treason for the Popish Conspiracy ; but, my Lord, I hope as the Court would never admit Indictments of Perjury against the Witnesses in that Case of my Lord *Shaftsbury*, so you will not admit it here ; and if my Lord Chief Justice *Jones* were in the Right, who did the same thing in his Circuit, I hope I shall have that Right done me here. My Lord, It is not me they indict, but the whole Protestant Interest is aim'd at in this Prosecution ; and hereby they arraign the whole Proceedings of so many Parliaments, all the Courts of Justice, and the Verdicts of those Juries that convicted the Traitors that were executed ; for my own part, I care not what becomes of me, the Truth will one time or another appear.

L. C. J. I hope in God it will.

Otes. I do not question it, my Lord.

L. C. J. And I hope we are finding it out to day.

Otes. But, my Lord, since I have not the liberty to argue those things that were most material for my Defence against this Indictment, I appeal to the Great God of Heaven and Earth, the Judge of all ; and once more in his Presence, and before all this Auditory, I avow my Evidence of the Popish Plot, all and every part of it, to be nothing but true, and will expect from the Almighty God, the Vindication of my Integrity and Innocence.

Mr. Sol. Gen. May it please your Lordship, and you Gentlemen of the Jury —

Otes. My Lord, I have one thing to move to your Lordship ; I desire I may be brought up to morrow by Rule of Court to hear my Tryal that is then to be.

L. C. J. Ay, let him be brought up by Rule to his Tryal.

Otes. My Lord, I lie under very great Affliction with the Stone and the Gout, and besides that, I have lain in Irons these twenty-one Weeks ; I beseech your Lordship, that this Cruelty may not be inflicted upon me. My Lord, I am but hitherto a Debtor to the King upon a Civil Account ; and if I should be convicted upon these Indictments, I could then be but in Execution for a Trespas ; and I humbly conceive and hope the Court will shew me that Favour as to acquaint my Keeper, that I ought not to be so handled.

L. C. J. Look you, for that I tell you again what I have often said, I expect from the Marshal that he keep you as he ought to keep you ; I have heard that there have been abundance of Attempts made for your Escape, and therefore the Marshal must have the greater Care of you.

Otes. Let any of those Complaints be made out, my Lord, and I'll be contented to be used how they will.

L. C. J. I repeat it again, Let the Marshal have a care to keep you *in salvâ & arctâ Custodiâ*, according to Law.

Mr. Just. Holloway. If the Marshal does otherwise than his Duty, inform against him, and take the Remedy the Law allows.

P p p

Marshal.

Marshal. But the last Night, my Lord, Ropes were brought into his Chamber, on purpose to give him means to escape, and here are the Bundle of Ropes.

Otes. I know nothing at all of them, I assure you, my Lord.

L. C. J. Well, you have our Rule. Go on, Mr. Solicitor.

Mr. Sol. Gen. May it please your Lordship, and you Gentlemen of the Jury, I am of Counsel for the King in this Cause; which is upon an Indictment of Perjury against *Titus Otes*, the Defendant; and the Perjury charg'd upon the Defendant, is laid to be in his Oath at the Tryal of *Ireland*, at the *Old Bailey*; and it is thus, That he in his Evidence at that Tryal, did swear, that there was a Treasonable Consult of the Jesuits, held at the *White Horse Tavern* in the *Strand*, the 24th of *April* 78. and that he was there present. —

Otes. Ay, I was there.

L. C. J. You must be quiet, and let the Counsel go on without Interruption.

Mr. Sol. Gen. And that they separated themselves into lesser Companies and Clubs, and that the Jesuits came to a Resolution to murder the late King, and that he, the Defendant *Otes*, carried this Resolution from Chamber to Chamber, and saw it signed by them; now all this is laid in his Indictment to be false; for that in truth, he was not present at any such Consult of the Jesuits at the *White Horse Tavern* in the *Strand* upon the 24th of *April* 78. nor did carry any such Resolution from Chamber to Chamber to be sign'd as he had sworn in the *Old Bailey* at that Tryal, and so has committed Wilful and Corrupt Perjury.

Gentlemen, The Evidence that has been given to prove, that he was not present at any such Consult, nor did carry any such Resolution, has been by proving where he was at that very time that he swears this Consult was held, that is, that he was really at *St. Omers*, in Parts beyond the Seas, and not in *London*; and to make out this, we have produced no less than twenty Witnesses, that swear positively, and give you very many Circumstances to induce you to believe, that what they have taken upon them to remember is really and effectually true.

First, You have *Mr. Hilfley*, and he swears that he himself came away from *St. Omers*, the 24th of *April*, New Stile, which is the 14th of *April*, Old Stile, which was a Sunday; that Night he came to *Calais*, the next Day he arriv'd at *Dover*, and coming up to Town towards *London*, the next Day he met with *Mr. Burnaby*, who was then going to *St. Omers*. And he further swears, that at that very time, when he came from *St. Omers*, he left *Otes*, the Defendant upon the Place; this I say was the 14th of *April*: And for a Confirmation of this to be true, he left him there at that time, I would mention what two other Witnesses do testify, and therein do verify what he swears; for they tell you, that at this very time when he came over, or within a Day or two, but long before such time as there was any occasion to bring this to be a Question, he told one of them, in a Discourse that was between them, that he had left upon the Place from whence he came, which was the College at *St. Omers*,

an English Minister, whose Name was *Sampson Lucy*. —

Otes. My Lord, I beg I may have leave to withdraw, for I am very weak, and ill.

L. C. J. Then make Room for him to go away, if he will.

Mr. Sol. Gen. And they give you an account, that the Defendant, *Otes*, went by that Name there, and it is not denied by him that he did so: And this is a Circumstance greatly verifying *Mr. Hilfley's* Evidence. Then comes *Mr. Burnaby*, who swears, That he met *Mr. Hilfley* when he came from *St. Omers*, about the 16th of *April*, Old Stile, and the 21st of *April*, Old Stile, he came to *St. Omers*; and that when he came there he found *Otes* there upon the Place; this was the first of *May*, New Stile; and he gives you this Circumstance to strengthen his Testimony, That he very well remembers, that upon the 2d of *May*, New Stile, the Day after he came to *St. Omers*, *Otes* intruded into his Company, and got himself acquainted with him; he says further, that upon the 3d of *May*, New Stile, he particularly remembers *Otes* was in his Company there, and they went into the Garden and walk'd together; he also says, he saw him the 5th of *May*, New Stile, which is the 25th of *April*, Old Stile, the Day after this Day assign'd for the Consult, with this Circumstance, That he remembers to have seen him in the Rhetorick School, and so successively afterwards he gives you a particular account down to *Midsummer*; after that *Otes* continued in the College at *St. Omers*, and then went away.

Then the next Witness we produce is *Mr. Pool*, and he gives you an account, That upon the 25th of *April* 1678. New Stile, which was the 15th of *April*, our Stile, he came over here, and he left behind him at *St. Omers*, the Defendant *Otes*; for he particularly remembers, that he saw him there when he came away; so *Hilfley* left him the 14th of *April*; *Mr. Pool* came away the 15th of *April*, which is our 25th, and left him at *St. Omers*, and does not remember, That he used to be absent out of the College; and *Mr. Burnaby* finds him there the 21st of *April*; so that particularly at the times the other two came away, and *Burnaby* came thither, there he was, and there they saw him.

The next Witness is *Mr. Thornton*, and he gives you an account when *Otes* came thither first, and how long he stayed there; he says he came about *Christmas* 77. and there he stayed till *Midsummer Eve* 78; and he tells you some particular Days he saw him on; he says he saw him there on the 1st of *May*, New Stile, and he saw him the 2d of *May*, New Stile, in Company with *Mr. Burnaby*, the next Day after his Arrival there, wondering at their sudden Acquaintance. And he adds a particular Circumstance, why he remembers it was the 2d of *May*; because that Day the Scholars at *St. Omers* acted a Play, at which *Otes* had a Scuffle for a Seat; and he says he does likewise remember him to have been there, when *Mr. Pool* came away, which was the 25th of *April*, New Stile.

Then *Mr. Conway*, that was our next Witness, gives you an account likewise of *Otes's* coming to *St. Omers* about *December* 77. and how long he stayed there, viz. till the latter end of *June* 78. And he does not remember, that he lay out of the

the College above one Night, and that was in *January*. And he remembers particularly, that he saw him with Mr. *Burnaby* such a Day in *May*.

Then we brought another Witness, and that was Mr. *Haggerstone*, and he tells you, he had good reason to remember Mr. *Otes*, for he was in the same *Classis* with him; and this Gentleman gives an account particularly, that he remembers him to be there the next Day after Mr. *Burnaby* came, and agrees in Testimony with all the rest, that from *Christmas* till *Midsummer*, he was not absent out of the College, but one Night.

We have another Witness, Mr. *Beefton*, and he remembers, that *Otes* was playing at Nine-pins the 1st of *May*; he remembers the 2d of *May* to have seen him with Mr. *Burnaby* after the Play was over; and that agrees with the other Witnesses about his being in *Burnaby's* Company the 2d of *May*; and he remembers likewise, that he himself was chosen Reader to the Sodality; but upon Mr. *Otes's* Importunity, he supplied the Place in Mr. *Beefton's* Room, only with this Reserve and Condition, That Mr. *Beefton* was to be Reader at any time, if *Otes* failed; and he gives you this particular account, that *Otes* did read, as he believes, every Sunday and Holiday, from the latter end of *March* when he was chosen Reader, to within a Week of his going away; for that he did never read himself, as he should have done if *Otes* had been absent or failed to read.

We have another Witness, and that is Mr. *Smith*, and he swears his being there from *Christmas* 77. to *Midsummer* 78. and he remembers particularly as to *April* and *May*, because the 21st of *April*, he himself fell sick in the College, and went into the Infirmary, and remained there till the 7th of *May*; and he does remember that *Otes* visited him very oft in that time in the Infirmary, and told him Mr. *Hilsley* was gone away, and Mr. *Pool* was gone away, and two or three other Particulars, which happened in the College at that time; so that there is another Evidence, that is very strong with Circumstances to confirm the Testimony of the rest; and he gives you a very satisfactory account of it, by shewing the Reasons how he comes to remember these things.

Mr. *Price*, who was our next Witness, has given you a Relation all to the same purpose of *Otes's* coming there at *Christmas*, and of his going away at *Midsummer*. And he remembers particularly, that *Otes* was at *St. Omers*, when the Jesuits went to the Consult at *London*; for that there was a Consult, and at that time, is acknowledged to be true; but not such as he says, nor was he there; but he says some of the Fathers did call there in the way to *England*. And at that very time, and after, he saw him there. And Mr. *Doddington* gives you the same account.

Then comes Mr. *Gerrard*, and he tells you a Story to the same purpose; how long *Otes* was there, and when he came. And that the 2d of *May* he remembers *Otes* was at the Play; and he remembers the 26th of *May* *Otes* was there, which was the 16th of *May*, Old Style. And he is sure *Otes* was there at that time, for this reason, that being the Day whereon he himself was confirmed, *St. Augustine's* Day; and *Otes* was

confirm'd with him; and therefore he has reason to remember *Otes* was at *St. Omers*.

My Lord *Gerrard* of *Bromeley* was our next Witness, and he gives you an account to the same purpose; and to the General Evidence, in which he confirms the others, he adds this particular, That *Otes* used to read with a singular canting Tone; so that he must needs remember him, and was so remarkable for other things, that he could not be absent without being miss'd, which he never was.

Then comes Mr. *Morgan*, who was there at that time, a Scholar; but he's now a Minister of the Church of *England*; and therefore not liable to Mr. *Otes's* great Exception of Religion; he confirms what all the Witnesses said of the time of *Otes's* coming, and of the time of his going away: And particularly he swears, That when Mr. *Hilsley* went away, he was there; when Mr. *Pool* went away, he was there; and when Mr. *Burnaby* came thither, he was there. And this is not all; for there is somewhat more remarkable in his Testimony; for he tells you particularly he does remember, That upon the 24th of *April*, Old Style, the Day, Gentlemen, when *Otes* says he was at the Consult in *London*, *Otes* was then at *St. Omers*. And the occasion of his remembering this he gives you an account of; for, he tells you, upon reading the Tryal of *Ireland*, where *Otes* swears, That he was here at the Consult the 24th of *April*, 1678. Old Style, all the College reflected upon it, and wondered at the Impudence of the Man, that he should dare to swear such a thing, when all the College remember'd him to be there all the while: And upon Recollection of Circumstances, he himself did particularly recollect his own playing at Ball that very Day, and having toss'd his Ball over the Wall, he borrowed *Otes's* Key to go into the Garden to fetch it: And this was thought of whilst things were fresh, and every Man remembered this, or that, or the other thing to be done at such a particular time.

Mr. *Arundel*, who was another Witness, proves the general Testimony of the rest, and agrees in some particular things; and all he says, is to the same purpose.

Mr. *Christopher Turberville*, he comes and swears *Otes's* being at *St. Omers* the 4th or 5th of *May*, which is the 24th and 25th of *April*, Old Style. For that upon Mr. *Pool's* going away, he changed his Chamber in the College, and saw *Otes* divers Days afterwards in his Chamber, and at the Door; and he knew that he constantly read in the Sodality, and that he left particularly the *Sunday* before he went away, which was about *Midsummer* 1678.

There was another Gentleman, and that was Mr. *Anthony Turberville*, who gives Evidence all to the same purpose; and this Circumstance goes thorough all the Testimony of these Persons, that there's scarce any body can come to, or go out of the College, but it is known to all that are there, every Man takes notice of it, 'tis the Common Discourse amongst them; and therefore they give this as the Reason of their Belief, That he was there all this while, because they did not remember any thing that should give them occasion to believe Mr. *Otes* was away from the College from *Christmas* till *Midsummer*, but only one time; and the remembrance of that

that does shew, That they do really observe these things; for they could all tell that in *January* he went to *Watton*, and stayed out one Night.

There is one Witness more that is positive and particular, and that is Mr. *Clavering*, and he remembers *Otes*, by a very remarkable Circumstance, was at *St. Omers* at the very time the Congregation is said to be held in *London*; for he tells you there came a Person to beg Money of him, and there was a Collection made in the House; and this Person did desire to speak with *Otes*, who was then in the College; and whom it seems this Person had known in *Spain*; but *Otes* did refuse to speak with him, and did not come down to him. Thus he remembers such an one came there, and when he was there, he was sent to *Otes* to desire him to come down to this Man, and he would not. Ay, but now how is this remember'd to be at the time when the Congregation was held here in *England*? As to that, he gives this plain and full account, That it must be at that very time; for the Scholars did discourse among themselves, and were reckoning up what he had gotten among them, and what he had gotten at *Watton*; and finding that it was very inconsiderable that he had gotten at *Watton*, they talk'd among themselves what should be the Reason, and concluded it was, Because the Fathers were gone over to *England* to the Congregation.

These particular Circumstances our Witnesses give you as the Reasons of their particular Remembrances of the particular times: But, Gentlemen, you must take along with you those General Considerations too that are offered, which do affect the whole time, from *Christmas* till *Midsummer*. First, That none can come or go, without being discours'd of in the College: Next, That much more Mr. *Otes* must needs be miss'd, than any other, being so remarkable a Person, as they tell you, that scarce any Week pass'd without his making it remarkable by some ridiculous Action or another. They say he sat singly by himself, at a particular Table, that no Man could come into the Hall, but they must see him; and therefore, if absent, must needs miss him. And yet they swear they do not ever remember him absent, but that one Night; and if he had been absent, they must needs have observed it, because of all those Circumstances that have been reckoned up.

These are the Witnesses, Gentlemen, that we have produced to prove this Charge upon the Defendant, two of whom are brought only to verify Mr. *Hilsley's* Testimony; having heard it from him at that time that he had left *Otes* at *St. Omers*; when there was no Thoughts of this Question.

Now among these twenty Witnesses, there are not above two or three at most that were at either of the Tryals before. They were never produced as Evidence, tho' indeed they proved the same thing that was testified by others then, but with many other Circumstances and Particularities that were not before spoken of; some are now produced that were produced before, and the Reason is, because they are themselves concerned in those Particularities which gave occasion to the others to remember them.

Gentlemen, after the producing of so many Witnesses, and so strong a Proof; What is it

that Mr. *Otes* has produced against it? His main Objection to their Testimony, is, There were several that came from *St. Omers* to testify at those former Tryals what these now swear, who were not believed, but I was believed; and the Men were Convicted, Condemned, and Executed upon my Testimony: But is that all he has to say? No, says he, I have likewise Witnesses to offer as a Counter-proof to them, a positive Proof that I was here in *England*, at the time they swear me to be at *St. Omers*; and he says well; if that be proved, there is an end of the Case. Well, what is the Proof? The Witnesses that he has, have been these four, *Cicely Mayo*, Servant to Sir *Richard Barker*, *Butler* his Coachman, *Page* another of Sir *Richard's* Servants, and the Parson *Walker*.

The Evidence of *Page* and *Walker*, tho' produced last by Mr. *Otes*, yet I crave leave to mention first, and set them out of the way. *Page*, he remembers to have seen Mr. *Otes* in a Disguise at Sir *Richard Barker's*; that is, in grey Cloaths; but he is not certain as to the time, and he cannot take upon him to say what time of the Year, or what Year it was, only he believes it was in *May*; and therefore that can be no sufficient Evidence to contradict Witnesses, that with great Particularity speak to certain times. As for *Walker*, the Parson, he said he saw him between *St. Martin's lane* and *Leicester-fields*; but he cannot remember the time when neither; nay, the Remembrance he has of it goes rather to another time, than the time in question; for being asked what Circumstance he knew the time by, he said, it was about a Year and a quarter before the Plot was discovered, which must be in *April* or *May* 1677, and that will do the Doctor no Service at all upon this Question.

Now let us consider Mrs. *Mayo's* Testimony; and the Oath that she made was this, That when *Otes* came over into *England*, she saw him at Sir *Richard Barker's* House the latter end of *April*, or the beginning of *May*, and the Week before *Whitsuntide*; the latter end of *April*, or the beginning of *May*, was the first time that he came, that she saw him; but that he came before, as she heard, but the Coachman only saw him, and told her that *Otes* had been there; but the second time she did see him, and he went in and dined there in the House: Sir *Richard Barker* was not there, but my Lady's Sister, her Sons and Daughters were there; she says, that she saw him again a Week before *Whitsuntide*; that when he came the first time he was in grey Cloaths, a white Hat, and a short Perriwig: Afterwards he was in black Cloaths, a pretty long Perriwig, not very long, but the Perriwig was brown; and these are the Circumstances she remembers to have seen him by.

Now let us see what *Butler*, the Coachman, says, he remembers about the beginning of *May* he saw *Otes* at his Master's House in a Disguise; the other said it was the latter end of *April*, or the beginning of *May*; but I stand not upon that; but this he does swear, That the first time he saw him, *Cicely Mayo* saw him too, that he was then in grey Cloaths, a white Hat, but his Hair was cut short, and he had no Perriwig on; afterwards he came in a Cinnamon-colour'd Coat, and green Ribbons, and a long black Perriwig: This is *Butler's* Evidence.

Now these two People's Evidence are utterly impossible to be reconciled, they contradict one another so much: First, they contradict one another in this; she says, The first time he came, she did not see him, but the Coachman told her, he had been there; but he swears, That she did at that time look out of the Window into the Yard, and did see him as well as he: Another Contradiction is this, She remembers the first time he came in grey Cloths, a white Hat, and a short Perriwig; the Coachman he swears he had no Perriwig on, but his Hair was cut short to his Ears: Then again she swears the second time, he was in black Cloths, and an indifferent long Perriwig, and the Perriwig was brown; and the other swears he was in cinnamon colour Cloths, and a long Perriwig, and it was a black one. Now thus you see the Witnesses contradict themselves, and cannot be reconciled to one another.

But take one thing more, which is very considerable, wherein she contradicts Mr. Gerrard; for she swears he was here a Week before *Whitsontide*, that she is sure of: Now that falls upon the nineteenth Day of May; then upon the sixteenth Day of May, was the Week before *Whitsontide*; now, that is a most Eminent Day, by the Testimony of Mr. Gerrard; for that happens to be the twenty sixth of May, New Style, and that was the Day he was confirmed with Mr. Gerrard at St. Omers: And no Man sure can doubt, which of the two Witnesses is to be believed; and it cannot but be true, that he was there at that time; because so remarkable a Circumstance cannot be forgotten; and yet this Woman swears that he was here a Week before *Whitsontide*, and that by Computation must be the time of his Confirmation: But, Gentlemen, another thing that I offer upon the Testimony of these Witnesses, is this; If you will believe it, he himself contradicts his own Witnesses, or they him, and one of them is forsworn: For he has sworn the Consult was the twenty fourth of April, and that three or four Days after that was over, he went back with the Fathers to St. Omers: Now, this contradicts all that his Witnesses have said: But he has given himself, as he thought, some little Latitude; says he, the Consult began the twenty fourth, but it held six or seven Days longer. We will for this time admit it to be so, and give him the six Days he requires; and yet after all, it will not come up to the time that his Witnesses speak to; for to the twenty fourth of April, add six Days, and that brings us just to the last Day of April; and then take four Days in May, to make up the three or four Days after the Consult was over, and we are yet at a great distance from the *Whitson* Week; for that was the nineteenth of May, and the Week before must be the twelfth or thirteenth, and so it is impossible to be reconciled to Truth what he and his Witnesses swear; either the Evidence that the Doctor now brings, must be a Contradiction to his own former Oath, or his Oath proves they are mistaken; besides the Contradiction that is between the Witnesses themselves; for they vary in a great many material Circumstances, which I have before reckoned up to you.

But, Gentlemen, false Witnesses are very often detected by little Circumstances, though I must needs say these are not small ones; for

these are very remarkable things in themselves, and great Contradictions to one another, and therefore 'tis impossible they both can swear true.

There were some other Witnesses that were produced by Mr. Otes formerly upon this Point; one of which was Clay, the Priest, and he you hear is contradicted by Mr. Howard's Testimony, who not only tells you he was not at his House, when he says he was; but shews that Clay was mistaken in Point of Time: 'Twas not in May, but in July: But that's not all, we have another Evidence, Gentlemen, to show how this Mistake comes to pass, and which will give a great light into this sort of Practice that has been used in this Matter; for we have two Witnesses that give you an Account how Otes and Sir William Waller were at the Gate House with Clay, and there did threaten him, That unless he swore he dined with Otes at Mr. Howard's in May, they knew he was a Priest, and he should be hanged: The Man was somewhat cautious at first, for truly he knew nothing of the Matter, but at last, upon Condition he might have his Money again that was taken from him; he had been a Rogue formerly, and he did not know what he might do: Now, we find presently after, that he was in Fact brought as a Witness; what he swore, Mr. Howard tells you, and you have heard him contradicted in that point of Time. For Mr. Howard says, it was in July; and then it was agreed, that Otes was in England; for our Witnesses tell you, that at Midsummer he came away from St. Omers.

So that, Gentlemen, the Evidence that was formerly produced for him, is not only taken away by positive Counter-proof, but there is fixed upon him, with great Infamy, the additional Crime of Subornation, by forcing People to swear for him under the Threats of being hanged; and we all know how such People lay under great Fears and Terrors at that Time.

There was another Witness that was produced formerly for him; but I shall not take upon me to repeat all the particular Evidence that has been now given about that Matter: In short, our Objection to that Testimony lies thus; That Otes did swear in his Narrative, that Smith was a dangerous Man, and employed by the Jesuits to stir up the People against the Government; that appears by Otes's own Oath: But it likewise appears, that afterwards they were reconciled, and that he gave Smith a Certificate under his Hand, that he was a good Protestant, and a good Subject, and about Eminent Service for the King: Now, we see no reason hitherto, why Mr. Otes should change his Mind, after having sworn him such an ill Man, all of a sudden to be so kind to give him his Protection, and so advantageous a Character, as that was in that Season. But, Gentlemen, the Mystery is easily unfolded, if we go three or four Days further in time, which brings us to the Tryals of *Whitbread* and *Langborn*; it seems Mr. Otes was then aware of that, which is now an Objection to his Testimony; for it was made an Objection at the first Tryal of *Ireland*, That he was not at this Consult, for he was then actually at St. Omers; but no Witnesses were there to prove it; but now he was aware that some were a coming over, and it concerned

him to make some good Proof if he could, that really and in Truth he was here in London at that Time.

And I cannot omit to take notice of what my *Lord Chief Justice* was pleased to observe and object to him now ; It is a wonder a Man should be here in Town so long ; a Man that had much Acquaintance, as it seems he had, a Man that went about freely and publicly, as his own Witnesses say he did, should be seen by nobody, but these few, should not be able to give an Account, by any body, where he lodged, at any one Time in this Interval. Nay, by no Circumstances that must occur to his own Knowledge, to be able to shew where he lodged, is very strange ; though it should be that he did lodge in the Houses of those that would not come to give Evidence, as he alledges, yet it is almost impossible, but there must be some other Circumstances to prove his being here, besides the Evidence of the Landlord of the House where he lodged ; but he gives no Account where he was lodged, and whom he conversed withal, but these People only ; and that they should see him, who were not his Intimates, and none else in the World, is to me one of the most strange Things that can be conceived.

Now, Gentlemen, when he has given no manner of Satisfaction, that he was here, and is by twenty Witnesses sworn not to be here ; what is it that he says to all this ? Why, he doth insist upon it, that his Credit must not be now Impeached, because that once he had the fortune to be believed, and some Men have died and suffered for it ; as if no Perjury were to be punished, but that which is unsuccessful ; whereas the reason why Perjury is taken notice of in the Temporal Courts, is only because of the Mischief that it may do : Shall it then be no Crime when a Man has done the Mischief, when the fear of that Mischief was the ground of making it a Crime ? That is a most monstrous way of arguing. And yet this would Mr. *Otes* have look like an Argument, that because he has been believed in his false Oaths, and Men have suffered by his Perjury, and he has been successful in his Crime, that Success has protected his Wickedness from Punishment. This I confess is a new way of arguing ; and such as none but Mr. *Otes* could certainly have invented.

But, Gentlemen, to contradict this, we have shown you, that as he has had the fortune to be believed ; so he has likewise had the fortune to be disbelieved. For there have been produced as many Records of Acquittals, where he was an Evidence, as there have been produced Convictions upon his Testimony ; so that he has been as often disbelieved as believed.

Whither then does he betake himself next ? He has called a great many Witnesses to give you, as Evidence for him, an Account what Opinions at that time the Houses of Parliament, the Courts of Justice, and the Juries had of his Evidence ; and then insists upon it, that now to call his Credit in question, is to arraign the Justice of the Nation, the Wisdom of both Houses of Parliament that believed him, the Honesty of the Juries that convicted those whom he accused, and the Integrity and Understanding of the Judges who were learned, wise and just Men ; and with great Earnestness he asks the Question, Why now at this time of Day

should this be called in question, which received so much Credit and Approbation so long ago, by the good Opinion that all sorts of Men had of it at that Time ? And, now to question this, he would have thought to be a casting a Blot upon the Wisdom of the Nation, and an arraigning the Justice of it ; when, if the Thing be duly considered, the not punishing this heinous Offence with the utmost Severity that the Law will allow of, now, that these Circumstances appear to make it plain and evident, would be a greater piece of Injustice and Reproach, rather to our Nation, than any ways a Reflection on the Justice of it.

Gentlemen, when we consider the Circumstances of this Case now, I do verily think it will appear to be a very strange and wonderful Thing to us, that ever any Man should have believed him. And it is a strange Consideration to reflect upon, to think what Credit he had at that time. But withal consider, Gentlemen, could any one imagine, that it were possible for any Man on Earth to become so impudent, as to dare to expose himself before the High Court of Parliament, the great Courts of Justice, and there tell a most Infamous Lye for the taking away the Lives of Men ? The greatness of the Attempt, was a great inducement to the belief of it, because no Man could be presumed to dare the doing of such a Thing, if he had not a Foundation of Truth to build upon. And when he had thus made his Discovery, and that of such a nature too, a most horrid, bloody and traiterous Conspiracy to murder the King, to overturn the Government, to massacre all the Protestants in the Kingdom, and to deface the very Name of the Protestant Religion. What was more natural than that the Parliament should take all imaginable care to prevent the accomplishment of so great a Mischief ? And consider too how much easier it was for him to relate his Evidence in a continued Story, than afterwards it was to maintain it, when it came to be examined and opposed by them that were accused, who best knew wherein, and by what means to prove him false.

Gentlemen, the Care the Parliament took to disappoint any Designs of this nature, and the means they used for the Security of the King and Kingdom, and the Preservation of our Religion and Lives (which I cannot but observe was previous to the Tryal of any one Offender, that was tried and convicted upon this Evidence) must needs put the whole Nation under great apprehensions of Danger, and make the way much easier for him to be believed, as by sad Experience we found it did. Under these Circumstances came those Men to be tried, with this further (as we cannot now but think) that there were ill Men at work, that laboured to improve those Fears and Jealousies, that had already possessed Men's Minds ; the Wonder then will be the less, if Men under such Disadvantages, tried by Men under those fears and apprehensions, had the ill Fortune to be convicted. But when Men had a little overcome their Fears, and began to consider his Evidence more calmly, the Scene was changed, *Otes* lost his Credit, and the Men were all acquitted. Nor is this Prosecution any reflection on the Protestant Religion, whose cause he falsely assumes,

fumes to himself. No, Gentlemen, the Protestant Religion had no share in that Invention. It needs not the support of a Lye, no not the most plausible Lye, much less of one so Infamous as this does now appear to be. It is rather a Vindication of our Religion, to punish such Offenders as they deserve, and the proper way to maintain the Justice of the Nation, and wipe off that Reproach this Man's Perjury has brought upon it.

L. C. J. Then, Gentlemen of the Jury, the Evidence has been very long, and it cannot be expected after so much Time has been spent in this Cause, and such a difference of Testimony, and especially considering that the Testimony has met with frequent interruptions, and, I may say, some Part of it delivered in great Confusion, it cannot be thought or imagined, I say, that I should be able to remind you of the several Particulars that concern this Case, and may be necessary to be observed about it. But, Gentlemen, I am sure, by the Knowledge I have of the most of you, you are Persons of great Understanding; so that what may be omitted by me, I question not, but your own Abilities will supply; I confess I am much shortened in my Labour, by the Pains that Mr. *Solicitor* has taken to sum up the Evidence to you, and without all doubt, has done it with all Faithfulness to his Master, and with great Right to himself. I could not hear much of what he did say; but you, who were nearer and did hear all, which I could not do, your Judgments will direct you to lay that Weight upon it, which it deserves, and which the Law will allow; for, Gentlemen, I am bound to tell you, that you are to lay no weight upon any Allegations on the one Side or on the other, or what is observed to you by the Court, further than is supported by the Testimony that has been offered.

Now, Gentlemen, I think it not amiss for me (before such time as I enter upon the Consideration of the Particulars, and reminding you what I take to be Evidence in this Case, and what not) to clear one Point, that this Person *Otes*, the Defendant, against whom this Indictment of Perjury is brought, has endeavoured to insinuate, on purpose to gain himself a Reputation, which if he could acquire this way, would add a greater Reproach to the Justice of the Nation, than it has contracted already, by giving too much Credit to such profligate Wretches, as have too lately appeared among us. The Objection he makes and insists so much upon; says he, I was believed very much before, I can produce you the Opinions of the Judges, that declared themselves very well satisfied with my Evidence, and the Verdicts of Juries, two or three; that convicted Men upon my Testimony; and not only that, but here were likewise three or four Parliaments that did not only believe that Testimony (or rather Narrative; for I cannot call that Testimony which was given before the House of Commons) that I gave, but did declare their Satisfaction of the Truth of what I said, which Satisfaction and Belief of theirs did produce Thanks from both Houses to me for giving this Testimony.

But all this while, what Mr. *Solicitor* said upon this Point, is a plain and a full Answer to it:

If in case upon a sudden Information, the King, the Parliament, the Courts of Law, and Juries, were surprized into this Belief, as not imagining there could be a pack of such Villains, that could be wound up to that height, as these Fellows have been; that there could be such an horrid Impostor, as this Fellow, that should make such Attempts, unless there had been some Truth in it.

Therefore the surprize of the Thing, at that Time might obtain a Belief; but, God forbid, that that Belief which was so obtained, should protect the Party believed from being called in question for the falshood of that Testimony, which was the ground of that Belief. It was hardly credible that any Person could be so wicked as to declare such impudent falsties as these; but, God forbid, that we should continue longer under the same blindness and delusion, the whole Matter is now laid open and detected. Therefore, Gentlemen, if you are satisfied in your Consciences, and do believe upon the Testimony and Evidence that has been given here this Day, that those very Things that were so much believed before, were credited upon the Surprize of a sudden Discovery, or the boldness of the Undertaking, yet now do plainly appear to be false; then be it, I say, upon your Consciences, if you let this falshood go unpunished: It is a Charge upon us who are upon our Oaths as Judges, and who must answer to the great Judge of all the World for our Judgments; and 'tis likewise a Charge upon you that are sworn to try this Cause, and must answer, as well as we, for what you do in it, not to have regard to any thing that was done before upon that hurry and surprize, but seriously to weigh and consider what is sworn now, and from thence make a Conclusion, whether you are not satisfied that innocent Blood has been spilt by the means of this Fellow: Nay, in this Case, 'tis a contracting of much more Guilt than ordinary, as it is Murder done under the Forms of Law, and common Methods of Justice; That Men should take away the Lives of their Fellow Creatures, by Perjury and False Accusations, is of such dreadful Consequence, that if the Justice of the Nation shall be afraid to have such Matters detected, there would be an end of all the Security we have of our Lives, Liberties, and whatsoever is dear to us.

Gentlemen, the Justice of the Nation lies under a very great Reproach Abroad, for this particular Thing; and we must be, all of us, that have any Concern for the Honour and Good of our Country, uneasy, till this Matter be thoroughly searched into, and impartially determined; and I take it to be a Case of the greatest Importance to the Settlement of the Kingdom, for the Credit of our Laws, for the Honour and Justice of our Kingdom, that ever came in Judgment in any of our Courts of Justice. And therefore as you respect your own Consciences, and the Obligation of that Oath you are now under, and as you would be thought to bear any regard to the Peace, Honour and Good of your Country, take care to examine strictly and impartially into the Merits of this Cause, and weigh the Evidence which has been given on all Sides: Be not at all dismayed with the Apprehension of Clamour

mour or Calumny, from any sort of People whatsoever, for doing your Duty; neither be led away by the Insinuations of what was believed formerly; for you hear the Reason which might make Otes be believed then; but it is incumbent upon you to enquire, whether you have not sufficient reason to be satisfied what the Truth now is.

And, Gentlemen, I take my self to be the more obliged to take some pains in the pressing a serious and impartial Consideration of these things upon you; because I cannot but say, my Blood does curdle, and my Spirits are raised, that after the Discoveries made, I think, to the satisfaction of all that has attended this Day, to see a Fellow continue so impudent as to brazen it out, as he has done this Day; and that there should appear no more Shame and Confusion than what was seen in the Face of that monstrous Villain that stood but now at the Bar; the pretended Infirmary of his Body made him remove out of Court, but the Infirmary of his depraved Mind, the Blackness of his Soul, the Baseness of his Actions ought to be looked upon with such Horror and Detestation, as to think him unworthy any longer to tread upon the Face of God's Earth: You'll pardon my Warmth, I hope; for it is impossible that such things should come before any honest Man, and not have some extraordinary Influence upon him.

Gentlemen, As to the Merits of the Cause, you have the positive Proof of many Witnesses, whose Testimony I shall by and by, as well as I can, repeat to you; but, pray you, first give me leave to observe somewhat, as to some Points that have been started at the Bar, as, Whether a Papist can be a Witness? Now, suppose all these Persons that come here to testify this Matter against the Defendant, were Papists, as they are not, except you can take it upon your Oaths and Consciences, that all these Men are guilty of voluntary and wilful Perjury, you must find the Defendant guilty.

As to their Difference in Religion, which Otes so much hung upon, I must tell you, every Papist or Roman Catholick, call them how you will, except the contrary be made appear by a Legal Exception; I mean such as would take off the Testimony of one that were not a Papist, is as good a Witness in a Court of Justice, as any Protestant whatsoever; we are not come here to controvert Points of Religion, but to try a bare Matter of Fact; so that all that stuff that you have heard here this Day from the Defendant, and those Insinuations that he made about their Religion, on purpose to cast Dirt and Filth upon all the Testimony that they have brought against him, must signify nothing with you at all. If in case such Doctrine happen to prevail as he has this Day preached, then it is in the Power of any Villain, to swear any Mischief whatsoever against a Roman Catholick, and that Roman Catholick has no way to vindicate himself, nor to make the Truth appear. We have no such Exceptions to Witnesses in our Law; every Man, till it is made to appear, that his Credit is forfeited, may and ought to be received as a Witness to give Testimony in any Cause; so that all that Matter is of no Import at all.

And, Gentlemen, I am the rather minded to

hint this unto you, because he has insinuated something out of the Tryals of *Grove* and *Pickering*, and *Ireland*, which was in *December*, in the Year 1677. at which Tryal *Whitebread* and *Fenwick*, who had pleaded to the same Indictment; were brought on to Tryal; but because there was but one Witness against them, the Court discharged them for that time, and they came not again to Tryal till the Month of *June* or *July* hereafter, when they were convicted and executed; now between that time of *Ireland's* Tryal, and the time when *Whitebread* and the rest came on to Tryal again, says Otes, they had sufficient time to have brought all their Witnesses from *St. Omers*, to testify this Business of my being there, having notice by the former Tryal, what Evidence was against them; but all the Witnesses they did bring, which were about fifteen or sixteen, were not sufficient to countervail the Testimony that Otes gave of his being here in Town; and thereupon they were convicted, condemned, and afterwards (I am sorry to say it) executed.

This is the Objection he makes; but at the same time I must repeat what I said before, when such a dismal Story as this was told, when he had the Confidence to relate it before, in the Houses of Parliament, and there obtained Credit; no wonder if, in that hurry, all of that Perswasion were looked upon with an evil Eye; and the Conviction of those that were at that time accused were too easy.

We must remember the Apprehensions some were under of our Religion being to be subverted, our Government to be destroyed, our King to be murdered, our Throats to be cut by the Papists, to that height, that this very Fellow, Otes, was so much credited, that all other People almost were below him, and greater Respect shewn to him, than to the Branches of the Royal Family. Nay, it was come to that degree of Folly, to give it no worse Name, than in publick Societies, to the Reproach and Infamy of them be it spoken, this profligate Villain was caressed, was drunk to, and saluted, by the Name of the *Saviour of the Nation*. O prodigious Madness! that such a Title, as that was, should ever be given to such a Profligate Monster of Impiety, as this is.

Good God, whither were we running, when many easy People were so strangely wrought upon by this Impostor, and when the villainous and black Designs of some evil Instruments amongst us, could prevail so far, as to deceive almost a whole Nation into the Belief of so horrid a Falshood; even at the same time that a hidden Treason too deeply contriv'd was carried on amongst us? But, God be thanked, was not too lately discovered. The Conspirators had a fair Game of it, whilst this Fellow was believed, and they needed no other means to accomplish their Design: But when he was found false, and the pretended Plot had lost its Credit in the World, what is their next Step? Why, then they enter into that black and bloody Conspiracy, from which it hath pleased God lately to deliver us.

I speak this the rather, because I know there are in my Eye several Persons, whose Fears of Popery made them give Credit to such Villains as these before: But when it pleased God to open their Eyes, and the false Mist vanish'd, they

they found a real Conspiracy against the Persons of that Blessed King, lately dead, and of our Gracious Sovereign, now living, carried on under the pretence of that false, but so much credited Discovery, and now, God be thanked, all our Eyes are open. And I hope, as we are secured from what we so vainly dreaded, so we shall not be afraid to have Villany detected, and the greatest Mark of Infamy that can be put upon it.

Yes, Gentlemen, there was a Consult, and there was a Conspiracy against the Life of our King; our Government, and our Religion: Not a Consult at the *White Horse* in the *Strand*, but a Cabal and Association of perfidious Rebels and Traitors, who had a mind to embroil us in Blood and Confusion, but, God be thanked, it had not its desired Effect; the same sort of Villains were Parties in this Conspiracy, that had too great a Hand in the late great Rebellion, which we to this Day feel the smart of, and they had a mind to make use of the like Instruments, as they did before, to bring us into the like Misery, as we were before involv'd in.

And is it not a prodigious thing, to have such Actions as these to day defended in a Court of Justice, with that Impudence and Unconcernedness, as tho' he would challenge even God Almighty to punish his Wickedness, and blasphemously blesses God, that he has liv'd to do such wonderful Service to the Protestant Religion; and is so obstinate, in his Villany, as to declare he would venture his Blood for the Confirmation of so impious a Falshood; and indeed, to speak the Truth, he makes no great Venture in it; for when he had pawn'd his immortal Soul, by so perjur'd a Testimony, he may very easily proffer the venturing of his vile Carcass to maintain it?

Gentlemen, Having thus said, (and I could not forbear saying of it) give me leave to put you in mind of what lies before you now to be tryed. First, this Indictment takes notice, that there was an Indictment, taken before the Commissioners of Oyer and Terminer, and Goal-delivery at *Hicks's-hall*, of High Treason against *Whitebread*, *Fenwick*, *Ireland*, *Pickering* and *Grove*, and that Indictment, and the whole Record is proved to you by *Swift*: For I must tell you as I go along, what Proofs there are of all the Particulars, and you, upon consideration of all that is alledged, are to be Judges what is sufficient Proof to convict the Defendant of the Crime that is laid to him; which is wilful and corrupt Perjury. The Indictment, Gentlemen, sets forth the Oath that *Otes* did make at *Ireland's Tryal*, and then avers it to be false: For the Oath that he did take, that stands thus, That he did swear he was present at a Consult, held at the *White Horse* Tavern in the *Strand*, the 24th of *April* 1678. That he did swear, That it was there resolved to murder the late King: How that that Resolution was carried by him from Chamber to Chamber, that is, to *Whitebread's* and *Fenwick's*, and *Ireland's* Chambers, and saw them sign this Resolution there; and the Assignment of the Perjury, is, That he was not present at any Consult, 'tis not that there was not any such Consult, tho' it appears by the Evidence that there was none such, but that he was not present at any Consult at all held there at that time.

Now, that he did make such an Oath, is proved by a worthy Gentleman, Mr. *Foster*; a Gentleman known to you all that live in the City of *London*; and he did truly make that Remark in the beginning of his Testimony, that any honest Man in his place would have done; That he was one of those unfortunate Men, that tryed Mr. *Ireland*; for tho' a Man do go according to his Conscience, as to be sure there is no question to be made of it, but all these Jury-men did in finding that Verdict; yet when I come to find, that the Evidence, upon which I convicted those Men, is detected to be false; and that upon my Verdict the Persons were executed; tho' no Guilt of their Blood is really contracted by me; yet I cannot but think my self unfortunate, that I was, tho' innocently, an Instrument of their Death; and there is never an one of you, but would have thought your selves unfortunate, if you had convicted Men upon such a Testimony, which tho' you believed then, yet afterwards you should have reason to conclude was false. And yet *Otes* would have you think, that because they believed him when he was a Villain, and not known to be so, you must believe him, notwithstanding his Villany is now discovered; for that is all the Argument this learned Doctor has a mind to impose upon you by.

Gentlemen, Mr. Solicitor has been very particular, in giving an Account of the whole Evidence, and then it comes to this, which is the natural Question in the Case, Whether upon the Testimonies that have been given to you, there does remain so much as a Doubt, what Verdict you ought to give; for I confess, were it a thing in the least doubtful, Matters of Perjury are so nice and tender, that we and you ought to be cautious how you convict People for Perjury in doubtful Matters; but if it be a thing without doubt, and plainly evident, that there was a Verdict thereupon, adds to the Guilt; because the Justice of the Nation is imposed upon; the God of Heaven deliver every honest Man's Soul and Conscience from such Guilt. For my part, I would not for the Universe have the least Guilt of innocent Blood lie upon me.

Then, Gentlemen, to prove what *Otes* swore is not true, you have no less than twenty two Witnesses, that swear directly he was not here in *London* the 24th of *April* 1678. But it may be that it is not such a positive Testimony as the Law requires to prove a Perjury; but then to swear directly that he was in another place, at that time, is a positive Contradiction to his Evidence; and this has been testified by the Oaths of twenty two Persons, against the Credit of whose Testimony there is no Objection at all really made, but only Impudence; and that Shadow of an Objection, They are all Papists, and I am a Protestant; and truly a wonderful Credit is is, I must needs say, for the Protestant Religion for to have such a Learned and Pious Supporter, as Mr. *Otes*, to be of that Perswasion, but it is certain there was a *Judas* amongst the twelve Apostles, and there are Rascals of all Perswasions. And truly I take it makes never the more for his Advantage, nor the Honour of our Church, that he is pleased to call himself by that Name, which he, and such as he, have brought into some Scandal and

Reproach, by setting themselves up, as the great Pillars of it; but we know Dr. Otes has been very liberal to himself, he has given himself Baptism, and given himself the Doctor's Degree, and now he gives himself the Title of the Reforming Protestant, Mr. Otes. We have Protestant Shoe-makers, and Protestant Joiners, and Protestant Atheists, and all sorts of true Protestant Rascals; but it becomes us and you to assert the Honour of our Religion by disowning any Fellowship with such Villains, or their Actions.

Gentlemen, The Method that was taken, gives you an exact account in point of time, as to this whole Business. First, Says Mr. Hilsley, I left him, in time the 23d of April, New Stile, at St. Omers, and I am sure I saw him there then, which is the 13th, Old Stile, the 24th of April, New Stile, which is the 14th, Old Stile, I came from St. Omers, I did not see him there that Morning, but I myself came to Calais, it being Sunday, and I stayed there till Sunday in the Afternoon, and all Night. I came on Monday in the Afternoon to take Water at Calais, and from thence went to Dover. And from thence the next Day I went towards London; but I stayed four or five Days by the way before I came to London; but then there is this Circumstance that you must take along with you, Gentlemen, That at this time, one Mr. Burnaby was coming from London, and going to St. Omers, and met with Mr. Hilsley in his way towards London; says Hilsley, I came afterwards to Town, and that was upon the Monday following, which happens to be the 21st or 22d of April, our Stile; but this I do remember very particularly, which makes his Testimony to be true, and not dressed up for this occasion; says he, I told one Osborn at that time that we had a pretty Fellow at St. Omers, that went sometimes by the Name of Lucy, and sometimes by the Name of Otes, a Minister of the Church of England; and there he comes and gives an account of his ridiculous childish Actions, and what a remarkable Fellow he was; and this, says he, I told to Osborn.

Now, to make this good, you have one Mr. Dorrel, who tells you there happened a Discourse, where he was present, between his Mother and Mr. Osborn, about Religion; and amongst other things, Osborn did say, Mr. Hilsley had told him he left Otes at St. Omers when he came away from thence; and Mr. Osborn, he comes and says, I remember I did tell Mr. Dorrel and his Mother, at that time that Mr. Hilsley did tell me this Story; so that here are these two Witnesses which support Mr. Hilsley in that Circumstance of the time of his coming away, and his Relation of Otes being left behind him, and that this was related about the 21st or 22d of April.

Burnaby is the next Person that was produced, and he swears he met Hilsley by Custinbourn; and he happens to set out for St. Omers the 18th of April, our Stile, and to come thither to St. Omers the 21st; and he swears positively, that he was there the 21st, 22d, 23d, and was there the 25th Day of April, our Stile; and he does positively affirm, that all those Days he saw Otes there at St. Omers; that Otes intruded into his Company at his first coming; and that he and all the other Scholars wondered at the

Confidence of the Man; and he particularly remembers that he was with him at a Publick Entertainment that was there the 25th; and if so, then it is impossible that what Otes has sworn of his being at the Consult the 24th of April, our Stile, can be true; and except you can imagine Mr. Otes to fly from St. Omers the 24th Day in the Morning, and be at the Consult and back again at Night, which is more than he would have believed, because he swears the contrary, you must conclude that what he swore was false.

The next Witness is Mr. Pool, and he comes and says, he was there at St. Omers, and he came over from thence the 25th of April, and that was the Day after Otes swears the Consult of the Plot to be here; and all the rest of the Witnesses do directly swear, That at the time that Pool went from thence, Otes was there; so that the Testimony of Pool is fully and positively confirmed; and Pool gives you a reason why he came over, which was the Death of a Brother of his, and upon a Prospect of an Estate he came into England, which likewise is a reasonable Circumstance why he should remember the time, because he had such Inducement to come over hither.

The next, Gentlemen, is one Thornton, and he comes to the Month of May, to the 1st and 2d of May, their Stile, which was the 21st and 22d of April, our Stile, and particularly he is sure Otes was there upon the 22d of April, our Stile, that is, the 2d of May, their Stile. For, says he, there was an Action or Play of the Scholars; and I can tell you how I remember Otes was there, Otes had a mind to have a place to see the Play, which he had no Pretence or Title to; and he had a Scuffle with some body about it; and therefore I remember by that Token, that he was there at that time.

Now, Gentlemen, it is not easy to be imagined, that six or seven Men should agree in their Testimony in all those Circumstances, which in themselves are but minute; yet when offered as Reasons to induce Men's Remembrance, must be allowed as good Reasons; and yet this is to be thought to be but a made Story. If Sir Richard Barker's Coachman, and Mrs. Mayo had had any such Circumstances to support their Testimony, they would have had much more Credit.

Then there is one Conway; and it is very observable what he speaks of; for he was there all the while that they say Otes was there, and he gives you an account that he saw him with Burnaby the first time he came over, and agrees with Burnaby in this, that he wonder'd much at his Confidence, and did think that he was very well known to him before: He swears Otes came in thither about the beginning of December 77, and he was not absent, says he and several more, any one Night, except in January once at Watton, till he went away in June 78. Nay, they are so precise in their Memory for very good Reasons, because they are so regular in their Societies, and keep a strict Order, each has his fixed Place in the Refectory, where all the Socii or the Members of the College do meet; and because this Fellow was an old Fellow, older than the rest, and likewise was a Dunce, therefore he was set at the Dunce-Table in every body's View, because he was a Block-

Blockhead, and too old to keep Company with the Boys; so that though perhaps one of those young Fellows in a mixt Society may escape the View, and be absent without being missed, yet Remarkable Mr. Otes is not so easily forgotten, that us'd to sit by himself. And as that Noble Lord, my Lord Gerrard of Bromley says, he has a particular Face, and a particular Tone; and there was more reason to remark him than any other, both upon the Account of his Person and of his Actions; so that I must needs say indeed, it is not a downright and positive Swearing, but their Testimony is given with deliberation and recollection of such particular Circumstances as may reasonably induce any unprejudic'd Person to give Credit to it.

The next Witness, Gentlemen, is *Haggerstone*, whose Evidence is wonderful particular, and very material as to the Circumstances that accompany it. For you are to observe, that in these Colleges some are of the Sodality, and some are not; and some are of such and such Classes or Forms, and others of other. Now this Gentleman and Mr. Otes were of the same Form, and he does particularly remember that he was setting up for a Preacher, as he has an excellent knack that way; and he tells you, how ridiculous he made the late King in a Sermon; that he halted between two Opinions, and there ran a Stream of Popery between his Legs; and such like precious Stuff he vented. And to fix it to be about the same time that is now in question, he says, he particularly remembers it was when he was Reader, when Mr. Otes was, it seems, the Buffoon to the Society, or as I may call him, the Jack-pudding to the College, that us'd to make them Sport, and was guilty of so many ridiculous Things, that they could not but put particular Remarks upon him.

Next, I take notice, that this Person says, there were two Persons, *Williams* and *Marsh*, that were qualified to give Suffrages in the Congregation, that is, they were pass'd eighteen Years standing, and did go over: For that there was a Consult, is not denied, nor that it was in *London*, nor that it was upon the 24th of *April*; but they say, it was a Triennial Meeting, which they us'd to have once in three Years for the choice of some Officers to manage the Affairs of the Society; as for the choice of a Provincial, and other Persons that they were to send upon their Errands, in order to the support of their Society; so that under the Colour and Countenance, of what was in it self ordinary and usual, and that happened to be at that Time, Otes, who had heard somewhat of it, and that it was the 24th of *April*, and that such and such were to be there, he upon that Hear-say, as should seem at *St. Omers*, does feign and contrive this pretended Conspiracy.

The next is one *Beesfon*; and it is very material too that he swears: For besides what he testifies, That from the time of his coming, which was in *December 77*, he was not absent till the 23^d of *June*, when he went away; and for the Time in question, he very well remembers his being there, by this Circumstance: Says he, I was chosen to be Reader of the Sodality in the Month of *March*, but then Otes comes and gets the Office out of my Hands; but still with me there was that Benefit reserved, that if he should at

any time fail of Reading there upon a *Sunday*, or a Holy-day, I was then to have read, and to have supplied his Place. Says he, I was there from *March*, till the Time Otes went away in *June*; and Otes read there that very *Sunday* before the Time in *June* that he went away. And I am sure I heard him read every time; and in case he had not read every time, I must have read in his Absence: But I did not read at all during that time.

Now, Gentlemen, when a Man is to succeed or to supply the Absence of another in an Office that is peculiar as to the Charge incumbent upon the Officer, and considerable as to the Profit of it, that must needs make an impression upon the Mind, and give a Man a more exact remembrance of the Thing; and therefore I recommend it particularly to your Observation.

The next is one Mr. *Smith*, and he says, he saw Otes there all the Time: And as to one part of it, when he himself was in the Infirmary, Otes went to visit him every two or three Days; nay, and about such a Time in *May*, says he, which was about the beginning of *May*, Otes being then in the Infirmary, not well, the Doctor and he had a pretty Dialogue together, and Otes spoke false Latin to the Doctor, for he said, *Si placeat Dominatio vestra*, in the beginning of his Compliment; This he did particularly say was the Expression that this excellent Scholar us'd to the Physician at his first application to him, and all the whole College took notice of that Piece of his Learning.

The next is one *Price*, and he tells you, he was there all the time that the others speak of; he remembers him very well, and particularly says, I am sure Otes was there the 11th of *May*, *N. S.* which will be the first of *May O. S.* Because, says he, I know he was soundly beaten that Day upon a Quarrel that he had there; this particularly he speaks to, besides his remembrance of the other Circumstances in concurrence with the former Witnesses.

Mr. *Doddington* swears the same, and Mr. *Gerrard* also swears the same, with that other particular Circumstance that Mr. *Solicitor* repeated to you, which was of Otes being there upon the Day of Confirmation, the 26th of *May N. S.* the 16th of *May O. S.* and he is sure of it, because he was Confirmed along with him, and therefore it is impossible he should forget it: And my Lord *Gerrard*, who was next, gives this reason upon his remembrance of all the forementioned Particulars, that he always took special notice of the Man for his Canting Tone, his Physiognomy, and remarkable Behaviour.

Then there is Mr. *Morgan* who is no Papist, but a Minister of the Church of *England*; now Mr. Otes was angry with all the rest, because they were Catholics; but what has to say to Mr. *Morgan* who is a Protestant? Why the truth is, there are none of them to be believed, because they swear against him, and really he ought to be permitted to give that reason, or it is like to go very hard with him; for if in case you believe but a third Part of the Testimony that has been given; it is enough to do his Work. But what says Mr. *Morgan*? Truly he comes up to the 24th of *April* particularly, and he tells you how he remembers it; and the first Occasion he had to look into it was; they

they being all surprized at St. Omers at what Otes had Sworn, and Mr. Morgan recollecting with himself, did remember that very Day he was playing at Ball within the College, and happened to toss his Ball over the Wall into the Garden, and not being able to recover it any other way, he spied Otes walking and looking into his Book, and therefore he desired him to lend him his Key, and by the help of that, he went in and fetched his Ball; and this was the very Day that Otes swore he was here.

Mr. Arundel says the same: The two Turbervoiles say the same; and one of them is positive to have seen him there, either the 24th and 25th, or 23d and 24th of April O. S. which is the 3d and 4th, or 4th and 5th of May N. S. and if it were either of these Days, it cannot be possible he should be here at the Consult.

The next is Mr. Clavering, and I cannot but particularly take notice of what he has sworn: He says Mr. Otes was there all the time that the rest speak of; but it seems particularly about the time of the Congregation in London: There comes in a Stranger that was poor, and this Gentleman Mr. Clavering made a Collection for him; and it was talked of in the College as the reason why he had not Success in his Collection, because the Fathers were gone to the Congregation. Nay, and yet farther says he, I do remember particularly that Mr. Williams and Mr. Marsh did go over to the Congregation, but Otes did not; for I do remember when Williams and Marsh came back again, I had some Discourse with Mr. Otes about the Congregation: He came to me, and desired to know of me what Account I was able to give of the Matter of that Meeting after the Consult was over. Now had Mr. Otes been there, and been a Person of that great Trust that he had sworn himself into, he needed not sure have asked Mr. Clavering at St. Omers, what the Business of the Consult was at London, where he himself had been, but the other had not.

There is besides Mr. Copley, another Witness, Mr. Cooke, that speaks particularly of the 30th of April, that he was sure Otes was there then, because of the Procession, and because he walked by himself in it; and Wright the last Witness gives a general Account, but speaks to no particular Time.

And now, Gentlemen, after all this Evidence, *Viva voce*, you must give me leave to hint *Testimonium Rei*, an improbable Oath was that which Otes owns he made, if it be considered in all its Parts. Can any Man believe that fifty Persons should meet together in a Tavern in London, and these fifty Persons should come to a Resolution to kill the King and subvert the Government, and alter the Religion; and that this Consultation being drawn up in the Tavern (for so he swears it was) they should sever themselves into lesser Clubs and Companies, and take care that none should sign when they were altogether and among themselves, but must have it carried up and down from one Man's Chamber to another, and find no body to trust with this Affair, that if discovered, must subject them to present Destruction, and ruin their whole Party, but only Mr. Otes, who was none of their own Order, nor does appear to be of such Credit amongst them? Can you believe any Men should be so void of Sense and Reason,

that of fifty together, and those reputed as subtle as any Sort of Men whatsoever, there should not be one Man of common Understanding that should take care for a more rational Management of so great and hazardous an Undertaking? When they were met together, and might have dispatched it in a quarter of an Hour, they should separate themselves into several Parts of the Town, and trust a Resolution of that nature in Mr. Otes's Pocket, in whom if they had had more Confidence than they seem to have, yet it was folly and madness to give him that Opportunity of destroying all them, and making himself; were there no other Evidence but the very Testimony of the Thing, it would go a very great way with me I confess; but I must say withal, you are Judges of this Fact, upon a superadded Testimony of Twenty two Witnesses, *Viva voce*, I think it leaves the Thing without any doubt.

Gentlemen, the Answer given by the Defendant to this Charge is very fallacious; and though he puts such a Countenance upon it, as though his Witnesses were such Persons of Credit, that nothing could be objected against them, yet he is certainly very much mistaken in that: He has produced but two positive Witnesses, and those two as positive as they are in their Proof, are likewise positive in their Contradictions of one another, and what they have said is left to your Consideration.

The one is a Coachman, the other was Sir Richard Barker's House-keeper; they indeed do say, Sir Richard Barker's Wife's Sister, and his Nephew, and his Daughter, and his Nieces, and a worshipful Knight, and I know not who, that the old Woman tells me are gone into my Countrey, were all there at the same time, and no body comes to testify it, but only this Coachman and this old Woman: These, Gentlemen, are Things fit to be thought of.

But now let us consider how they agree in their Evidence. Says the Woman, I saw him not till the beginning of May, but I am sure he was there before once or twice. And how does she know that? Because the Coachman told her so; and he came there several times, but he did dine there but once; and when he came there the first time she saw him, he came in such a Disguise, and he had a short Perriwig, and a kind of a short white Coat, and a white Hat; but when my Coachman comes to swear, he tells you the first time he saw him, the Woman saw him too, that he had his own Hair, and cut close to his Ears, that made him look, as the young Fellow told her, like a Quaker. And when I asked the Coachman, Are you sure that Benjamin the young Fellow did see him the first time you saw him there? He told me, No; but he was sure the old Woman did look out of the Window and see him, which she denies. I then asked him how often he dined there? He tells you several Times, and there were such and such, and the old Woman did see him dine there several times; which she denies that she ever saw him dine there above once: And I take notice of one of the Evidence, the Coachman, he gives but an odd sort of Reason for his remembrance: In February, says he, my Lady died, and my Master was sick at Putney, and Otes came into the Yard while I was cleaning my Coach; and I am sure it was where the

Coat

Coat of Arms hung over the Door, because he ask'd me about my Lady's death, and therefore it must be in *May*, when, for ought does appear to the contrary, it might be in any other Month after the Escutcheon was up; and in the other Circumstances there is no certainty at all; So that it is plain, these Witnesses swear according as their Humour leads them, and not according to any remembrance they have of the Thing.

And I rather believe it, because the third Witness, that is *Page* the Apothecary, that used to make up *Sir Richard Barker's* Medicines, gives an Evidence contrary to both those, he cannot remember the Year positively or particularly; but I'll tell you how he thwarts and contradicts the other Peoples Testimony; for he remembers he came in such a Disguise, but he believes no body spoke to him but himself, because he found him walking in the Place that was for the common reception of the Patients, and he asked for *Dr. Tongue*, and he not being within, he went away very discontented: And so now these three Witnesses seem to contradict one another; and the last Witness *Walker*, who is the Parson, he says nothing to the Matter; for it does plainly appear, the Time which he speaks of, which was about a Year and a half before he was called to testify at the five Jesuits Tryal, must be in the Year 77, and not in the Year 78, which is the Question here, which must be before he went first to *St. Omers*.

Gentlemen, the other Part of *Mr. Otes's* Defence has been upon this Topick: Says he, I have been believed heretofore, the Parliaments have given me Credit; and to prove it, he has called several Noble Lords and Persons of Quality. The first was my Lord of *Devonshire*, who says he cannot remember any Particulars of his Evidence, 'tis so long since; but he remembers the Parliament, upon the Evidence given of the Plot, did make such Votes as we do all know of. And there were a great many People that gave Credit to his Testimony, who, God be thanked, are of another Opinion now. And my Lord of *Clare* says, he was not in the House of Lords at the beginning of the Discovery, and cannot remember any Thing in particular. But my Lord of *Huntingdon* was a little more particular; and *Mr. Otes* began to be angry with him, because he spoke so much: Says he, I remember *Mr. Otes* was examin'd in the House of Lords, and was believed there, because they did believe he spoke Truth at that time; but now, upon Consideration of the Contradictions and Falsities of his Evidence, I cannot but say, I do believe him, says he, to be a great Villain, and that he has been guilty of spilling innocent Blood. And this Noble Lord speaks with great Honour and Consideration: And truly, I believe, if every Man that is here were to speak his Mind, my Lord has delivered the Opinions of us all, and many Thousands more in the Nation.

Mr. Otes call'd next my Lord Chief Baron, my Brother *Gregory*, my Lord of *London*, *Sir George Treby*, *Mr. Williams*, and my Brother *Dolben*. But they all tell you, they are able to give no particular Answers to his Questions; and this was the Sum of his Evidence.

To this *Mr. Attorney General* has given a Reply of Evidence, that truly is of very great

Moment. First, here is produced *Sir George Wakeman*, whom *Otes* accused of High Treason, and he suffered his Tryal and was acquitted; so that as well as the Jury had given Credit to him in the former Verdicts, so says *Mr. Attorney*, I must speak likewise for the Credit of that Verdict that did disbelieve him, because though he did swear as roundly and briskly up to the Matter as he had done before, yet when he had not the Hurry and Surprize of his Discovery to support him, his Villany was detected, and the Innocent acquitted. And besides the Record of the Acquittal, here is the Person himself who is now under no dread or danger, having stood his Tryal and being acquitted; and he takes it upon his Oath, in the Presence of the great God, and the Searcher of Hearts, That whatsoever *Otes* swore against him at his Tryal, was every Tittle of it false; And this Acquittal of his, being after great and mature Consideration, is an Evidence of another-gets quality, than the Verdicts of the other Convictions.

Next to him, is my Lord *Castlemain*, a Person of very great Honour; and he gives an Account he was arraigned of High Treason at this Bar, and upon his Tryal *Otes* was produced as a Witness against him, and there he swore he met with my Lord *Castlemain* in *Lincolns-Inn-Fields*, and great familiarity there was between them, so that my Lord could not trust him in a less Affair than the Plot; and away he goes with him to *Fenwick's* Chamber, there to talk about a Design of killing the late King. *Mr. Otes*, of all Mankind must be the great Repository of this Secret; but the Jury then being Persons of great Understanding and Integrity, did not believe *Otes*, but acquitted my Lord *Castlemain*: And he does here take it upon his Oath, back'd with all the Imprecations of Evil to himself that a Man can use, That there was not one Word of Truth in *Otes's* Testimony; nor did he ever see *Otes* in his life, till such time as he was taken up upon his Accusation. Now are here two Persons of Honour and Quality, that upon their Oaths do particularly give you an Account, as in the Presence of Almighty God, that *Otes* has twice forsworn himself against them.

Gentlemen, there is notice to be taken of the Journal of the House of Lords; and though it is true for the sake of the Precedent, and to secure the Justice of the Nation, we did keep them strictly to their Proof, that it was upon Oath. And as to the Business of *Smith*, though we do believe the Thing in our private Judgments, yet we thought it not fit to be permitted, that Persons should upon their own Oaths confess themselves to be guilty of Perjury, and afterwards give Evidence against others; for such are not to have the Countenance of ever being Witnesses again: Yet by the Records of Parliament, and other Evidence, there is enough to make the Matter aimed at clear.

For it is clear by his Narrative, that *Otes* did first swear, as far as he could well swear, to bring him into the Displeasure of the People: For that was his way to intimidate all he had to do with, and thereby force them to comply with his Designs. And there was no more plausible Accusation at that time, than to accuse a Man for saying somewhat against

the Parliament, or being in a Combination to subvert the Protestant Religion. But you see when he comes to have his own Turn served, then this Man upon whom he had fixed such an odious Character, is really no Papist at all, but engaged in Service for his King and Country, and has Mr. Otes's Passport, a Thing of great advantage to him at that Season. This the King's Counsel made use of with great reason, as an Evidence of Tampering: For the Man has altered his Opinion of one he had before accused, and now brings him as an honest Man to give Evidence for him. And this, say they, must be intended to be done by Practice and by Threats.

And the rather, Gentlemen, for that you have an Account by Witnesses sworn, that there was one *Clay* a Popish Priest, that lay in Prison at the *Gate-House*, and while he was there *Otes* and *Sir William Waller* came into the Prison to him, and tampering with him, says *Otes*, I hear there are some *St. Omers* Boys that intend to testify that I was at *St. Omers*, when I say I was at *London*; but you must swear, that you dined with me at Mr. *Howard's* in *May* 1678. or if you will not, you know I know you to be a Priest, and I'll hang you. Says *Clay*, Where is my Silver and Gold that was taken away from me? And we all know *Sir William Waller* was wonderful good at the fingering of Gold; he us'd to take away broad Pieces as Popish Reliques, because of the Crosses upon them. Says *Clay*, Give me my Gold again, I will swear for you; I have been a Rogue before, and I may be a Rogue again. And accordingly a Contract is made for him to swear directly that *Otes* and he were together at Mr. *Howard's* House in *May* 78. This very Fellow that tells you now the Story, told it the next Morning to another Man, who has likewise sworn the same. Then is *Clay* conveyed by *Otes* to the *Old Bailey*, and there swears, being thus threatened and suborn'd, That in *May* 1678. he and Mr. *Otes* dined together at Mr. *Howard's* House, and you have Mr. *Howard* produc'd, who does swear that *Clay* did swear so; but indeed he was not there with Mr. *Otes* at Dinner till *July* after.

This, Gentlemen, is direct Corruption and Subornation; and if a Man will be a corrupt Knave, and endeavour to suborn Witnesses to swear that which is false, he is the more likely to swear false himself. Besides, that you are to take notice, here is his own Narrative produced, where you have it sworn by himself, That he went back to *St. Omers* about the beginning of *May*, and was there all the Month of *May*, and in *June* till the latter end of it. Then all this while, either Mr. *Otes*, or his Witnesses, are perjured in the Case: He says, he stay'd but three or four Days in *England* after the Consult was over, and then went freight back again to *St. Omers*. Which must be the first Week in *May*; but if you believe his two Witnesses, he din'd with them several times after that: And so it is apparent, some of them are guilty of gross and foul Perjury.

Now, Gentlemen, I cannot but resort back to the Objection that I made at first. 'Tis strange to me, that a Man that came upon such a Design, should go publickly about the Streets at Noon-day, though in a Disguise, yet he was known. But if you take the Persons Time to be in the Year 1677, then it is easily reconciled what they did say of their seeing him in such a Disguise; and so all their Testimony may stand together, and perhaps they may mistake in a Point of Time, though not in the Substance of their Evidence; and I would out of Charity conclude it to be so.

But I will say, if they are to be taken strictly to the Year 1678, it is monstrous to imagine, that we should have no body brought to let us know where he lodged, where he eat, with whom he convers'd for all that time.

Gentlemen, I have detained you the longer in this Matter, because I take it to be of so great Weight, wherein the Justice and Honour of the Nation are so much engag'd, and it was therefore fit this Cause should be tryed in the most solemn and publick manner, in order to vindicate the Nation from the Reproach and Calumny of Injustice and Oppression. And sure I am, if you think these Witnesses swear true, as I cannot see any colour of Objection, there does not remain the least doubt, but that *Otes* is the blackest, most perjur'd Villain that ever appear'd upon the face of the Earth.

Cl. of Cr. Tipstaff, you must take care of the Jury.

L. C. J. Gentlemen, if any of you have a mind to drink at the Bar, before you go, you shall have some got for you.

Jury. No, my Lord, we do not care for drinking.

L. C. J. Then we will stay for you.

Then the Jury withdrew to consider of their Verdict, and after about a quarter of an Hour's stay, they returned and delivered in their Verdict: That the Defendant was Guilty of the Perjury whereof he was Indicted. Which being Recorded, the Lord Chief Justice spoke to the Jury, to this effect.

L. C. J. Gentlemen, that we are not, God be thanked, in those Times of Disorder and Confusion that we have been heretofore in, to have Humming or Hissings to declare the Auditors Approbation or Dislike of Juries Verdicts. But because there has been this Day mention made of the Opinions of Judges about Verdicts, I shall take the liberty to declare my Mind to you now; That for my Part, I am satisfied in my Conscience, you have given a good and a just Verdict; and so I believe is every other Judge upon the Bench.

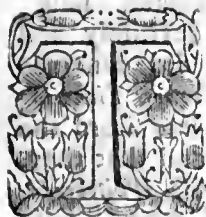
To which the rest of the Judges assented; and then the Court arose.



THE
T R Y A L
O F
TITUS OTES.

Die Sabbati 9. Maii 1685. in Banco Regis.

Dominus Rex versus OTES.



HIS Day being appointed for the Tryal of the Other of the Causes between Our Sovereign Lord the King, and Titus Otes, for Perjury: The same began about nine in the Morning, and proceeded after this manner:

First, Proclamation was made for Silence: Then the Defendant was called; who, appearing in Person, was advised to look to his Challenges; but he challenged none; only he desir'd, that they might be all ask'd, Whether they were of the Grand Jury that found the Bill? Which was done: And all denying it, the Twelve sworn were these:

Sir Thomas Vernon, Kt. Nicholas Charleton, Esq; Thomas Langham, Esq; Thomas Hartop, Francis Griffiths, John Kent,	}	Jur,	George Toriano, Henry Loades, John Midgley, John Pelling, Thomas Short, and George Peck.
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Cl. of Cr. Gentlemen, You that are sworn, hearken to the Record.

Memorandum, That by a certain Inquisition for our Sovereign Lord the King, at the Guild hall of the City of London, and within the same City, on Tuesday the 28th of October, in the 36th Year of the Reign of our late Sovereign Lord Charles II. by the Grace of God, of England, Scotland, France, and Ireland, King, Defender of the Faith, &c. before Sir Henry Tulse, Knight, Mayor of the City of London; Sir William Turner, Knight; and Sir James Edwards, Knight, Aldermen of the said City; Sir Thomas Jenner, Knight, one of His Majesty's Serjeants at Law, and Recorder of the same City; Sir Robert Jefferies, Knight; and Sir John Peake, Knight, other Aldermen of the said City; and others their Companions, Justices of our said Lord the King; by His Majesty's Letters Patents under the Great Seal of England, to enquire of several Offences in the said Letters Patents contain'd, and to hear and determine the same, according to the Laws and Customs of this Kingdom, by the Oaths

of Twelve Jurors, honest and lawful Men of the City of London aforesaid, who then and there being then and there sworn, and charged to enquire for our said Sovereign Lord the King, and the Body of the said City, upon their Oaths, present:

That at a certain Session of our said Lord the King, holden for the County of Middlesex, at Hicks's Hall in St. John's-street, in the County aforesaid; on Monday (to wit) the 16th Day of December, in the Year of the Reign of our said late Sovereign Lord, Charles II. by the Grace of God, of England, Scotland, France and Ireland, King, Defender of the Faith, &c. the 30th before Sir Reginald Forster, Baronet; Sir Philip Matthews, Baronet; Sir William Bowles, Knight; Sir Charles Pitfield, Knight; Thomas Robinson, Humphrey Wyrley, Thomas Harriot, and William Hempson, Esquires, Justices of our said Lord the King; to enquire by the Oaths of Honest and Lawful Men, of the County of Middlesex aforesaid; and by other ways, manners, and means, whereby they might, or could better know, as well within Liberties as without; by whom the Truth of the Matter might be better known and enquired of, concerning all Treasons and Mispriisons of Treasons, Insurrections, Rebellions, Counterfeittings, Clippings, Washings, Falsenaking, and other Falsifying of the Moneys of this Kingdom of England; and of any other Kingdoms, and Dominions whatsoever; and of all Murthers, Felonies, Manslaughters, Killings, Burglaries, and other Articles and Offences in the Letters Patents of our said Lord the King, to them, or any four or more of them, thereupon directed, specified; As also, the Accessories of the same, within the County aforesaid, as well within Liberties as without, by whomsoever, howsoever had made done, or committed, and to hear and determine the same Treasons, and other the Premises, according to the Law, and Custom of this Kingdom of England, assigned by the Oaths of Ralph Wain, John Vaughan, Richard Foster, Thomas Paget, Robert Newington, Henry Tompkins, Robert Hayes, John Greenwood,

Peter

Peter Stinyefon, Josiab Richard Richman, Augustine Bear, John King, Nathanael Brit, Francis Fisher, Edward Foster, and Samuel Lynn; Honest and Lawful Men of the County aforesaid, sworn, and charg'd to enquire for our said Lord the King, and the Body of the County aforesaid, upon their Oaths; it was presented, That *Thomas White*, otherwise *Whitebread*, late of the Parish of *St. Giles's in the Fields*, in the County of *Middlesex*, Clerk; *William Ireland*, late of the Parish aforesaid, in the County aforesaid, Clerk; *John Fenwick*, late of the same Parish and County, Clerk; *Thomas Pickering*, late of the Parish aforesaid, in the County aforesaid, Clerk; and *John Grove*, late of the Parish aforesaid, in the County aforesaid, Gentleman: As false Traitors against the most Illustrious, and most Serene, and Excellent Prince, our said late Sovereign Lord *Charles II.* by the Grace of God, of *England, Scotland, France and Ireland*, King, Defender of the Faith, &c. their Supreme and Natural Lord; not having the Fear of the Lord in their Hearts, nor weighing the Duty of their Allegiance; but being moved and seduced by the Instigation of the Devil, the cordial Love, and true, due, and Natural Obedience, which True and Faithful Subjects of our said Lord the King, towards him our said Lord the King, should, and of right ought to bear, utterly withdrawing and contriving, and, with all their might, intending the Peace and common Tranquillity of this Kingdom of *England*, to disturb; and the true Worship of God, within this Kingdom of *England*, used, and by Law Established, to subvert; and Sedition and Rebellion within this Kingdom of *England*, to move, stir up, and procure; and the cordial Love, and true and due Obedience, which true and faithful Subjects of our said Lord the King, towards him the said Lord the King, should, and of right ought to bear, utterly to withdraw, put out, and extinguish; and our said Sovereign Lord the King, to Death and final Destruction to bring and put, the 24th of *April*, in the 30th Year of the Reign of our said late Sovereign Lord *Charles II.* at the Parish of *St. Giles's in the Fields* aforesaid, in the County of *Middlesex* aforesaid; falsely, maliciously, subtilly, advisedly, and traiterously, did purpose, compass, imagine, and intend Sedition and Rebellion within this Kingdom of *England* to move, stir up, and procure, and a miserable Slaughter amongst the Subjects of our said Sovereign Lord the King, to procure and cause; and our said Lord the King, from the Regal State, Title, Power, and Government of his Kingdom of *England*, wholly to deprive, depose, cast down, and disinherit; and him our said Lord the King, to Death and final Destruction to bring and put; and the Government of the said Kingdom, and the sincere Religion of God, in the same Kingdom, rightly, and by the Laws of the same Kingdom Established, at their Will and Pleasure to change and alter; and the State of this whole Kingdom of *England*, through all its Parts, well instituted and ordained, wholly to subvert and destroy, and War against our said Lord the King, within this Kingdom of *England* to levy.

And to compleat and perfect the same their most wicked Treasons and traiterous Imaginations and Purposes aforesaid; they, the aforesaid *Thomas White*, otherwise *Whitebread*, *William Ire-*

land, John Fenwick, Thomas Pickering, and John Grove, and other false Traitors, to the Jurors unknown, the aforesaid 25th Day of *April*, in the 30th Year aforesaid, with Force and Arms, &c. at the Parish of *St. Giles's in the Fields* aforesaid, in the County of *Middlesex* aforesaid; falsely, maliciously, subtilly, advisedly, devilishly and traiterously did assemble themselves, unite, and congregate; and then and there falsely, maliciously, subtilly, advisedly, devilishly and traiterously did consult and agree, our said Sovereign Lord the King, to Death and final Destruction to bring and put, and the Religion within this Kingdom of *England*, rightly, and by the Laws of the same Kingdom establish'd, to the Superstition of the *Romish* Church, to change and alter: And the sooner to compleat and perfect the same their most wicked Treasons and traiterous Imaginations and Purposes aforesaid, the said *Thomas White*, otherwise *Whitebread*, *William Ireland*, *John Fenwick*, *Thomas Pickering*, and *John Grove*, and other false Traitors of our said late Lord the King, to the Jurors unknown; afterwards (to wit) the same 24th Day of *April*, in the 30th Year aforesaid, at the aforesaid Parish of *St. Giles's in the Fields*, in the County of *Middlesex* aforesaid, falsely, subtilly, advisedly, maliciously, devilishly and traiterously between themselves, did conclude and agree, That they, the said *Thomas Pickering* and *John Grove*, Him our said late Lord the King should kill and murder; and that they, the said *Thomas White*, otherwise *Whitebread*, *William Ireland*, *John Fenwick* and others, false Traitors, to the Jurors unknown, a certain number of Masses, between them then and there agreed, for the Health of the Soul of him the said *Thomas Pickering*, therefore should say, celebrate and perform; and therefore should pay unto the said *John Grove* a certain Sum of Money between them then and there agreed.

And the Jurors aforesaid, upon their Oaths aforesaid, did further present: That the said *Thomas Pickering* and *John Grove*, upon the Agreement aforesaid, then and there falsely, subtilly, advisedly, maliciously, devilishly, and traiterously did take upon themselves, and to the same *Thomas White*, otherwise *Whitebread*, *William Ireland*, *John Fenwick*, and other false Traitors against our said Lord the King, to the Jurors aforesaid unknown, then and there falsely, subtilly, advisedly, maliciously, devilishly and traiterously did promise that they, the said *Thomas Pickering* and *John Grove*, Him our said late Lord the King would kill and murder: And that they, the said *Thomas White*, otherwise *Whitebread*, *William Ireland*, *John Fenwick*, *Thomas Pickering*, *John Grove*, and other false Traitors against our said Lord the King, unknown; afterwards (to wit) the same 24th Day of *April*, in the 30th Year aforesaid, at the aforesaid Parish of *St. Giles's in the Fields*, in the County of *Middlesex* aforesaid; falsely, subtilly, advisedly, maliciously, devilishly and traiterously did give their Faith each to other; and upon the Sacrament then and there traiterously did swear and promise to conceal, and not to divulge their said most wicked Treasons and traiterous Compassings, Consultations and Purposes so between them had, Him our said late Lord the King, traiterously to kill and murder, and the *Romish* Religion within this Kingdom of *England* to be used

used to introduce; and the true Reformed Religion within this Kingdom of England rightly, and by the Laws of the said Kingdom Establish'd, to alter and change: And that the said *Thomas Pickering* and *John Grove*, in Execution of the traiterous Agreement aforesaid, afterwards (to wit) the same 24th Day of *April*, in the 30th Year aforesaid, and divers Days, and Times after, at the aforesaid Parish of *St. Giles's in the Fields*, in the County aforesaid; Muskets, Pistols, Swords, Daggers, and other offensive and cruel Weapons, Him the said late Lord the King to kill and murder; falsely, subtilly; advisedly, maliciously, devilishly and traiterously did prepare and obtain, had and kept for themselves; and that they, the said *Thomas Pickering* and *John Grove*, afterwards (to wit) the same 24th Day of *April*, in the 30th Year aforesaid; and divers Days and Times after, with Force and Arms, &c. at the Parish aforesaid, in the County of *Middlesex* aforesaid, and in other places within the County of *Middlesex* aforesaid, falsely, subtilly, advisedly, maliciously, devilishly and traiterously did lie in wait, and endeavour our said late Lord the King traiterously to kill and murder; and that the said *Thomas White*, otherwise *Whitebread*, *William Ireland*, *John Fenwick*, and other false Traitors, to the Jurors aforesaid unknown, afterwards (to wit) the same 24th Day of *April*, in the 30th Year aforesaid, at the Parish aforesaid, in the County of *Middlesex* aforesaid, falsely, subtilly, advisedly, maliciously and traiterously did prepare, perswade, excite, abate, comfort and counsel four other Persons to the Jurors unknown, and Subjects of our said Lord the King, Him our said late Lord the King traiterously to kill and murder, against the Duty of their Allegiance, against the Peace of our said Lord the King his Crown and Dignity, and against the Form of the Statute in such Case made and provided; and thereupon it was so far proceeded, that afterwards, at the Court of Goal-delivery of our said Lord the King, at *Newgate*, at *Justice-hall* in the *Old Bailey*, in the Suburbs of the City of *London*, in the Parish of *St. Sepulchre*, in the Ward of *Faringdon without*, *London*, the 17th Day of *December*, in the 30th Year aforesaid; before the Justices of the said Lord the King, of the same Goal-delivery; then and there held, by Adjournment of the County of *Middlesex* aforesaid; came the said *William Ireland*, *Thomas Pickering* and *John Grove*, under the Custody of *Sir Richard How*, Knight; and *Sir John Chapman*, Knight, Sheriff of the County of *Middlesex* aforesaid; into whose Custody, for the Cause aforesaid, they were before committed: Being brought to the Bar there, in their proper Persons; and presently being severally asked concerning the Premises above-charged upon them; how they would acquit themselves; the aforesaid *William Ireland*, *Thomas Pickering* and *John Grove* did severally say, That they were not thereof guilty; and for the same, for good and bad, they did severally put themselves upon the Country; and by a certain Jury of the Country, in that behalf duly impanel'd; sworn and charged then and there in the same Court, before the Justices of Goal-delivery aforesaid, were tryed; and that upon that Tryal, between our said late Lord the King, and the said *William Ireland*, *Thomas Pickering* and *John Grove* at *London* aforesaid;

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to wit, at the *Justice-hall* in the *Old Bailey* aforesaid; in the Parish of *St. Sepulchre*, in the Ward of *Faringdon without*, *London* aforesaid; The Defendant (*Titus Otes*) late of the Parish of *St. Sepulchre* aforesaid, in the Ward aforesaid Clerk, was produced as a Witness, on the part of the said late Lord the King, upon the Tryal aforesaid; and before the said Justices of Goal-delivery, in the Court aforesaid, then and there held, upon the *Holy Gospels of God*, was duly sworn to speak and testify the Truth, the whole Truth, and nothing but the Truth, of, and in the Premises between our said Lord the King, and the said *William Ireland*, *Thomas Pickering* and *John Grove*: And that the said *Titus Otes* then and there, in the Court of Goal-delivery aforesaid, upon his Oath aforesaid, upon the Indictment aforesaid, at the Parish and Ward aforesaid, by his own proper Act and Consent of his most wicked Mind, falsely, voluntarily and corruptly, did say, depose, swear, and give in Evidence to the Jurors of the Jury aforesaid, then and there sworn and impanel'd to try the Issue aforesaid between our said late Lord the King, and the said *William Ireland*, *Thomas Pickering* and *John Grove*; That the said *William Ireland*, in the Indictment aforesaid, mentioned, was in Town (within the Cities of *London* and *Westminster*, or the Places adjacent to the said Cities, meaning) upon the 1st or 2d Day of *September*, in the Year 1678. Whereas in truth and indeed the said *William Ireland*, in the Indictment aforesaid, mentioned, was not in Town, nor within the Cities of *London* or *Westminster*, or the Places adjacent to the same Cities, or either of them, upon the 1st or 2d Day of *September*, in the Year 1678. And so the aforesaid *Titus Otes*, the aforesaid 17th Day of *December*, in the 30th Year aforesaid, at the *Justice-hall* aforesaid, in the Court aforesaid; upon the Tryal aforesaid, upon the Indictment aforesaid, between our said late Lord the King, and the aforesaid *William Ireland*, *Thomas Pickering* and *John Grove*, so as aforesaid had, by his own Act and Consent, and of his most wicked Mind, falsely, voluntarily and corruptly, in Manner and Form aforesaid, did commit voluntary and corrupt Perjury.

And the Jurors aforesaid, last sworn to enquire for our said Lord the King; and the Body of the City of *London* aforesaid, upon their Oaths aforesaid, do further present, That at another Session of our said late Lord the King, held for the County of *Middlesex*, at *Hicks's-hall* in *St. John's-street*, in the County aforesaid, on *Thursday* (to wit) the 12th Day of *June*, in the 31st Year of our said late Lord King *Charles II.* before *Sir Philip Matthews*, Baronet; *Sir Thomas Orby*, Knight and Baronet; *Sir William Pultney*, Knight; *Sir William Bowles*, Knight; *Thomas Robinson*, *Thomas Harriot*, Esquires; and others their Companions, by Letters Patents of our said late Lord the King, to the same Justices aforesaid, and others; and to any four or more of them, under the Great Seal of our said late Lord the King, made to enquire, by the Oaths of good and lawful Men of the County of *Middlesex* aforesaid, and by all other ways, manners and means, by which they might or could better know, as well within Liberties as without; by whom the Truth of the Matter might be best known and enquired, of all Treas-

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sons,

sons; Misprisions of Treasons, Insurrections, Rebellions, Counterfeittings, Clippings, Washings, False-making, and other Falsifyings of the Money of this Kingdom of England, and of other Kingdoms and Dominions whatsoever; and of all Murders, Felonies, Man-slaughters, Killings, Burglaries, Rapes, Meetings and unlawful Conventicles; Speakings of Words, Combinations, Misprisions, Confederacies, false Allegations, Trespasses, Riots, Routs, Retainers, Escapes, Contempts, Oppressions; and of other Articles and Offences in the same Letters Patents of our said Lord the King, specified; As also, the Accessories of the same, within the County aforesaid, as well within Liberties as without, by whomsoever and howsoever had, done, perpetrated or committed; and of other Articles and Circumstances concerning the Premises howsoever; and the same Treasons, and other the Premises, to hear and determine according to the Law and Custom of this Kingdom of England; being assigned by the Oaths of Henry Ashurst, Esq; Edward Garvell, John Radford, John Warral, William Hanmar, Robert Pritchard, John Tredder, Gilbert Ureweyne, David Colliwex, Abraham Harrison, Charles Morgan, Philip Trehearn, John Collier, Robert Whiterod, William Webb, Thomas Edwards and Abraham Tillent; honest and lawful Men of the County aforesaid, Sworn and Charged to enquire for our said Lord the King, and the Body of the County aforesaid; upon their Oaths, it was presented, That *Thomas White*, late of the Parish of St. Giles in the Fields, in the County of Middlesex, Clerk, otherwise called *Thomas Whitebread*, late of the Parish aforesaid, in the County aforesaid, Clerk; *John Fenwick*, late of the Parish aforesaid, in the County aforesaid, Clerk; *William Harcourt*, late of the Parish aforesaid, in the County aforesaid, Clerk, otherwise called *William Harrison*, late of the Parish aforesaid, in the County aforesaid, Clerk; *John Gaven*, late of the Parish aforesaid, in the County aforesaid, Clerk; and *James Corker*, late of the Parish aforesaid, in the County aforesaid, Clerk, as false Traytors against the most illustrious, most Serene and Excellent Prince, our late Sovereign Lord King *Charles II.* by the Grace of God, of England, Scotland, France and Ireland, King; Defender of the Faith, &c. Their Supreme and Natural Lord; not having the fear of God in their Hearts, nor weighing the Duty of their Allegiance; but being moved, and seduced by the Instigation of the Devil, the Cordial Love, the true, due, and Natural Obedience, which true and faithful Subjects of our said Lord the King, towards him, our said Lord the King, should, and of right ought to bear; wholly withdrawing, and contriving, and with all their might intending the Peace and common Tranquility of this Kingdom of England to disturb; and the true Worship of God within this Kingdom of England used, and by Law established, to overthrow; and the Government of this Kingdom of England, to Subvert, and Sedition and Rebellion within this Kingdom of England, to move, stir up, and procure; and the Cordial Love, and true, and due Obedience, which true and faithful Subjects of our Lord the King, towards him the said Lord the King, should, and of right ought to bear, utterly to withdraw, put out, and extinguish; and our said late Lord the King to

death and final Destruction to bring, and put, the 24th Day of April, in the 30th Year of the Reign of our said late Lord King *Charles II.*, &c. at the Parish of St. Giles in the Fields, in the County of Middlesex aforesaid, with diverse other false Traytors against our said late Lord the King, to the Jurors aforesaid unknown, falsely, subtilly, advisedly, maliciously and trayterously did purpose, compass, imagine, and intend Sedition and Rebellion within this Kingdom of England to move, stir up and procure, and a miserable slaughter among the Subjects of our said Lord the King to procure, and cause; and our said late Lord the King, from the Regal State, Title, Power and Government of his Kingdom of England, utterly to deprive, depose, cast down, and disinherit; and him our said late Lord the King to Death, and final Destruction to bring, and put; and the Government of the same Kingdom, and the sincere Religion of God in the same Kingdom, rightly and by the Laws of the said Kingdom Established, at their Will and Pleasure to change and alter; and the State of this whole Kingdom of England, through all its Parts well instituted and ordered, wholly to subvert, and destroy; and War, against our late Lord the King, within this Kingdom of England, to levy; And to perfect and compleat the same, their most wicked Treasons and Trayterous Imaginations, and Purposes; They the said *Thomas White*, otherwise *Whitebread*, *John Fenwick*, *William Harcourt*, otherwise *Harrison*, *John Gaven*, *Anthony Turner*, and *James Corker*, and other false Traytors to the Jurors aforesaid unknown, the aforesaid 24th Day of April, in the 30th Year aforesaid, with Force and Arms aforesaid, at the Parish of St. Giles in the Fields aforesaid, in the County of Middlesex aforesaid, falsely, maliciously, subtilly, advisedly, devilishly and Trayterously did assemble, unite and gather themselves together; and then and there falsely, maliciously, subtilly, advisedly, devilishly and Trayterously did consult, consent and agree our said late Lord the King, to Death and final Destruction to bring and put, and the Religion within this Kingdom of England, rightly and by the Laws of the same Kingdom established to change and alter, to the Superstition of the Church of Rome, and the Government of this Kingdom of England to subvert; and that one *Thomas Pickering*, and one *John Grove*, him our said late Lord the King should kill and murder; and that they the said, *Thomas White*, otherwise *Whitebread*, *John Fenwick*, *William Harcourt* otherwise *Harrison*, *John Gaven*, *Anthony Turner*, *James Corker*, and other false Traytors against our said late Lord the King, to the Jurors unknown, a certain number of Masses, between them; then and there agreed upon, for the health of the Soul of him the said *Thomas Pickering*, therefore should say, celebrate and perform; and therefore should pay unto the said *John Grove*, a certain Sum of Money, between them then and there agreed upon: And that the said *Thomas White*, otherwise *Whitebread*, *John Fenwick*, *John Gaven*, *Anthony Turner*, *William Harcourt* otherwise *Harrison*, and other false Traytors against our said late Lord the King, to the Jurors unknown, in the further Prosecution of the Treasons and Trayterous Consultations and Agreements aforesaid, afterwards (to wit) the said 24th Day of April, in the

the 30th Year aforesaid, at the aforesaid Parish of St. Giles in the Fields, in the County of Middlesex aforesaid, falsely, subtilly, advisedly, maliciously, devilishly, and Trayterously, did severally give their Faith each to other; and upon the Sacrament, then and there Trayterously did swear and promise to congeal, and not to divulge their said most wicked Treasons and Trayterous Compassings, Consultations and Purposes aforesaid; so between them had, him the said late Lord the King Trayterously to kill and murder, and to introduce the Romish Religion, to be used within this Kingdom of England, rightly and by the Laws of this Kingdom Established to alter and change; and that the said Thomas White otherwise Whitebread, John Fenwick, William Harcourt otherwise Harrison, John Gaven, Anthony Turner, James Corker, and other false Traytors to the Jurors aforesaid unknown, in further Prosecution of the Treasons and Trayterous Intentions and Agreements aforesaid, afterwards (to wit) the said 24th Day of April, in the 30th Year aforesaid, at the Parish aforesaid, in the County aforesaid, falsely, subtilly, advisedly, maliciously, devilishly and Trayterously, did prepare, perswade, excite, abet, comfort and Counsel four other Persons to the Jurors unknown, and Subjects of our said late Lord the King, him our said late Lord the King, Trayterously to kill and murder, against the Duty of their Allegiance, and against the Peace of our said late Lord the King, his Crown and Dignity, and against the Form of the Statute in that Case made and provided; whereupon, it was Commanded the Sheriff of the County aforesaid, that he should not omit, &c. But should take them to answer, &c.

Which Indictment the said Justices of our Lord the King, afterwards (to wit) at the Goal-delivery of our said Lord the King, of Newgate, holden by Adjournment for the County of Middlesex, at Justice-Hall in the Old Bailey, in the Suburbs of the City of London, on Friday (to wit) the 13th Day of June, in the 31st Year aforesaid, before Sir James Edwards, Knight, Mayor of the City of London; Sir William Scroggs, Knight, Lord Chief Justice of His Majesty's Court of King's Bench; Sir Francis North, Knight, Lord Chief Justice of His Majesty's Court of Common-Pleas; Sir Thomas Allen, Knight and Baronet, one of the Aldermen of the said City of London; Sir George Jeffries, Knight, Recorder of the said City of London; and other their Companions, Justices of our said Lord the King, assigned to deliver his Goal of Newgate of the Prisoners in the same being, by their own proper Hands did deliver there, in the Court of Record, in form of Law to be determined: And thereupon, at the said Goal-delivery of our Lord the King, of Newgate, holden by the Adjournment aforesaid, for the County aforesaid, at Justice-Hall aforesaid, the said Friday the 13th of June, in the 31st Year aforesaid, before the aforesaid Justices of our said late Lord the King last named, came the said Thomas White, otherwise Whitebread, John Fenwick, William Harcourt, otherwise Harrison, John Gaven, and Anthony Turner, under the Custody of Sir Richard How, Kt. and Sir John Chapman, Knight, Sheriff of the County aforesaid; into whose Custody, for the Cause aforesaid, they were before that time Committed; being brought to the Bar there,

in their proper Persons; who were committed to the aforesaid Sheriff, &c. And immediately being severally demanded concerning the premises aforesaid, in the Indictment aforesaid specified, charg'd upon them as above, how they would thereof acquit themselves; the said Thomas White, otherwise Whitebread, John Fenwick, William Harcourt, otherwise Harrison, John Gaven, and Anthony Turner, did severally say, That they were Not thereof Guilty: And thereupon, for Good and Bad, did severally put themselves upon the Country. And thereupon, upon the Indictment aforesaid last recited, at the Session of our Lord the King, at the Justice-Hall in the Old Bailey, it was so far proceeded, that the Issue aforesaid between our said late Lord the King, and the said Thomas White, otherwise Whitebread, John Fenwick, William Harcourt, otherwise Harrison, John Gaven, and Anthony Turner; afterwards (to wit) the aforesaid Friday, the 13th Day of June, in the 31st Year aforesaid, at Justice-Hall aforesaid, by a certain Jury of the Country in that behalf duly impanell'd, Sworn and Charged, was Tried; and that upon the Tryal of the Issue aforesaid last mentioned, between our said late Lord the King, and the said Thomas White, otherwise Whitebread, John Fenwick, William Harcourt, otherwise Harrison, John Gaven, and Anthony Turner, at London aforesaid, (to wit) at the Justice-Hall in the Old Bailey aforesaid, in the Parish of St. Sepulchre in the Ward of Faringdon Without, London, aforesaid, the said Defendant, Titus Otes, was also a Witness produced on behalf of our said late Lord the King, upon the Tryal aforesaid, upon the Indictment last aforesaid: And he, the aforesaid Titus Otes, then and there at the Session last aforesaid, at the Justice-Hall aforesaid, in the Court of the same Session (to wit) at the Parish and Ward aforesaid, was duly sworn upon the Holy Gospels of God, to speak and testify the Truth, the whole Truth, and nothing but the Truth, of, and in the Premises, in the Issue aforesaid last mentioned, so as aforesaid joyned between our said late Lord the King, and the said Thomas White, otherwise Whitebread, John Fenwick, William Harcourt, otherwise Harrison, John Gaven, and Anthony Turner. And that the said Titus Otes then and there, at the Session aforesaid last mentioned, in the Justice-Hall aforesaid, in the Court of the same Session, upon his Oath aforesaid, upon the Indictment last aforesaid, by his own proper Act and Consent, of his most wicked Mind, falsely, voluntarily, and corruptly did say, depose, swear, and give in Evidence to the Jurors of the Jury aforesaid last mentioned, so as aforesaid Sworn and impanell'd to try the Issue aforesaid between our said late Lord the King, and the said Thomas White, otherwise Whitebread, John Fenwick, William Harcourt, otherwise Harrison, John Gaven, and Anthony Turner. That William Ireland (one William Ireland, then before Convicted and Executed for High Treason against our late Lord the King, meaning) took his Leave of him the said Titus Otes and others, at the Chamber of the said William Ireland, then being in Russel-street (a certain Street, called Russel-street, lying within the City of Westminster, in the County of Middlesex, meaning) between the 8th and 12th Day of August, in the Year of our Lord 1678. Whereas, in truth and in deed, the said William Ireland did not take his Leave

of the said *Titus Otes*, or any other Persons whatsoever, at the Chamber of the said *William Ireland*, then being in *Russel street* aforesaid, between the said 8 and 12 Days of *August*, in the Year of our Lord 1678. And so the said *Titus Otes*, upon the said *Friday* the 13th Day of *June*, in the 31st Year aforesaid, at the Session last aforesaid, at the *Justice-Hall* aforesaid, in the Court of the same Session, upon the Indictment last aforesaid, so put in Issue, and Tryed as aforesaid, between our said late Lord the King; and the said *Thomas White*, otherwise *Whitebread*, *John Fenwick*, *William Harcourt*, otherwise *Harrison*, *John Garven*, and *Anthony Turner*, by his own proper Act and Consent, and of his most wicked Mind, falsely, voluntarily, and corruptly, in manner and form aforesaid, did commit voluntary and corrupt Perjury, to the great Displeasure of *Almighty God*, in manifest contempt of the Laws of this Kingdom of *England*, to the evil and pernicious Example of all others in the like Case offending, and against the Peace of our Sovereign Lord the King, his Crown and Dignity. Upon this Indictment he has been Arraigned; and thereunto hath pleaded, *Not Guilty*: And for his Tryal, hath put himself upon the Country, and His Majesty's Attorney-General likewise; which Country you are. Your Charge is, To enquire, whether the Defendant, *Titus Otes*, be Guilty of the Perjury he stands Indicted, or *Not Guilty*. If you find him Guilty, you are to say so: If you find him *Not Guilty*, you are to say so, and no more: And hear your Evidence.

Sir George
Jefferies.

L. C. J. Look ye, Mr. Attorney, my Lord Chief Justice *Jones* has sent to know, whether you have any thing to do with him to Day, here?

Sir Robert
Sawyer.

Mr. At. Gen. Not at all, that I know of.

L. C. J. Mr. Otes, Do you intend to make use of my Lord Chief Justice *Jones*, or any of the Judges of the *Common Pleas*, as Witnesses?

Otes. Yesterday, my Lord, I did call for them, to have made use of them, as Witnesses.

L. C. J. But have you any thing to say to them to Day?

Otes. I cannot tell, as yet.

L. C. J. Then my Lord Chief Justice *Jones* must be told, That he does not know, whether he shall, or not. Go on, Sir *Samuel Astrey*.

Then Proclamation was made for Information, and Evidence was made in usual manner.

Mr. Phipps. May it please your Lordship, and you, Gentlemen of the Jury; This is an Indictment against *Titus Otes*, Clerk, for Perjury: And this Indictment sets forth, That *William Ireland*, *Thomas Pickering*, and *John Grove*, in the 30th Year of the late King, were Indicted of High Treason, and Tryed at the *Old Bailey*; and at that Tryal, the Defendant, *Titus Otes*, was produced a Witness for the King; and being sworn to tell the Truth, the whole Truth, and nothing but the Truth; did falsely, voluntarily, and corruptly depose, and swear, and give in Evidence to the Jury that did try that Cause, That the said *William Ireland* was in Town (within the Cities of *London* and *Westminster*, or the Places adjacent, meaning)

upon the First or Second Day of *September*, in the Year 1678. Whereas, in truth, the said *William Ireland* was not in Town, nor within the Cities of *London* and *Westminster*, or the Places adjacent, upon the First or Second Day of *September*, in the Year 1678. And so the said *Titus Otes* hath committed wilful and corrupt Perjury. And the Indictment further sets forth, That upon the 13th Day of *June*, in the 31st Year of the late King, *Thomas White*, otherwise *Whitebread*, *John Fenwick*, *William Harcourt*, otherwise *Harrison*, *John Garven*, and *Anthony Turner*, were Indicted and Tryed at the *Old Bailey* for Treason; and at that Tryal, the said *Titus Otes* was a Witness produced on the part of the King: And being sworn to testify the Truth, the whole Truth, and nothing but the Truth; by his own Act and Consent, of his own most wicked Mind, falsely, voluntarily, and corruptly did depose, and swear, and give in Evidence to the Jury, That *William Ireland* (one *William Ireland*, before that time Convicted and Executed for High Treason, meaning) did take his Leave of him the said *Titus Otes*, at his the said *William Ireland's* Chamber, then being in *Russel Street*, between the 8th and 12th Day of *August*, in the Year of our Lord 1678. Whereas, in truth, the said *William Ireland* did not take his Leave of him the said *Titus Otes*, or of any other Persons whatsoever; at his the said *William Ireland's* Chamber, then being in *Russel-Street* aforesaid, between the said 8th and 12th Day of *August*, in the Year of our Lord 1678. And so the said *Titus Otes* did then and there commit wilful and corrupt Perjury. And this is laid to be to the great Displeasure of *Almighty God*, in contempt of the Laws of this Land, to the evil and pernicious Example of all others in the like Case offending, and against the King's Peace, Crown, and Dignity. To this he has pleaded, *Not Guilty*. If we prove it, we do not question, but you will find him Guilty.

Mr. At. Gen. May it please your Lordship, and you Gentlemen of the Jury; Mr. Otes stands Indicted for having perjured himself: The Instances, Gentlemen, that we charge him with, are these: First, What he swore at the Tryal of *Ireland*; and we say, that at that Tryal he did swear *Ireland* was in Town the 1st or 2^d of *September*, 1678. The second Instance is, What he swore at the Tryal of the five Jesuits; and there we say, he did swear, That *Ireland* was in Town between the 8th and 12th of *August*, and that he took his Leave of him here in Town at his Chamber in *Russel-Street*; and we do charge him by this Indictment, that he has forsworn himself in both Instances: And that *Ireland*, Gentlemen, was neither in Town between the 8th and 12th of *August*, nor the 1st or 2^d of *September*. And we shall make it out very evidently; For, Gentlemen, as to the Proof in this Case, our Case stands thus; We say, That the 3^d of *August*, 1678, *Ireland* went into *Hartfordshire*, to a House of my Lord *Aston's*; and from thence went into *Staffordshire*. I will not stand to open the Particulars, where he was every Day; but we shall give you an Account, in a Method very easie to be remembered and observed, where he was till the 14th of *September*. But one remarkable Instance, Gentlemen, I desire to take particular notice of; and that is the Time of *Pancras Fair*, which is upon the 2^d of *September* always, a known Day, and a known Place

Place in that Country. Now we have among the rest, many Witnesses to prove, That Mr. Ireland was there that Day, and not in Town. And when we have proved this, as we shall by a whole Cloud of Witnesses, I believe, you Gentlemen of this Jury, will no more doubt, that Mr. Otes is Forsworn in these Particulars, than the Jury Yesterday did in that Particular; nor than, I believe, the whole Kingdom does by this time.

Mr. Sol. Gen. My Lord, we shall go to our Evidence; and first, we produce the Records of the two Tryals of Ireland, and the five Jesuits. Swear Mr. Swift. *[Which was done.]* Pray, Sir, put in the Records. Are those true Copies?

Mr. Swift. My Lord, I examined these Records with the Originals, and they are true Copies.

Mr. At. Gen. Mr. Otes, Will you have them read? Or to save the time of the Court will you agree them?

Otes. My Lord, I consent to save the time of the Court; if they shall be made use of for Evidence for me.

L. C. J. No doubt, they are Evidence for you, as well as against you, when they are produced here.

Mr. Sol. Gen. If Mr. Otes does admit the Records, then shall we go on, and prove what he did swear at those Tryals; and for the first part of the time, which is between the 8th and 12th of August, we desire that Mr. Thomas Harriot, and Mr. Rainsford Waterhouse may be sworn. *[Which was done.]*

Mr. At. Gen. Mr. Harriot. Pray do you remember at the Tryal of the five Jesuits, was Mr. Otes produced and sworn as a Witness?

Mr. Harriot. Yes, he was, my Lord.

Mr. At. Gen. Do you remember what Testimony he gave about Ireland's being in Town, and when it was, he said, he was in Town?

Mr. Harriot. My Lord, he did positively swear, that Mr. Ireland, the late Jesuit, did take his leave of him the said Otes and others, at the said Ireland's Chamber in Russel-street, betwixt the 8th and 12th of August, 1678.

Mr. Sol. Gen. Were you of the Jury that tryed the five Jesuits, Mr. Harriot?

Mr. Harriot. Yes, I was Foreman of that Jury.

Mr. Sol. Gen. What say you, Mr. Waterhouse? Were you present at that Tryal?

Mr. Waterhouse. Yes, I was of the Jury too.

Mr. Sol. Gen. What did Otes swear at that Tryal?

Mr. Waterhouse. He said, That Mr. Ireland took his leave of him the 12th of August. My Lord Chief Justice Scroggs then asked him, are you sure it was the 12th? And then he said, He would not be positive it was the 12th, but between the 8th and 12th it was, I am positive upon my Oath.

Mr. At. Gen. It is so in the Print too; but we will now go on.

L. C. J. But will the Defendant ask these Witnesses any Questions?

Otes. My Lord, if your Lordship please, I will ask Mr. Harriot a Question.

L. C. J. Ay, do, ask him what you will.

Otes. Mr. Harriot. Did I swear, that he took his leave of me, or I took my leave of him?

Mr. Harriot. You swore, that Ireland took his leave of you and others, between the 8th and

12th of August, 1678. between those two Days, and in that Year.

Mr. Just. Withins. It is a nice Question, that of yours, Mr. Otes, upon my Word.

Otes. My Lord, I know what reason I have to ask that Question; I am sure in Perjury, the Court ought to keep up the Witnesses strictly to what is laid in the Indictment.

L. C. J. Well, you have his Answer according to the Indictment.

Otes. Pray, my Lord, be pleased to ask Mr. Harriot this Question, whether he took Notes of the Tryal?

Mr. Harriot. Yes, I did so, Sir.

Otes. My Lord, I desire to know of Mr. Harriot, whether he has those Notes by him?

Mr. Harriot. No, Sir, I have them not here; but I have had them by me this four or five Years, or more. It was my manner in all the Tryals, wherein I was concern'd as a Jury-man, to read the Tryals strictly over, when they were printed, especially where I happened to have any Notes, that I took at the Tryal; and to compare the printed Tryal with my Notes; and where I found any thing doubtful, I used to put a Query upon it. And this and many other things, I found to be in the printed Tryal strictly according to my Notes.

Otes. My Lord, I desire to know, what Tryal he was Foreman at?

Mr. Harriot. That of the Five Jesuits, in June, the 13th of June, 1679.

L. C. J. Have you any thing to ask Mr. Waterhouse?

Otes. Yes, my Lord. Pray, Sir, let me ask you a Question.

Mr. Waterhouse. Ay, if you please, Sir.

Otes. Did you take Notes of that Tryal you speak of, Sir?

Mr. Waterhouse. No, I did not.

Otes. How come you then to remember this, That I was so positive as to the time betwixt the 8th and 12th of August?

Mr. Waterhouse. Because I was one of the Jury; and because my Lord Chief Justice made a stop, when you said, 'Twas the 12th of August; and bid you consider: And you consider'd, and consider'd it; and did affirm positively, That it was between the 8th and 12th of August.

L. C. J. He gives you a plain Reason for his Remembrance.

Otes. My Lord, I have done with him.

Mr. Sol. Gen. Then we desire Mr. Foster may be sworn. *[Which was done.]*

Mr. Foster, Pray will you tell what you remember Mr. Otes swore at Mr. Ireland's Tryal, about Ireland's being in Town?

Mr. Foster. I was one of the Jury at the Tryal of Mr. Ireland, Mr. Pickering, and Mr. Grove; and I did see Mr. Otes sworn, as a Witness for the King, at that Tryal; and so was Mr. Bedloe: And Bedloe there gave Evidence, That there was a Meeting at Harcourt's Chamber; and Ireland, Grove, and Pickering was there: And that this was the latter End of August. Mr. Ireland did make his Defence, as much as he could, to prove, That he was not in Town from the Beginning of August, to the Middle of September; and brought divers Witnesses. But upon his denying to be here the latter End of August, Mr. Otes did come and swear: I am certain (says he) that the First or Second of September, he was in Town; for then I had of him Twenty Shillings.

Otes. Was I positive, that he was here in Town the 1st or 2d of September?

Mr. Foster. You were positive, Sir, to the 1st or 2d; I have it in my Notes in Writing.

L. C. J. He tells you, it is in his Notes: And therefore he's sure you said so.

Mr. At. Gen. In the Printed Copy, if it be right, there is mention made of the Word *Positive*.

L. C. J. I think, that is in *August*, between the 8th or 12th he was positive.

Otes. Did I say these Words, *I was positive*?

Mr. Waterhouse. I say, you affirmed that he was in Town the 1st or 2d of September.

L. C. J. It is not necessary, that you should use the Word *Positive*: The Question is, Whether it was positively affirmed?

Mr. Just. Withins. Was not that true that you said? Did not you affirm a positive Truth?

Otes. My Lord, I'll tell you the Reason why I ask the Question, because I have forgot my self, whether I us'd the Word or no; and therefore I ask for my own Information now.

L. C. J. Well; ask for what Reason you will, you have receiv'd an Answer to your Question; and upon my Word he gives a notable Evidence: Says he, *Bedloe* had sworn a reasonable Practice by *Ireland*, in the latter end of *August*. Then *Ireland* comes, and makes his Defence: Says he, *That cannot be*; for I was out of Town at that time: I was not in London all *August*, nor the beginning of *September*. Then come you in, to support the Testimony of *Bedloe*; and swear, that he was in Town the 1st or 2d of *September*; for then he gave you Twenty Shillings. And so you come to rivet the Matter that was sworn before by *Bedloe*.

Otes. My Lord, What I swore was Truth.

L. C. J. That is now to be tried.

Mr. At. Gen. We have another of the Jury here, Mr. *John Byfield*: Pray, swear him.

[Which was done.

Mr. Sol. Gen. Well, Sir, what did you hear *Otes* swear at that Tryal?

Mr. Byfield. I heard the same that they have testified before.

L. C. J. But you must tell us what that was.

Mr. Sol. Gen. Were you a Jury-man at that Tryal?

Mr. Byfield. Yes, I had a Summons to the Old Bailey.

L. C. J. But what did *Otes* swear? That's the Question.

Mr. Byfield. Mr. *Otes* did positively assert, That *Ireland* was here in Town the 1st or 2d of *September*; and to confirm it, he said, He receiv'd of him Twenty Shillings.

Mr. At. Gen. Now, my Lord, we shall go to our Evidence to prove, That all this is absolutely false: For *Ireland* went out of Town into *Staffordshire*, and did not return till after the 9th of *September*. And for this, we call *Anne Ireland*.

[Who was sworn.

Mr. Sol. Gen. Mrs. *Ireland*, Pray, where did you take your Leave of your Brother Mr. *Ireland*, who was Executed in Summer 1678: and when?

Mrs. A. *Ireland*. I took my Leave of him the beginning of *August*.

Mr. Sol. Gen. What Day in *August* do you remember?

Mrs. A. *Ireland*. The 3d of *August*.

Mr. Sol. Gen. Where was it?

Mrs. A. *Ireland*. In my own Lodging.

L. C. J. Where was your Lodging?

Mrs. A. *Ireland*. In *Russel-street*, *Covent-Garden*.

L. C. J. Now tell us again the time when it was?

Mrs. A. *Ireland*. It was on *Saturday* Morning; as I remember, the 3d of *August*, the *Saturday* after *St. Ignatius's Day*.

L. C. J. How come you to remember so particularly, that it was then?

Mrs. A. *Ireland*. Because upon *St. Ignatius's Day*, we were invited to Mr. *Gifford's* at *Hammersmith*; my Brother, my Mother, and I, were invited to stay all Night: But my Brother refused to stay, because—

L. C. J. Which Brother? What was his Name?

Mrs. A. *Ireland*. *William Ireland*.

L. C. J. Did they stay there?

Mrs. A. *Ireland*. No, my Lord; my Brother came home on foot, but we stayed all Night.

Mr. At. Gen. Here is an Almanack of that Year: And the 3d of *August* was on a *Saturday*.

Mrs. A. *Ireland*. He said he could not stay, because he was to go into the Country upon *Saturday*. I ask'd him, *Why he would set out on Saturday*? And says he, *I'll go to Standen*; there I shall meet with my Lord *Ashton*, and his Family; and have an Opportunity to go with him into *Staffordshire*.

L. C. J. She says, he went out of Town on *Saturday* after *St. Ignatius's Day*; which was *Saturday* the 3d of *August*: But there being a Discourse between her and her Brother, why he should make choice of a *Saturday*; which she thought, it seems was an inconvenient Day to take a Journey on. And upon that, her Brother made Answer again, That that Night he would only go to *Standen*, to my Lord *Ashton's* House, where he should meet with Company to go along with him into *Staffordshire*.

Mr. At. Gen. What Day of the Week was *St. Ignatius's Day*?

Mrs. A. *Ireland*. *St. Ignatius's Day* was on a *Wednesday*.

L. C. J. What Day of the Month is *St. Ignatius's Day*?

Mrs. A. *Ireland*. It is either the last Day of *July*, or the 1st of *August*.

L. C. J. Look on your Almanack, if you have any one of that Year, Mr. Attorney.

Mr. At. Gen. We have no such Saint in our Almanack.

Mrs. A. *Ireland*. It was, as near as I can remember, the 3d of *August*, that he went out of Town.

Mr. Sol. Gen. The 3d of *August*, at that time, was on a *Saturday*.

Lord Petre. *St. Ignatius's Day* is always the last Day of *July*, my Lord.

Mr. At. Gen. In this Almanack another Saint has justled him out; and that is *Bishop German*.

L. C. J. And in my Almanack, a third has justled them both out; but my Lord *Petre* says, it is always the last of *July*; and that was on a *Wednesday* that Year.

Mrs. A. *Ireland*. I remember it was on a *Wednesday*.

L. C. J.

L. C. J. And you are sure he went out of Town the *Wednesday* after?

Mrs. A. Ireland. Yes, I am sure he went out of Town then; for I ask'd him; Why he would go on a *Saturday*? And he told me he would go but to *Standen* that Night.

Mr. Sol. Gen. And that does hold, according to the Computation, to be the 3d of *August*.

Otes. My Lord, She is not positive in this, that he went out of Town the 3d of *August*.

Mr. At. Gen. Yes, but she is; for she says, that she was the *Wednesday* before (which was St. Ignatius's Day) with him a little way out of Town.

L. C. J. And that it was *Saturday* after he went out of Town; and she gives the Reason, that she entred into a Discourse with him, why he would go on *Saturday*? And he made that Answer which you hear.

Mr. Just. Withins. Mr. Otes knows what Day St. Ignatius's Day is upon, I presume.

Otes. It is the last Day of *July*, I think.

Mr. Sol. Gen. In our Protestant Almanacks, it seems, we give another Bishop place.

Mr. At. Gen. Mrs. Ireland, When did you see him again?

Mrs. A. Ireland. Just a Fortnight before *Michaelmas*, and not before.

L. C. J. You were his near Relation, I suppose?

Mrs. A. Ireland. Yes, my Lord, I was his Sister.

L. C. J. Pray, when he came to Town again, where did he lodge?

Mrs. A. Ireland. He used to lodge at the same place where we did always; and in the mean time, while he was absent, my Mother lent one Mrs. Eagleston his Lodging.

L. C. J. Is that Person, you lent his Chamber to in his Absence, here?

Mrs. A. Ireland. No, my Lord.

L. C. J. When did she enter upon his Lodging?

Mrs. A. Ireland. Truly, my Lord, I cannot tell; her Maid fell sick, and so she came down a pair of Stairs lower into his Lodging. It was in a short time after he went out of Town, my Lord, as I remember.

L. C. J. When did he come to Town again, do you say?

Mrs. A. Ireland. He came to Town again a Fortnight before *Michaelmas*; it was that Day Fortnight before *Michaelmas*, that *Michaelmas-day* fell on—

L. C. J. Have you any Questions to ask her, Mr. Otes?

Otes. My Lord, I desire to know, Why she did not give this Evidence before? Or whether ever she did give this Evidence at any of the Tryals?

Mrs. A. Ireland. Yes, I was at my Brother's Tryal; and there I gave the same Evidence.

Otes. Were you there at the Tryal of the five Jesuits? And did you give the same Evidence then?

Mrs. A. Ireland. No, I was not call'd.

L. C. J. But were you there?

Mrs. A. Ireland. I was in the Court at the same time, but was not Examined.

Otes. What Year is it you speak of, that he went out of Town the 3d of *August*?

Mrs. A. Ireland. The Year 78.

Otes. I desire, my Lord, to ask this Gentlewoman, what Religion she is of?

Mrs. A. Ireland. I am a Roman Catholick, my Lord.

Otes. I desire to know, whether her Name be Ireland or Ironmonger?

Mrs. A. Ireland. My right Name is *Ironmonger*; but because of his Profession, he went by the Name of *Ireland*; and for his sake we go by that Name too.

Otes. By what Name did you give Evidence at Ireland's Tryal?

Mrs. A. Ireland. By that Name of *Ireland*.

L. C. J. Why, Mr. Otes, that is a good Name enough to be called by; you may remember, you were called *Titus Ambrosius*, and *Sampson Lucy*, at St. Omers.

Mr. At. Gen. Swear Mrs. *Eleanor Ireland*.

[Which was done.]

Mr. At. Gen. When did your Son go out of Town?

Mrs. El. Ireland. The 3d of *August*.

Mr. Sol. Gen. Are you sure it was the 3d of *August*?

Mrs. El. Ireland. Yes, I am sure it was.

Mr. Sol. Gen. What Year was it?

Mrs. El. Ireland. My Memory is not good for that; I cannot tell what Year, my Daughter can.

Mr. Sol. Gen. Was it the same Year he was tryed afterwards?

Mrs. El. Ireland. Yes, it was the same Summer; at *Michaelmas* after he was taken up.

Mr. Sol. Gen. What time did he return again out of the Country?

Mrs. El. Ireland. The 14th of *September* after?

Otes. My Lord, I would ask her, Whether or no she gave this Evidence at her Son's Tryal?

Mrs. El. Ireland. Yes, I was a Witness there; but they would not permit me to speak half so much; they would hardly let me speak at all.

Otes. I desire to know, whether she was an Evidence at the five Jesuits Tryals?

Mrs. El. Ireland. No, I was not there then.

Mr. At. Gen. Pray swear Mrs. Duddle, and Mrs. Quino.

[Which was done.]

Mr. Sol. Gen. Come, Mrs. Duddle; Do you remember when Mr. Ireland went out of Town, in the Year 78?

Mrs. Duddle. To the best of my remembrance, it was the 3d of *August*.

Mr. Sol. Gen. Why do you think it was the 3d of *August*?

Mrs. Duddle. He went for a Recreation out of Town three Days before, which was upon an Holiday, St. Ignatius's Day; and he went out of Town one Night then, and he came and stayed but two Nights after; and went out of Town upon the *Saturday*.

L. C. J. Did he stay out of Town one Night?

Mrs. Duddle. Yes, he stay'd out of Town all Night.

L. C. J. Are you sure he stay'd all Night?

Mrs. Duddle. I am sure he stay'd but one Night.

L. C. J. But what say you to that, Mr. Attorney? This Witness contradicts the other.

Mr. Just. Withins. Ay, plainly.

Mrs. Duddle. Mrs. Ireland, and Mrs. Anne Ireland, and he, went out upon a Recreation out of Town, it being Holiday; and I remember well, that was of a *Wednesday*. And that *Saturday*

Thursday he went away, and never came again till a Fortnight before *Michaelmas*.

L. C. J. But mind my Question, Woman.

Mrs. Duddle. Yes, my Lord.

L. C. J. Did he come home that Night he went on the Recreation?

Mrs. Duddle. I do not know.

L. C. J. But just now you swore, he stay'd out all Night.

Mrs. Duddle. No, my Lord.

L. C. J. Yes, but you did though; prithee mind what thou art about.

Mrs. Duddle. I do not say, He; but I am sure his Sister and the Company stay'd out that Night. I remember very well, he went the third Day after, which was *Saturday*. And Mr. *Jennison* came to ask for him three Weeks after: And there was a Person of Quality with him in the Coach; I think, it was Sir *Miles Wharton*. And he asking for him, they gave him an account, that they had not heard from him since he went; which was then three Weeks after he was gone. And I remember well, he did not come to Town again till a Fortnight before *Michaelmas*.

L. C. J. How can you tell that?

Mrs. Duddle. My Lord, I can tell it very well: For I was almost every Night in the Room where he used to lie; and there lay a Gentlewoman there, that I knew.

L. C. J. What was her Name?

Mrs. Duddle. Mrs. *Eagleston*.

L. C. J. How comes she to lie there?

Mrs. Duddle. Her Maid fell sick, and she chang'd her own Chamber, and lay there all the time he was out of Town.

Otes. My Lord, Is this good Evidence?

L. C. J. Ay, why not?

Otes. My Lord, I think she contradicts the other Witness: For she says, he lay out two Nights.

L. C. J. No, there you are mistaken too. But I tell you what I did observe before. Mrs. *Anne Ireland* swore, that they did stay all Night; but Mr. *Ireland* refused to stay there; but would go home, because he was to go his Journey on *Saturday*. Then this Woman comes; and she said at first, that he went out of Town on the *Wednesday*, and stay'd out all Night; and lay at home but two Nights, and then went away. But now, when I put her in mind to take care what she said, she swears, She is sure the Sister lay out; but she is not sure of *Ireland's* lying out: But she is positive he went away on the *Saturday* the 3d of *August*, and return'd not till a Fortnight before *Michaelmas*.

Otes. My Lord, I humbly conceive, she having once sworn false,——

L. C. J. Ay, but she immediately recollected her self.

Otes. By what Token does she remember it to be the 3d of *August*?

L. C. J. She said before, it was the *Saturday* after St. *Ignatius's* Day, which was on a *Wednesday*, the last Day of *July*; and he went then out of Town. She called it by the Name of Recreation.

Otes. Was it the *Saturday* after St. *Ignatius's* Day?

Mrs. Duddle. Yes, it was: And I had not remember'd it, but that it was upon that Holiday.

Otes. This is a Roman Catholick, I suppose, my Lord.

L. C. J. I cannot tell. What Religion are you of?

Mrs. Duddle. I am a Roman Catholick, my Lord. Mr. *Jennison* knows what I say to be true.

Otes. Were you a Witness in any of the Tryals at the *Old-Bailey*?

Mrs. Duddle. I was in the Court, but was not called.

Mr. Sol. Gen. What say you, Mrs. *Quino*? When did Mr. *Ireland* go out of Town?

Mrs. *Quino*. I must say the same; It was the 3d Day of *August*, on a *Saturday*.

L. C. J. How do you know that it was on a *Saturday* the 3d of *August*?

Mrs. *Quino*. By the same Reason that she speaks. I mark'd that other Day he went out of Town; and he came again, and his Mother stay'd there that Night: And he went on *Saturday* Morning out of Town. I know it very well: For my Husband was his Taylor, and he had somewhat to alter in his Cloaths; and I brought it immediately after it was done.

L. C. J. Are you sure he went out of Town that Day?

Mrs. *Quino*. He went out of the House, and, as I take it, he went out of Town?

L. C. J. Did he say, he was to go out of Town?

Mrs. *Quino*. He had his Boots on; and took Horse at the *Bull-Inn* in *Drury-lane*.

L. C. J. How do you know it?

Mrs. *Quino*. Because his Servant that was there has testified it.

Mr. At. Gen. Now swear my Lord *Aston*. (Which was done.) We'll bring *Ireland* now upon the 3d of *August* at Night, to my Lord *Aston's* House at *Standen*.

Mr. Sol. Gen. Pray will your Lordship give my Lord and the Jury an account, when Mr. *Ireland* came to your House, and how far he travelled with you afterwards?

Lord *Aston*. My Lord, Being in Town, I was spoke to, and desired, that Mr. *Ireland* might have the Opportunity of going in my Company down into *Staffordshire*; which I consented to. I went out of Town, as I remember, the latter end of *July* 1678. and this same Mr. *Ireland* came to me at my House in *Hartfordshire* at *Standen*, upon the 3d of *August* at Night.

L. C. J. What Day of the Week was that, my Lord?

Lord *Aston*. As I remember, it was *Saturday*, and in the Evening.

L. C. J. How long did he stay with your Lordship?

Lord *Aston*. My Lord, I stay'd till *Monday* at *Standen*; and upon *Monday* he went in my Company to St. *Albans*, which was the 5th of *August*.

Mr. At. Gen. Whither then did you go, my Lord?

Lord *Aston*. There I met with my Brother and Sister *Southcoat*.

L. C. J. Sir *John Southcoat* you mean, my Lord.

Lord *Aston*. Yes, my Lord. And thence, in four Days, we went to my House at *Tixhall*.

L. C. J. Did Mr. *Ireland* travel with you all the Way?

Lord

Lord *Aston*. I cannot charge my Memory, my Lord, that he did, so as particularly to swear it: But there he came into my Company sometimes at *Tixhall*; but I cannot tell the particular Days: Nor could I speak positively to those things that I have spoke to now, but that I find in my Note-Book, that at that time he did come to my House at *Standen*, and did go with me to *St. Albans*.

Mr. *At. Gen.* Pray, my Lord, Did he go that Journey to *Tixhall* along with you?

Lord *Aston*. I cannot say positively that, Mr. Attorney; but I have a general Notion that he did. Nor could I testify this so positively, I say, but by Notes that I have of things at that time: Where I have only writ down these things concerning Mr. *Ireland*, that he came the 3d of *August* to my House at *Standen*: That on *Monday* we went together to *St. Albans*; and there met us Sir *John Southcoat*, and my Sister his Wife; and thence I went to *Tixhall*; and there I arriv'd the 8th of *August*, which was *Thursday*.

L. C. J. My Lord, I ask you this Question; you say, you have a general Apprehension, that he did go with you to *Tixhall*: Pray, did he come with you to *Standen* for that purpose, to go with you to *Tixhall*?

Lord *Aston*. I had no Business with him at all; but he desired the opportunity to go down in my Company into *Staffordshire*.

L. C. J. Pray, my Lord, Do you remember you saw him within four or five Days after at *Tixhall*?

Lord *Aston*. To name particular Days, I cannot; but that I saw him several Days at *Tixhall*, I am sure.

Otes. My Lord, You say that Sir *John Southcoat* went with you to *Tixhall*.

Lord *Aston*. Yes, he did so.

Otes. My Lord, I would ask this Nobleman, Whether he was at the Tryal of the five *Jesuits*? Or the Tryal of *Ireland*?

Lord *Aston*. No, my Lord, I was not.

Otes. Then I would ask, my Lord, If he saw Mr. *Ireland* executed?

Lord *Aston*. No, I did not.

Otes. Then I would ask him this Question; Whether the *Ireland* that was executed be the same *Ireland* he speaks of?

Lord *Aston*. Amongst those that knew him well, I have been told it was the same.

Otes. That is but Hear-say, my Lord; he does not speak of his own Knowledge.

L. C. J. For that matter, I suppose, you'll produce some other *Ireland*, Mr. Otes, if it was not the same.

Mr. *At. Gen.* Was it this Mrs. *Ireland's* Brother, that was here a Witness now?

Lord *Aston*. He was so reputed, and so looked upon.

L. C. J. That is all one. If any body should ask me, if you were the same Mr. Otes that was at *St. Omers*; I should say, I heard so; and it would be very good Evidence, unless some one else were produc'd.

Otes. My Lord, I submit; I will be directed by the Court in any thing that is fair, and not injurious to my Defence.

L. C. J. We will not direct you in any thing that's foul, but pray keep to those Questions that are pertinent.

Otes. Are you sure *Ireland* went the whole Journey with you, my Lord?

Lord *Aston*. I did answer that; I have but a general Notion of it, he came to me for that purpose.

Otes. Then my Lord is not positive he went with him into *Staffordshire*.

L. C. J. No, he is not; but I would ask you this Question. My Lord *Aston*, Do you believe he went with you to *Tixhall*?

Lord *Aston*. I make no doubt of it; I would pawn all I have in the World upon it; only I cannot swear it, because I have it not in my Notes, as I have those two other Days.

Mr. *Just. Withins*. Do you like him the worse, because he is cautious, Mr. Otes?

Otes. No, Sir, I do not. But pray, my Lord, ask him, because it is a Question here about a point of time; Whether he remembers, that within eight or ten Days, he saw *Ireland* at *Tixhall*?

Lord *Aston*. I cannot say any thing as to that.

Mr. *At. Gen.* Swear Sir *Edward Southcoat*.

[Which was done.]

L. C. J. I thought you had called him Sir *John Southcoat*.

Mr. *At. Gen.* Sir *John* is sick, and cannot be here.

Otes. I suppose my Lord *Aston* is a Roman Catholic?

L. C. J. Ay, that all the World knows very well; but I tell you what, Mr. Otes, I observe, he is not so easy in giving his Oath; nay, he is wonderful cautious in swearing; I speak it for his Commendation, not as his Fault, he is not very forward at swearing.

Mr. *Just. Withins*. Well, what do you ask this Gentleman, Mr. Attorney?

Mr. *At. Gen.* We desire Sir *Edward Southcoat* would give an account, whether he met Mr. *Ireland* at my Lord *Aston's*? And when?

Sir *E. Southcoat*. I was with my Lord *Aston* in his Company.

L. C. J. When was that, Sir?

Sir *E. Southcoat*. The 4th of *August* I saw Mr. *Ireland* at my Lord *Aston's*.

L. C. J. Was it the same *Ireland* that was afterwards tryed and executed?

Sir *E. Southcoat*. It was the same *Ireland* that was commonly reported. I did not see him executed.

Mr. *At. Gen.* Was it the same that was reputed to be this old Gentlewoman's Son?

Sir *E. Southcoat*. Yes, it was.

L. C. J. Pray, Sir, go on with your Evidence.

Sir *E. Southcoat*. Upon *Monday* we began our Journey to *Tixhall*, and went that Night to *St. Albans*, where we met my Father and Mother, and thence we continued on our Journey the next Day.

L. C. J. Was he with you there that Day you went to *St. Albans*?

Sir *E. Southcoat*. He was with us, I remember very particularly. It was hot Weather, and my Lord *Aston* invited him into the Coach; for before he was riding by the Coach-side, and there I remember a particular Discourse that he and my Lord *Aston* had; from thence we went on to *Northampton*, and came the *Tuesday* Night.

L. C. J. Was *Ireland* with you there?

Sir *E. Southcoat*. *Ireland* was with us there.

Otes. My Lord, I did not well observe what this Gentleman said.

L. C. J. Pray mind your Business your self, he speaks plain enough ; go on, Sir.

Sir Edward Southcoat. Mr. Ireland was with us, I say my Lord, all the Journey ; and I do remember it particularly by a pretty Horse Mr. Ireland rode upon ; and I had a Dispute with my Cousin, who should buy him ; I took particular notice every Day of him, as he rode by the Coach, and Converſed with him every Night in the Inn. We went, I say, from St. Albans to Northampton on the Tuesday ; from Northampton we went to Coventry on the Wednesday, and from thence to my Lord Aston's, at Tixball, on the Thursday.

L. C. J. Come, let us go by degrees. Was Mr. Ireland with you, when you went from my Lord Aston's at Standen to St. Albans ?

Sir Edward Southcoat. Yes, he was.

L. C. J. You say, it was a hot Day, when you set out : And my Lord Aston did invite him into the Coach.

Sir Edward Southcoat. Yes, my Lord, he came into the Coach on Monday, which was the first Day we set out ; and came that Night to St. Albans.

L. C. J. You lay there that Night ?

Sir Edward Southcoat. Yes, my Lord.

L. C. J. Where did you lie there ?

Sir Edward Southcoat. At the great Inn, at the Bull.

L. C. J. Ay, That is the great Inn.

Sir Edward Southcoat. The next Night, my Lord, we came to Northampton.

L. C. J. Where did you lie there ?

Sir Edward Southcoat. We lay at the Sign of the George ; it was Sir William Farmer's House ; but made use of for an Inn, because the Town was burnt down.

L. C. J. Was Mr. Ireland with you all that Day ?

Sir Edward Southcoat. He rode with us all the Day.

L. C. J. And you took notice of it, because of his Horse, you say ?

Sir Edward Southcoat. Yes, he had a very pretty Horse, my Lord ; and my Brother bought the Horse of him, after we came back again.

L. C. J. Whither went ye the next Day ?

Sir Edward Southcoat. The next Night we lay at the Bull in Coventry, and from thence on Thursday, we arrived at my Lord Aston's, at Tixball.

Mr. At. Gen. My Lord, the Jury desires to know what he says ? For they have not heard it.

L. C. J. He says, Mr. Ireland went with my Lord Aston in the Coach, it being a hot Day, on Monday the 5th of August, from Standen, my Lord Aston's House in Hertfordshire to St. Albans, and lay there at the Bull Inn that Night ; that he went the next Day, which was Tuesday, the 6th of August, with them to Northampton. That he rode upon a pretty Horse, which makes him remember it particularly ; and that there was a Dispute on the Road, who should buy him ; and when they came back, his Brother bought him. He says, they lay on Tuesday Night at Northampton, at the George, which was a Gentleman's House, which was turned into an Inn, because of the Fire : That he went with them the next Day to Coventry, which was Wednesday the 7th of August, and lay with them that Night at the

Bull in Coventry ; and the next Day, which was Thursday the 8th they came, and Ireland with them, to my Lord Aston's House at Tixball in Staffordshire.

Mr. At. Gen. Pray Sir Edward Southcoat, How long did he stay with you at Tixball, at my Lord Aston's ?

Sir Edward Southcoat. He staid with us there till the Tuesday after ; and then we began our Journey from my Lord Aston's House in Tixball into Wales, to St. Winifred's Well.

L. C. J. That is Holy-Well, you mean.

Sir Edward Southcoat. Yes, my Lord.

L. C. J. You say, he stayed all Friday, Saturday, Sunday, Monday, and till Tuesday after you came to my Lord Aston's at Tixball.

Sir Edward Southcoat. Yes, my Lord, he did so.

Mr. At. Gen. So then, my Lord, we are gotten to Tuesday the 13th of August, which is past the time of the Perjury, that is laid second in the Indictment ; but in Point of Time, is the first that happened ; for he swore that Ireland took his leave of them, and others here in Town, between the 8th and 12th of August ?

Mr. Sol. Gen. Where did you go on Tuesday, Sir ?

Sir Edward Southcoat. Towards Wales.

Mr. Jones. Was he at Tixball the 12th of August ?

L. C. J. He says, he was there till Tuesday the 13th. Pray let us not have the same Questions repeated over and over again.

Mr. Sol. Gen. Where did you go on Tuesday Night ?

Sir Edward Southcoat. We went to Nantwich, and lay at the Holy Lamb there.

L. C. J. Where were you the next Night ?

Sir Edward Southcoat. The next Day we reached to St. Winifred's Well.

L. C. J. Where did you lie there ?

Sir Edward Southcoat. At the Star, which is the great Inn there.

L. C. J. It is so.

Mr. At. Gen. Was Mr. Ireland there with you ?

Sir Edward Southcoat. Yes, he was.

Mr. At. Gen. Whither did ye go then ?

Sir Edw. Southcoat. We staid not but one Day at Holy-well ; for we arrived there pretty late at Night ; and all the Morning we spent there, and went away in the Afternoon, and came that Evening to Chester, and lay there only one Night, and came the next Day to Tixball again.

Mr. At. Gen. Which was Friday the 16th of August.

Mr. Sol. Gen. Pray, my Lord, be pleased to ask him, Whether this Gentleman Mr. Ireland was with them all the while, in this Journey to Holy-well ?

Sir Edw. Southcoat. Every Day particularly ; I remember it very perfectly.

Mr. At. Gen. After he came to Tixball again, How long did he tarry there ?

Sir Edw. Southcoat. That I cannot so well say. I do remember truly, but he was afterwards at my Lord Aston's at Tixball. I remember some scambling Days ; but I can fix upon only two.

L. C. J. which are they ?

Sir Edw. Southcoat. I cannot tell what Day of the Month it was, or what Day of the Week ; but one Day that I remember him there, was Mr. Cbetwind's Race with Sir Henry Gough ; and one other Day.

L. C. J. When was that Horse-Race?

Sir Edw. Southcoat. My Lord, I cannot tell what Day of the Month it was.

Mr. At. Gen. When was the other time you speak of?

Sir Edw. Southcoat. I remember him there one Thursday, upon the Bowling-green at Tixball, where there was a particular Company.

Mr. Sol. Gen. My Lord, We desire to know, when his Brother did buy the Horse of Mr. Ireland?

Sir Edward Southcoat. When we came back; for he came home with us from my Lord Aston's, and we began our Journey, the 9th or 10th of September, from Tixball to Kingston; and when we arriv'd at my Father's House, my Brother bought the Horse of him.

L. C. J. Did you come home back again with Mr. Ireland, do you say?

Sir Edw. Southcoat. Yes, my Lord, we did.

L. C. J. When did you set out from Tixball?

Sir Edw. Southcoat. The ninth of September, my Lord, I think it was; I am sure, it was upon a Monday, the 9th or 10th.

L. C. J. When did you come home?

Sir Edw. Southcoat. We were four Days on our Journey.

L. C. J. And did you come straight to London?

Sir Edw. Southcoat. No, we went to my Father's House in Surry.

L. C. J. Which way did you come?

Sir Edw. Southcoat. The first Night we came to the Bull in Coventry; and from thence, the next Night, we went to the Altar Stone at Banbury; and from Banbury, we came the third Day to Agmondisham (I think, it is called) a little Town in Buckinghamshire: And from thence the fourth Day, to my Father's House, by Kingston in Surry.

Mr. At. Gen. And then Ireland sold his Brother his Horse.

L. C. J. How long was he at your Father's House in Surry, Sir Edward?

Sir Edw. Southcoat. My Lord, we came on the Thursday; and as I take it, he went on the Saturday to London: My Brother, after he had bought his Horse, lent him the Horse to Town; and sent a Man with him, to bring it back again.

Mr. At. Gen. That Saturday, my Lord, makes it come just to the Fourteenth of September; and is the very Day Fortnight before Michaelmas-Day.

Otes. My Lord, I desire to ask this Gentleman, Whether he saw Ireland all August, and till the Fourteenth of September in Staffordshire, and elsewhere? And, how long in Staffordshire?

Sir Edw. Southcoat. I cannot say, as to any particular Days of the Months, after our coming from Holy-Well, till our coming from Tixball to London.

L. C. J. Marry, if he did, he would contradict what he had said before: For from the time of coming from Holy-Well, to the time of coming back to London, he could tell but of two Days, and those uncertain: For he remembers not by the Times, but by other particular Circumstances.

Otes. Pray, my Lord, be pleased to ask him this Question, When was the first Day he saw him in September?

Sir Edw. Southcoat. Truly, my Lord, I remember not any Day before we began our Journey home?

Mr. At. Gen. But, my Lord, this is his Testimony: He was in his Company till the sixteenth of August. It is true, there were other times that he saw him at Tixball; but he cannot particularly speak unto them: But by and by, we shall go on to every Day, and prove particularly where he was.

Otes. My Lord, I desire to know, Was Sir Edw. Southcoat at the Tryal of Ireland a Witness, or no?

Sir Edw. Southcoat. No, I was not, my Lord.

Otes. Were you at Whitebread's Tryal, Sir?

Sir Edw. Southcoat. Yes, I was, and gave the same Evidence I give now.

Mr. Sol. Gen. Then swear Mr. John Southcoat. [Which was done.]

Mr. At. Gen. This is Sir Edward Southcoat's Brother, my Lord.

L. C. J. What, he that bought the Horse?

Mr. John Southcoat. Yes, my Lord, I bought the Horse of Mr. Ireland.

L. C. J. Well, what do you ask him?

Mr. At. Gen. Pray, Sir, When did you meet Mr. Ireland in August 1678? And where?

Mr. John Southcoat. My Lord, I met with Mr. Ireland, upon Monday the Fifth of August, at the Bull-Inn in St. Albans, with my Lord Aston: I came thither that Day with my Father and Mother. And the next Day we went to Northampton; and there we inn'd at the Sign of the George, Sir William Farmer's House; which is an House in the Road, us'd for an Inn since the Town was burnt: And I conversed with him every Day, in our Journey. And from thence, the next Day, we went to Coventry, to the Bull-Inn there; and from thence, to my Lord Aston's (on Thursday Night) at Tixball: There we stay'd all Friday, Saturday, Sunday, and Monday. Mr. Ireland was there; I was with him all the while. And then upon Tuesday we set out for Holy-Well in Flintshire; and went that Night to Nantwich, to the Lamb there. And the next Day we went through Chester to Holy-Well: We stay'd that Night at Holy-Well; and the next Day, came back again towards Noon, to Chester; and there lay that Night: And then the next Night, which was Friday, we came back again to Tixball.

L. C. J. Was Mr. Ireland with you both those Journeys, all the while?

Mr. John Southcoat. Yes, my Lord, he was; I did see him, and rode with him every Day.

L. C. J. Pray, Sir, How long were you at Tixball, after you came from Holy-Well?

Mr. John Southcoat. We stay'd there till we came away for good and all.

L. C. J. Was Mr. Ireland with you all that time?

Mr. John Southcoat. No, he was not?

Mr. At. Gen. Do you remember, that Mr. Ireland came to Tixball the Ninth of September; and came along home with you, when you came?

Mr. John Southcoat. Yes, I do remember it very well.

L. C. J. What Day did you come home, Sir?

Mr. John Southcoat. We came home in Four Days.

Mr. Sol. Gen. When did he leave you?

Mr. John Southcoat. We came home upon Thursday, and he went to London on Saturday.

L. C. J. Pray, Sir, Can you recollect when you did first see him again at *Tixball*, after you came from *Holy-Well*?

Mr. *John Southcoat*. My Lord, I cannot tell particularly any Day, till the Day we came away.

L. C. J. Do you remember the Horse-Match between Mr. *Chetwind*, and Sir *Henry Gough*?

Mr. *John Southcoat*. I was there, my Lord; but I do not remember Mr. *Ireland* was there.

L. C. J. How long did he stay at your Father's House in *Surry*, Sir?

Mr. *John Southcoat*. Two Days, my Lord.

Mr. *Sol. Gen.* You lent him your Horse you bought of him, I think, Sir?

Mr. *John Southcoat*. Yes, up to *London*, I did; and I lent my Man with him, to bring him back again.

Mr. *At. Gen.* Has Mr. *Otes* any Questions to ask this Gentleman?

Otes. My Lord, I desire to ask Mr. *Southcoat*, Whether or no he is sure, that *Ireland* was in his Company from the Fifth of *August*, to the Sixteenth?

Mr. *John Southcoat*. Yes, every Day, I am sure of it; I remember it very well.

Otes. Pray, my Lord, ask him, Whether or no he testified this that he now swears, at *Ireland's* Tryal?

Mr. *John Southcoat*. My Lord, I was not at *Ireland's* Tryal.

Otes. Then I desire to ask him, Whether or no he did testify this at the Five *Jesuits* Tryal?

Mr. *John Southcoat*. No, I was not sent for to any of the Tryals.

L. C. J. I am sorry you were not, Sir: 'Twas pity you were not there. It might have saved some innocent Blood.

Mr. *At. Gen.* Now swear *Harrison*. [Which was done.

Mr. *Sol. Gen.* Pray, will you give an Account, when you saw *Ireland*, and where?

Harrison. In the Year of our Lord 1678. my Master, Sir *John Southcoat*, went with my Lady, on Monday the Fifth of *August*, to *St. Albans*; and we came with a Coach and four Horses: For my Master had an old Servant, that had a Pair of Horses, which my Master made use of. And there we met my Lord *Aston*, in the Company of Mr. *Ireland*. And the next Morning, my Lord *Aston* went with my Master and Lady towards *Tixball*: And I rode by, in Mr. *Ireland's* Company; and came acquainted with him that Day. That Night we came to *Northampton*; and there we Inn'd at a Stone-House, that was used for the Inn, the Town being burnt before. The next Night we went to *Coventry*; and on *Thursday* we came to *Tixball*: There we stay'd till *Tuesday*. After we went to *Holy-Well*; and the *Tuesday* Night we lay at *Nantwich*: And thence we went to *Holy-Well*, and stay'd there on *Wednesday* Night: And on *Thursday* we came to *West Chester*; and I parted with him upon the *Friday* at *West Chester*.

Mr. *At. Gen.* Pray, did you know this *Ireland*? Was it he that was Tryed and Executed?

Harrison. I was at Mr. *Ireland's* Tryal.

L. C. J. Was it the same Man that was Tryed?

Harrison. My Lord, I saw him at his Tryal, the Hair of his Face was grown, and he was,

a little disorder'd; he did not look so well, because he was not so well dress'd; but it was the same Man, my Lord.

Mr. *Sol. Gen.* Before this Man goes, we have more Questions to ask him: When did you see him again, after you left him in *Chester* you say?

Harrison. I saw him several times at *Tixball*; I saw at the *Bowling-green* upon a *Thursday*; and I saw him when the Horse-Race was between Mr. *Chetwind* and Sir *Henry Gough*; I cannot tell what Day it was; for I had no reason to keep an Account of the particular Days at that time.

Mr. *At. Gen.* Did you come up with your Master again the 9th of *September*?

Harrison. My Lord, I did so; I have a Note wherein I set down the Charges at that Time. It is in this bit of Paper, which I have kept in my Almanack ever since. My Lord *Aston* sent his Coach with us to *Banbury*, where my Master's Coach was to meet him; but came only to *Coventry* the first Night. The next Night which was *Tuesday*, we came to the *Altar-Stone* at *Banbury*, and there we lay: From thence on *Wednesday*, we came to *Agmondisham*, where we were ill lodged. The next Day we baited at *Uxbridge*, and came to *Kingston*, and so to Sir *John Southcoat's* House, upon the *Thursday* Night. Upon the *Friday* Mr. *Ireland* sold his Horse to Mr. *John Southcoat*, my Master's Son. Upon the *Saturday* Morning, I came with him from my Master's House towards *London*; he did ride upon the Horse he had sold to Mr. *Southcoat*; and so we came up to Town, and took Water; and I took a little Bag that belonged to Mr. *Ireland* upon my Arm, and we landed at *Somerset House*, and I came with him to his Lodging in *Russell-street*; and when he came there, he went up Stairs, where were two Women met him, and welcom'd him Home: Said they, *We are glad you are come, we thought we had lost you, because we had never heard from you all this while*. There I took my leave of him, and did not see him again till his Tryal at the *Old Bailey*, and this was *Saturday* the 14th of *September*.

L. C. J. Pray let me see your Paper you speak of. [Which was delivered in, and the Court look'd upon it.

L. C. J. Did you write this in your Journey?

Harrison. Yes, my Lord, I did it at that time.

Mr. *At. Gen.* Are the particular Days inserted there, my Lord?

L. C. J. No, they are not, Mr. *Attorney*.

Harrison. I could not write well, it was only but Memorandums for my self.

L. C. J. What Day of the Month was the *Saturday* he came to Town?

Harrison. It was the 14th of *September*, my Lord.

L. C. J. That agrees with all that the Women said, that he came on *Saturday* a Fortnight before *Michaelmas*, being the same Day of the Week as *Michaelmas-Day* was: Thus far it is as clear as the Sun at Noon-day.

Otes. My Lord, There was a time when this was not believed.

L. C. J. Ay, Mr. *Otes*, we know there was a time, when there were *Ignoramus* Juries, and Things were believed, and not believed, as the Humour

Humour went. What can you, Mr. Otes, say to it? I must needs tell you, *prima facie*, 'tis so strong an Evidence, that if you have any Sense in the World, you must be concern'd at it.

Otes. Not at all, my Lord; I know who they are, and what is the end of it all.

L. C. J. Upon my Faith, I have so much Charity for you, as my Fellow-Creature, as to be concerned for you.

Otes. 'Tis not two straws matter, whether you be or no; I know my own Innocency.

L. C. J. Thou art the most obstinately hardened Wretch that ever I saw.

Otes. Pray, my Lord, ask him; whether he did not appear at Mr. Ireland's Tryal? And let it be remember'd what Credit he had then for all this Story he tells now. These People come here to serve a Turn only, and care not what they swear against me.

L. C. J. You must hold your Tongue.

Otes. My Lord, I must speak the truth, and I will speak the truth.

L. C. J. I think, there is scarce a Word of Truth comes out of thy Mouth.

Otes. You may think what you will, my Lord; but these Popish Traitors, I am sure, will swear any thing, and suborn Witnesses upon Witnesses against me to overthrow the Plot.

Mr. Just. Withins. If you cannot behave your self better than you do, we must send you elsewhere; we must not suffer this Behaviour: And therefore either be quiet, or get you gone.

L. C. J. Let him keep himself in order, and we'll hear him. If he think by boisterous Impudency to outface Justice, we will not suffer it. Go on, Mr. Attorney.

Mr. At. Gen. Swear Mr. George Hobson.

[Which was done.]

Mr. Sol. Gen. Were you in the Journey to Tixball with Mr. Ireland and my Lord Aston in 78?

Mr. Hobson. Yes, I was so, my Lord.

Mr. Sol. Gen. Pray tell all your Knowledge of that Matter.

Mr. Hobson. From the 3d of August till the 16th at Night, I was present with him every Day.

L. C. J. How do you know you were?

Mr. Hobson. That is to say, the 3d of August he came to my Lord's House at Standen in *Hartfordshire* in the Evening, and there he remained till Monday the 5th of August; and that Day in the Morning, he went together with other Company to *St. Albans*, where we met Sir John Southcoat and his Lady towards the Evening; and we all lodged there, because that was the appointed Place to meet at: We lodged the 6th of August at Night at *Northampton*; upon the 7th at *Coventry*; upon the 8th at *Tixball*, my Lord's House, where Mr. Ireland remained till Tuesday the 13th in the Morning. And upon the 13th in the Morning, we set forth with my Lady Aston, my Lord's Mother, and Sir John Southcoat, and Mr. Ireland, and the other Company, towards a Place called *Holy Well* in *Flintshire*: That Night, being Tuesday the 13th of August, we lodged at *Nantwich* in *Cheshire*; the Wednesday Night we lodged at *Holy Well*, where Mr. Ireland was with the rest of the Company; and on Thursday Night we returned back again to *Chester*, and lay there. Upon Friday we came

back again to my Lord's House at *Tixball*. After that I did not see Mr. Ireland till Monday the 26th of August, when he came back again to our House: Where he went in the mean time I cannot tell.

L. C. J. Whose House is it that this Man means by our House?

Mr. Hobson. I mean my Lord Aston's House at *Tixball*.

L. C. J. You knew him very well, did not you?

Mr. Hobson. Yes, my Lord, I knew him very well.

L. C. J. You say, he came back the 26th of August to *Tixball*?

Mr. Hobson. Yes, as I remember, he did so.

Mr. At. Gen. How long after the 26th of August was it, that you saw him at *Tixball*?

Mr. Hobson. When he went away for *London*.

Mr. At. Gen. When was that?

Mr. Hobson. The 9th of September.

L. C. J. Did you come along with him to *London*?

Mr. Hobson. No, my Lord; I see him go; he was not in the Coach, but he was in the Company.

Otes. My Lord, I would fain ask him a Question, When he was first acquainted with Mr. Ireland, that he speaks of?

Mr. Hobson. I never saw him till he came to my Lord Aston's at *Standen*.

Otes. Were you at the Tryal of Mr. Ireland, Sir?

Mr. Hobson. No, my Lord, I was not; I was then in *Staffordshire*.

Otes. Then it is material, my Lord, for me to ask him this Question, it relating to a particular Person; whether Ireland that was executed, was the Ireland he says he was with?

L. C. J. I will ask him, if you will. Was that the same Man that was afterwards tried and executed?

Mr. Hobson. I believe it was, my Lord.

Otes. I insist not so much upon the Question; but only in reference to the Witness, his Acquaintance being so short with him.

L. C. J. Truly, I think it is not so very short; for he swears he was with him from the 3d of August till the 16th every Day.

Mr. Just. Withins. I have no great Acquaintance with you; but I know you, Mr. Otes, because I have seen you so often.

L. C. J. Is it the same Ireland that was at the Tryal? You, Harrison, you saw him then?

Harrison. The very same, and no other.

Mr. Just. Withins. Certainly no body doubts that.

L. C. J. 'Tis fit he should have his Question answer'd, if the Witness can. Pray, go on, Mr. Attorney.

Mr. At. Gen. Swear George North. (Which was done.) Pray, will you give an account where you met Mr. Ireland, and whether you was with him in his Journey?

North. My Lord, I saw him the 4th of August, which was Sunday, at *Standen*, my Lord Aston's House in *Hartfordshire*: Upon the 5th, he went with my Lord to *St. Albans*; where my Lord met with Sir John Southcoat and his Lady; and I was with them. And from thence we went on Tuesday to the George at *Northampton*: And from thence, on Wednesday the 7th, to the Bull

at *Coventry*. And upon the 8th, we came to *Tixball*; which was *Thursday*. And from *Thursday* the 8th, to *Tuesday* the 13th, I did see him every Day at my Lord's House at *Tixball*.

L. C. J. Whither went he then?

North. He went with my old Lady, and some other Company to go to *Holy-Well*.

L. C. J. When did you see him again?

North. I did see him several times after that at *Tixball*: But I took no particular notice of him again till he went away for *London*.

L. C. J. When was that?

North. I did see him the 9th of *September*: He came to go with Sir *John Southcoat* to *London*: Mr. *John Southcoat*, and he. I took my Leave of him.

Otes. What Religion are you of, Sir?

North. I am a *Catholick*, my Lord.

Otes. I desire to know, how he comes to remember this so well?

North. I waited at the Table; and he was every Day at Dinner with my Lord.

Otes. Were you at the Tryal of *Ireland* a Witness?

North. No indeed, my Lord, I was not.

Mr. At. Gen. Swear *Richard Ingletrap*.

[Which was done.]

Mr. Sol. Gen. Pray, will you give an account, whether you knew Mr. *Ireland*, and where you saw him?

Ingletrap. The 1st of *August*, my Lord, I was ordered to be at *Standen* in *Hartfordshire*, to wait upon my Lord *Aston*, to go with him to *Tixball*. And the 3d of *August*, I saw Mr. *Ireland* there at *Standen* Lodge at my Lord's House. The 4th Day he rested there being *Sabbath-Day*.

Mr. At. Gen. What are you, an *Hackney-Coach-man*?

Ingletrap. Yes, my Lord, I am so. And upon the 5th, which was *Monday*, he went with my Lord *Aston* to *St. Albans*; upon the 6th, to *Northampton*; on the 7th, to *Coventry*; and the 8th Day, to *Tixball* Lodge. He was in the Company, and went all the way with him; and I was there too.

L. C. J. How long did he stay there?

Ingletrap. Till *Tuesday* the 13th.

L. C. J. Did you see him there till *Tuesday*?

Ingletrap. I do not say, that I did see him every Day.

L. C. J. Did you go with them on *Tuesday* to *Holy-Well*?

Ingletrap. No, I did not.

Mr. At. Gen. But, my Lord, you observe, that is past one of the Times that he swore *Ireland* was here in Town; that is, between the 8th and 12th of *August*.

L. C. J. It is so.

Mr. At. Gen. Pray, what Religion are you of, Mr. *Ingletrap*?

Ingletrap. I am a *Protestant*, my Lord?

Otes. Were you at the Tryal of the five *Jesuits*, or that of *Ireland*?

Ingletrap. No, I was not.

Otes. My Lord, I desire you would ask him, he being a *Protestant*, How he came to be acquainted with *Ireland*, that was a *Priest*?

L. C. J. Why, Mr. *Otes*, Is there no Conversation to be between *Papists* and *Protestants*?

Otes. Truly very little, my Lord: But that is not to the Point now. I desire to have an Answer to my Question.

Ingletrap. There was no great Acquaintance between us, my Lord; for I never saw him before that time.

Mr. At. Gen. Swear *Andrew Wetton*. *(Which was done.)* Did you go that Journey with my Lord *Aston* to *Tixball*?

Wetton. No. I went from *Tixball* to *Holy-Well*.

Mr. At. Gen. What Day did you set out from *Tixball*?

Wetton. Upon *Tuesday* the 13th of *August*.

Mr. Sol. Gen. Where did you lie that Night?

Wetton. At *Nantwich* at the *Holy Lamb*. And the next Day we baited at *Chester*; and from thence we came the next Night to *Holy-Well*: There we stay'd all Night, and till next Day at Noon. We din'd at *Holy-Well*, and came that Night back to *Chester*: And from thence, the next Day, we came home to *Tixball*.

L. C. J. Was Mr. *Ireland* there all the while?

Wetton. Mr. *Ireland* was there, I look'd after his Horse.

L. C. J. When did he come first to *Tixball*?

Wetton. He came upon the 8th, and stay'd till the 13th; and then went to *Holy-Well*.

Mr. Sol. Gen. Pray, what Religion are you of?

Wetton. I am a *Protestant*, Sir.

Mr. At. Gen. And the 9th of *September* he came away from *Tixball* for *London*, you say?

Wetton. Yes. I saw them take Coach, and he did ride on Horseback.

L. C. J. Did you see him often at *Tixball*, between the time he came from *Holy-Well* and the time he went to *London*?

Wetton. Yes, he was there several times; but I cannot tell the particular Days: But, my Lord, if you please, I can tell you the very Money he gave me, which was a Shilling and two Six-pences, when we came back from *Holy-Well*.

L. C. J. And the 16th, you say, he came back from *Holy-Well*?

Wetton. Yes, it was the 16th, upon *Friday*, that he came from *Holy-Well*.

L. C. J. And he says, the 9th of *September* he came back again from *Tixball* to *London*; and that he saw him several times, in the mean time, at my Lord *Aston*'s House.

Mr. Sol. Gen. So, my Lord, we are past one of the Times; and have fix'd him at *Tixball* upon the 16th.

Mr. At. Gen. We have a couple of Witnesses more upon this Point, and then we shall go on to the 17th; and so all along to the 9th of *September*.

Mr. At. Gen. Swear *Thomas Sawyer*. *(Which was done.)* When came Mr. *Ireland* to *Tixball*? Can you tell?

Mr. Sawyer. He came the 8th of *August* to *Tixball*, and continued there till the 13th: And then he went away; but whither he went, I cannot tell: But, as I was told, it was to *Holy-Well*.

Mr. At. Gen. When did he come to *Tixball* again?

Mr. Sawyer. When my old Lady *Aston* came home, which was *Friday* the 16th.

Mr. Sol. Gen. Do you know when he left *Tixball* for good and all?

Mr. Sawyer. the 9th of *September*, my Lord, he went with Sir *John Southcoat* to go to *London*.

L. C. J.

L. C. J. Can you remember he was there at any time between the 16th of *August*, and the 9th of *September*?

Mr. *Sawyer*. He was once or twice there; but I cannot tell the particular Days.

Mr. *Sol. Gen.* What Perswasion are you of, as to Religion, Sir?

Mr. *Sawyer*. I am one of the Church of *England*, my Lord.

L. C. J. Truth is the same in all Perswasions.

Mr. *Sol. Gen.* But we would obviate Mr. *Otes's* Objection, That they are all Papists.

Mr. *At. Gen.* Swear *Frances Allen*. (Which was done.) Pray, will you give an account, when you saw Mr. *Ireland* in *Staffordshire*?

Mrs. *Allen*. He came the 8th Day of *August* to *Tixball*, and continued there the 9th, 10th, 11th, 12th, and to the 13th in the Morning, and then he did go to *Holy Well*.

Mr. *At. Gen.* She will tell you one particular Circumstance, how she remembers him about that time.

Mrs. *Allen*. The 10th of *August* was *Saturday*; and that which causeth me to remember it, is this; There was a Woman, one *Sarah Paine*, I think her Name was, which testified at the Tryal, that he was in Town at that time; but he was not: For he was at *Tixball* upon the 10th, which was *Saturday*; and the 11th, which was *Sabbath-day*: And I saw him in the Chamber those Days.

Mr. *At. Gen.* How came you to know him so well?

Mrs. *Allen*. I was a Servant to my Lord *Aston*, and look'd to Mr. *Ireland's* Chamber, and wash'd his Linnen; and those Days I saw him in his Chamber.

Mr. *At. Gen.* When he went from *Tixball* to *Holy Well* the 13th, when did he come back again?

Mrs. *Allen*. The 16th Day, which was *Friday*.

Mr. *At. Gen.* Did he come afterwards to *Tixball* at any time?

Mrs. *Allen*. He went away the 17th, and I can tell you by a good Token, that he did so: For the 17th I carried his Cloaths into his Chamber, that he was to take with him.

Mr. *At. Gen.* When did he come again to *Tixball*?

Mrs. *Allen*. He came several times, but truly I cannot tell what Days particularly.

Mr. *Sol. Gen.* Pray, when did he go away for good and all?

Mrs. *Allen*. I remember his going away with Sir *John Southcoat*, but I cannot tell the time.

Mr. *At. Gen.* Pray what Religion are you of?

Mrs. *Allen*. I am a Protestant of the Church of *England*; so I was Christened, so I have lived, and so I hope to die before you all.

L. C. J. Upon my Word, she is very kind, she has a mind to die before us: 'Tis a sign she lives a good Life, she's so ready to die.

Mr. *At. Gen.* So, my Lord, you see that the 17th of *August*, he departed from my Lord *Aston's*. Now we shall call Mrs. *Harwell* to give you an account, whither he went on the 17th. Swear Mrs. *Jane Harwell*. (Which was done.)

Mr. *Sol. Gen.* Where do you live, Mrs. *Harwell*?

Mrs. *Harwell*. I live now in Town, my Lord.

Mr. *Sol. Gen.* Where did you live in the Year 78?

Mrs. *Harwell*. At *Wolverhampton*.

Mr. *Sol. Gen.* Did you know Mr. *Ireland*, he that was executed?

Mrs. *Harwell*. Very well, my Lord.

Mr. *Sol. Gen.* What time did he come to your House at *Wolverhampton*?

Mrs. *Harwell*. The 17th of *August* 1678.

Mr. *Sol. Gen.* What Day of the Week was it?

Mrs. *Harwell*. Upon *Saturday*.

Mr. *Sol. Gen.* From whence did he say he came at that time?

Mrs. *Harwell*. I do verily believe it was from *Tixball* that he came; I cannot positively say.

Mr. *Sol. Gen.* How long stay'd he there?

Mrs. *Harwell*. He came to my House the 17th of *August* 1678. He supped there that Night, and I think he lay in my House every Night till the 26th of the same Month. Upon the 19th Day, after Dinner, I went with him a good part of the Town of *Wolverhampton*; and upon *Friday* following, which was the 23d, he went a little way out of Town, to a Fair hard by; and return'd the same Day; and stay'd at my House the next Day, being *Bartholomew-day*. The next Day being the 25th, being *Sunday*, he was at my House, and he stay'd, as I said, every Night, and lay at my House; and went away on *Monday* the 26th of *August*. It was, to the best of my remembrance, in the Morning.

Mr. *Sol. Gen.* Whither did he say he was going, when he went from your House on the 26th?

Mrs. *Harwell*. I think to *Tixball*, he said.

Mr. *Sol. Gen.* When did you see him again after that?

Mrs. *Harwell*. He returned to me again the 14th of *September* following. That Night he supped at my House, and lay there; and he stay'd at my House *Thursday* the 5th of *September*, *Friday* the 6th, and he went away on the 7th from me for good and all.

Mr. *At. Gen.* Whither did he go then?

Mrs. *Harwell*. To *Tixball* I think, I cannot tell.

Mr. *At. Gen.* Whence did he say he came, when he came last to your House; which was *Wednesday* the 4th of *September*?

Mrs. *Harwell*. Then he said, he came from *Boscobel* and *Black-Ladies*, and that way.

Mr. *Sol. Gen.* Can you tell any thing that makes you remember he was at *Boscobel*?

Mrs. *Harwell*. I have some Circumstances that make me believe and remember it.

L. C. J. Ay, tell us what they are.

Mrs. *Harwell*. My Lord, Upon *Monday* the 2d of *September*, I heard Mr. *Ireland* would be at *Boscobel*; and I said to my Friend that told me so; Sure Mr. *Ireland* will not be there that Night, and I so near him. Yes, said she, be will. Then, said I, I will write to him; and so I did. And I tell you the 4th of *September*, which was *Wednesday*, he came to my House, and stay'd that Night, and the two next Days with me, and went away upon the *Saturday* after.

L. C. J. You say, you did write to him upon the 2d of *September*?

Mrs. *Harwell*. Yes, I did so.

L. C. J. What was the occasion of your writing to him at that time?

Mrs. *Har-*

Mrs. Harwell. One Madam Dormer, was then in those Parts, and he being gone a Visiting his Friends at Black Ladies, I writ to him, and desired him to give her a Visit, for I knew she would be glad to see him.

L. C. J. He came back to you the 4th of September, you say?

Mrs. Harwell. Yes, he did so, my Lord.

L. C. J. Did he own upon the Fourth of September, that he had received your Letter?

Mrs. Harwell. He said he had been at the Place, my Lord, but I know not whether he had received my Letter or no; but I am sure he waited upon my Lady; for she told me so afterwards.

Otes. I desire to know whether this Gentleman was at Ireland's Tryal?

Mrs. Harwell. No, my Lord, but I heard that upon the 17th of December following, Mr. Ireland was try'd at the Old Bailey for High Treason. Upon the 19th, I was informed by the Post what was sworn against him; and particularly as to this time, which I knew to be false: And upon my own Cost and Charges I sent an Express away to Town here to a Friend that I knew, upon reading the Letter that was written to me, that Mr. Ireland was falsely accused; and by that Express also I sent a Petition, humbly beseeching His late Majesty, that we might bring in Witnesses to prove, that Mr. Ireland was in Staffordshire, when Mr. Otes swore he was in Town; and upon that the King staid the Execution about five Weeks. We did hope for a second Tryal, but we could not obtain it; and he was executed. I did it at my own Cost and Charges: For I thought it my Duty, if I could, to save his Life, knowing that to be false which was sworn against him.

L. C. J. She speaks gravely and soberly upon my Word.

Mr. Just. Withins. So she does indeed.

Mr. At. Gen. We have abundance of them, my Lord. Swear Mr. William Rushton.

[Which was done.]

Mr. Sol. Gen. Tell my Lord what you know of Mr. Ireland's being at Mrs. Harwell's in August 1678, at Wolverhampton.

Mr. Rushton. My Lord, In the Month of August 1678, I did see Mr. William Ireland at Wolverhampton in the County of Stafford; and it was upon the 18th of August, and I saw him there, from the 18th to the 25th, every one of the Days but one, and that I cannot be positive in. He went that Day to Litchfield, which was upon the 23d, as I take it, but I cannot be positive; but all the rest of the Days I did see him there once, if not twice or thrice a Day.

Mr. At. Gen. Where did he lodge then?

Mr. Rushton. At Mr. Jyfford's, or Mrs. Harwell's.

Otes. Were you at any of the Tryals of Ireland, or the five Jesuits, Sir?

Mr. Rushton. No, I was never at one till now.

Otes. Pray, my Lord, what Religion is this Gentleman of, I desire to know?

Mr. Rushton. Not of your Worship's Religion, Doctor Otes.

L. C. J. But answer his Question.

Mr. Rushton. I am a Catholick.

Otes. A Roman Catholick he means, I suppose.

Mr. Rushton. Yes, I am a Roman Catholick, and a Loyal Subject.

Mr. Sol. Gen. Swear Mrs. Katherine Winford.

[Which was done.]

Mr. At. Gen. Mrs. Winford, Pray did you see Mr. Ireland at Mrs. Harwell's, the Year 1678?

Mrs. Winford. Yes, I did, Sir.

Mr. At. Gen. Pray tell the Court what you do know of that Matter.

Mrs. Winford. I did hear at Wolverhampton, that Mr. Ireland came to Town the 17th of August, and I did see him there the 18th, and I did see him there the 19th, and I did see him there the 20th, and I saw him there upon the 22d, 23d, 24th, and 25th, and that was the last time I saw him there.

L. C. J. At Mrs. Harwell's was it that you saw him?

Mrs. Winford. Sometimes at Mrs. Harwell's; and sometimes at my Father's House, who lived in that Town.

Otes. My Lord, I desire to know how she comes to remember those Days so particularly?

Mrs. Winford. I remember them, because St. Bartholomew's Day was the 24th of August, and that was the Saturday after he came to Town; and the first Day I saw him was the Sunday before, and so I reckon it to be on those Days I saw him.

L. C. J. Have you any other Questions to ask her, Mr. Otes?

Otes. No, my Lord, I have not; She was a Witness before at Whitebread's Tryal, and was not believed there.

L. C. J. Well, make your Remarks by and by, and let them now go on with their Evidence.

Mr. Sol. Gen. Then swear Mr. William Stanley.

[Which was done.]

Mr. At. Gen. Pray, did you see Mr. Ireland at Wolverhampton, and when?

Mr. Stanley. Upon the 18th of August 78. It was Sunday, I saw Mr. Ireland in Wolverhampton in the Morning, and in the Afternoon he was in my own House. Upon Monday the 19th I saw him twice that Day at my own House; I positively speak that, and I verily believe I did see him on Tuesday the 20th, and Wednesday the 21st; but Thursday and Friday I cannot say I did see him those two Days: For he went upon one of them to Litchfield. But upon Saturday and Sunday I am sure I saw him, and two or three times some Days.

Otes. Pray, Mr. Stanley, did you know him before?

Mr. Stanley. No, I did not, Sir.

Otes. Was you at his Tryal?

Mr. Stanley. No, I was not.

Otes. Were you at the five Jesuits Tryal?

Mr. Stanley. No, I was not in London since, till the last Term.

Otes. What Religion are you of, Sir?

Mr. Stanley. What Religion are you of, Mr. Otes?

L. C. J. Nay, do not ask Questions, but answer the Questions he asks.

Mr. Stanley. I am a Roman Catholick.

Mr. At. Gen. Mr. Stanley, Pray can you recollect any Circumstance how you came to remember that it was such and such Days that you saw him?

Mr. Stanley. Yes, my Lord, I can.

L. C. J. What are they, tell them us?

Mr.

Mr. Stanley. I buried a Child that Morning, being Sunday the 18th of August, and he came to my House in the Afternoon, and I entertained him with those Things that I had provided for to entertain my Friends at the Funeral. On Monday was a Wake, and the young People went all to the Wake, and left Madam Harwell alone; and so she came with him to my House, and I entertained him with the same kind of Entertainment that I did the Day before.

L. C. J. That is a remarkable Circumstance indeed.

Mr. At. Gen. Swear Mrs. Dorothy Purcell. [Which was done.]

What say you, Mrs. Purcell, when did you see Mr. Ireland, at Wolverhampton?

Mrs. Purcell. I saw him the 18th, 19th, 20th, 21st, 22d, and 23d Days of August, 1678.

Mr. At. Gen. Where did you see him?

Mrs. Purcell. At a Friend's House in Wolverhampton.

L. C. J. How come you to remember those Days of the Month?

Mrs. Purcell. I remember them by particular Circumstances.

L. C. J. What are those particular Circumstances? Let us hear them, How come you to name those very Days, the eighteenth, nineteenth, and so on?

Mrs. Purcell. I can remember it as well as any thing in the World.

Otes. I desire, my Lord, that she may tell how she does remember it.

Mrs. Purcell. That's enough, and as much as need to be said, I remember very well.

Otes. But I desire to know how you come to remember it?

Mrs. Purcell. I remember it, I tell you, very well; And I do affirm I saw him there.

Otes. But you do not tell what Circumstances you remember it by.

Mrs. Purcell. No, there is no need of it, I am sure I saw him there then.

Mr. At. Gen. Tell him some Circumstances.

Mrs. Purcell. Those were the Days before Bartholomew Eve.

Otes. My Lord, Is this any thing of Evidence?

L. C. J. The Jury hears it, and they will consider of it.

Otes. What Religion are you of, Mrs?

Mr. Purcell. Must I tell what Religion I am of?

L. C. J. Yes, answer his Question.

Otes. I dare say she is a Papist, she need not trouble her Head to answer it.

Mr. At. Gen. Swear Mr. Scott. [Which was done.] Were you at Wolverhampton when Mr. Ireland was there?

Mr. Scott. Yes, I was.

Mr. At. Gen. Did you do any Service for him there?

Scott. I look'd to his Horse.

Mr. At. Gen. When did he come thither, do you remember?

Scott. I cannot tell just the time that he came in.

Mr. At. Gen. What Day of the Week was it that he came thither?

Scott. It was of a Saturday.

Mr. At. Gen. What Month was it?

Scott. I cannot tell very well what Month it was; it was in August I think.

Mr. At. Gen. How long did he continue there?

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Scott. The space of a Fortnight off and on.

Otes. Is that Evidence, my Lord, that he has delivered?

L. C. J. It is but very small Evidence. It is only Circumstantial to confirm the other Testimony.

Mr. At. Gen. How long was it before Ireland was tryed and executed, can you tell that?

Scott. No, I know nothing of it.

Mr. At. Gen. Then swear Mr. John Stamford. [Which was done.]

Mr. Sol. Gen. Did you see Mr. Ireland at Wolverhampton, and when was it, I pray you?

Mr. Stamford. My Lord, in the Year 1675. I was sent beyond Sea to St. Omers, to fetch over two young Gentlemen that were Students there; And there I became acquainted with Mr. Ireland, who was then Procurator of the Jesuits at St. Omers. And in August 78. I did see him in Wolverhampton, upon the Sunday after the Assumption of our Lady; which was the 15th of August, he came to see me, and I saw him there that Day.

L. C. J. What Day of the Month is the Assumption of our Lady?

Mr. Stamford. That is always the 15th of August, my Lord.

Mr. At. Gen. How often did you see him there?

Mr. Stamford. I saw him Sunday and Monday, and till that seven Night, I saw him every Day in that Week but one, when he went to Litchfield.

Otes. My Lord, I desire to know how he comes to remember that it was at that time?

L. C. J. He tells you a Reason for it, because it fell out to be upon the Sunday after the Assumption of our Lady; which is always the 15th of August.

Otes. My Lord, he says he came acquainted with Mr. Ireland at St. Omers.

L. C. J. Yes, he says, that was in the Year, 1675.

Otes. I desire to know, my Lord, what Business he had there?

L. C. J. He tells you, he went to fetch over two young Men that were Students there.

Otes. Pray, my Lord, I desire to know what Religion he is of.

L. C. J. What Religion are you of?

Mr. Stamford. I am a Roman Catholick.

Otes. I desire to know what his Profession?

Mr. Stamford. I am a younger Brother, of a good and loyal Family as any of the County of Stafford, and that suffered as much as any for the late King.

Otes. I believe if it were looked into he is somewhat else besides a younger Brother.

Mr. At. Gen. Yes, he says he is of a Loyal Family.

L. C. J. I am sure there is such a Family in that County that were great Sufferers for King Charles I. and the late King; and were very instrumental in Services for the late King, at his escape from Worcester; but whether he be of that Family or no, I cannot tell.

Mr. Stamford. The Doctor thinks I am a Jesuit, but I'll assure him I have a Wife and Children.

Mr. At. Gen. Mr. Otes was about to have made him a Priest, but it seems he hath a Wife and Children, and so is out of Danger.

Z z z

Mr. Sol. Gen.

Mr. Sol. Gen. Pray, swear Mrs. Katharine Fowler.

[Which was done.]

Mr. At. Gen. Did you see Mr. Ireland, Mrs. Fowler, at Wolverhampton, in 1678?

Mrs. Fowler. Yes, I did.

Mr. At. Gen. When was it?

Mrs. Fowler. I did see him on Saturday the 17th of August at Wolverhampton, he came that Day to my Mother's House, where I was.

Mr. At. Gen. How long did he stay there?

Mrs. Fowler. Till the 27th, which was Monday was Seven Night after, I was in his Company every Day in that time unless it were Friday, which Day they say he went to Litchfield to the Fair.

L. C. J. Is Mrs. Harwell your Mother?

Mrs. Fowler. Yes, my Lord, she is, and I lived at that time with my Mother.

L. C. J. How do you remember this, Have you any Tokens that you can give us, why you remember it was then?

Mrs. Fowler. My Lord, I recollected my self after Mr. Ireland's Tryal, in which Mr. Otes swore that he was here in Town between the 8th and 12th of August, that that was the very Month that Mr. Ireland was in Wolverhampton, and thereupon I concluded that Mr. Otes had not sworn true by that Recollection when it was fresh in my Memory, being within half a Year after.

Otes. Madam, Are you Mrs. Harwell's Daughter?

Mrs. Fowler. Yes, I am so, Sir.

Otes. Did you not know one Mr. Jennison?

Mrs. Fowler. Which Jennison?

Otes. Mr. Robert Jennison.

Mrs. Fowler. Yes, I do know him.

Otes. Are you not a kin to him?

Mrs. Fowler. Yes, but I am sorry to own I have such a Relation.

Mr. At. Gen. Swear Mr. Gifford.

[Which was done.]

Mr. Sol. Gen. Did you see Mr. Ireland in Staffordshire, and when, I pray you?

Mr. Gifford. I saw him there at Wolverhampton the 17th of August 1678, and he continued there till the 26th, I saw him there every Day.

Otes. Pray, my Lord, be pleased to ask this Gentleman, whether he were at the Tryal of Ireland?

Mr. Gifford. No, I was not in Court, nor examined as a Witness.

Otes. Were you at the Tryal of the five Jesuits, Sir?

Mr. Gifford. I was there, but was not examined.

L. C. J. Was it every Day, say you, that you saw him at Wolverhampton?

Mr. Gifford. Every Day.

L. C. J. They say, he was one Day out of Town at Litchfield.

Mr. Gifford. He was out of Town that Day, but I saw him.

Mr. At. Gen. Swear Mrs. Elizabeth Gifford.

[Which was done.]

Mr. Sol. Gen. You hear the Question, Did you see Mr. Ireland in Staffordshire in 78, and when?

Mrs. E. Gifford. Mr. Ireland came to Wolverhampton the 17th of August, and continued there till the 26th.

Mr. At. Gen. How do you remember it?

Mrs. Gifford. By a Wake that was just hard by,

that was at that time; and he came to my Uncle's House upon the Sunday following the Assumption of our Lady.

Mr. At. Gen. Did you see him every Day till the 26th?

Mrs. Gifford. I remember I did see him every Day but two Days that I was abroad at the Wake.

Otes. My Lord, I desire to know, whether she was examined at any of the former Tryals?

Mrs. Gifford. Yes, at the five Jesuits Tryal, I was.

Otes. Were you not at Ireland's Tryal?

Mrs. Gifford. No, I was not.

Otes. There was one Gifford examined there.

Mr. At. Gen. Swear Mrs. Elizabeth Keeling.

[Which was done.]

Mr. Sol. Gen. Did you see Mr. Ireland at Wolverhampton, and when?

Keeling. Yes, my Lord, I did see Mr. Ireland at Wolverhampton.

Mr. Sol. Gen. Pray tell when it was.

Keeling. It was the 17th of August he came to my Mistress's House.

Mr. Sol. Gen. What August?

Keeling. August before the Plot.

L. C. J. Who was your Mistress?

Keeling. Mrs. Harwell, my Lord.

Mr. Sol. Gen. How long did he continue there?

Keeling. He came on the Saturday, and I saw him there till the Monday. When I was sent for to my Mother's Burying I left him and Madam Dormer at Dinner, and came back on the Thursday. And in his Chamber I heard him discourse, but I did not see him. Upon the Friday he went abroad, and returned again that Night. Upon the Saturday I saw him, and he continued there till Monday Morning, and then he went away, and returned on Wednesday the 4th of September, and stayed till Saturday the 7th; and then went away from Wolverhampton.

Otes. I desire to know what Religion this Woman is of?

Keeling. I am a Roman. Catholick, God be thanked.

Mr. At. Gen. Mrs. Keeling, When did Mr. Ireland return again do you say, after he went first to Wolverhampton?

Keeling. It was the Wednesday seven-night after, Sir.

Mr. At. Gen. That was the 4th of September.

L. C. J. How long stayed he there then?

Keeling. Till Saturday in the Forenoon.

Mr. At. Gen. Whither did he say he was going then?

Keeling. He said he went to Bellamour to Dinner.

L. C. J. Did you see him at any time after?

Keeling. No, my Lord, I saw him no more.

Mr. At. Gen. Then swear Mr. Richardson.

[Which was done.]

Mr. Sol. Gen. Pray, Sir, will you give an account when you saw Mr. Ireland and where, in the Year 78?

Mr. Richardson. My Lord, I saw a Gentleman that I was informed was Mr. Ireland, at Wolverhampton, at a Wake; which was Monday the 19th of August.

Mr. At. Gen. Where did he lodge?

Mr. Richardson. At Mrs. Harwell's.

Mr. At.

Mr. At. Gen. What, Are you a Tradesman?

Mr. Richardson. Yes, an Apothecary in *Wolverhampton*.

L. C. J. How many Days did you see him at *Wolverhampton*?

Mr. Richardson. I saw him only one Day in the Market-place.

L. C. J. You did not know Mr. Ireland before?

Mr. Richardson. But I was informed that was he.

L. C. J. What became of that Ireland that you were informed was at *Wolverhampton* then?

Mr. Richardson. I heard presently after that, upon Mr. Otes's Plot, he was secured and executed.

Mr. At. Gen. What Religion are you of, pray, Sir?

Mr. Richardson. I am of the Church of England.

Otes. Pray, Sir, I would ask you this Question.

Mr. Richardson. As many Questions as you please, Mr. Otes.

Otes. Who told you it was Mr. Ireland?

Mr. Richardson. Mrs. Harwell.

Otes. When was it she told you it was Ireland?

Mr. Richardson. To the best of my Remembrance, it was before he was apprehended as a Traitor.

Otes. He is uncertain when he was told so.

L. C. J. Well, make what Advantage you can of it by and by.

Mr. At. Gen. Swear Mrs. Eleanor Graves.

Mr. Sol. Gen. Pray, Mistress, did you see Mr. Ireland at *Wolverhampton* at any time?

Mrs. Graves. Yes, I did, my Lord.

Mr. Sol. Gen. When was it?

Mrs. Graves. The first time was six Years ago in August, it is now going on seven Years since.

Mr. At. Gen. What time in August was it?

Mrs. Graves. The first Day was the 20th or 21st, I am sure I saw him upon the 22d; for I din'd with him, and was with him all the Afternoon; and supp'd with him. Upon the 23d we went to *Litchfield* together, which was *Bartholomew Eve*. And I saw him the 25th, which was Sunday after.

L. C. J. Are you sure it is the Ireland we are now speaking of?

Mrs. Graves. They said it was the same Mr. Ireland that was executed. They call'd him so.

L. C. J. Nay, there is no great Doubt, but only for Mr. Otes's Satisfaction.

Mr. At. Gen. At whose House did he lie at *Wolverhampton*?

Mrs. Graves. At Mrs. Harwell's.

Mr. At. Gen. Where was it you supp'd with him, I pray you?

Mrs. Graves. He din'd and supp'd at a Relation's House of mine.

L. C. J. Who was that? Name him.

Mrs. Graves. It was at my Uncle *Winford's*.

L. C. J. Did you go along with him to *Litchfield* do you say on the 23d?

Mrs. Graves. Yes, and so did my Uncle; and at Night we came back together.

Mr. Sol. Gen. What Religion are you of, Mistress?

Mrs. Graves. I am of the Church of England.

Otes. My Lord, I desire to ask her, How did she know it was the same Ireland that was tried?

Mrs. Graves. It was the same Ireland that they said was afterwards executed. I know no more.

Mr. Sol. Gen. Did you go back with him to Mrs. Harwell's from *Litchfield*?

Mrs. Graves. I did, to my Uncle *Winford's* House.

Mr. At. Gen. Now we come, my Lord, to another Period of Time, which is from the 26th of August, to the 29th; and for that we first call Sir *Thomas Whitegrave*, who is a Justice of the Peace, and a worthy Gentleman; a Member of the Church of England in that County. Swear him. [Which was done.]

Mr. Sol. Gen. Pray, Sir *Thomas*, will you be pleased to give the Court an account, whether you saw Mr. Ireland in *Staffordshire* 1678, and what time it was?

Sir *Thomas Whitegrave*. I saw Mr. Ireland upon the 29th of August before the Popish Plot; it was upon a Thursday in the Afternoon upon *Tixball* Bowling-green; and I discoursed with him; he told me he was to go home that Night with Sir *James Simmons*, and Mr. *Heveningham*. They told me afterwards he went on Saturday to *Hildersham*, and went thence on Monday following towards *Boscobel*; some time after that, a Rumour came down that Mr. Ireland was accused with others, of being in a Plot of the Papists; and my self and some others that were in Commission for the Peace in that County, did reflect upon the time that Ireland was in the Country, and we were a little disturbed, because he had been at particular Places among our Neighbours, whom we knew to be Catholics.

Mr. At. Gen. Can you remember no Day but that one, Sir *Thomas*?

Sir *Thomas Whitegrave*. Only the 29th I saw him there, and discours'd with him; and afterwards there was Word sent to me, to desire me that I would come up to London at his Tryal.

L. C. J. And did you come up, Sir *Thomas*?

Sir *Thomas Whitegrave*. No, I did not; I had no Subpœna; and being a Justice of the Peace, I did not think fit to leave the Country at that time without a Subpœna.

Otes. My Lord, I desire to know of this Gentleman, how long he had been acquainted with Mr. Ireland?

Sir *Thomas Whitegrave*. I never saw him before, nor since.

L. C. J. He goes no further than the 29th.

Mr. At. Gen. No, my Lord, he does not. Then swear Mr. *William Fowler*.

[Which was done.]

Mr. Sol. Gen. Pray, will you give an account when you saw Mr. Ireland, and where?

Mr. Fowler. I saw Mr. Ireland upon the 27th of August 78. in *Staffordshire*, at a Horse Race at *Etching-hill*. The Race was run between Sir *Henry Gough* and Captain *Chetwind*.

Mr. Sol. Gen. Did you see him any other Day in that Month?

Mr. Fowler. Yes, the 29th of August I saw him at *Tixball* Bowling-green.

Mr. Sol. Gen. When else did you see him?

Mr. Fowler. I saw him the 10th of August before.

Mr. Sol. Gen. Where, at Tixhall, at my Lord Aston's House?

Mr. At. Gen. Do you remember Sir Thomas Whitegrave was upon the Bowling-green the 27th of August?

Mr. Fowler. Yes, he was, and did discourse with Mr. Ireland there.

L. C. J. What became of Mr. Ireland afterwards?

Mr. Fowler. He went about the Country for some time, my Lord.

L. C. J. Was it the same Ireland that was executed?

Mr. Fowler. Yes, it was the same.

L. C. J. You say you saw him the 29th at Tixhall Bowling-green?

Mr. Fowler. Yes, I did so.

L. C. J. When you heard he was taken up for the Plot, what did they say whither he went at that time?

Mr. Fowler. I think he went to Mr. Heveningham's, or thereabouts.

Otes. I would fain know this Gentleman's Religion.

Mr. Fowler. I am a Roman Catholick.

L. C. J. We ask it only because Mr. Otes desires to be satisfied in that Point.

Mr. At. Gen. Pray swear Mr. Howard.

[Which was done.]

Mr. Sol. Gen. What time in August 78 did you see Mr. Ireland in Staffordshire, and where?

Mr. Howard. I came out of Shropshire upon the 27th of August, to the Horse Race at Etching-bill; and there I saw this Mr. Ireland upon the 28th. I dined at one Mr. Herbert Aston's House at Bellamore, and there I saw him again.

Mr. At. Gen. What other time did you see him?

Mr. Howard. Never any other time.

Otes. How does he know it was the same Mr. Ireland?

Mr. Howard. I came up to Town soon after, and they told me that knew him, that it was the same Ireland that suffer'd.

Mr. At. Gen. Swear Mr. Drayton.

[Which was done.]

Mr. Sol. Gen. Where did you see Mr. Ireland?

Mr. Drayton. At Etching bill Race.

Mr. At. Gen. What Day was that?

Mr. Drayton. That was the 27th of August 1678.

Mr. At. Gen. When did you see him after?

Mr. Drayton. The next Day following I did not see him; but the Thursday following I saw him at Tixhall, and he went home with Mr. Heveningham to Aston, and I saw him on Friday, he was with us there, and went a fishing, and we catch'd a great Pike of a Yard long; which was not ordinary with us. Upon the 31st, which was Saturday, my Master went to kill a Buck in the Park, and Mr. Ireland went along with him, and they went to a little Village hard by, and there I parted with him, and did see him no more that Day. Mr. Gerrard of Hilderham was to meet my Master a hunting, but he was sick, and did not: Then upon Sunday the 1st of September, I was sent to see Mr. Gerrard of Hilderham, and there I saw Mr. Ireland.

L. C. J. Who was your Master, pray you?

Mr. Drayton. This Lord Gerrard of Bromeley's Father.

Mr. At. Gen. He was accused by Dugdale of the Plot, and died afterwards in Newgate.

Otes. Pray ask Mr. Drayton what Religion he is of?

Mr. Drayton. I am a Roman Catholick.

Mr. At. Gen. Swear Sir James Simmons.

[Which was done.]

Mr. Sol. Gen. When did you see Mr. Ireland, Sir James?

Sir J. Simmons. Upon Tuesday the 27th of August 78, I remember very well, I saw Mr. Ireland at the Horse Race at Etching-bill, between Sir Henry Gough, and Mr. Chetwind; and I remember particularly, that Sir Henry Gough's Horse distanc'd him. I did not see him before he came to the Inn, but there we met, and drank together. And Thursday the 29th of August, being at Tixhall Bowling-green, Mr. Ireland was there, and came home with my Father Heveningham and me, and some Gentlemen in the Country; and came to Aston, and stay'd there that Night. I remember the next Day was Pancrass Fair, and I went to the Fair, and did not come home.

Mr. At. Gen. What Day of the Month is that Fair usually kept?

Sir J. Simmons. It is an unconstant time; now and then in September, now and then in August; and that Year we had a Subscription to get it regulated to a certain Day.

L. C. J. Did you see him after?

Sir J. Simmons. My Lord, I cannot swear to the Saturday, because I cannot so well tell whether I came back from the Fair on Friday Night, I think I did not.

Mr. At. Gen. Swear Mr. Green.

[Which was done.]

Mr. Sol. Gen. Did you know Mr. Ireland?

Mr. Green. Yes, my Lord, I did.

Mr. Sol. Gen. When did you see him in 78?

Mr. Green. The first time was Etching-bill Race, the 27th of August.

Mr. Sol. Gen. What other Days do you remember?

Mr. Green. Thursday the 29th I saw him; I belong to Sir James Simmons, and Mr. Ireland came home with him, and some other Gentlemen to Mr. Heveningham's at Aston, and was a setting with him on Friday the 30th in the Afternoon. And Saturday the 31st he was a hunting with Mr. Gerrard. Nay, more than that, I saw him drawn on the Sledge, but not executed. And that was the same Man that was there at that time.

Otes. What Religion is this Gentleman of?

Mr. Green. I was ever a Roman Catholick.

L. C. J. Pray were they a fishing that Day?

Mr. Green. In the Morning he was, and they got a great Pike; I saw the Pike and did eat part of it.

Mr. At. Gen. Swear Mr. Fallas.

[Which was done.]

Mr. Sol. Gen. When did you see Mr. Ireland, Sir?

Fallas. Upon the Thursday after Sir Henry Gough's Race, which was Thursday the 29th of August, Mr. Ireland came to Mr. Heveningham's, and I look'd to his Horse there. Upon Friday Morning they went a fishing, and got a great Pike; and I did see them go out a setting after Dinner,

Dinner, he and Mr. Green, with my Lady and the Keeper; and I saw him come in again. And I saw him drink a Glass of Table-Beer in the Hall. Upon Saturday Morning, which was the 31st of August, they went a hunting in Mr. Gerrard's Park, and kill'd a Buck; and afterwards my Master asked him to go home with him again, but he would not: For he said he must go to Mr. Lowes at four, and we parted at three. And I came here, and saw him executed; but while he was at my Master's House, his Horse was never out of the Stable but I brought it to him.

Mr. At. Gen. When did you see him executed?

Fallas. It was the 24th of January afterwards, I think.

Otes. What Religion are you of?

Fallas. I am for the Church of England, a Protestant, I always was so.

Otes. Pray, my Lord, ask him when he was acquainted with Mr. Ireland?

Fallas. The first time was the 29th of August, when he came to my Master's House.

Otes. That does not come to my time, my Lord.

Mr. At. Gen. But it comes very close to it; it reaches to the 31st of August.

L. C. J. It is within a Day of you, upon my Word.

Mr. Sol. Gen. And I'll tell your Lordship what is yet more considerable; this Place is an hundred and twenty Miles from London: But we shall not leave him there.

Otes. I desire to know whose Servant he is?

Fallas. I am a Servant to Mr. Heveningham, and I serve the King; I come to testify the Truth. I was here before, but then we must not be heard; all the Cry was against us, that we were Rogues, and must be knock'd on the Head.

L. C. J. Were you here at any of the Tryals?

Fallas. I was at the Council-Table, and there I was in great Danger of being knock'd on the Head.

Otes. Would they have knock'd him on the Head at the Council-Table, does he say?

Fallas. I have been in the Room by the Council-Table, where they have cryed, Knock them down, hang them Rogues; do they come to be Witnesses against the Saviour of the World? And they came about me there, and asked me if I knew any of them, or was of their Company? And I was glad to say I came thither about a Suit of Law I had with a Brother of mine; and then they pitied me.

Mr. Sol. Gen. Now we have brought him, my Lord, every Night where he lodged from the 3d of August to the 31st.

Mr. At. Gen. And then we shall prove that he went to Mr. Gerrard's at Hildersome that they speak of; there he was the 31st and 32d—

L. C. J. How, Mr. Attorney, the 32d? I doubt you will hardly be able to tell us where he was that.

Mr. At. Gen. The 1st of September I mean, my Lord.

L. C. J. Ay, we understand you very well.

Mr. At. Gen. Swear Mr. John Proctor.

[Which was done.]

Mr. Sol. Gen. When did you see Mr. Ireland in 78?

Proctor. I saw him the 31st of August 78.

Mr. Sol. Gen. Where?

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Proctor. At Fulford.

Mr. Sol. Gen. At whose House?

Proctor. At Mr. Lowes.

Mr. Sol. Gen. That was the Place the other Witness said Ireland told him he was to be at four of the Clock, and therefore went away at three.

Mr. At. Gen. When did you see him afterwards?

Proctor. I saw him the next Day, the 1st of September.

Mr. At. Gen. Where?

Proctor. At Esquire Gerrard's.

Mr. At. Gen. How far is that from Mr. Lowes?

Proctor. It is a Mile and an half.

Mr. Sol. Gen. Did you see him afterwards?

Proctor. Not there, I did not.

Mr. At. Gen. What Religion are you of?

Proctor. I am a Protestant.

L. C. J. What did you hear became of that Ireland afterwards?

Proctor. I saw him executed at Tyburn afterwards, and it was the same Man.

L. C. J. Where did you live then?

Proctor. I lived at Fulford then.

L. C. J. What, with Mr. Lowe?

Proctor. Yes, my Lord.

Otes. It seems he was a Servant to a Papist.

L. C. J. What then, what of that?

Otes. My Lord, I desire you would ask him, whether he ever saw Ireland before the 31st of August which he speaks of?

Proctor. No, I did not.

L. C. J. But you are sure it was the same Man you saw executed?

Proctor. Yes, I am sure of it.

Mr. Sol. Gen. What Circumstance can you tell that he was the 1st of September at Mr. Gerrard's?

Proctor. I went to Dinner thither that Day: I rode before Madam Brooke.

L. C. J. What Day of the Week was that 1st of September?

Proctor. It was upon a Sunday, my Lord.

Mr. At. Gen. Was that about Pancrass Fair-time?

Proctor. Yes, my Lord, it was.

Mr. Sol. Gen. He can tell you another Circumstance how he comes to remember him at Mr. Lowes the 31st of August.

L. C. J. Ay, by what Token do you remember that he was there the 31st of August?

Proctor. I went that Day to pay some Money, and came home again in the Afternoon; and just as I came in, he came thither.

Otes. How does he say he knows him to be the same Man?

L. C. J. He has told you twice he saw him executed.

Otes. What Religion is he of, does he say?

L. C. J. He is a Protestant.

Mr. At. Gen. Then swear Mr. John King.

[Which was done.]

Mr. Sol. Gen. Pray, do you acquaint the Court and the Jury where you saw Mr. Ireland, and when.

Mr. King. I saw Mr. Ireland at Mr. Gerrard's of Hildersome the 1st of September that Year that the Plot broke out, which was in the Year 78. There I saw him on Sunday; there he stayed all Night, and so did I; and on Monday Morning I went to Mrs. Crompton's where I liv'd, and he came thither to Millage as soon as I, which is

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within

within a Mile of *Hildersome*, and dined there the same Day.

L. C. J. How far is that from *London* pray you?

Mr. King. An hundred and ten miles.

L. C. J. And he was there at Dinner, you say?

Mr. King. Yes, he was.

L. C. J. How long was it before Dinner was done?

Mr. King. I believe he might go thence about two of the Clock.

L. C. J. Where did he say he designed to go then?

Mr. King. He designed to go to *Boscobel* that Night.

L. C. J. Do you remember any body else was at *Mr. Gerrard's* then when you saw him?

Mr. King. Yes, *Mr. Ferman Drayton* was at *Hildersome* at that time.

Otes. Pray, what Religion is this Gentleman of?

Mr. King. I am a Roman Catholick, *Mr. Otes.*

Mr. At. Gen. Pray swear *Mr. Francis Lee.*

[Which was done.]

Mr. Sol. Gen. Pray, tell my Lord and the Jury where you saw *Mr. Ireland*, and when?

Lee. I was a Servant to *Mr. Gerrard*, and *Mr. Ireland* upon Saturday Night came to my Master's House, and stayed all Night and all Day on Sunday, and went away on Monday to *Millage*.

L. C. J. What time and what Year was it?

Lee. It was in 78; but I am not certain of the Day of the Month: It was on a Saturday he came, and I have Witnesses to prove I was there at that time.

L. C. J. What Month was it?

Lee. It was in August; as I think, the last Day, but I am not certain: And he went on Monday to *Millage*, and there dined at *Mrs. Crompton's*; and from thence he went to *Pancrass*, and thence he did go to *Boscobel*, and stayed all Night there.

Mr. At. Gen. That was the 2d of September.

L. C. J. How do you know he went to these Places?

Lee. I was told so.

Otes. My Lord, I desire to know how long this Man was acquainted with *Ireland* before?

Lee. I never saw him but at that time.

Otes. How does he know it is the same Man then?

Mr. King. Here is a Man that saw me with him, and was present at *Ireland's* Execution.

L. C. J. Who is that, *Proctor*?

Mr. King. Yes, my Lord.

L. C. J. Then call *Proctor* again. (Who came in again.) Who went along with you to Dinner on Monday?

Lee. My Lord, He did see me at *Hildersome* at *Mr. Gerrard's*.

L. C. J. What say you, *Proctor*, was this Gentleman there at that time?

Proctor. Yes, my Lord, I did see him there.

L. C. J. Was that the same Man that was executed, which you saw at *Mr. Gerrard's*?

Proctor. Yes, it was.

L. C. J. Did you dine with *Mr. Ireland* on Monday at *Mrs. Crompton's*?

Lee. Yes, my Lord, I did, and went afterwards with him to *Pancrass*, and stayed there two Hours, and then he went to *Boscobel*.

Mr. Sol. Gen. There are the two Days gone which *Mr. Otes* swore to, and in which he was so positive that it was either the 1st or 2d of September.

Mr. At. Gen. Then swear *Mr. Biddolph*.

[Which was done.]

Mr. Sol. Gen. Pray, Sir, when did you see *Mr. Ireland*, and where?

Mr. Biddolph. My Lord, I was in *Staffordshire* the latter end of August and the beginning of September, and I was at *Mrs. Crompton's* House, which is my Aunt, the 2d of September, being Monday, where I saw *Mr. Ireland*, and dined with him that Day; and after Dinner he went with *Mr. Gerrard's* Son who was to go to School to *Boscobel*: And I will give your Lordship a particular Circumstance that may satisfy you that I am not mistaken in the time: As I came thorough *Northamptonshire* that Summer, I was at my Lord *Cullen's*, and he desired me to be at a Horse Race at *Newton-Slade*, where there is a Plate always run for upon the first Thursday in September, and that Year it was the 5th of September. Now when I dined at my Aunt *Crompton's*, she would have had me stay'd all Night at her House, but I excused my self, and told her I had promised to come to my Lord *Cullen* to be at the Race, and I must needs be there before, to be as good as my Word to my Lord; and therefore I went away to *Pancrass*, and so on my Journey, otherwise I had stayed with my Aunt all Night: And I am sure this was Monday before this Horse Race.

Otes. My Lord, This Gentleman speaks to no Year particularly.

Mr. Biddolph. It was in 1678, the Year before *Mr. Otes's* Plot broke out.

Mr. At. Gen. Now we will call *Mrs. Crompton*: Swear her.

[Which was done.]

Mr. Sol. Gen. Pray, when did you see *Mr. Ireland*, *Mrs. Crompton*?

Mrs. Crompton. He was at my House at *Millage* in *Staffordshire* at Dinner, the same Day that my Nephew *Biddolph* did dine there: As for the Day of the Month I cannot so well tell it, because when my Friends dine with me, I do not use to note down the Day particularly; but it was, I remember, a pretty remarkable time, for it was about *Pancrass* Fair. *Mr. Gerrard* of *Hildersome* came with him, and *Mr. Ireland* being a Stranger, I asked who he was, and they told me it was *Mr. Ireland*: He never was at my House before nor after; he was a meer Stranger to me.

L. C. J. What Day was it, say you?

Mrs. Crompton. It was the same Day my Nephew *Biddolph* dined there.

L. C. J. Was it Monday the 2d of September, do you remember?

Mr. At. Gen. He says he was at her House at *Millage* that Day, and she says it was the same Day he dined there.

Mrs. Crompton. But I never note down the particular Days when my Friends dine with me, except I had particular occasion to do it, as I had none at this time.

Otes. My Lord, I desire to know what Religion this old Gentlewoman is of?

Mrs. Crompton. I am a Roman Catholick, my Lord.

Mr. At. Gen. Swear *Mrs. Palmer*:

[Which was done.]

Mr. Sol.

Mr. Sol. Gen. Mrs. Palmer, Where did you see Mr. Ireland?

Mrs. Palmer. I was at Dinner at Mrs. Crompton's at Millage, where there was a Gentleman called Mr. Ireland that did dine there.

L. C. J. When was it?

Mrs. Palmer. I cannot tell truly what Day it was.

L. C. J. Who was there besides you at Dinner that Day?

Mrs. Palmer. 'Tis so long since, I cannot remember.

L. C. J. Was Mr. Biddolph there?

Mrs. Palmer. Not that I remember, my Lord.

L. C. J. What do you bring her for, Mr. Attorney?

Mr. At. Gen. She dined there that Day it seems; but if she cannot remember it, I cannot help it.

L. C. J. But these kind of Witnesses do but slack your Proof.

Mr. Sol. Gen. My Lord, I think we do over do our Business indeed.

Mr. At. Gen. We have one Witness more to this Point, and that is Mrs. Mary Holmes; swear her. *[Which was done.]* Where did you see Mr. Ireland in the Year 78?

Mrs. Holmes. I saw him at Millage, my Lord.

L. C. J. When?

Mrs. Holmes. The 1st or the beginning of September, I am sure.

Mr. Sol. Gen. What Day of the Week was it?

Mrs. Holmes. Monday.

L. C. J. You have Proof enough of this, Mr. Attorney General.

Mr. At. Gen. Truly, I think so, my Lord.

Mr. Sol. Gen. Pray swear Mrs. Esther Gifford. *[Which was done.]* Mrs. Gifford, When did you see Mr. Ireland?

Mrs. Gifford. Upon the 2d of September 78. I saw Mr. Ireland, above a hundred Miles from this Place.

Mr. Sol. Gen. Where?

Mrs. Gifford. At Pancrafts.

Mr. Sol. Gen. What time of the Day was it?

Mrs. Gifford. In the Afternoon about four or five a Clock.

Mr. Sol. Gen. Did he stay there all Night?

Mrs. Gifford. I cannot tell indeed.

Mr. At. Gen. Swear Mr. Pendrel. *[Which was done.]*

Mr. Sol. Gen. Now, my Lord, we are come to the 2d of September in the Evening, we shall prove where he was that Night and the 3d, and then we shall return to the 4th of September, when Mrs. Harwell swears he came back to Wolverhampton.

Mr. Hanfes. When did you see Mr. Ireland, Mr. Pendrel?

Mr. Pendrel. I saw him upon the 2d of September.

Mr. At. Gen. Where did you see him?

Mr. Pendrel. At Boscobel at my House, there he lodged with me that Night.

Mr. Sol. Gen. In what Year was it?

Mr. Pendrel. In the Year 1678.

Mr. At. Gen. Was it the September before the Plot, and before Mr. Ireland was executed?

Mr. Pendrel. Yes, my Lord, it was.

L. C. J. Did you know him before?

Mr. Pendrel. No, I did never see him before, as I know of.

L. C. J. How long did he stay there?

Mr. Pendrel. He stayed that Night and the next Day all Day, and went away the 4th of September to Black-Ladies.

Mr. Sol. Gen. Whose House is that?

Mr. Pendrel. It is Mr. John Gifford's.

L. C. J. You say you live at Boscobel; did you hear any thing of a Letter came to your House for Mr. Ireland?

Mr. Pendrel. Not that I know of, my Lord, there was not any that I remember.

Mr. At. Gen. Then swear Mrs. Pendrel.

[Which was done.]

Mr. Sol. Gen. Pray, Mistress, will you give an account where you saw Mr. Ireland?

Mrs. Pendrel. I saw him at Boscobel, at the Royal Oak; he came there the 2d Day of September.

Mr. Sol. Gen. Can you tell what Year it was?

Mrs. Pendrel. It was the first beginning of the Plot.

Mr. Sol. Gen. How long did he stay there?

Mrs. Pendrel. He stay'd Tuesday, and Wednesday he went to Black-Ladies, and so away to Wolverhampton.

Mr. Sol. Gen. We have but one Witness more, my Lord, for Wednesday the 4th of September, and then we have done. Swear Mr. Charles Gifford. *[Which was done.]* When did you see Mr. Ireland?

Mr. C. Gifford. May it please your Lordship, I saw Mr. Ireland at my Father's House at Black-Ladies.

Otes. My Lord, I would ask Mrs. Pendrel a Question before she goes: Whether she was not a Witness at the five Jesuits Tryal?

Mrs. Pendrel. I was in Court, but they would not suffer me to swear.

Otes. Did she not give Evidence there?

L. C. J. She was examined, but she could not be sworn, because she came to testify against the King in a Capital Cause.

Mr. At. Gen. Pray what say you, Mr. Charles Gifford?

Mr. C. Gifford. My Lord, I say I saw Mr. Ireland at my Father's House at Black-Ladies, and he stay'd there an Hour and an half, and went thorough Chillington, and said he would go to Wolverhampton.

Mr. At. Gen. What Day of the Month was it?

Mr. C. Gifford. I am morally certain, it was the 4th of September, and so he went to Wolverhampton, as I am informed. He came to our House to see a Lady that was there.

L. C. J. What Lady was it?

Mr. C. Gifford. It was one Madam Wells.

Mr. Sol. Gen. Thus, my Lord, we have lodged him the 4th of September at Wolverhampton, when Mrs. Harwell says, he returned to her; and so, my Lord, we have given an account where he was from the 3d of August to the 14th of September.

Mr. Sol. Gen. We have prov'd where he was every Day in that time, but only the 8th of September, and for that we must leave it to the Jury. We have proved that he came away from Mrs. Harwell's the 7th, and he said he was to go to Tixball; and the 9th he did go from Tixball in Sir John Southcoat's Company, and came to London the 14th.

L. C. J. Well, what say you to it, Mr. Otes?

Otes.

Otes. Has Mr. Attorney done his Evidence, my Lord?

Mr. At. Gen. We shall call no more Witnesses, unless you go about to support your own Credit, and then we have other Witnesses to call.

Otes. I do not value any Witnesses you can bring against my Credit.

Mr. At. Gen. Well, for the present we do not design to call any more Witnesses.

L. C. J. Then let us hear what you say to it.

Otes. My Lord, Here is an Indictment exhibited against me, which sets forth, that I should swear at Mr. Ireland's Tryal, that Mr. Ireland was in Town the 1st and 2d of September; and it sets forth, that in truth he was not in Town: And likewise it sets forth, that I swore at the Tryal of the five Jesuits, that Mr. Ireland took his leave of me and others here in Town at his Lodging in *Russel-street*, between the 8th and 12th of August; whereas the Perjury there assigned, is this, That he did not take his leave of me or any other Person, betwixt the 8th and 12th of August, at his Lodging in *Russel-street*. Now, my Lord, I was not the only Witness of Mr. Ireland's being in Town in the Month of August; nor the only Witness of his being in Town about that time in September. My Lord, my Prosecutors have endeavoured to maintain this Charge against me thus: The first thing they have gone upon, as far as I can remember in the Indictment, is as to the 1st or 2d of September, or rather they have endeavoured to prove both under one. Now in answer to all this Evidence, my Lord, the first thing I shall offer to your Lordship's Consideration and the Consideration of the Jury, is the great Hardship I lie under, after six Years time to be put to disprove what the Counsel here have now offered against me. My Lord, I observe first, that this Indictment which is now upon Tryal, is founded upon the Tryal of *Ireland*, which was the 17th of December 1678, at the *Old Bailey*, and it is now six Years after that Evidence of mine was delivered. A second thing is, that the Indictment is found by special Commission, as appears by the Indictment itself. Now I must recommend to the Consideration of your Lordship and this Jury, why the Prosecution of this pretended Perjury has been delayed so long, when it appears by the Evidence which has been produced, that the Witnesses to prove it were known six Years since, as much as they are now; and there is no colour of Evidence offered, that any new Fact has been lately discovered which was not then known. There is no Reason, my Lord, that is assigned, or can be assigned for this Delay, but only that the Hardship might be the greater upon me: For now it is difficult, if not impossible, for me to maintain the Evidence I then gave, so many Persons being since dead or gone beyond the Seas, and many things that were fresh then, are now grown out of Memory; and I beg your Favour to insist upon this, and I think it cannot be denied me. If such a Practice as this be admitted, no Witness is safe in giving his Testimony against any Conspirators whatsoever. For, my Lord, I must desire leave to offer another thing to your Consideration, before I speak to the particular Evidence, and

that is this, That here is nothing but a bare Point of Time upon which this Perjury is assigned; when the Substance of the Testimony that I gave at the Tryals of Mr. Ireland and the rest about the Popish Plot, is not assigned as any Perjury at all; it is only a Circumstance of Time and Place: And, my Lord, I shall offer this to your further Consideration, that *Ireland* was convicted for a Treasonable Resolution to murder the late King, and not for being in Town in August or September 78, or elsewhere; and he was not convicted for his being in his Chamber in *Russel-street*, and taking his leave there in August, which is one matter of the Perjury now assigned. Next, my Lord, 'tis hard and unreasonable to tie up Witnesses that come to discover Plots and Conspiracies, to speak positively as to Circumstance of Time and Place; and every little Punctilio in their Evidence to bind them up to such Niceties in the Delivery of their Testimonies, as to Time and Place. It is usual to speak with Latitude, as to such kind of things, and 'tis probable my Evidence, which is now in question, was not, that *Ireland* was the 1st or 2d of September positively here in Town; but, my Lord, I did (I believe) give myself a Latitude, and would not confine myself to either the 1st or 2d, 5th, 6th, 7th, or 8th; but, my Lord, that he was in September there, I am positive: I must therefore beg your Lordship's and the Court's Opinion, whether that Mr. Foster did prove that I was positive and precise to the Days of the 1st and 2d of September 78?

L. C. J. In my Opinion it is a plain Evidence that you did swear positively to those two Days; and you spoke to a Circumstance very material in your Evidence, that either the 1st or 2d of September you had twenty Shillings of him in Town here: Now that Circumstance of his Kindness to you, was not a Circumstance either of Time or Place.

Otes. Then, my Lord, I shall begin with my Proofs; but, my Lord, I desire I may have free Liberty to mind my Business; for here is a Gentleman behind me that will not let me be at quiet, but is either meddling with me or my Papers.

L. C. J. Who is it? Let me know him, and I will take care to make him quiet, or set him farther off. You, Gentlemen that are at the Bar should know better, one would think: He must have liberty to make his own Defence; and if he complains and lets me know who meddles with him, they had better do somewhat else.

Otes. My Lord, The first thing that I offer, is, that *Ireland* was convicted of Treason, and for that you have the Record.

L. C. J. It is allowed of all sides, that *Ireland* was convicted and attainted of Treason.

Otes. Then, my Lord, the principal Defence which, as near as I can remember, Mr. Ireland made at his Tryal, was an Endeavour to prove that he was not in Town between the 8th and 12th of August, nor the 1st and 2d Days of September, which are the Points now in Issue; and he then produced one Mr. Gifford and his Sister and Mother; and fifteen or sixteen Witnesses were produced at Mr. Whitebread's Tryal, of which there is another Record, that being six Months after Mr. Ireland was tried: There
Mr.

Mr. *Whitebread* produces several Witnesses, Mr. *Gifford*, I say, and several others, I think to the number of sixteen, which were to prove *Ireland's* being out of Town in these times that these Witnesses speak of. Now, my Lord, all those several Witnesses being produced to prove *Ireland* then out of Town, the very Point that is now in Issue, was then so; and notwithstanding all those Witnesses, the Jurors who tryed Mr. *Ireland*, and the Jurors who tryed Mr. *Whitebread* and the other four Jesuits, found them guilty; tho' they endeavoured with all their force imaginable to oppose my Testimony, and it was left to the Consideration of the Jury what their Witnesses had said. If your Lordship pleases to remember, my Lord Chief Justice *Scroggs* did observe to the Jury, that the Evidence of the Prisoner at the Bar did consist only in Punctilio's of Time; which, as near as I can remember what he says, he called a Nicety of time; and in *Whitebread's* Tryal he was pleased to call it catching in Point of Time. And it was observ'd at *Ireland's* Tryal, that his Defence was so weak that my Lord Chief Justice *Scroggs* upon the Integrity of *Bedloe's* Evidence and mine, uses these Words to the Jury, (tho' he then endeavoured to do what these Witnesses do now): It is most plain the Plot is discovered, and that by these Men, and that it is a Plot and a villainous one; which shews not only the Fulness and Satisfactoriness of our Proof that we gave, but does also take notice of the little Shifts and catching Tricks he made use of to prove himself out of Town; which would not weigh with the Court: Therefore I observe it is but the same Objection that then was made, and is not a new one now. And my Lord Chief Justice that then was, speaking of that Proof he brought (which the Court heard with Patience, but could easily see thro' the Vanity of it) said, What Arts they have of evading this, I know not; for as they have turn'd their Learning into Subtilty, so they have their Religion too. All this is well remembered by those that were by and heard that Tryal: And tho' *Ireland* laboured to disprove me in that Circumstance of Time, yet still the Court did justify the Evidence that Mr. *Bedloe* and my self had given: And the same Chief Justice said, I leave it to you to consider, whether you have not as much Evidence from these two Men as can be expected in a Case of this nature; and whether Mr. *Otes* be not rather justified by the Testimony offered against him than discredited. This was after his Plea was debated and considered; and I must further observe to your Lordship, that tho' Mr. *Ireland* by his false Witnesses pressed this Matter as far as he could then, and urged the Court to believe it; yet when the Jury brought in their Verdict and found him Guilty, the Chief Justice expressed the Satisfaction of the Court in these Words: You have done, Gentlemen, like very good Subjects and very good Christians; that is to say, like very good Protestants; and now much good may their 30000 Masses do them. This, my Lord, was the Case of Mr. *Ireland*, at his Tryal, and the same point of his being out of Town was again managed before a second Jury at the Tryal of the five Jesuits; but the Court saw the Design of the Popish Party to blemish the Evidence given of the Plot; but yet they

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look'd upon it only as a Trick: And my Lord Chief Justice *Scroggs*, in summing up the Evidence at that Tryal, says, They fall foul upon Mr. *Otes*, meaning my self; he appears to have been their Agent; and whilst so, bad enough: But if he had not had a mind to have become a good Man; he would not have done us that good he has done in the Discovery of the Design they had engaged him in. And if your Lordship please to remember, that at that Tryal of the Five Jesuits, when all Arts were used to prove *Ireland* out of Town, and me at St. Omers, in the same Charge to the Jury, my Lord *Scroggs* did take notice that the Jesuits were very exact at catching in a Point of time; but now says, that is a thing that no Man can precisely charge his Memory withal; and therefore he does there perswade the Jury, that that should not be too strictly the Measure of their Judgments about Truth and Falshood, by the Mistake of seven or eight Days; For, said he to the Jury, examine your selves how often every Day you do mistake things that have been transacted half a Year ago, and err in Point of Time, taking one Week for another, and one Month for another; and therefore you are not to lay too great a Weight upon the Point of Time. Now if too great weight, my Lord, be not to be laid upon a Point of Time, then this Charge that is now brought against me is not of weight at all. And besides, my Lord, this ought to be considered, if this were the great Objection then, and then answered, it ceases to be an Objection now. And as the Court did observe at the summing up of the Evidence, that they made their Defence about the Uncertainty of a Point of Time, which was no Defence at all: So that, my Lord, the whole Course of my Plea is this: 'Tis a hard Case for a Man after six Years, to be indicted for a Circumstance of Time. I will first offer the Testimony of one Witness that is dead, and that is Mr. *Bedloe*, who at his Death confirmed all that he had sworn of the Popish Plot to be true, and affirmed that he had rather spoken less than the Truth, than more; and for that I desire that my Lord Keeper may be called, who took his dying Examination.

L. C. J. As for that, Mr. *Otes*, it is a thing very well known to the World, and particularly to a worthy Gentleman that sits by you, (pointing to Mr. North) that Mr. *Bedloe*, when he was sick, did make some such Protestation.

Otes. Then, my Lord, I desire that Mr. *Blayney* may be sworn, to give an account what Mr. *Bedloe* testified at *Ireland's* Tryal.

Then Mr. *Blayney* was sworn.

Otes. Mr. *Blayney*, Pray will you see in your Notes of *Ireland's* Tryal, whether Mr. *Bedloe* did not swear that Mr. *Ireland* was in Town, the latter end of August 78, or the beginning of September.

Mr. *Blayney*. Whereabouts in the Tryal is it, Sir?

Otes. It is in the Printed Tryal, folio 41.

Mr. *Blayney*. My Lord, I do find these Words in my Notes, that Mr. *Bedloe* should say, about the latter end of August, or the beginning of September; but I believe it was the latter end of August, Mr. *Ireland* was at *Harcourt's* Chamber,

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and

and being asked the Question by my Lord Chief Justice *Scroggs*, Whether he said positively, it was the latter end of *August*, he said it was in *August*, he would not be positive to a Day, but he thought the latter end.

L. C. J. 'Tis very well known that too, that *Bedloe* did swear *Ireland* was in Town the latter end of *August* or beginning of *September*, and to confirm it upon *Mr. Ireland's* denial, you swore he was in Town the 1st or 2^d of *September*, and gave you Twenty Shillings, that was the Occasion of your Oath.

Otes. Then, my Lord, I desire to call some Witnesses to testify to the Deposition that was taken of *Mr. Jennison*, about *Ireland's* being then in Town.

L. C. J. When was that Deposition taken, and before whom?

Otes. It was taken in the Year 79. by Sir *Edmund Warcup*.

L. C. J. But we cannot admit that in Evidence, unless the King's Counsel will consent.

Otes. My Lord, I will then produce what he swore at another Tryal.

L. C. J. Why, where is he, is he dead?

Otes. My Lord, it has cost me a great deal of Money to search him out; but I cannot any where meet with him; and that makes my Case so much the harder; that I cannot, when I have done all that Man can do, get my Witnesses together. I sent in the depth of Winter for him, when I thought my Tryal would have come on before; but I could never hear of him.

L. C. J. We cannot help that.

Otes. Will what he said at any other Tryal be Evidence here?

L. C. J. Look you, though in strictness, unless the Party be dead, we do not use to admit of any such Evidence; yet if you can prove anything he swore at any other Tryal we will indulge you so far.

Otes. Have you the Record of Sir *George Wakeman's* Tryal there, Sir *Samuel Astrey*?

Mr. At. Gen. Here it is, if *Mr. Otes* have any use for it, we will lend it to him.

L. C. J. Put it in, and now prove what you can, what *Jennison* swore at that Tryal.

Otes. *Mr. Blayney*, have you your Notes of Sir *George Wakeman's* Tryal here?

Mr. Blayney. No, Sir, the Ticket of your Subpoena did only mention *Ireland*, *Whitebread* and *Langhorn's* Tryals. But I did formerly upon another Occasion look for the Tryal of Sir *George Wakeman*, but could not find it among all my Notes.

Otes. Sir, Can you remember then what *Jennison* swore at that Tryal, about *Ireland's* being here in Town?

Mr. Blayney. Truly, my Lord, I can never trust my Memory at all when I take Notes, and it is now so long since that Tryal, that I dare not undertake to say I remember any Particulars of it.

L. C. J. He says it is so long since, that he cannot remember anything. But there is Sir *Edmund Warcup* now, is he sworn?

Cryer. Yes, My Lord.

L. C. J. What do you ask him then?

Otes. I would desire to Examine Sir *Edmund*

Warcup, my Lord, about the Deposition of *Jennison* that he took.

L. C. J. But we tell you that cannot be admitted as Evidence, without they will consent to it on the other Side.

Otes. My Lord, he proves *Mr. Ireland* here the 19th of *August*, and that contradicts these Witnesses.

L. C. J. If they will admit it well and good, else we cannot do it.

Mr. At. Gen. My Lord, we will be so fair with *Mr. Otes*, if he will admit *Mr. Jennison's* Letter that is under his Hand, wherein he does own that he was mistaken in his whole Evidence about that Matter, we will consent his Deposition be read.

Mr. Just. Withins. If he will not consent to that, there's no reason you should consent to the other, *Mr. Attorney*.

L. C. J. Look you, *Mr. Otes*, *Mr. Attorney* makes you this Offer, You desire to have *Mr. Jennison's* Depositions read; which cannot be done without their Consent; they tell you they will consent, if you will let them prove what he has owned since about that Business.

Otes. My Lord, I will consent with all my Heart; let them read any Letter under his Hand.

L. C. J. Well, do it on both Sides by consent: And now *Mr. Otes*, do you produce his Examination.

Otes. Pray Sir *Edmund Warcup*, will you please to give the Court an Account, what Deposition *Mr. Jennison* made before you about *Ireland's* being in Town in *August* 78.

Sir *Edmund Warcup.* If my Lord commands me, I will.

L. C. J. Ay, you must answer his Question.

Sir *Edmund Warcup.* This *Mr. Jennison* did make one Information before me, and according to the Duty that was incumbent upon me, I delivered it in to the King and Council, and there it has lain ever since; for me to remember the Particulars of it is impossible.

L. C. J. Have you his Examination here, *Mr. Otes*? If you have, shew it him.

Sir *Edward Warcup.* If I see my Hand to it, attesting it was sworn before me, I can say somewhat to it.

Otes. My Lord, he says he delivered it into the Council; but it is printed.

L. C. J. That is no Evidence, Man.

Sir *Edward Warcup.* I can say nothing to it, unless I saw it under my own Hand.

Otes. That is impossible for me to have, my Lord.

L. C. J. I cannot tell how to help it.

Sir *Edward Warcup.* You have no more to say to me, Sir, have you?

Otes. No, Sir, I have not. Pray call *Sarah Batten*.

Mr. At. Gen. Is that the same that was *Sarah Pain*?

Otes. I think so, Sir; I am not sure it is she, till she come hither.

Cryer. Here is *Sarah Batten*.

Otes. Pray swear her, and call Sir *Thomas Doleman*. [Which was done.]

But Sir *Thomas Doleman* did not appear.

Otes. Pray was not your Name, *Sarah Pain*?

Batten.

Batten. My Lord, I desire my Charges before I speak.

L. C. J. What is your Name, good Woman?

Batten. My Name is *Sarab Batty*.

Otes. Was not your Name *Sarab Pain*, once?

Batty. No, my Maiden name was *Sarab Edmunds*.

Otes. Was not you a Witness at the Tryal of *Mr. Ireland*?

Batty. No, Sir.

Otes. Did not you live with my Lord *Arclington*?

Batty. No, Sir.

Otes. Then I have been at all this Charge for nothing. Are you sure your Name was not *Sarab Pain*?

Batty. No, indeed, Sir.

Otes. They told me that she liv'd at *Uxbridge*, and thither I sent.

Batty. I do live at *Uxbridge*, Sir.

Otes. Upon your Oath, were you a Witness at any of the Tryals, or no?

Batty. No, my Lord, I was not.

Otes. Then I have nothing to say to her.

L. C. J. What other Witnesses have you to call?

Otes. We have laboured all we could to find her out, and searched for her with all the care imaginable; and here we thought we had had her, but it seems it is not she.

L. C. J. We cannot help it.

Batty. I hope, my Lord, you will consider my Charges in coming up hither.

Otes. I will take care of thee, Sweet-heart.

L. C. J. Who do you call next?

Otes. Pray call *Mr. Charles Cläre*.

Cryer. He is not here.

Otes. Pray call *Mr. Percival*. My Lord, I desire *Mr. Blayney* may give an Account what she swore about *Ireland's* being in Town, seeing I cannot have her here.

L. C. J. That we cannot do neither, without *Mr. Attorney* will consent: For this as well as the other, is an extraordinary Thing.

Otes. You see by my bringing this Witness, my Lord, that I have done what I could to find her out.

L. C. J. What say you, *Mr. Attorney*, will you consent?

Mr. At. Gen. No, my Lord, it is so irregular, that we cannot consent to it.

Otes. Pray call *Mr. Percival* and *Mr. Vaughan*.

Cryer. They do neither of them appear.

Otes. Then I must lose the Benefit of her Testimony.

L. C. J. Have you done?

Otes. No, my Lord, I will have done immediately.

L. C. J. Take your own time.

Otes. I desire *Sir Michael Wharton* may be called.

Cryer. He is not here.

Otes. Pray call *Mr. Charles Cherwin*.

Cryer. He is not here.

Otes. Pray call *Mr. Robert Bowes*.

Cryer. He is not here.

Otes. Pray call *Mr. John Savile*.

Cryer. He is not here.

Otes. My Lord, I have served all these with *Subpœna's*; and if they will not come, I cannot help it.

L. C. J. Nor we neither.

Otes. *Mr. Jennison* was used as a Witness in the Tryal of *Sir George Wakeman*, and so was *Mr. Bowes*, and *Mr. Burnet*, who was produced to prove the Circumstance of *Mr. Jennison's* Evidence: But, my Lord, since I cannot have the benefit of his Evidence, nor of *Sarab Pain's*, I must only sum up all I have to say in two or three Words: My Lord, besides that what I did deliver in Evidence at those Tryals, I gave in upon Oath: You have *Mr. Bedloe's* Evidence at the Tryal of *Ireland* testified by *Mr. Blayney*; and the Testimony of him as a dying Man, given into my now Lord Keeper, wherein he averr'd, That what he had spoken of the Plot, was all true: And you hear that he swore *Mr. Ireland* was here in Town in *August*, and so did *Sarab Pain* too, and I think upon my self as very hardly used, to have such a part of my Testimony brought in question, after Witnesses are dead, or gone out of the way. As for *Mr. Jennison*, his Evidence was formerly made use of; and his Evidence was approved of too, as is well known to those that sat Judges upon the late Viscount *Stafford*. But this is that, my Lord, I must needs say for my self, That as I hope to see the Day of Salvation in another World, whatever I have sworn about *Mr. Ireland's* being here in Town betwixt the Eighth and Twelfth of *August* 78. and in the beginning of *September*, is true, as I shall answer it before God another Day. And, my Lord, as to the Evidence this Day brought against me, I desire you would but observe, though that there are many of those Witnesses, yet a great part of them do not come up to the Eighth or Twelfth of *August*: And I hope your Lordship will remember and remark to the Jury, what little Credit those of them had that came to testify in the behalf of *Mr. Ireland* at his Tryal, and at the Five Jesuits Tryals, of which there are two Records before you; and they do first justify this, That *Ireland* and the rest of them were Guilty of what they were accused of; and then, that these Witnesses did not testify the Truth.

Besides these two Tryals, my Lord, you have a third Verdict, and that is, at the Tryal of *Mr. Langborn*: Now the whole Popish Plot almost was laid forth in those three Tryals; and my Lord, I believe verily I am the first Precedent in all *England*, of any one's being indicted for Perjury that was a Witness for the King in such a Case as this, after six Years times elapsed, after Verdict upon Verdict, and Judgment and Execution upon these Verdicts, and when no new Objection is now offered, but what was then started; and no new Circumstance occurs now, but was as forcible then, except it be the Change of the Season. And I desire it may be considered, when all the Judges of *England* were Commissioners of *Oyer and Terminer* at those Tryals, these Matters were fully discussed and debated; and then they did look upon all the Objections as fully answered and confuted.

My Lord, I am confident if I had been a Witness in any other Cause than of a Conspiracy of the Papists, I might have had fairer quarter than I have now: And I do verily believe, that at this rate, it is more safe for Papists to be Traytors, than for any Protestant to discover a Popish Plot.

My Lord, and Gentlemen of the Jury, I beseech you to take my Case into your serious Consideration, as to the hardship of it; and since all my Witnesses are in Places unknown, or they are such as, considering the Times, dare not appear, some of them being Lawyers, and under fear they shall fare the worse in their Practice; and others being Persons that depend upon the Law, and think they shall be look'd ill upon, as I am now look'd upon with a hard Eye by the Popish Party and their Adherents: Yet I hope, you that are sworn to do Justice, will not let me be ruined by a number of false Witnesses, by the Evidence of Papists that are Parties. For if your Lordship please to consider that Vote of the Lord's House, which is a Court of Record, wherein they do declare that they are fully satisfied by the Proofs they have heard, that there then was, and for divers Years last past had been, a Horrid and Treasonable Plot and Conspiracy, contrived and carried on by those of the Popish Religion, for the murdering of His Majesty's Sacred Person, and for subverting the Protestant Religion, and the Ancient and Established Government of this Kingdom: Which Vote of Parliament, my Lord, does make the Papists to be all Parties in this Case, and where they are Parties, I hope they shall not be admitted as Evidence, or at least not be believed, because there is a Turn to be served by them against me, and a Revenge they are resolved to take upon me; for they have hopes now of bringing in their Religion, and are to welcome that in with my Ruin; and this is the Cause of this Prosecution: Their Eyes do see now what their Hearts so long desired, that is, the Death of a great Man who died but lately, and against whose Life they had conspired so often and so long. My Lord, if this had been the first Conspiracy that ever the Papists were guilty of, there might have been some more Scruple and Objection in the Case: But if you cast your Eyes upon *Campian* and others in Queen *Elizabeth's* Time, of *Garnet*, and the Powder Jesuits in King *James's* Time, and the Designs of the Popish Party in the Time of the late King *Charles*, the first discovered to the Archbishop of *Canterbury*: If these Things do pass for Truth, and there is no Averment against so many Records as we have of their Conspiracies, then my Discovery is no such improbable a Thing; and I hope then the Gentlemen of the Jury will take it into their Considerations; who they are that are Witnesses in this Case; Men whose very Religion is Rebellion, and whose Principles and Practices are pernicious to the Government; and thereby they are to be looked upon as dangerous Persons in Church and State. But, my Lord, if the Letters of *Coleman* be well considered, they will justify me, that he Corresponded with *Le Cheefe* the French King's Confessor, for the promoting of Popery in *England*, is notorious to all Mankind, that have either read or heard that Tryal: Your Lordship was of Counsel for the King in that Case, and heard how it was opened, and plainly proved upon him: And when his Letters have been made so publick, and proved under his own Hand, nay and confessed by himself, I think no Man will doubt but that

must be a plain Proof of the Plot; and will be enough to vindicate me.

My Lord, I have one Word more, and then I have done, and leave it to your Lordship and the Jury. My Lord, as they would now sling the Popish Plot upon me, so there is an evident Design to sling the Murder of *Godfrey* upon a Protestant Peer; and because an Indictment was upon the Testimony of the Traytor *Fitzbarris*, against that noble Lord, they have resolved to have profligate Villains to take his Life for that Murder: That is apparent; and so they will go on step by step, if they be let alone; and think at length to wipe their Mouths with *Solomon's* Whore, and say, They have done no Mischief. My Lord, I leave these Things to the Consideration of the Court and Jury; I will not detain you any longer: I have called what Witnesses I could get, but the distance of Time has made it impossible for me to have those here now, that did give Evidence in this Matter before.

My Lord, I have one Favour to beg of the Court, I had but a bad Night last Night, and am now in a great Pain; I desire that you would grant me one Request, that I may have Counsel assigned me to argue the Errors in Yesterday's Indictment: My Lord, I am but a poor Man, and cannot be at the Charges of seeing Counsel.

L. C. J. We did assign you Counsel before; you may have who you will for Counsel.

Otes. Will your Lordship be pleased, to do me the Favour to let me have some time to prepare and instruct Counsel.

L. C. J. Ay, what Time would you have?

Otes. A Week's time, if your Lordship please.

L. C. J. Give him till this Day seven-night, there may be no hurt in that.

Otes. Till Monday come seven-night, if your Lord please, let me have.

L. C. J. No, no, we cannot do that; we give you a Week's time, which is more than ordinary; for by the Rules of the Court there are but Four Days allowed, and those would be out Monday or Tuesday.

Otes. I thank your Lordship for that Time you have given me, but I hope you will be pleased to take the Particulars I have mentioned, into your Consideration; and I desire I may have liberty to go Home, because I am not well.

L. C. J. Ay, you may go, if you will.

Mr. Sol. Gen. May it please Your Lordship, and You Gentlemen of Jury, the Question that you are to try, is a Perjury, which is charged on the Defendant *Titus Otes*, for swearing that *William Ireland* was in Town, upon the first or second of September, 78. And likewise, for swearing, that he took his leave of him at his Chamber in *Russel-street*, between the eighth and twelfth of August 78. And we do assign the Perjury in both those Points, that he is forsworn in both, and the Evidence of that Perjury is, that it is impossible to be true what *Otes* did swear, because *Mr. Ireland* was not in Town between the eighth and twelfth of August, nor the first or second of September.

Gentles

Gentlemen, You have heard the Evidence that has been given, and there has been no less than between forty and fifty Witnesses produced to shew that it is really impossible what Otes did swear should be true; he tells you that this Matter is in a Circumstance of Time, wherein it is difficult for a Man to be positive to a Day, and a Man may be allowed some Latitude in such a Case; nay, it is usual with Witnesses in Points of Time, to swear with a Latitude; but, my Lord, to shew that, if we should grant that false Doctrine to be true (and false most certain it is, and of mischievous consequence it would be, if, when things are charged upon Men that depend upon Circumstance of Time and Place, the Witnesses should not be strictly kept to those Circumstances) yet, I say, granting that Position, it is impossible it should do him any Service in the Case before you: For between the beginning of *August*, and the 14th of *September*, (which includes both the Times he swears to, and the Latitude of above twenty Days to boot) there is not any one Moment of Time wherein his Oath could be true.

Gentlemen, You observe what the Witnesses have said, how they have given you an account of every particular Day of both Months, from the 3d of *August*, when he first left *London*, to the 14th of *September*, when he returned back again: We did ask the Witnesses, that it might appear to be plainly true, what they swear, if they had any particular Circumstances that made them to remember it; and they have given a great many, and now it lies upon us, to shew you that it is Demonstration, that what they have said and testified, must be true; and that those Days they speak of, he was in the Places they named.

For take the Periods of Time, and you will find you have him from the 3d of *August* to the 16th, with my Lord *Aston*, going from *London* to *Tixball*, upon the 17th they give you an account of him at Mrs. *Harwell's* to the 26th; from the 26th to the 4th of *September*, there are others that give you a particular account, by remarkable Circumstances, where he was every Day in *Staffordshire*; from the 4th to the 7th you find him at *Wolverhampton*; for the 8th indeed we do give no particular account where he was that Day; but we prove that upon the 9th he was at *Tixball*, and from thence he came away with Sir *John Southcoat* towards *London*, and there you have a particular account where he was every Day till the 14th, when he returned to his Lodging.

And now, Gentlemen, I shall shew you, that, if you believe these Witnesses saw him in these Months; that certainly it was upon those Days they speak of, that they did see him.

First, That he went out of Town in *August*, you have these Witnesses, *Anne Ireland*, *Eleanor Ireland*, Mrs. *Duddle*, Mrs. *Quino*, and my Lord *Aston*. Well, how come they to remember it was upon the 3d of *August*? Why the four Women remember it by this particular Remark; Three Days before there was a Holiday, which they keep in Memory of *Ignatius*; and upon that Day they remember Mr. *Ireland* went abroad to take a Recreation, and came home again that Night, tho' the rest of the Company stayed there; because he was to go out of Town. Up-

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on the third Day after, which must be the 3d of *August*: For *Ignatius's* Day you hear, is always the last Day of *July*. And they do positively swear, that upon the 3d of *August*, he took his leave of *Anne Ireland* and *Eleanor Ireland*. Mrs. *Duddle* remembers, that he went out that Day. Mrs. *Quino*, whose Husband was his Taylor, says, he did stay a little to have somewhat in his Cloaths mended: And she saw him in his Boots; and he said he was to go out of Town. Mrs. *Anne Ireland* says, they took the Liberty to lodge a Gentlewoman in his Chamber, and saw him not again till a Fortnight before *Michaelmas*: And that he did go out of Town upon the 3d of *August*, is further prov'd by my Lord *Aston*, who noted it down in his Book at that time that *Ireland* came to his House at *Standen* in *Hartfordshire*; so that here is as strong an Evidence as can be, that he did go on the 3d of *August*, and that they remember it to have so been by all the Circumstances that can be imagin'd.

Well, the 3d of *August* he went out of Town. The 4th of *August* we give an account where he was: He stayed that Day with my Lord *Aston* at *Standen*. The 5th of *August* he set out with my Lord *Aston's* Company, and went to *St. Albans*. The 6th, he went to *Northampton*. The 7th to *Coventry*. The 8th to *Tixball*; and the Company that went with him proves it, which was Sir *Edward Southcoat* and Mr. *John Southcoat*, and *Harrison* and *Hobson*, who saw him go in the Company; and Mr. *North*, who says he saw him every Day; and *Ingletrap* the Coachman that drove the Coach, all these remember it positively; and some of them speak of a remarkable pretty Horse which he rid upon.

Now when he comes from *Tixball*; (for we have brought him hither by manifest Proof, by Men that could not forget, by Men that saw him in the Company:) There he remained (as they all testify) till the 13th of *August*, and that was the Tuesday after his Arrival at *Tixball*; and from thence he went that Day a Journey into *Flintshire* to *Holywell*; and that is proved by the Witnesses that were in his Company in that Journey. They tell you, the 13th he lay at *Nantwich*. The 14th at *Holywell*. The 15th at *Chester*. And the 16th he came back again to *Tixball*. And so here you have abundance of Witnesses, that give you a particular account where he was, in what Company they saw him from the 3d of *August* to the 16th. If he were then in this Company from the 3d to the 16th; he could not be in his Chamber in *Russel-street* between the 8th and the 12th.

Then we came to the 17th, and then we find him to be at *Wolverhampton*, where he continued to the 26th; and that it must be between the 17th and the 26th, is plain; for after that time which Mrs. *Harwell* speaks of, the other Witnesses give such Circumstances, that it cannot be otherwise: You find him on the 27th at a Horse Race, which is a remarkable Circumstance. And these are things that Men do very well remember what Days of the Month they happen upon. We then give you an account of the 29th; that at *Tixball* he was seen in Company upon the Bowling-green, with Persons of Quality; Sir *Thomas Whitegrave* and others. So we give you an account where he lodged. The 28th he was at *Bellamore*.

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The 19th he went to Mr. *Heveningham's*; there he lodged till the 1st of *September*; and this is remember'd by particular Circumstances, that he went a Fishing, and a Setting, and a Hunting. Then the next Day, which is the 1st of *September*, and the next Day after, the 2d of *September*, they saw him at Mr. *Gerrard's*; he din'd upon the 2d at Mrs. *Crompton's*, and lay at *Boscobel*; there he continued the 3d, and the 4th he came to *Wolverhampton* again.

So that this shews, that what Mrs. *Harwell* did speak of, was true; for if Mrs. *Harwell* did see him, as 'tis not at all doubted but she did: It must be in that Interval of Time between the 16th and the 27th; where we give you an account of him by other undeniable Circumstances, that he lodged at other Places, and could not lodge at her House at *Wolverhampton*.

Besides, Gentlemen, the particular Circumstances that they do remember him by, proves it to be on those Days. Mrs. *Harwell* gives her positive Oath, that he did come there the 17th, and lay there every Night to the 26th, which was on the Monday Seven-night after; and that he came again the 4th of *September* after, and lay there till the 7th.

Then there is *Rushton*, another Witness, that saw him at her House, the 18th, 19th, 20th, 21st, 22d, and 25th. And, I say, it must be those Days, because we have given an account, by other Witnesses, of all the other Days. And it must be that very time, that *Otes* speaks of: For it was the Summer before *Ireland* was apprehended and executed for the Plot, which was *Michaelmas* 1678.

Mrs. *Winford* she remembers him at *Wolverhampton*, the 18th, 19th, 22d, and 24th.

Stanley remembers the 18th and 19th: And if you ask him, how he remembers it? He tells you by a Circumstance, that most Men would remember; he buried his Child that Day, and entertain'd *Ireland* with the Provision for the Funeral. Now Men usually remark such Accidents as these; for that is a thing a Man cannot forget, that has any Concern in the World for those that are so nearly related to him. And therefore such Circumstances must of necessity evince the Truth of what he speaks; because it is brought to his Mind by an Accident that cannot be forgotten.

Mrs. *Purcel*, which is the next Witness: And she remembers to have seen him the 18th, 19th, 20th, 21st, 22d, and 23d; for she remembers the last of them was the Day before *Bartholomew-day*, which was a remarkable Day.

Then there is another Man, that look'd to his Horse whilst he was there; but his Memory will not serve him to speak to any particular Time: He only evidences, that he was there; and the other Witnesses speak to the Time.

Mr. *Stamford*, he remembers it to be at that time, because he saw him on the Sunday after the *Assumption of our Lady*; which is always the 15th of *August*. And the like says Mrs. *Gifford*. These Circumstances verify her Testimony.

And Mr. *Gifford* remembers, he came on the 17th Day: And he saw him every Day, till the 26th Day.

And Mrs. *Fowler*, who is Mrs. *Harwell's* Daughter: She remembers, he came the 17th Day;

and she was in his Company every Day, till the 26th; except one Day, when he went to *Litchfield*; that was the Day before *Bartholomew-day*, which was *Friday*.

Mrs. *Keeling*, she swears, that upon the 17th Day he came there, which was *Saturday*. She saw him on the Sunday, and on the Monday; and went on the Monday in the Afternoon, to the Funeral of her Mother: Which is another Circumstance, that she must needs remember; and by that, has the Remembrance of the Day of the Month when he was there: And she return'd back again on Thursday, and heard him that Day, but did not see him. But she saw him every Day after, till he went away: And she remembers his going away was upon the 27th. And she remembers likewise, that he return'd the 4th of *September* after.

Mr. *Richardson*, he proves, That he saw him upon the 19th Day of *August* at *Wolverhampton*; as he was told, it was he: And being ask'd, When he was told so? He says, Mrs. *Harwell* told him so some time before he was apprehended: So that she could not tell it him then, to serve a Turn. And he is a Protestant too.

So is likewise *Eleanor Graves*: Who gives you an account that she saw him there on the 20th, 21st, and 22d; and on the 23d, she went to *Litchfield* with him; and upon the 25th, she supp'd with him at Mr. *Winford's*.

Now, Gentlemen, you have a full account of it, even to a Demonstration, That he must be in these Places at this time, if you will believe one thing; that is, That these Witnesses saw him at all: And sure none can doubt, but these Witnesses did, upon the Circumstances they have testified, see him in *August* and *September*. And then it must be those particular Times, that they speak of.

At *Wolverhampton* then you have him to the 26th: The 27th Day, you have an account of him at the Horse Race at *Etching-bill*. The 28th, Mr. *Howard* gives you an account, he din'd at *Bellamore*, at Mr. *Aston's*. The 29th, you find him at the Bowling-green at *Tixball*: And from thence to Mr. *Heveningham's*; where he lodg'd that Night, and stay'd there the 30th: Which is prov'd by the Circumstances of Fishing in the Morning, and Setting in the Afternoon. And the next Day which was *Saturday* the 31st, you hear he was at the Killing of a *Buck*; where Mr. *Gerrard* was expected, but Sickness prevented his Coming. And you have him the 1st of *September*, which was *Sunday*, at Mr. *Gerrard's* House, where several of the Witnesses did see him.

And besides, one *Proctor* tells you, He saw him the 31st of *August*, at *Fulford*, at Mr. *Lowe's*. And he very well remembers that to be the Time, by a remarkable Circumstance: For (says he) the last Day of *August* I went to pay some Money, (which is a thing Men are generally very punctual in) and when I came home again, I found him there. And he swears he saw him at Mr. *Gerrard's* House, the 1st of *September*, the Day after.

Mr. *King* remembers he saw him at Mr. *Gerrard's* of *Hildersham*, the First of *September*; and that he din'd at Mrs. *Crompton's*, the Second of *September*; and stay'd there till Two of the Clock in the Afternoon: And went from thence, with an intent to go to *Boscobel*.

Lee says, He saw him at Mr. Gerrard's House, and at Mrs. Crompton's : That he dined there, and went from thence to *Pancrass*, and from thence to *Boscobel*.

Mr. *Biddulph* remembers, he dined with him on the Second of *September*, at his Aunt's ; and that by this Circumstance, He was desired by my Lord *Cullen*, to see an Horse-Race in *Norshamptonshire* ; and promised my Lord *Cullen* to come : Which Horse-Race is always on a certain Day, the First *Thursday* in *September* ; and that Year it happen'd to be the Fifth of *September* : And it was the *Monday* before, that he din'd at his Aunts. And because of his Promise to my Lord *Cullen*, he would not stay all Night. And so it must be the Second Day of *September*, that he saw him there.

Mrs. *Crompton* says, It was the same Day, that her Nephew, Mr. *Biddulph*, dined there : For he was a Stranger, and she never saw him before, nor after.

And there is another Gentlewoman, Mrs. *Palmer*, that swears, He dined at Mrs. *Crompton's* ; but she cannot tell the particular time when.

Mrs. *Gifford* saw him at *Pancrass*, between the Hours of Four and Five in the Afternoon, upon the Second of *September* : And *Lee* went along with him to *Pancrass* ; and from thence he went to *Boscobel*.

Mr. *Pendrell* says, He saw him the Second of *September* at Night. For he came to his House. Which agrees with all that the other Witnesses say, which was, That he intended to go to *Boscobel* that Night. He and his Wife both testify, That there he lodged upon the Second of *September* ; and stay'd there the Third of *September* ; and went from thence the Fourth, to *Black-Ladies* ; Where Mr. *Gifford* tells you, he dined.

And we have given you an Account before, where he was the Fourth at Night : For then he was returned to *Wolverhampton* ; and there he lodged to the Seventh of *September*. And after the Seventh of *September*, though we do not give you a positive Evidence, That upon the Seventh of *September*, at Night, or upon the Eighth, he was at my Lord *Ashton's* : Yet we have given you that, which amounts almost to a Demonstration, That he must be there upon the Eighth of *September*. For he went from thence with Sir *John Southcoat*, to go towards *London*, on the Ninth. And our Evidence is the more Credible, because they swear cautiously all of them : Unless they remember some remarkable Circumstance, they will not take upon them to fix upon a particular time.

Then, Gentlemen, we give you an Account, by the Persons that were in his Company where he was every Day, all along from the time he left *Tixhall*, down to the time he came to Sir *John Southcoat's* House in *Surry*. And this Journey took up the Ninth, Tenth, Eleventh and Twelfth of *September* : There are Four Days ; and he stay'd there one Day. Then he sold Mr. *Southcoat* his Horse. Mr. *Southcoat* lent him his Horse to come to Town ; and the next Day he did come to Town. And so we have brought him to *Saturday* the Fourteenth of *September*.

And now, let all the World be judge, if there be any possible Room left, that any one Word Mr. *Otes* has said, can be true ; even giving him

the Latitude of Time, he himself desires, and says, All Witnesses must be allowed. No, there is not one Minute for him, wherein he can be verified in any one Tittle of his Evidence, as to *Ireland's* being in Town. And this is that which I call (and sure, well I may so call it) a *Demonstrative Proof*, That what *Otes* did swear, is utterly false.

Gentlemen, the Jury had not this Evidence at the Tryal of *Ireland* : Some they were, that went out of the Town with him ; and some, one or two of *Wolverhampton*, were at the Five *Jesuits* Tryals ; but not above Five or Six in all of these Forty odd, that now appear. True indeed it is, all these were not there ; and *Ireland*, upon that, unfortunately suffered ; for so I may take leave to say, It was *Unfortunately*.

Mr. *Otes* has said one thing unto you, which he lays much stress upon : He would have you look upon it as a great Hardship, That this Prosecution comes so late ; and that it is strange, after Six Years time spent, this should not be set on foot.

But, Gentlemen, I cannot but with much Sorrow remember to you ; and I know you all remember it too well : That there was a time, when the City of *London* was so far corrupted, that it was become a Refuge and a Sanctuary for High Treason ; when there was no Justice to be had for the King there ; when Men lodged themselves within those Walls, as a Protection for their Conspiracies ; we all remember the Time, when Indictments were preferred, and a plain Evidence given to a Grand Jury, even to the publick Satisfaction of all that heard it ; and yet they have refused to find the Bill : And not only so, but were so abetted by the Rabble, that it was scarce safe for the Judges to sit upon the Bench. These are Things none of us can forget, but must be perpetually remembered, to the Shame of the Authors and Contrivers of them ; And therefore it is no wonder an Indictment was not preferred against Mr. *Otes* at that Time, when the plainest Proof against Criminals could not be admitted. And this will give every Man Satisfaction, why it has been delayed. And I hope at the same time give every Man a Caution, how they fall into the like Circumstances again.

But, Gentlemen, you have heard the Evidence that is now offered, to prove this Matter of Fact ; and it is a plain Demonstration, if you will believe that Mr. *Ireland* was seen by these Men at all, he was seen at those very times they have particularly declared : For upon Consideration of the Circumstances, it is impossible it should be at any other times ; and so I leave it to you to judge upon the whole, whether the Defendant be Perjured or no.

L. C. J. Gentlemen of the Jury, this Case has taken up a great deal of Time ; but it is a Case of that Moment and Consequence, that sure no time ought to be thought too long, that is employed for the discovering of the Truth, so necessary to be discovered, as the Matter now in question. For as I said at the beginning upon this Occasion, and I cannot but say it again now ; I confess, I cannot without Horror and Trembling, reflect upon the many Mischiefs and Inconveniencies we have been run into, if the Testimony given this Day in this Cause against *Otes* prove true, as I cannot in the

the least imagine, where there should remain the least Objection against the Truth of it ; I cannot, I say, but bewail, that so many innocent Persons (to the Reproach of our Nation be it spoken) have suffered Death upon this account.

God deliver me, from having the least stain of *Innocent Blood* imputed to me ; and it is more to be lamented, when we see that Impudence, which has brought that Infamy upon our Land, continues with a brazen Face, defying all Shame to this Day. But by this we may be informed, how some Men's Consciences are seared, and that there are some People that do indeed live without the Fear of God in the World. For if that Man, who has assumed to himself the Habit and Character of one that should preach to others, Religion, Vertue, and the Things that become true Christians, shall become such a Monster of Impiety and Impudence, in defiance of Heaven and Earth ; What greater and more manifest Proof can there be of a seared Conscience ?

I cannot but lament likewise the Wickedness of our Age, when I reflect upon the Testimony of that other Wretch (indeed I cannot use Terms severe enough for him) that when he was going into another World, should persist in such gross Falsities ; I mean *Bedloe*, infamous *Bedloe* ; and let his Name be for ever infamous to all Mankind, that have any regard, or deference for the Truth ; that he should with his latest Breath dare to affirm, That every Word he had said of the *Popish Plot*, was true ; when it is as clear as the Sun, by the Testimony of this Day ; that every Word he swore about *Ireland*, was utterly false. *Good God of Heaven ! What an Age have we lived in, to see Innocence suffer Punishment, and impudent Falsity reign so long.*

Gentlemen, I hope all Eyes are opened (I wish they had been so long since ;) let us lay the Burden, the Infamy and Reproach of these Things, upon them that deserve it ; for we cannot but know, we are reckoned as a By-word to all our Neighbours, and shall remain Monuments of Ignominy to all succeeding Ages and Times, if we did not endeavour to discharge our selves, and our Religion, and the Justice of our Nation from these Scandals.

Gentlemen, I think I am obliged, in the first Place, to take notice of what Mr. *Solicitor General* has mentioned, concerning the Insolency of those Times ; wherein the Faction was grown to that extravagant Height, that, in truth, a Man durst not appear, with safety of his own Life and Fortune, to Testify the Truth. And, Is it not a shame, that it should be remembered, what one of the Witnesses this Day Testified ? That when he came to appear at the Council-Table, to Attest a Matter of Fact, before this Innocent Blood was spilt (for so I must call it, if that which has been Sworn this Day is true) the Rabble should be so boisterous, as to cry out ; *Where is that Villain, that dares come to give Evidence against OTES, the SAVIOUR of the NATION ?* Oh, horrid Blasphemy, that no less an Epithet should be given to such a Profligate Wretch as *Otes*, than that which is only proper to our Blessed LORD ! As though *Otes* had merited more than all Mankind ; and so indeed he has, if we take it in a true Sense :

He has deserved much more Punishment, than the Laws of this Land can inflict.

And I must needs say, Gentlemen, That this is an Instance, why there seems not to have been Punishment enough ordain'd in Law for Perjury, because our Law-makers did not foresee, that there could ever be such Villains, such Miscreants, as these.

We have indeed another Instance in the Law, of a Crime for which there is no adequate Punishment ; and that is in the Case, where a Child kills his Father ; Paricide has no peculiar Judgment assigned for it ; but we are forced, because these Things have been sometimes practised, by a Construction in Law, to make that Child as a Servant to his Father, and so punish him with the Judgment of Petty-Treason ; but take him immediately as he is a Child, and not as a Servant, and I say there is no particular Provision in Law, to punish such an Offence : And, What is the Reason of it ? Because it is so unnatural, and against the Imaginations of Mankind to believe, there ever could be such a wicked Child in the World.

If that be not to be imagined, How could it be imagin'd, that there should ever be such horrid Villains, as should attempt the Destruction of the Government of Three Kingdoms ? Good Lord ! What Times do we live in ? Surely, 'tis such an Age, as was never known, from the Creation of the World, to this Day.

And to this must be added, what aggravates the Mischief, That all this is done under the Umbrage, Countenance, and Pretence of Law ; the Proceedings of Law, the usual Methods of Justice, are made the Instruments of the most horrid Injustice. The Murder of our late Blessed Sovereign, King CHARLES the Martyr, of ever happy Memory, though a Crime as high in it self, as the Law knows of ; yet I may say, it was aggravated very much, that that Unfortunate, but Glorious King, should be brought to the Block, by a Pretext of Law, and Cut off by a colourable Method of Justice ; 'tis that which makes that Murder ten times more Base and Infamous. So, Gentlemen, the Destruction of poor innocent Persons, by false Accusations, by the pernicious Evidence of Perjur'd Witnesses, in a Court of Justice, makes their Crime infinitely more odious, than common Murder.

Gentlemen, I cannot but speak with warmth in a Case of this Nature ; and I the rather speak so, because, at the time when those things were done, we all know, the Nation was in a Hurry, and a sort of ill-minded Men had crept in among us, who had blown us up to such an height, that nothing but what comply'd with their malicious and Devilish Designs, was to be believed ; when the King could not get common Justice done against real Traytors ; but the very Streams of Justice were all Corrupted, though the Fountain (God be thanked) was preserved pure.

When the Faction (by Cabals and Intrigues) had got Sheriffs of their own Party, and laboured to get all other Officers of their own wicked Principles, then came all those Mischiefs we so long labour'd under. When those Fellows, that had so great a share in the late Rebellion, were the only fit Men to be trusted with the Government ; and all the while were designing to destroy it, and to bring us into the

the same miserable Condition we formerly were in.

Was it ever (I speak to you, Gentlemen of the Jury, Citizens of London, who know its ancient Constitution, and have too well experienced its late Convulsions) was it ever known, till Justice was designed to be Corrupted, that there was any labouring to be Sheriffs? No, Endeavours were always used to be excused, and Fines paid to get off from that Office: And the reason is plain; for never was there a wise and wealthy Citizen, that had a mind, out of a principal Part of his Estate, to squander away so much as is necessary to defray the Charge of that Office: But it was the Design that those Rascals had upon the Government, that made them so greedy of those Places; and they thought they had now an Opportunity to effect their Design, upon these Fellows pretended Discovery. They believed, that because we were hurried into the Mischiefs of the late Times, by Pretences of Popery, the same Bait would be swallowed now: Therefore the Cry must be set up, *Popery was a coming in*. They concluded, if they could but make use of the same Engines, they should have the same Effect: Witness a Peer, that is now dead, one that was a main Instrument of our Confusion in the late Times, and thereby experienced in Villany, was made use of as the Chief Tool in these late Contrivances.

But alas! When they found those Pretences and Projects would take no longer, then they fly to that, which was indeed the bottom of All; I mean, *The bloody Conspiracy*: When they found they could not overthrow the Government by Methods of Law, they betake themselves to downright Treason. For by this time, the Eyes of the honest Citizens were opened; and they found what Interest was driving on: And it was time to have them open, when a Cause in *Guild-Hall* was always Tried according to the Characters of the Client, and not the Merits of the Cause; when, if a Man was blasted with the name of a *Tory*, he was sure to lose it: But if a whining Rascal was Sanctified with the name of a *Whigg*, he was sure to have it go on his Side: Witness the famous Cause of *Mr. Loader*, about his *Lions*.

But when Sheriffs came to be Elected in due manner, such as were fit to be Trusted with the City-Business: What do they, but break out into a horrid Conspiracy, to take away the Life of that blessed King, that merciful Prince, so lately deceased, to the Grief and Sorrow of all His loving and loyal Subjects? And not only so, but to rob us of His Sacred Majesty, our present most Gracious Sovereign; whom I pray GOD to preserve long to Reign over us. *To which, the Auditory gave a great Acclamation, saying, Amen.*

Gentlemen, When these Things are thought upon, you must give me leave to observe (let others think what they please) that was the real Plot, the true Plot: For there is one thing observable, that attends this whole Affair, That every Man who Suffered for the Plot, which the Witnesses truly call *Otes's Plot*, to a Man denied it even to the last Gasps; and took it upon their Deaths and Salvations, that they were Innocent: Nay, when they had not those Hopes *Bedloe* had, of Life (for I cannot believe, that he could have been so egregious a Villain, as

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to have Attested such notorious Lies, if he had not hoped to have recovered; and thereby increased his own Reputation) yet not a Man of the others, but disowned it with their dying Breath. Now, on the other Side, there was not a Man, that was concerned in the Conspiracy, of which this was to be the Blind and the Colour, had the Confidence to deny it, when they came to Suffer for it. All this ought to be put in the Ballance, and duly weighed.

For, Gentlemen, because it is a Matter that is not only publick here, but all the World over, we must have the Justice of the Nation vindicated, and its Dis-reputation wiped off. And having taken notice of these Things, which I could not well omit upon this Occasion, I must now put you in mind, what is necessary for you to take into your Consideration, as to the particular Case before you. And,

First, You must observe, That this Indictment against *Otes*, is for Committing wilful and Corrupt Perjury; which is also said to be done maliciously. And if it were false, surely it was malicious; because, by his false Oath, have Innocent Men been Convicted, Condemned, and Executed.

Secondly, You are to consider, how far the Thing goes, to make it material to the Issue: For if it were upon a Nicety only, or a Catch, or any of those fine Words, that he has been pleased to make use of; it were not fit to Perjure him upon it. But it is certainly very material: For Time and Place are Matters substantial to discover Truth and Falshood by, as in the Case of *Susannah*; The Perjury of the *Elders*, as you may remember, was detected by those very Circumstances. But I shall shew you the Occasion of this Oath; and that will manifest it to be a material Part, in respect of the Time. For,

First, Here was a Consult held, as he Testified, the 24th of April, 1678. and then he swears *Ireland* was in Town, and present at the Consult: But all that *Otes* swore, would not do the Feat, because that he was but one Witness. Then comes *Bedloe*, his worthy Yoke fellow (a Brace of such Witnesses, as the Lord deliver all Mankind from) and he assigns another Fact upon *Mr. Ireland*, in the Month of August, the latter end of it, or the beginning of September; which is material, and makes two Witnesses against *Ireland*, which *Otes* knew well enough: For he is his Arts-Master; he knows all the Tricks, and can tell the very Nick that will do. And therefore, when he finds *Mr. Ireland* so positively affirming, That he was then out of Town; and if so, *Bedloe* did not swear true: Then does this *Otes* come in (and thereby makes his Testimony material to the Point then in Issue.) Says he, *The First of September, or (at least) the Second, I will swear he was in Town; for he gave me Twenty Shillings*: And that is given as a Token, why he does remember it. And thus he did prop up *Bedloe's* Testimony, against *Mr. Ireland's* Defence. This is proved to you by *Mr. Waterhouse*, who was one of the Jury. And the same thing does the next Gentleman swear, which is *Mr. Byfield*: They do both agree in that Circumstance punctually, That he swore, he had then of him Twenty Shillings.

Ay, (but says he for himself, because I would remove the Objections out of the way, as they occur to me) 'tis very hard, this being now some

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six or seven Years ago, that I should be called to question about such a thing; when they might have had a time to disprove it before.

Besides, Gentlemen, the Answer that has been truly given to you, concerning the Miserableness of the Times; when, the Truth of it is, there was no Justice to be had for Protestants, if we speak of the *Church of England-Men* under that Name: For either they were Papists in Masquerade, or Popishly affected; or the Names of *Tory* and *Tamboy*, and I know not what, was enough to do their Work for them: And no body was reckoned of the Sober, Virtuous, Godly Party, but those that were under *Associations* and *Covenants*; as tho' there was no Sanctity to be found in any but those who were bent to destroy all Virtue and Religion. I say, besides that, there is another Answer, which I am sorry has so much Weight in it: Could any Man have believed, that *Otes* should dare so impudently to swear a Falshood, and that in a Cause where Life was concern'd; and the Man hang'd upon his Testimony? To what purpose then should his Relations interpose to disprove *Otes*, after his Death? That would not revive him. But you find there was an Inclination that way; and I wish to God, with all my Heart, it had taken effect: For what says the old Gentlewoman? As soon as she heard what Mr. *Otes* had sworn, which she knew to be false, immediately she dispatch'd an Express to *London*; and sent a Petition to the King, *That either Ireland might have a new Tryal, or his Execution might be repriev'd, till they brought up such Witnesses, as would have made it apparent, and as clear as the Light, That what this Fellow had testified, was notoriously false.* But such, such, I must say, was the Misfortune of the Time we were in, that stop'd the Fountain of Mercy it self, from letting forth its wonted Streams; and even compelled that Compassionate Prince, rather than he would give any Disturbance to his People, to permit that Execution against his own Inclination; because there was a Verdict, and Judgment in the Case. For, as he was really the Fountain of Justice; so was he of Mercy too. And it is well known to those that had the Happiness to be near his Person, how oft he expressed his Concern for having consented to this Execution. And this continued with him even to his dying Day, as the Business of my Lord of *Strafford* did with his Royal Father.

And, Gentlemen, I chose to mention this Passage concerning his late Majesty, for this Reason, That when we live in such tumultuous Times, when things are put so hard upon Princes, as to compel them to restrain their Mercy, where they think it due, rather than seem to stop the Current of Justice; this should not be remember'd with any Reflection upon them, but with Infamy to those that are the Causes and Grounds of it: When such prodigious Wretches, as *Otes* and *Bedloe*; for there appears no Evidence before you, but of those two profligate Villains, who came out of Goals: And after having been guilty of Villanies almost of all sorts that ever were committed, came to be sanctified by committing more: And were therefore called, *The Saviours of the Nation.*

Gentlemen, The next Objection that is made against the Evidence for the King, is, *That they are all Papists; who design nothing but to destroy the Government, and ruin the Protestant Religion.* And this must be taken to be the whole Design of

all these Persons of Quality, and others, that they come to forswear themselves, and damn their Souls to all Eternity, on purpose only to destroy Innocent, Protestant Mr. *Otes*. Alack-a-day! When, at the same time, I must tell you, if it were necessary, you have about seven or eight Protestant Witnesses of the Church of *England*, that confirm the Testimony of the rest: Not that we must think, or ought to have any such Conception among us, but that Roman Catholicks, in Point of Law, are good Witnesses; and are to be credited as much as any other Witnesses whatsoever, unless there be some Objection made to them; which would be the same against a Protestant as a Papist: For there remains a Right in them; and they ought to have equal Credit given to their Testimony, with those of any other Perswasion, if a regular Objection be not started against them. And sure I am, that has been always the Law; and shall be my Practice, while I have any thing to do with the Administration of Justice. Let the sober Party, as they call themselves, make what Reflections they please upon it, or trouble themselves as they will about it; I value them not, nor their Opinion: Let them send as many Penny-Post Letters and Libels as they have a mind to do; two of which I receiv'd last Night, about Yesterday's Tryal. This I am sure of, Lying is as much the Talent and Inclination of a Presbyterian, as ever it can be of a Papist: Nay, more; For it is as inseparably incident to a Presbyterian, (and such sniveling, whining, canting Knaves) to Lie, as to Speak. They can no more forbear Lying, than they can forbear Speaking; for generally, as often as they do the one, they do the other.

Besides, I must observe to you, with what Caution, Care and Sobriety, both of Expression and Action, all these Gentlemen and Women have delivered their Testimony, with the greatest Tendernefs and Care that possibly could be: And as well as they have given it with Caution; so I cannot but put it home to you, Gentlemen at the Bar, to give it it's due Consideration.

For tho' the other Juries did believe *Otes*, and not them at that time; yet that is not to be your Measure, because you have not the same Reason to do it. Could any Person think, that there should be such Villains upon Earth, as impudently to swear downright Treason against their Fellow-Subjects, if there were no Truth in the Accusation? That was the thing that guided those Juries, who were all of them, no doubt, very honest Men; and that was it, which influenc'd the Parliament to do what they did in the Matter. For it was morally impossible to be thought, any such Wickedness could be so publickly attempted.

But, God be thanked, the Eyes of all honest and understanding Men are opened. And we see the Fault was in our Credulity; and that these were Fellows should not have been believ'd: And it concerns us, when the Truth has been so debauch'd, and our Credulity so imposed upon, to shew the World our just Resentment thereof.

And this I say to you, Gentlemen, with a purpose to vindicate those Persons who were concern'd as Jurors, in the Tryals of all those Causes; because that is the thing much harp'd upon, and aim'd at: That because he was believed

lieved before, to disbelieve him now, would cast a Reflection upon the Juries; whereas, if that Opinion hold, never will there be any such thing as Perjury detected, so long as the *Sun* and *Moon* endure: For if a Verdict be obtain'd upon false Testimony, and it shall be enough for the Witness to say; I was believed at such a Tryal, and therefore do not you offer to prosecute me for Perjury: That would be the finest Doctrine that could be taught, to give a Licence to destroy all Truths, Justice, and human Society.

Therefore I leave it home upon you: Upon your Consciences be it; for, in the Presence of the Great God of Heaven and Earth, that sees all our Hearts, and will judge us for our inward Thoughts at the last Day; *Liberavi animam meam*. If you can find all these Persons (in number forty-seven) guilty of wilful, downright, malicious, and corrupt Perjury; then you must acquit the Defendant.

For the Particulars of the Evidence, which abound in many material Circumstances in Point of Time and Place, I shall run them over as short as I can, and remind you of them; not because I think it extraordinary necessary, as tho' there were the least Doubt of the Fact, but for the Satisfaction of all Mankind, that are not under invincible Prejudice against the Truth. And I am sure, upon Yesterday's Business there remained not any Doubt with any that heard it, save one, who I know had a great share in the Design, that was at the bottom of it; and I doubt, was one of those Persons that set this Villain on Work; his Name may be concealed for the present, but a few Days will discover it here, or in some other Place.

Gentlemen, What Mr. Attorney, or Mr. Solicitor General, or any of the King's Counsel have said, or what the Defendant has said for himself, if not proved, and made plain by Evidence, is to be no Guidance at all to you; who are only to go according to the Testimony given to you; for that is pursuant to your Oath, which Oath is the Rule of your Enquiry.

The Witnesses that prove, that he did swear so in both the Points in the Indictment; I need not mention, they were so full: They tell you, he swore, that *Ireland* was in Town from the 8th to the 12th of *August*; but because he fixed upon the 8th at first, there was Caution given him, *Be not so precise to a Day, consider with your self*. Then comes he to stab the Business to the quick, and to river it home: If I cannot be positive to the 8th, I will be positive between the 8th and 12th. And as to the other Point, I did observe before that, because *Bedloe* was at a stand, upon *Ireland's* denying his being in Town the latter end of *August*, or the beginning of *September*; therefore comes *Otes* up again, to fix it home; and, says he, I am sure he was in Town the 1st or 2d of *September*, because he gave me Twenty Shillings: That he swore this, is testified by three Gentlemen, who were Jury-men at those Tryals.

Now, that this is notoriously false, false to a tittle; and, as Mr. Solicitor does observe, not the least time left to give any sort of Countenance to what he swore, is thus made out to you.

First, You are to take notice, that upon the 3d of *August*, being *Saturday*, it is sworn by three or four Witnesses, that he went out of Town; and this is not sworn as Mr. *Otes* gave

his Evidence positively without Circumstances; but they give you an account how they remember it; because upon the *Wednesday* before, which was a publick Day of Note among them, and always kept as a Festival in Memory of *St. Ignatius*, upon the last Day of *July*, as both they and Mr. *Otes* himself do affirm, there went Mr. *Ireland*, Mrs. *Anne Ireland*, and their Mother out of Town to a Friend's House to Dinner. Mrs. *Ireland* did desire him to stay there all Night, as she did. No, says he, I cannot stay all Night, because I must go out of Town on *Saturday*, and I must provide things necessary for my Journey: Nay, that is not all; for it goes yet further: Says his Sister unto him, Why do you begin your Journey on a *Saturday*? That is an improper Day: Oh! says he, I do it, because I am that Night to go to my Lord *Aston's* House in *Hartfordshire*; where I am to meet with Sir *John Southcoat*, and go down with them into the Country: This does the Mother swear, and the Sister. And then the Maid-servant, and the Taylor's Wife, do give you another Token, That it was *Saturday* the 3d of *August*, because he had something to be mended in his Cloaths; and stay'd for them; and he was to go out of Town, for he had his Boots on.

There is yet this Circumstance further, wherein those four do all agree, That as he went out of Town the 3d of *August*, so he did not return till the 14th of *September*; for they say it was the *Saturday* Fortnight before *Michaelmas*, and the same Day of the Week that *Michaelmas day* was of: So that you will find, that there is a constant Proof, and as plain a one as any possibly can be in the World, as to the Time of his going out, and coming home. And where he was in the mean time, proved directly by a great Company of Witnesses, except one Day. For you see, the 3d of *August* he went to my Lord *Aston's* at *Standen*: Several there are that saw him there the 4th, and dined with him there; particularly, Sir *Edward Southcoat*: And to shew that it is not a thing they are positive in, and swear it roundly without Consideration, they give you an account of the Reasons of their Knowledge. You are to consider also the Testimony given by my Lord *Aston*, a Person of great Honour and Quality: Says he, Tho' I dare venture all I am worth in the World upon the Truth of it, that *Ireland* did go along with me all the Journey; yet, because I did not take such particular notice of the rest of the time as I did of those two Days, I will not take upon me to swear it. If Mr. *Otes* had had the fortieth Part of that Caution in his Evidence, I dare say, you had not had the Trouble of this Day's Tryal.

The Fifth, You have a great many Witnesses who give you an account, that he came on *Monday* Night to *St. Albans* with my Lord *Aston*; there is Sir *Edward Southcoat*, Mr. *John Southcoat*, my Lord *Aston*, the Coachman, and all the Servants: Sir *Edward* tells you, that *Monday* was a hot Day, and my Lord *Aston* took him into his Coach; but he rode a Horseback all the rest of the way; and had a fine going Horse; which Horse Mr. *John Southcoat* bought of him when the whole Journey was ended. They tell you likewise, upon the 6th and 7th Days, the very Inns they lodged at upon the Road; and particularly at *Northampton*, they lay at the *George*, which was Sir *William Farmer's* House, which was then let to an Inn-keeper, because of the Fire in that

Town. And, which is most material of all, for Mr. Otes's Satisfaction, you have for these Times no less than four Witnesses, that are Protestants of the Church of *England*, who give you the same Account. There are in all no less in number than fourteen to this Point; and whether you will believe those fourteen to be wilfully perjured, without Evidence to the contrary, is left to you: And if they do swear true, Otes that was Yesterday found Perjured, must be Convicted of Perjury again to Day: For in short the Question is, Whether you will believe Persons of Credit, that have no stain upon their Reputation; or Otes, that, upon plain Evidence, was found Guilty of Perjury Yesterday.

When we come to *Tixball*, we have no less number, that testify where he was from Day to Day, and from Night to Night, to the 17th, and from the 17th to the 26th. You have fifteen Witnesses more, all as direct and positive, as can be in the World; swearing where he was from time to time. It seems he came to *Tixball* Thursday the 8th; there he stayed till Thursday following, and then he went to *Holy-Well*; he lay the first Night at *Nantwich*; the next Night at *Holy-Well*, at the Sign of the Star, a notorious Inn there; he came to *Chester* on Thursday, and some of the Company left him there, but others came back with him to *Tixball*; who say, he went away on Saturday Morning, which happens to be the 17th. And thus you have a full account of him, quite from the 3d to the 17th, beyond all Controversy, plainly proved by Persons of undoubted Credit. And if he were where they say he was from the 3d to the 17th, How could Otes swear true, that he took his leave of him here in Town, between the 8th and 12th?

Now let us come from the 17th to the 26th, and you have no less than fifteen Witnesses, four whereof are Protestants; which I urge not as a necessary Qualification to be a Witness, but to answer Otes's Objection, as tho' this was a Popish Design to destroy him. They have given you an account where he was from time to time, by convincing Circumstances, which you have heard, particularly of one Day that he went to *Litchfield*; one of the Witnesses went with him, and a Protestant Witness too, that came back with him again, and supped with him at her Father's House. The Apothecary tells you the Day that he saw him was a Wake-day, which is a remarkable Time in the Country. You are told of the Funeral of one Woman's Mother, that made her stay away from Monday till Thursday: Of another Man's Child. I mention them but shortly to you, because I know you have taken Notes of them, and they are only used as Instances to manifest the Integrity of the Witnesses, that this was not a thing contrived on purpose to make a Story of, but did really happen in the Order they tell it. And I must remember you of another Circumstance some of them do swear, that whereas Otes had a mind to evade their Testimony by that Question, Whether this was the same *Ireland* that was tried? It was most certainly he; for that is made too evidently to appear, by their seeing him executed at *Tyburn*, I am sorry to say, innocently.

From the Third of August to the Twenty-sixth, there is not one Night, but you hear where he was: And from the Twenty-sixth of August to the Seventh of September, you hear where he was at the Horse-Match, upon the *Bowling-Green*,

at Mr. *Heveningham's*, Mr. *Low's*, Mr. *Gerrard's*, Mrs. *Crompton's*, Mr. *Pendrel's*, Mr. *Gifford's*, and Mrs. *Harwel's*: And from the Seventh to the Fourteenth, save only one Day, viz. the Eighth, you have a particular Account too; and it does not appear by a rambling Evidence, but a faithful Account is given of all the Time, save that Eighth Day; which shews the Caution of the Witnesses. And it cannot but be easily presumed, he was either at *Tixball*, or thereabouts, because he was at *Wolverhampton* the Seventh, coming to *London* the Ninth. How easy is it to imagine him there the Eighth, and the rather because where he was the Eighth, is not material to the Point in Question before you, but where he was the First and Second?

And, Gentlemen, If in case you had a mind to imagine, he was the Eighth at *London*; it must be by a strained Imagination: For you must take him to be at *Wolverhampton* the Seventh, and made him ride Post to *London* that Night, and return Post from *London* the Eighth to *Tixball*, to be ready there early in the Morning upon the Ninth, or take four Days Journey back again; or else you cannot give the least Countenance to any other Imagination, but that he was about *Tixball* the Eighth of September.

Well, at *Tixball* you have him the 9th of September; and from thence, you have it testified by all the Persons that came along with him all the way, that he lay one Night at *Coventry*, another at *Banbury*, a Third at *Agmondisham*: That he Baited at *Uxbridge* the Fourth, which was the 12th of September; and came to Sir *John Southcoat's* House that Night, being Thursday: He stayed there Thursday Night, and Friday; and upon Saturday the 14th of September, Sir *John Southcoat's* Man went along with him to *London*, whither he rode upon the Horse he sold Mr. *Southcoat*; the Man saw him at his Lodging; and he says, they wondered when he came in, that he had stayed so long.

And then we return to the Four Witnesses they begun with at first; who make all this Testimony to stand well together, That he went away the 3d of August, and was never in Town till the 14th of September: And every Day, but the 8th of September, which makes nothing to the Business, is particularly spoke to: And he must be there that Day too, except you will put him upon very hard Service, to ride Post to *London* and back again, in Twenty four Hours; for no other reason, but only to commit a Treason, that none ever found out but Mr. Otes. And, I am sure, if he did, he took a great deal of Pains to a very little purpose.

Gentlemen, I have taken up much of your Time, and detained you the longer in this Matter; because I cannot but say with grief of Heart, our Nation was too long besotted; and of innocent Blood there has been too much spilt: 'Tis high time to have some Account of it. 'Tis a Mercy we ought to bless Almighty God for, that we are prevented from spilling more innocent Blood! God be blessed, our Eyes are opened; and let us have a care for the future, that we be not so suddenly imposed upon by such Prejudices and Jealousies, as we have reason to fear, such Villains have too much filled our Heads with of late.

Gentlemen, 'Tis incumbent upon you, to Try according to the Evidence that has been given, whether the Defendant be Guilty, or Not Guilty.

And

And 'tis incumbent upon us that sit here as Judges, to see the Law executed, as we will answer it at the Tribunal of the great Judge of Heaven and Earth, before whom we must appear, and receive our Tryals at the Great Day. And God forbid, but we should use our utmost Endeavours, to inflict the greatest Vengeance, that the Justice of the Nation can permit us to inflict upon such Villains as these are; that have contracted so much Mischief and Reproach upon us, and so much Guilt upon themselves.

Gentlemen, I am sorry, I say, I have kept you so long: 'Tis a Case of such Importance, that I could not but say what I have done in it. There may be other Circumstances arising from the Evidence, which I may have omitted; but were very largely and fully spoken to, by Mr. Solicitor. Whatsoever has been forgotten by him, or by me, I am sure, will be sufficiently supplied by your own Observations: For I know you to be Gentlemen of great Knowledge and Experience in Matters of this Nature.

Then the Jury withdrew, to Consider of their Verdict; and, after half an Hour's Recess, returned to the Bar; and, answering to their Names, delivered in their Verdict, That the Defendant was Guilty of the Perjury whereof he stood Indicted: Which being Recorded, the Lord Chief Justice spoke to the Gentlemen of the Jury, to this Effect.

L. C. J. Look ye, Gentlemen, because there

has been some Notice taken to Day, as there was Yesterday, concerning the Opinions of Judges, about *Verdicts* that have been given; I would say a Word or two to you: Not that I much admire the doing of it, at any time; nor would I do it now, for your Sakes; because, I am sure, you act according to your Consciences, and affect not Commendation: But because it may be necessary, for the Satisfaction of some People, that they should know our Opinions also in this Matter; I must tell you, You have given a *Verdict*, that becomes your Honesty, Integrity, and Loyalty. And I declare, in the Presence of Almighty God, the Searcher of Hearts, That had I been of the Jury, I must have given the same *Verdict*. Gentlemen, 'Tis an Honest and Just *Verdict*, that you have given; and by it, you have Contributed, as much as in you lies, to vindicate the Nation from the Infamy it has so long lain under.

Mr. Just. Withins. For my part, I think, if you had given any other *Verdict*, you had found against plain Demonstration; the Evidence was so full and clear.

Mr. Just. Holloway. The Court is very well satisfied with the *Verdict*; and you have acquitted your selves like worthy, honest Gentlemen.

Mr. Just. Walcot. There is nothing can be said to the *Verdict*, but that it is a just *Verdict*, and according to the Evidence.

[And then the Court arose.]

Die Lunæ, 11 Maii 1685. Banco Regis. Dominus Rex versus Otes.

THis Day Mr. Wallop moved, That in regard the Court were pleased to give the Defendant time till *Saturday* next, to move in Arrest of Judgment, upon the Conviction on *Friday* last; they would please to give to the same Day, to move in Arrest of Judgment, upon the Convi-

ction on *Saturday*; which the Court granted. But afterwards, upon the Motion of Mr. Attorney General, they order'd, That a Note of the Exceptions to both Indictments should be sent to the King's Counsel some Days before *Saturday*.

Die Sabbati, 26 Maii 1685. Banco Regis. Dominus Rex versus Otes.

THis Day being appointed for the Defendant to move what he could in Arrest of Judgment, upon the two Convictions of Perjury; he was brought, by Rule from the Prison, to the King's-Bench-Court.

L. C. J. Mr. Attorney General, Have you any thing to move?

Mr. At. Gen. My Lord, I pray your Judgment upon Otes, who is convicted upon two Indictments, for two notorious Perjuries.

L. C. J. Who is Counsel for Otes?

Mr. At. Gen. Mr. Wallop moved for him.

L. C. J. What is it that Mr. Wallop has to say?

Otes. My Lord, I desire I may speak one Word: It was *Thursday* Night before my Attorney could make an end of examining the Records; Sir Samuel Astry knows it very well: Then I sent the Rule to those Gentlemen that were assign'd to be my Counsel; and the Exceptions were delivered in but yesterday. I pray I may have a Day or two more, that my Counsel may be prepared to argue for me.

L. C. J. We cannot do that: We gave you beyond the ordinary Rules, in extending it till to Day.

Mr. At. Gen. My Lord, He talks of Examining the Records: He had Copies of them all this long Vacation.

Otes. My Lord, My Attorney will be ready to make Oath, that he finished the Examining but on *Thursday* Night.

L. C. J. We do all know they were pleaded to the last Term; and you have had all this Vacation, to consider of them: And we have indulged you beyond the ordinary Time.

Otes. My Lord, I desire but a Day or two more.

L. C. J. No, we cannot do it: We have done more already than we ordinarily do. Persons that are Convicted use to have but four Days allowed them to move in Arrest of Judgment; but you, instead of having but four Days, after had eight.

Otes. If your Lordship pleases to give me time till *Monday*.

L. C. J. I tell you, We cannot do it. If Mr. Wallop have any thing to say for you, we'll hear him.

Mr. Wallop. I have nothing to say.

Mr. At.

Mr. At. Gen. Here are four Exceptions delivered to me last Night, as made by Mr. Wallop.

L. C. J. But he says he has nothing to say. We know not whose these Exceptions are.

Otes. I do deliver in those Exceptions, my Lord: Pray let them be read.

L. C. J. Read them, Sir Samuel Astrey.

Cl. of Cr. Reads. *Dominus Rex versus Otes*. The Defendant's Exceptions.

I. That a Witness, sworn in the behalf of the King in a Process of High Treason, cannot be punished for Perjury by the King.

II. That it does not appear, that the Indictments of *Ireland*, &c. found in *Middlesex*, were legally transmitted into *London*; and consequently, all the Proceedings thereupon were *Coram non Judice*.

III. That the Perjuries assign'd, are in Matters foreign to the Issue.

IV. It is *Resolutio Signat'* in that part of the Indictment, that mentions what the Defendant swore; and in the Perjury assigned 'tis *Resolutio Signand'*; and it is no good Assignment of the Perjury.

Mr. Just. Withins. These are doughty Exceptions indeed.

L. C. J. Mr. Attorney, What say you unto them?

Mr. At. Gen. Truly, my Lord, I think I need not say much to them; the first Exception is a plain Mistake of the Indictment: For had Mr. Otes been indicted upon the Statute, it had been something; but at the Common Law certainly he may be prosecuted by the King, tho' he was Witness for the King before. As to the second, That it does not appear *Ireland's* Indictment was well transmitted from *Middlesex* to *London*; that sure is well enough: For after it is recited, that they were so and so indicted, it does set forth, that the Tryals were had upon Records there depending before the Commissioners of Oyer and Terminer, and Goal-delivery; and it shall be taken, that they were well brought before them. As to the third Exception, That the Perjuries assigned are foreign to the Matter in Issue; that is not so: For it is apparent, one of the Indictments is in the expresse Point of the great Treason charged against them; that is, the Consult of the 24th of *April*. And as to the second Indictment, it appeared upon the Evidence, That there was a treasonable Meeting sworn in *August*; and he swore *Ireland* was here in Town in the beginning of *August*, and in the beginning of *September*. And then for the fourth Matter, That he swore he saw them sign it; and the Perjury assigned is, That he did not carry it to be signed; that receives a plain Answer: For we alledge, he falsly and corruptly swore that he was present, and that he carried the Resolution to be signed, and he saw them sign the Resolution. Now, in these two things, we have laid the Perjury; 1. We say he was not there: And 2. He carried no such Resolution to be signed: Indeed, we do not say that he did not see them signed, nor we need not; for if he were not there, nor did carry it, he could not see them sign it. There is nothing in the Exceptions, my Lord; and therefore I pray your Judgment.

L. C. J. Is there any body of Counsel for Mr. Otes, that will say any thing to these Exceptions?

Otes. I pray, my Lord, that I may have liberty but till *Monday*, for my Counsel to prepare.

L. C. J. No, we cannot do it: Indeed, if there had been any colour or weight in the Excep-

tions, it might have been something; tho' we have indulg'd, in this Case already, more than ever we used to do in Cases of this nature; for it is known to every body that knows any thing of the Course and Practice of the Court, That after Conviction no more than four Days are allowed to move in Arrest of Judgment: And being the Practice of the Court, it is the Law of the Court; and I am sure, as little Favour ought to be shewn in a Case of Perjury, as in any Case whatsoever: But yet, however, because he should not think that the Extremity of the Law was aimed at by the Court in this Case, and he hindered in his legal Defence, the Court did indulge him more time than is usually granted in such Cases. Now, as for the Exceptions, certainly they are very frivolous.

For the *First*, It would be admirable Doctrine indeed, in case it should obtain, That if a Man be a Witness in any Case for the King, and forswear himself, he should not be prosecuted for Perjury at the King's Suit: For we know that no Man can be prosecuted for his Life, (except it be in Cases of Appeal) but at the Suit of the King; and to be sure, all Prosecutions for Treason must be at his Suit. If then Witnesses come and forswear themselves, to take away Men's Lives, and they should not be called in question for it, criminally, by the King; That were a fine way to sanctify the greatest Villainy, and make the Process of Law to become an Instrument of the most infamous Cruelty in the World. I presume, no Gentleman at the Bar would think that an Exception fit to put his Hand to.

Then as to the *Second*, That the Perjury is not assigned in Points material to the Issue, that is plainly otherwise; for the time must needs be very material, because it was impossible that Mr. *Ireland* could be guilty of the Treason sworn against him, at his Chamber in *Russel-street*, between the 8th and 12th of *August*, if he were not in Town between the 8th and 12th of *August*: Nor could he be privy to the Treason sworn by *Bedloe*, the latter end of *August*, or the beginning of *September*, in *Harcourt's* Chamber, if he were out of Town from the 3d of *August* till the 14th of *September*; and therefore both those Perjuries were in the very Points in Issue.

And then for the 24th of *April*, which is the main Perjury of all; It is not laid in this Indictment, That there was no Consult of the Jesuits upon that Day: nor is there any notice taken, That there was no Consult at the *White-Horse* Tavern; but it says only, that Otes did swear, there was a Consult there, and that he was present at it; and that he saw the Resolution written down by *Mico*, if I do not misremember the Name: And that upon the 24th of *April*, he went with it from Chamber to Chamber, to have them sign it. And then comes the Indictment, and assigns the Perjury, *Ubi revera* he was not at the *White-Horse* Tavern that Day; and I think it is pretty plain he was not, for he was then at St. Omers.

Then admitting all that Matter about the signing of the Resolution, to be out of Doors, a plain Perjury is assign'd and prov'd. For it was most proper for them to lay it as they did; and so it was in the other Point too. He swore he carried the Resolution from Chamber to Chamber, and saw it signed. Now, say they, He did not carry it from Chamber to Chamber, to be signed; and if so, then he could not see it

it signed ; and it will all be well enough sure. And if any one part of the Oath he swore proves false, that is sufficient to maintain this Verdict ; and 'tis notoriously plain, it was false throughout.

And of this Matter he now stands Convicted, upon as full and plain an Evidence as ever was given in any Case in the World ; and I am sorry to think that any Man, who is guilty of such an Offence, should continue so obstinate and hardened in Villany as he appears to be.

But I think it not amiss for me to say something upon this occasion, for the Satisfaction of some that hear me ; and for an Example for the future. The Crime whereof this Man stands Convicted, is certainly a very heinous one, attended with such dismal Consequences that ensued upon it, that I think no Man can have a true Christian Spirit in him, but he must begin to melt with the Consideration of the great Mischiefs his Perjury has brought upon himself and us : It has brought the Guilt of innocent Blood upon many ; to be sure it hath on his own Head, and I pray God deliver all Men from having any Hand in innocent Blood.

And as the Crime is great, so it is to be known, that a proportionable Punishment of that Crime can scarce by our Law, as it now stands, be inflicted upon him. But that you may see we have considered how to punish it, as such a Crime does deserve ; We have consulted with all the Judges of *England*, that if the Law would allow it, he might have such a Judgment for this heinous Offence, as might be proper to terrify all others from committing the like again. For Punishment is not intended only for the sake of the Offender, to reward him according to his Deserts ; but it has a Prospect also of Example and Terror to all others, that they should take care how they offend in any such manner, and that is as considerable a part of the End of the Law as any other.

Gentlemen, It is known, that by the Old Laws of *England* Perjury was punished with Death ; it grew a little more moderate afterwards, not to make the Crime the less, but because of the Danger there might be of Malice of some revengeful Persons, by endeavouring by Perjury to Convict others of Perjury. But the next Step was cutting out of the Tongue, to shew that the Law in all Ages had an Abhorrency of false Oaths, and punished that impious Crime of Perjury with the most terrible Punishments.

Since that time our Ancestors have yet been more moderate, and have not extended the Judgment to Life and Member ; but by the unanimous Opinion of all the Judges of *England*, whom we purposely consulted with upon this Occasion, It is conceived, That by the Law, Crimes of this nature are left to be punished according to the Discretion of this Court, so far as that the Judgment extend not to Life or Member.

And I tell you this, Gentlemen, the rather, because I observe our Law-Books are more silent here, in regard the Judgments for these Offences are not so solemnly and particularly entered up, as they are in Cases Capital : But they are left more discretionary ; because that Crimes of this nature may be attended with particular Circumstances, either to aggravate, or

lessen the Punishment : And therefore the Punishment might be distributed accordingly.

And for that reason, Gentlemen, it is well known to us all, that that was the occasion of taking away the Court of *Star-Chamber*, as the Preamble of the Act for taking it away does manifest : That inasmuch as the Authority, for the Correction of all Offences whatsoever, was by the Common Law of this Land originally fixed in the Court of *King's-Bench* ; and the Proceeding by Information in the *Star-Chamber*, when it might be by Process in this Court, was look'd upon as a double way of Vexation : Therefore that Court is abolished, and the Authority of the *King's-Bench* Court left entire. And it is notoriously known, how Punishments, of all sorts and kinds, were inflicted by the Court of *Star-Chamber* for Perjury, and such like Offences, while that Court was up ; and since that time, in *Fox's Case* and others that you have heard of, it has been according to the Discretion of this Court, punished, as severely as this Court thought fit, so as the Sentence did not extend to Life or Member.

Now I thought it proper for me, not only for the sake of the Case now before us ; but also for your Learning sake, to tell you, This was the Resolution of all the Judges of *England*, upon Consideration of the Precedents, and of all the Rules of Law ; which have been fully debated, and considered of : And this, I declare, is their unanimous Opinion.

If then this be so, and it is left to the Discretion of the Court to inflict such Punishment as they think fit ; far be it from this Court at any time, as on the one side to inflict Punishment heavier than the Crimes deserve (no, we would rather use Commiseration, than extraordinary and exorbitant Severity ;) so, on the other side, to let go Crimes so notorious and heinous as these, without the severest Mark that can, by Law, be put upon them. When a Person shall be convicted of such a foul and malicious Perjury, as the Defendant here is, I think it is impossible for this Court, as the Law now stands, to put a Punishment upon him any way proportionable to the Offence, that has drawn after it so many horrid and dreadful Consequences : We do therefore think fit to inflict an exemplary Punishment upon this villanous perjurd Wretch, to terrify others for the future ; which is not my part to pronounce : But what it is, my Brother will tell you.

Mr. *At. Gen.* My Lord, You will be pleased to remember there are two Judgments.

L. C. J. There are so, we know it very well, Mr. Attorney.

Mr. *At. Gen.* That which was tryed first, was about the Consult on the 24th of *April* ; we desire that some particular Mark may be set upon that Day.

Then the Judges consulted a little together, and Mr. Justice Withins pronounced the Sentence thus.

Mr. *Just. Withins.* Titus Otes, You are Convicted upon Two Indictments for Perjury ; I say, for Perjury : I must repeat the Word twice, because you are doubly Convicted. One of the greatest Offences, that our Law has Cognizance of ; 'tis so in its own Nature : But your Perjury has

has all the Aggravations that can be thought of to heighten it. If a Man kills another with his Sword, and there be forethought Malice in the Case, he is to be hang'd for it: But when a Man shall draw innocent Blood upon himself by a malicious, premeditated, false Oath, there is not only Blood in the Case, but likewise Perjury, corrupt, malicious Perjury: I know not how I can say, but, That the Law is defective that such a one is not to be hang'd. For, if we consider those dreadful Effects which have followed upon your Perjury, we must conclude our Law defective; they are such, as no Christian's Heart can think of, without bleeding for that innocent Blood which was shed by your Oath; and every knowing Man believes, and every honest Man grieves for. God be thanked; our Eyes are now opened; and indeed we must have been incurably blind, if they had not been opened first by the Contradictions, Improbabilities, and Impossibilities in your own Testimony; but likewise by the positive, plain, direct and full Proof of forty-seven Witnesses to one particular Point: Against whom you had not one Word to object, but they were Papists and Roman Catholicks; which is no Objection at all: Tho' at the same time, it did appear, that nine or ten of them were Protestants of the Church of England. That was all you had to say; you had not one Word to justify your self from that great and heinous Perjury you were accused of. I hope, I have not been thought a Man of ill Nature; and, I confess, nothing has been so great a Regret to me in my Place and Station, as to give Judgment, and pronounce the Sentence of Law against my Fellow-Subjects, my Fellow-Creatures: But as to you, Mr. Otes, I cannot say, my Fellow Christian. Yet, in this Case, when I consider your Offence, and the dismal Effects that have follow'd upon it, I cannot say, I have any Remorse in giving Judgment upon you. And therefore having told you my Thoughts shortly about your Crime, and how readily I pronounce your Sentence; I shall now declare the Judgment of the Court upon you. And it is this:

First, *The Court does Order for a Fine, That you pay a Thousand Marks upon each Indictment.*

Secondly, *That you be strip'd of all your Canonical Habits.*

Thirdly, *The Court does award, That you stand upon the Pillory, and in the Pillory, here before Westminster-Hall Gate, upon Monday next, for an Hour's time, between the Hours of ten and twelve; with a Paper over your Head (which you must first walk with round about to all the Courts in Westminster-Hall) declaring your Crime. And that is upon the first Indictment.*

Fourthly, *(On the second Indictment.) Upon Tuesday, you shall stand upon, and in the Pillory, at the Royal Exchange in London, for the space of an Hour, between the Hours of twelve and two; with the same Inscription.*

You shall upon the next Wednesday be whipp'd from Aldgate to Newgate.

Upon Friday, you shall be whipp'd from Newgate to Tyburn, by the Hands of the Common Hangman.

But, Mr. Otes, we cannot but remember, there were several particular Times you swore false about: And therefore, as Annual Commemorations, that it may be known to all People as long as you live, We have taken special Care of you for an Annual Punishment.

Upon the 24th of April every Year, as long as you live, you are to stand upon the Pillory, and in the Pillory, at Tyburn, just opposite to the Gallows, for the space of an Hour, between the Hours of ten and twelve.

You are to stand upon, and in the Pillory, here at Westminster-Hall Gate, every 9th of August, in every Year, so long as you live. And that it may be known what we mean by it, 'tis to remember, what he swore about Mr. Ireland's being in Town between the 8th and 12th of August.

You are to stand upon, and in the Pillory, at Charing-cross, on the 10th of August, every Year, during your Life, for an Hour, between ten and twelve.

The like over-against the Temple Gate, upon the 11th.

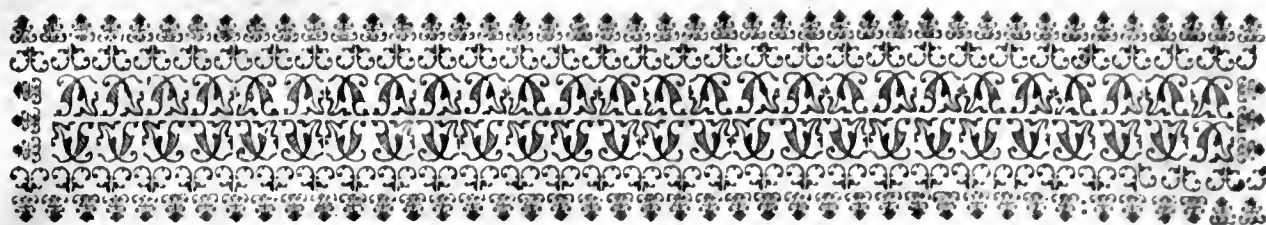
And upon the 2d of September, (which is another notorious Time, which you cannot but be remember'd of) you are to stand upon, and in the Pillory, for the space of one Hour, between twelve and two, at the Royal Exchange: And all this you are to do every Year, during your Life; and to be committed close Prisoner, as long as you live.

This I pronounce to be the Judgment of the Court upon you, for your Offences. And I must tell you plainly, If it had been in my Power to have carried it further, I should not have been unwilling to have given Judgment of Death upon you: For, I am sure, you deserve it.

L. C. J. Mr. Attorney, We will take care, that the Clerk shall distinguish the Judgments in the Entries.

Then the Prisoner was taken away.





T H E
T R Y A L
O F T H E L A D Y
A L I C E L I S L E.

On Thursday the 27th of August, 1685. the Grand Jury for the County of Southampton, at the Sessions of Oyer and Terminer and Gaol-Delivery, holden for the said County at the City of Winchester, upon special Commission from his Majesty for those Purposes, found an Indictment of High Treason against Alice Lisle, Widow, then in Custody in the County Gaol; Upon which she was Arraigned and Try'd in manner following.

Cl. of Ar.



LICE LISLE, Hold up thy Hand.

[Which she did.]

Thou standest here Indicted by the Name of *Alice Lisle*, of the Parish of *Ellingham*, in the

County of *Southampton*, Widow; For that thou, as a false Traytor against the most illustrious and most excellent Prince *James* the Second, by the Grace of God of *England, Scotland, France and Ireland* King, thy supream and natural Lord, the Fear of God in thy Heart not having, nor weighing the Duty of thy Allegiance, but being moved and seduced by the instigation of the Devil, the Love and true, due and natural Obedience which a true and faithful Subject of our said Lord the King, towards him our said Lord the King should, and of right ought to bear, wholly withdrawing, and with all thy might intending the Peace and common Tranquility of this Kingdom of *England* to disturb, and War and Rebellion against our said Lord the King within this Kingdom of *England* to stir up and move, and the Government of our said Lord the King within this Kingdom of *England* to subvert, and our said Lord the King from the Title, Honour and Regal Name of the Imperial

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Crown of this his Kingdom of *England* to depose, cast down and deprive, and our said Sovereign Lord the King to Death and final Destruction to bring and put, the 28th Day of *July*, in the first Year of the Reign of our said Sovereign Lord *James* the Second, by the Grace of God of *England, Scotland, France and Ireland* King, Defender of the Faith, &c. at the Parish of *Ellingham* aforesaid in the County aforesaid, well knowing one *John Hicks*, of *Keinsham* in the County of *Somerset*, Clerk, to be a false Traytor, and as a false Traytor traiterously to have conspired and imagined the Death and Destruction of our said Lord the King, and War, Rebellion and Insurrection against our said Lord the King within this Kingdom of *England* traiterously to have levied and raised: Thou the said *Alice Lisle* afterwards, to wit, the same 28th day of *July*, in the first year of the Reign of our said Sovereign Lord the King that now is, at the Parish of *Ellingham* aforesaid, in the County aforesaid, the said *John Hicks* in thy Dwelling-House, situate at the Parish aforesaid in the County aforesaid, secretly, wickedly and traiterously didst entertain, conceal, comfort, uphold and maintain; and that thou the said *Alice Lisle* then and there, for the comforting, upholding and maintaining of the aforesaid *John Hicks*, Meat and

[E e e e]

Drink

Drink unto the said *John Hicks* then and there maliciously and traiterously didst give and deliver, and cause to be given and delivered, against the Duty of thy Allegiance, against the Peace of our Sovereign Lord the King that now is, his Crown and Dignity, and against the Form of the Statute in that Case made and provided. How sayest thou *Alice Lisle*, art thou Guilty of the High Treason contained in this Indictment, or Not Guilty?

Lisle. Not Guilty.

Cl. of Ar. Culprit, By whom wilt thou be Tried?

Lisle. By God and my Countrey.

Cl. of Ar. God send thee a good Deliverance.

Then Proclamation was made for the Jurors impa-nell'd to try the Issue between our Sovereign Lord the King, and the Prisoner at the Bar to appear. And the Prisoner desiring, by reason of her Age and Infirmities (being thick of hearing) some Friends of her's might be allow'd to stand by her, and inform her of what pass'd in the Court; one *Matthew Brown* was nam'd, and allow'd of by the Court to give her all Assistance that he could in that matter. Then the Names of the Jurors were call'd over, and the Appearance Recorded: And it being a Cause of great Expectation and Moment, the Lord Chief Justice order'd the Sheriff to take care, that a very substantial Jury should be Returned of the best Quality in the Countrey.

Then Proclamation for Information and Evidence was made in usual manner, and the Prisoner was bid to look to her Challenges, and the Jury was Sworn in this Order.

Sworn,

Gabriel Whistler, Esq;
Henry Dawley, Esq;
Francis Morley, Esq;
Francis Pawlett, Esq;
Richard Godfrey, Esq;
Thomas Dowse, Esq;
Dutton Gifford, Esq;

Challenged.

Robert Barton
Godson Penton
William Taylor
Thomas Wavell
Anthony Talden.

Sworn.

John Cager.

Challenged.

Robert Forder
Thomas Lloyd
Thomas ———
Philip Rudisby.

Sworn.

Thomas Crop
Richard Suatt.

Sworn:

Matthew Webber.

Challenged.

Lawrence Kerby
John Fletcher
William Clarke
John Haily
Richard Sutton
Richard Snatt
Robert Burgefs.

Challenged.

George Prince
Stephen Steele
Thomas Merrot.

Sworn.

John Fielder.

So the Twelve Sworn were these:

<i>Gabriel Whistler</i> ,	Jury	<i>Dutton Gifford</i> ,
<i>Henry Dawley</i> ,		<i>John Cager</i> ,
<i>Francis Morley</i> ,		<i>Thomas Crop</i> ,
<i>Francis Pawlett</i> ,		<i>Richard Suatt</i> ,
<i>Richard Godfrey</i> ,		<i>Matthew Webber</i> ,
<i>Thomas Dowse</i> ,		<i>John Fielder</i> .

Cl. of Ar. Alice Lisle, Hold up thy Hand: You Gentlemen of the Jury that are Sworn, look upon the Prisoner and hearken to her Charge: She stands indicted by the Name of *Alice Lisle*, &c. Upon this Indictment she hath been Arraigned, and upon that Arraignment she has pleaded thereunto, Not Guilty; and for her Tryal has put her self upon God and the Countrey, which Countrey you are: Your Charge is to inquire, whether she be Guilty of the High Treason whereof she is indicted in manner and form as she stands indicted, or Not Guilty: If you find her Guilty, you are to inquire what Goods or Chattels, Lands or Tenements she had at the time of the High Treason committed, or at any time since: If you find her Not Guilty, you are to inquire whether she did fly for it; if you find that she did fly for it, you are to inquire what Goods or Chattels she had at the time of the Flight, as if you had found her Guilty: If you find her Not Guilty, nor that she did fly for it, you are to say so, and no more, and hear your Evidence.

Mr. Mundy. May it please your Lordship, and you Gentlemen that are Sworn; This is an Indictment of High Treason against *Alice Lisle*, the Prisoner at the Bar; and the Indictment sets forth, That she, as a false Traytor against our Sovereign Lord King *James the Second*, her supream and natural Lord, not having the Fear of God in her Heart, nor regarding the Duty of her Allegiance, but being moved and seduced by the instigation of the Devil, and withdrawing the Love and true Obedience which she owed to him as her Sovereign, and intending, as well as in her lay, to disturb the Peace of the Kingdom, and to depose the King and put him to Death, the 28th day of *July*, in the first year of this King, well knowing one *John Hicks*, late of *Keinsham* in the County of *Somerset*, Clerk, to be a false Traytor, and to have raised War and Rebellion against the King, she did then at *Ellingham* in this County, in her Dwelling-House traiterously entertain, conceal and comfort the said *John Hicks*, and for his maintenance and comfort then gave him Meat and Drink. This is laid to be against the Duty of her Allegiance, against the Peace of the King, his Crown and Dignity, and against the Form of the Statute in that Case made and provided: To this she has pleaded Not Guilty; if we prove this Fact, you must find her Guilty.

Mr. Pallexfen. May it please your Lordship, and you Gentlemen of the Jury, I am of Counsel in this Case for the King. The Prisoner that stands now at the Bar, *Alice Lisle*, is the Widow of one *Lisle*, who was in his Life-time sufficiently known: The Person mentioned in the Indictment to be entertained and concealed by her, *John Hicks*, is a Conventicle-Preacher, and one, that for bringing the traiterous Purposes intended in this late horrid Rebellion to effect, was one of the greatest and most active Instruments: for he was personally in this Rebellion, and did persuade and exhort some loyal Persons, that happened to have the misfortune of being taken Prisoners by that rebellious Crew, to quit their Duty and Allegiance to the King their Sovereign Lord, and become Partakers with them and the rest of his traiterous Accomplices, in taking Arms under their false pretended Prince. This, my Lord, we shall prove to you by plain, evident and undeniable Testimony

ny of those very Persons whom this Seducer thus applied himself to. Gentlemen, After it pleased God, by his Blessing on the victorious Arms of the King, that the Rebels were defeated, their pretended Prince and Head, with some of the chief of his Accomplices, were taken Prisoners, and that in a place near the House where the Prisoner lived, when all the Countrey was full of hurry in pursuit after those wicked Rebels: Thus, by God's Blessing and Providence dissipated, and forced, like Vagabonds, to skulk up and down; then does this *Hicks*, having got from the Battle as far as *Warminster* in the next County, send a Messenger, one *Dunne*, to the Prisoner's House, to desire her and request her, that she would receive and harbour him and his Friend (who that was will appear by and by) Mrs. *Lisle* returns an Answer by the Messenger, that she would receive him, but does withal give particular Direction, that the time when they did come should be late in the Evening; accordingly he comes in the beginning of the Night, at 10 of the Clock, booted and spurr'd, and brings with him another Arch-Rebel, one *Nelthorp*, that stands Outlaw'd for a most black and horrid Treason: When they come to the Prisoner's House, they turn their Horses loose at the Gate; for the Danger was so great, and their Apprehensions of being taken so urgent upon them to conceal and shift for themselves, that they thought it convenient to let their Horses go where they would. When they came there, the Messenger, as we shall prove by himself, was convey'd away to a Chamber, but Mrs. *Lisle* causes Meat and Drink to be set before Mr. *Hicks* and *Nelthorp*, and they supp'd with her, and afterwards they were lodg'd by her particular Order and Direction. The next Morning Colonel *Penruddock*, who had some intimation, in his search after the Rebels, that some Persons lay concealed in Mrs. *Lisle*'s House, comes thither, and tells her, after he had beset the House, *Madam, You have Rebels in your House, I come to seize them, pray deliver them up*: She denied that she had any in her House; but upon search, *Hicks*, and *Nelthorp*, and that other Fellow, the Messenger, were all found there, and she thereupon secured with them. The Method wherein we shall give our Evidence, will be this: We shall first begin with this piece of Evidence; That we shall prove, that *Hicks* was actually in the Army and in the Rebellion; and then we shall prove the several subsequent Facts as have been opened. We desire Mr. *Pope*, Mr. *Fitzherbert* and Mr. *Taylor* may be Sworn.

Lisle. My Lord, As for what is said concerning the Rebellion, I can assure you, I abhorr'd that Rebellion as much as any Woman in the World——

Lord Je-
series. L. C. J. Look you, Mrs. *Lisle*, because we must observe the common and usual Methods of Tryal in your Case, as well as others, I must interrupt you now: You shall be fully heard when it comes to your turn to make your Defence, but any thing you say now before-hand is altogether irregular and improper. You, it may be, are ignorant of the Forms of Law, therefore I would inform you: You are first to hear what your Accusation is; you shall ask any Questions of the Witnesses that you will, after the King's Counsel have examined them, as they go along,
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and when all their Testimony is delivered, you shall be heard to make your own Defence, and have full scope and liberty to enlarge upon it as long as you can; it is a business that concerns you in point of Life and Death; all that you have or can value in the World lies at stake, and God forbid that you should be hinder'd, either in time or any thing else whereby you may defend your self; but at present it is not your turn to speak; for the Forms of Law require your Accusers first to be heard, and it is absolutely requisite that the usual Forms and Methods of Law be inviolably observed, and be sure it does the Prisoner no injury that the Law is kept so strictly to; and we have that Charity, as well as Justice that it becomes, and is not below all Courts to have for Persons in your Condition; and we are obliged to take care, that you suffer no Detriment or Injury by any illegal or irregular Proceedings: For tho' we sit here as Judges over you by Authority from the King, yet we are accountable, not only to him, but to the King of Kings, the great Judge of Heaven and Earth; and therefore are obliged, both by our Oaths, and upon our Consciences, to do you Justice, and by the Grace of God we shall do it, you may depend upon it: And as to what you say concerning your self, I pray God with all my heart you may be innocent. Pray call your Witnesses.

Mr. *Pollexfen*. Swear Mr. *Pope*, Mr. *Fitzherbert*, and Mr. *Taylor*. [Which was done.]

L. C. J. Who do you begin with?

Mr. *Pollexfen*. Mr. *Pope*, Pray will you tell my Lord and the Jury what you know concerning this *Hicks*: Pray tell your whole Knowledge.

Mr. *Pope*. My Lord, I had the misfortune to be taken Prisoner by *Monmouth's* Army, going about some business of my own; and after I had been taken some few days, we happened to be brought to *Keinsham*, and we were put into Sir *Thomas Bridges's* Stables, and kept under a Guard there: Whilst we were there, I did see that Gentleman that goes by the Name of Mr. *Hicks*, who is now in *Salisbury* Gaol, and there I saw him yesterday; he came and asked for the Prisoners, which were about 4 or 5 in number, and he asked them, How they did? They made him little reply: Then he desired to know how we were dealt with; whether we were kindly used, or no? I replied, No, for we had had but a piece of Bread for two days: He made me answer, that he was sorry for that, for it was otherwise intended: And there was with him another Gentleman that was called the King's Chaplain, that is, the Duke of *Monmouth's*; and afterwards he pretended he would do us a kindness in speaking to the King (as he called him) for us. He talked with us some little time, and by and by he began to ask us what was the reason that we were there; we told him, we were taken Prisoners; upon which, saith he, This King (meaning, as I suppose, the late Duke of *Monmouth*) is a good King, and a Protestant; and a great deal to that purpose, with some reflecting Words on the Government, and upon the Person of the King; and he told us, he wonder'd what we had to say for our selves, being Protestants, that we did what we did in serving a Popish Prince, and not obeying a Protestant one. This is the Substance of what I have to say upon this matter.

[E e e e 2]

L. C. J.

L. C. J. Tho' you were pleased to phrase it, Sir, in the beginning of your Testimony, a Misfortune that you were taken Prisoner by the Rebels, yet, I suppose, you could not be without the Consolation of a good Conscience, that you suffered in the way of doing your Duty.

Mr. Pope. My Lord, I am very well satisfied I did suffer in a good Cause.

L. C. J. There is one piece of Happiness in it; that by that means you are able to give this Testimony this day, and do the King this piece of Service. But pray Sir let me ask you this Question; Are you sure the Man you saw yesterday at *Salisbury*, is the same Man that you spoke with at *Keinsham*, that goes by the Name of *Hicks*?

Mr. Pope. Yes, my Lord; and when I was there yesterday with him, I asked him whether he knew me; and told him, said I, you may well remember you see me at *Keinsham*: Saith he, I do not remember that ever I saw your Face before; said I, you remember *Sir Thomas Bridges's* Stables there? Said he, I remember I did see some Prisoners; said I, was not it there you saw me, and had such a Discourse with me? He seemed to deny it, but I told him, a Man of your Coat should not tell Untruths, you cannot but remember you saw me there; saith he, I will recollect my Memory if I can; and he afterwards sent to the *George* in *Salisbury* for me, and then he told me, he did recollect that he saw and talked with such a Person there.

Mr. Rumssey. Sir, I would ask you this one Question; Did you see him in the Army about the time of the Fight?

Mr. Pope. I think I saw him about a day or two before.

L. C. J. Had he any Weapon on?

Mr. Pope. I think not, my Lord.

Mr. Pollexfen. Our next Witness is Mr. *Fitzberbert*. Pray, Sir, will you give an Account to my Lord and the Jury, what you know of this *Hicks*.

Mr. *Fitzberbert*. My Lord, During the time that I was a Prisoner with this Gentleman at *Keinsham*, the 25th of *June*, I saw this Man, *John Hicks*, who held a Discourse with Mr. *Pope* near an Hours time, disparaging the Government and his Majesty, and extolling the Duke of *Monmouth*, what a brave Prince, and how good a Protestant he was.

L. C. J. Then he was among them, was he?

Mr. *Fitzberbert*. Yes, my Lord, he was, and I saw him yesterday at *Salisbury*.

L. C. J. Is that the same man that you saw in *Monmouth's* Army?

Mr. *Fitzberbert*. Yes, he owns himself to be the same man.

Mr. Pollexfen. How often did you see him there besides that time when he discoursed with Mr. *Pope*?

Mr. *Fitzberbert*. I saw him sometimes out of the Town, but I never discoursed him.

L. C. J. Did you see him there before or after that Discourse?

Mr. *Fitzberbert*. It was after.

L. C. J. Would the Prisoner ask this Witness, or the other, any Questions?

Lisle. No, my Lord.

Mr. Pollexfen. Then, Mr. *Taylor*, what say you to the matter?

Mr. *Taylor*. My Lord, I saw him at the same time that these Gentlemen speak of, at *Sir Thomas Bridges's* at *Keinsham*.

Mr. Pollexfen. Were you a Prisoner there, Sir?

Mr. *Taylor*. Yes, I was.

Mr. Pollexfen. What place was it you saw him in?

Mr. *Taylor*. It was in the Stables the first time that I saw him.

L. C. J. What Discourse had you with him? What did he say to you?

Mr. *Taylor*. He said, he wonder'd at us that we should take up Arms against so good a Prince and a Protestant as the Duke of *Monmouth*, and against the Protestant Religion, and hold up with Popery: Saith he, *Tork* is but a Papist; and a great many such Words.

L. C. J. Did you see him afterwards?

Mr. *Taylor*. Yes, my Lord, but I cannot tell particularly the Time and Place; up and down the Army.

L. C. J. Did you see him at *Salisbury*?

Mr. *Taylor*. Yes.

L. C. J. Is that the same man?

Mr. *Taylor*. Yes it is.

Mr. Pollexfen. Next, my Lord, we come to prove the Message and Correspondence between this same *Hicks* and the Prisoner Mrs. *Lisle*.

Mr. *Jennings*. Swear Mr. *James Dunne*.

[Which was done.]

Mr. Pollexfen. If your Lordship please to observe, the Times will fall out to be very material in this Case: The Battle at *Kings Edmore* was the 6th of *July*; 3 or 4 days after was the taking of *Monmouth* and my Lord *Grey* at *Ringwood*; upon the 26th day of *July*, 10 or 12 days after the taking of *Monmouth*, was this Message sent by *Dunne* to Mrs. *Lisle*; so we call *Dunne* to prove what Message he carried upon the 26th, what Answer was returned; he will tell you, that *Tuesday* was the time appointed for them to come, in the Night, and all the other Circumstances: But withal I must acquaint your Lordship, that this Fellow, *Dunne*, is a very unwilling Witness; and therefore, with submission to your Lordship, we do humbly desire your Lordship would please to examine him a little the more strictly.

L. C. J. You say well: Hark you, Friend, I would take notice of something to you by the way, and you would do well to mind what I say to you. According as the Counsel that are here for the King seem to insinuate, you were employ'd as a Messenger between these Persons; one whereof has already been proved a notorious Rebel, and the other is the Prisoner at the Bar, and your Errand was to procure a Reception at her House for him.

Dunne. My Lord, I did so.

L. C. J. Very well. Now mark what I say to you, Friend: I would not by any means in the World endeavour to fright you into any thing, or any ways tempt you to tell an Untruth, but provoke you to tell the Truth, and nothing but the Truth, that is the Business we come about here. Know, Friend, there is no Religion that any man can pretend to, can give a countenance to Lying, or can dispense with telling the Truth: Thou hast a precious immortal Soul, and there is nothing in the World equal

equal to it in value: There is no relation to thy Mistress, if she be so; no relation to thy Friend, nay to thy Father or thy Child, nay not all the temporal Relations in the World can be equal to thy precious immortal Soul: Consider that the great God of Heaven and Earth, before whose Tribunal thou, and we, and all Persons are to stand at the last Day, will call thee to an Account for thy rescinding his Truth, and take Vengeance of thee for every Falshood thou tellest. I charge thee therefore, as thou wilt answer it to the great God, the Judge of all the Earth, that thou do not dare to waver one tittle from the Truth, upon any Account or Pretence whatsoever: For tho' it were to save thy Life, yet the value of thy precious and immortal Soul, is much greater than that thou shouldst forfeit it for the saving of any the most precious outward Blessing thou dost enjoy; for that God of Heaven may justly strike thee into eternal Flames, and make thee drop into the bottomless Lake of Fire and Brimstone, if thou offer to deviate the least from the Truth, and nothing but the Truth: According to the Command of that Oath that thou hast taken, tell us who employ'd you, when you were employ'd, and where, who caused you to go on this Message, and what the Message was. For I tell thee God is not to be mocked, and thou canst not deceive him, tho' thou mayst us: But I assure you, if I catch you prevaricating in any the least tittle (and perhaps I know more than you think I do; no, none of your Saints can save your Soul, nor shall they save your Body neither) I will be sure to punish every variation from the Truth that you are guilty of. Now come and tell us how you came to be employ'd upon such a Message, what your Errand was, and what was the issue and result of it?

Dunne. My Lord, there came a man to my House, and desired me to go of a Message to my Lady Lisle's.

L. C. J. Prithee tell me when it was, and what Hour of the Day?

Dunne. What, when the man came to my House?

L. C. J. Yes.

Dunne. That I will, my Lord.

L. C. J. Be sure you do, and do not speak one word but what is true, and let the Truth come out o' God's Name.

Dunne. It was Friday Night.

L. C. J. What Day of the Month was it?

Dunne. Truly, my Lord, I cannot exactly tell that.

L. C. J. Was it after the Fight at *Weston*, or before?

Dunne. It was after the Battle, my Lord.

L. C. J. How many Days after was it?

Dunne. I cannot exactly tell.

L. C. J. Was it the Friday Se'night after the Fight?

Dunne. No, it was not.

L. C. J. What was desired of thee at that time?

Dunne. He desired me to go of a Message to my Lady Lisle's.

L. C. J. Dost thou know what man it was that came to thee, and desired thee to go on this Message?

Dunne. My Lord, I can tell what manner of man he was.

L. C. J. Give me a Description of the man?

Dunne. He was a short black man.

L. C. J. You say he was a short man?

Dunne. Yes, he was so, my Lord.

L. C. J. Was he a swarthy, or a ruddy Com-
plexioned man?

Dunne. He was not ruddy, but swarthy.

L. C. J. And what did he say to thee?

Dunne. He desired me to go to my Lady Lisle's for him, for one Mr. Hicks, and I went accordingly.

L. C. J. What were you to say when you came there?

Mr. Pollexfen. What Reward were you to have?

Dunne. That man that came to me, promised me that I should be well rewarded for my pains.

L. C. J. Where do you live (by the way)?

Dunne. In *Warminster* Parish.

L. C. J. How far is it from my Lady Lisle's?

Dunne. Six and twenty miles, or thereabouts.

L. C. J. You did go, you say? When?

Dunne. Upon the *Saturday*.

L. C. J. Well, we are got thus far; you went to my Lady Lisle's upon the *Saturday*, and from one Mr. Hicks: What was your Errand?

Dunne. To know of my Lady Lisle, whether she would entertain Mr. Hicks.

L. C. J. Well, now go on.

Dunne. When I came to my Lady Lisle's House, I went to the Bailiff that belonged to my Lady Lisle.

L. C. J. Ay, who was that Bailiff? Tell us his Name? I love to know Men's Names.

Dunne. His Name is *Carpenter*, I think.

L. C. J. Well, and what did you say to him?

Dunne. I asked him, whether my Lady would entertain one Hicks, or no: He told me he'd have nothing to do with it; but sent me to my Lady, and to my Lady I went; and when I came, I asked my Lady, whether she would entertain one Mr. Hicks, or no? She said, she did not know but she might.

L. C. J. Well, what then?

Dunne. My Lord, I'll tell you.

L. C. J. Ay, prithee take time to recollect thy self; but be sure thou speak nothing but the Truth. What said my Lady to thee?

Dunne. My Lady said, they might come to her House: And upon those Terms I went away home again, and returned that Answer to the Messenger that came to me. I came home on the *Sunday* Night, and that Message I delivered unto him, and told him, that upon *Tuesday* Night they might come to my Lady's.

L. C. J. You told him, you say, they might come on *Tuesday*?

Dunne. Yes, my Lord, I did.

L. C. J. Therefore I would fain know from you, how you came to tell him, They might come upon *Tuesday*? For you said just now, my Lady's Answer was, That she did not know but she might entertain him. Had you any such Direction from *Carpenter*, or any one else, to tell him, that they might come on *Tuesday*?

Dunne. I had such Directions from my Lady.

L. C. J. Very well; then let us know what were the particular Directions she gave; tell us what further Directions you had from her?

Dunne. I will, my Lord, presently, when I have recollected my self.

L. C. J. Ay, prithee compose thy self, recollect thy self.

[Then he pauses for a good while.]

L. C. J. Come now, tell us, Did she give you any Directions what time of the Day they might come thither, remember your self well, and tell us what she said to you?

Dunne. My Lord, I will as near as I can, speak the Truth.

L. C. J. Ay, in God's Name, let's have the Truth whatsoever comes on it?

Dunne. I will, my Lord.

L. C. J. Come then, What time did she give Directions that they should come?

Dunne. On *Tuesday* in the Evening.

L. C. J. Upon your Oath, Did she say *Tuesday* in the Evening?

Dunne. Yes, my Lord, she did.

L. C. J. What time in the Evening, early or late?

Dunne. She did not give any Directions at all about that, but only in the Evening.

L. C. J. What else did she say to you, tell us all the Discourse that passed between you?

Dunne. She said nothing else that I remember, my Lord.

L. C. J. Prithee, how did she say she would receive him, tell us what Words she used, for thou must needs imagine, we do suppose there must needs be some longer Discourse between you, than what you talk of.

Dunne. All that she said was, she would entertain him.

L. C. J. Him, Who?

Dunne. Mr. *Hicks*.

L. C. J. Just now you talked of them, and, they; Did you mention no body to her but Mr. *Hicks*?

Dunne. My Lord, I was sent to see whether she would receive Mr. *Hicks*.

L. C. J. Prithee Friend mind what thou hast said, and recollect thy self, I'll repeat it to thee, because thou shalt see that I remember it all very well, It seems that a Man, a short black Man came to your House in *Warminster* Parish to get you to go for a Message to Mrs. *Lisle's*, to know whether she would entertain one *Hicks*, and that you went upon the *Saturday*, and first, you met with *Carpenter*, and ask'd him that Question, whether his Lady would entertain one Mr. *Hicks*, and he told you he would have nothing to do with it, and thereupon you went to Mrs. *Lisle* and asked her the Question, and she told you that you should tell the Man that they should come the *Tuesday* following, and come in the Evening, and she would entertain him: Is not this what you have said?

Dunne. Yes, my Lord, it is.

L. C. J. Well then, now let us know what other Discourse you had with her?

Dunne. My Lord, I do not remember any thing more.

Mr. *Pollexfen*. Pray Mr. *Dunne*, did she ask you any Questions whether you knew Mr. *Hicks* or no?

Dunne. Nothing at all of that, that I remember.

Mr. *Coriton*. Did she believe that you knew Mr. *Hicks*?

Dunne. I cannot tell, my Lord.

Mr. *Coriton*. Do you believe that she knew him before?

Dunne. I cannot tell truly.

L. C. J. Why, dost thou think she would entertain any one that she had no Knowledge of merely upon thy Message? Mr. *Dunne*, Mr. *Dunne* have a Care, it may be more is known of this Matter than you think for.

Dunne. My Lord, I tell you the Truth.

L. C. J. Ay, be sure you do, do not let me take you prevaricating?

Dunne. My Lord, I speak nothing but the Truth.

L. C. J. Well, I only bid you have a Care, Truth never wants a Subterfuge, it always loves to appear naked, it needs no Enamel; nor any Covering; but Lying, and Snivelling, and Canting, and Hicksing, always appears in Masquerade. Come, go on with your Evidence?

Dunne. My Lord, I say I went back again and returned my Answer to the same Man that brought the Message to me.

L. C. J. Pray let me ask you one Question; Were you got to your House before you found him, or was he waiting there for you?

Dunne. He came to my House after I came home.

L. C. J. It was the same Man you say?

Dunne. Yes, it was.

L. C. J. Had he no Company with him neither time?

Dunne. No.

L. C. J. Well, and what Answer did you return him?

Dunne. I told him, my Lady said she would entertain Mr. *Hicks*; he asked when he might come up, I told him upon *Tuesday*, and upon *Tuesday* they came to my House.

L. C. J. What time did they come to your House?

Dunne. About seven of the Clock in the Morning.

L. C. J. What Day of the Month was it?

Dunne. Truly, my Lord, I cannot readily tell what Day of the Month it was?

L. C. J. Was it one or two that came to thy House?

Dunne. My Lord, there were three in all.

L. C. J. Who were those three, prithee?

Dunne. My Lord, there was the little black Man that brought the Message, and two other People.

L. C. J. Prithee describe what two other People these were?

Dunne. One was a full fat black Man, and the other was a thin black Man.

L. C. J. Who was that thin black Man?

Dunne. My Lord, I did not know him.

L. C. J. Did you not fancy which was *Hicks*?

Dunne. My Lord, I never knew any of their Names.

L. C. J. How long did they stay at your House?

Dunne. About three Hours.

L. C. J. When did you go away from thence?

Dunne. About eleven of the Clock.

L. C. J. Which way did you go then?

Dunne. We went through *Deverel*, and from *Deverel* to *Chilmark*, and from *Chilmark* to *Sutton*, and from *Sutton* to the Plain, and then one *Barter* met me; I knew the Way no further, and he was to shew me the Way from thence.

L. C. J.

L. C. J. Prithee hold; before thou goest any further, I desire to be satisfied about a Question or two; Dost thou say thou didst not know the Way?

Dunne. No, my Lord, after I came to the Plain.

L. C. J. How didst thou find the Way when thou wentst on thy Message first?

Dunne. My Lord, after I came to *Salisbury-Plain*, I met with one *Barter*, and he shewed me the Way.

L. C. J. Where is that *Barter*?

Mr. *Pollexfen*. My Lord, we have him here, we shall examine him by and by, there he stands. [Being a very lusty Man.]

L. C. J. Sure that was not the little Man thou spokest of?

Dunne. No, my Lord.

L. C. J. Prithee let me understand thee then if I can: Thou didst say at first there was only a little Man with a black Beard that was concerned with thee about that Message; now thou talkest of some Guide that thou hadst, prithee who did guide thee, let us know?

Dunne. My Lord, I say I went so far as *Fovant*, and so to *Chalk*, but when I came upon the Plain I did not know my Way to my Lady *Lisle's* House at *Moyle's Court*, I asked twenty People in the Street which was my way, but no body would tell me, at last I spoke to one *John Barter* to go with me to my Lady *Lisle's*, and he and I did agree to go together, and he shewed me the way and carry'd me to the House.

L. C. J. Thou shouldst have told us this before, Man, that we might have understood it. Where did you lie upon the *Saturday* Night?

Dunne. At *Fovant*.

L. C. J. I thought you had said, you had come to Mrs. *Lisle's* on *Saturday*?

Dunne. Yes, my Lord, I did so, and came back to *Fovant* that Night.

L. C. J. And where did you lie on *Sunday* Night?

Dunne. I lay at my own House on *Sunday* Night.

L. C. J. And *Barter* came along with you when you came on *Tuesday*?

Dunne. Yes, my Lord.

L. C. J. And did you go the same way upon the *Tuesday* that you went upon the *Saturday*?

Dunne. Do you mean, my Lord, the same way I came at first?

L. C. J. Ay.

Dunne. No, my Lord, we came to *Sutton*, not to *Fovant*.

L. C. J. Why did not you go the same way upon the *Tuesday* that you went upon the *Saturday*?

Dunne. Because I had appointed to meet him at such a Place.

L. C. J. Come, prithee answer me freely, and according to Truth; Who did desire thee, or order thee to go another way than that thou wentst at first? How came it to pass? Let us know the Truth?

Dunne. My Lord, I did count that to be the nearer way, and therefore I went that way.

L. C. J. That cannot be the Reason, for thou wouldst have gone the nearest way at first, I believe, come, tell us truly?

Dunne. My Lord, I know no other Reason.

L. C. J. Come, tell us what Towns and Villages you did go through then upon *Saturday*?

Dunne. My Lord, I went through several, *Chilmark* and *Fovant*.

L. C. J. And what Villages did you go thro' upon the *Tuesday*?

Dunne. I went through most of the same Towns.

L. C. J. What, and at Noon-day too?

Dunne. Yes.

L. C. J. And how chanc'd when you went that way, that you appointed *Barter* to meet you in another Place at *Fovant*?

Dunne. Because I did not know the way afterwards.

L. C. J. Then let me ask you another Question: Did you go the same way from *Fovant* to my Lady *Lisle's* as you went before?

Dunne. No, we did not.

L. C. J. How came that to pass?

Dunne. I would have went the same way, but they would not.

L. C. J. Which way did you go then?

Dunne. We went through *Chalke* and so thro' *Rocksborne*, and from *Rocksborne* to *Fording Bridge*, and so to *Moyle's Court*.

L. C. J. How far is this about now?

Dunne. Truly, my Lord, I cannot readily tell.

L. C. J. How many Miles is it from *Fovant* to my Lady *Lisle's*?

Dunne. My Lord, it is about fourteen or fifteen.

L. C. J. How many Miles was it the way that you went upon the *Tuesday*?

Dunne. It might be twenty, my Lord, for ought I know.

L. C. J. What was the Reason that *Barter* went that way?

Dunne. Truly, my Lord, I cannot tell.

L. C. J. Pray let me ask you another Question then; What Discourse had you with *Barter*? Or what Bargain did you make with him for shewing you the way? For you would not ask him to go with you without promising him some Reward.

Dunne. My Lord, I asked him to shew me the way to my Lady *Lisle's* House, and told him I was going for one *Hicks*, and so he took his Horse and went with me.

L. C. J. What Reward did you promise him?

Dunne. Half a Crown, my Lord, and half a Crown I gave him.

L. C. J. Well, that was the first time, and what did you promise him the second time?

Dunne. The second time one of the two Men gave him five Shillings.

L. C. J. What Man was it?

Dunne. It was the black Man.

L. C. J. What was his Name? It was not the little black Man that came first to desire you to go on the Message, was it?

Dunne. No, my Lord, it was not he that spoke to me first.

L. C. J. Did not that little Man that spoke to you first, promise you a Reward for your Pains?

Dunne. No, my Lord, that Man never promised me any thing.

L. C. J. Did he go along with you?

Dunne. No, my Lord, he did not.

L. C. J. Who were the two Men that went with you?

Dunne. *Hicks* and *Nelthorp*.

L. C. J. Which of them two was it that gave *Barter* five Shillings?

Dunne. It was *Nelthorpe* that gave him five Shillings.

L. C. J. How do you know his Name was *Nelthorpe*?

Dunne. At my Lady *Lisle's*, after he was taken I knew his Name to be *Nelthorpe*.

L. C. J. What Name did he go by before?

Dunne. Were I to die presently, my Lord, I cannot tell it.

L. C. J. Well, you went so much about: What time did you get to my Lady *Lisle's* upon the Tuesday?

Dunne. About nine or ten of the Clock at Night, my Lord.

L. C. J. Let us consider a little; you say you went from your House about eleven a Clock: What time did you get to *Forvant*?

Dunne. About two or three of the Clock, my Lord.

L. C. J. Where did you stay by the way?

Dunne. No where, my Lord.

L. C. J. Did you ride on still?

Dunne. Yes, my Lord.

L. C. J. Was it before nine or after nine that you came to my Lady *Lisle's*?

Dunne. I believe it was rather after nine, my Lord.

L. C. J. Who came first to my Lady *Lisle's*, prithee tell us frankly?

Dunne. My Lord, we came all three together to the Gate.

L. C. J. Who knocked at the Gate, you or *Barter*, or who else?

Dunne. *Barter*, my Lord, was discharg'd before we came near the House, about eight Miles from it.

L. C. J. Sayst thou so; How came you then to know the way without him?

Dunne. My Lord, I'll tell you, they lost their way, and they sent me down to *Marton*, and there I went to a Man, my Lord, and told him one *Hicks* desired to speak with him.

L. C. J. Thou sayst well, now must I know that Man's Name.

Dunne. The Man's Name that I went to at *Marton*, my Lord?

L. C. J. Yes, and look to it, you tell me right, for it may be I know the Man already, and can tell at what end of the Town the Man lives too.

Dunne. My Lord, I cannot tell his Name presently.

L. C. J. Oh! pray now, do not say so, you must tell us, indeed you must think of his Name a little.

Dunne. My Lord, if I can mind it I will.

L. C. J. Prithee do.

Dunne. His Name, truly my Lord, I cannot rightly tell for the present.

L. C. J. Prithee recollect thy self, indeed thou canst tell us if thou wilt.

Dunne. My Lord, I can go to the House again if I were at Liberty.

L. C. J. I believe it, and so could I, but really neither you nor I can be spared at present, therefore prithee do us the Kindness now to tell us his Name?

Dunne. Truly, my Lord, I cannot mind his Name at present.

L. C. J. Alack a-day, we must needs have it, come, refresh your Memory a little.

Dunne. My Lord, I think his Name was *Fane*.

L. C. J. Thou sayst right, his name was *Fane* truly, thou see'st I know something of the Matter: Well, what didst thou say to him?

Dunne. I told him I came from one Mr. *Hicks*.

L. C. J. And what didst thou desire of him?

Dunne. I told him that one Mr. *Hicks* desired to speak with him, and when he came out to Mr. *Hicks*, Mr. *Hicks* did desire him to shew him the Way to Mrs. *Lisle's*.

L. C. J. Now tell us what kind of Man that was that did desire this of Mr. *Fane*?

Dunne. My Lord, it was the full fat black Man.

L. C. J. Now we have got him out, now we know which was *Hicks*: Now go on.

Dunne. My Lord, this Man went and rid along with them as far as the new House that is built there, within a Mile of that House *Fane* went along with us, and afterwards, whether *Hicks* or *Nelthorpe*, or who knew the way I cannot tell, but to my Lady *Lisle's* we went.

L. C. J. Who directed you the way when *Fane* left you?

Dunne. My Lord, I cannot tell, for my part I did not know the way.

L. C. J. Who went with you?

Dunne. None but *Hicks* and *Nelthorpe*.

L. C. J. How far from my Lady's House was that place where *Fane* left you?

Dunne. My Lord, I cannot directly tell.

L. C. J. Then *Hicks* knew the way it seems from thence?

Dunne. So he might, my Lord, for ought I know, for I did not.

L. C. J. Thou art strangely stiff, but now we are come thus far with you, tell me what Entertainment you had at my Lady *Lisle's*, and look to it that you be sure to tell me Truth, for I know it to a tittle, I can assure you that?

Dunne. They went in before me, my Lord.

L. C. J. Who went in before you?

Dunne. *Hicks* and *Nelthorpe*.

L. C. J. But the Door was shut when you came, was it not?

Dunne. My Lord, I cannot tell truly.

L. C. J. Then tell me what Entertainment you had there?

Dunne. For my own part, my Lord, I carry'd a bit of Cake and Cheese from my own House, and that I eat.

L. C. J. What became of your Companions *Hicks* and *Nelthorpe*, I pray you?

Dunne. I never see them again till after they were taken.

L. C. J. How is that, prithee recollect thy self?

Dunne. Sure, my Lord, I did not see them till then.

L. C. J. Who came to the Door to you?

Dunne. A young Girl, my Lord, I knew not who nor what she was.

L. C. J. Did they go directly into the House?

Dunne. It was dark, my Lord, I did not see what they did.

L. C. J. Was there never a Candle there?

Dunne. No, my Lord.

L. C. J. It was dark, very dark, was it not?

Dunne. Yes, my Lord, it was so.

L. C. J. Was my Lady stirring then?

Dunne. I did not see her.

L. C. J. And this is as much as you know of the Business?

Dunne. Yes, my Lord, this is all that I remember.

L. C. J. Well, and what hadst thou for all thy Pains?

Dunne. Nothing but a Month's Imprisonment, my Lord.

L. C. J. Thou seemest to be a Man of a great deal of Kindness and good Nature; for by this Story, there was a Man that thou never sawest before, (for I would fain have all People observe what Leather some Men's Consciences are made of) and because he only had a black Beard and came to thy House, that black Beard of his should perswade thee to go 26 Miles and give a Man half a Crown out of thy Pocket to shew thee thy way, and all to carry a Message from a Man thou never knewest in thy Life, to a Woman whom thou never sawest in thy Life neither, that thou shouldst lie out by the way two Nights, and upon the *Sunday* get home, and there meet with this same black-bearded little Gentleman, and appoint these People to come to thy House upon the *Tuesday*, and when they come, entertain them three or four Hours at thy own House, and go back again so many Miles with them, and have no Entertainment but a piece of Cake and Cheese that thou broughtest thy self from Home, and have no Reward, nor so much as know any of the Persons thou didst all this for, is very strange.

Dunne. My Lord, the Man that came to desire me to go on this Message said that *Hicks* should reward me and pay me for my Pains.

L. C. J. But why wouldst thou take the word of a Man thou didst not know?

Dunne. I was forced to take his word at that time, my Lord.

L. C. J. There was no necessity for that neither; no body could force thee to do it: Alack a-day; Thou seemest to be a Man of some consideration: I mightily wonder thou shouldst be so kind to People thou didst not know, without any prospect of Recompence whatsoever.

Dunne. All the reason that induced me to it was, they said they were Men in Debt, and desired to be concealed for a while.

L. C. J. Dost thou believe that any one here believes thee? Prithee what Trade art thou?

Dunne. My Lord, I am a Baker, by Trade.

L. C. J. And wilt thou bake thy Bread at such easie Rates, upon my word, then thou art very kind, prithee tell me, I believe thou dost use to bake on *Sundays*, dost thou not?

Dunne. No, my Lord, I do not.

L. C. J. Alack a-day, thou art precise in that, but thou canst travel on *Sundays* to lead Rogues into lurking Holes: It seemeth thou hast a particular Kindness for a black Beard, that's all thy Reason for undertaking all this Trouble: Thou hast told me all the Truth, hast thou?

Dunne. I have, my Lord.

L. C. J. But I assure thee thy Bread is very light Weight, it will scarce pass the Ballance here.

Dunne. I tell the Truth, and nothing but the Truth.

L. C. J. No doubt of that, but prithee tell me whose Horse didst thou ride when thou wentest first?

Dunne. The Man's Horse that came to me to desire me to go the Message.

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L. C. J. How came he to trust thee with his Horse?

Dunne. The Lord knows, my Lord.

L. C. J. Thou sayst right, the Lord only knows, for by the little I know of thee I would not trust thee with Two-pence: Whose Horse didst thou ride the second time?

Dunne. My own, my Lord.

L. C. J. And where didst thou put thy Horse when thou camest to my Lady *Lisle's*?

Dunne. In the Stable, my Lord.

L. C. J. Where did they put their Horses?

Dunne. They left them without the Gate, I think, my Lord, I did not see them take them in.

L. C. J. No, thou saidst it was so dark thou couldst not see any thing: Pray were you with the two Men when they did alight?

Dunne. We did all three come together.

L. C. J. What did you give *Fane* for his Pains in shewing you the Way?

Dunne. He had nothing that I know of.

L. C. J. Well, you are the best natur'd and kindest hearted People that ever I knew: Whereabouts do you live?

Dunne. At *Warminster*, near my Lord *Weymouth's*.

Mr. Pollexfen. Pray *Mr. Dunne* will you answer me one Question; Was not there searching at that time up and down the Country for Rebels that were fled from the Battle?

Dunne. I did hear there was, some were taken.

Mr. Pollexfen. But did you hear there was searching at that time for other of the Rebels?

Dunne. I did not hear of any near me, but there were in other Places.

L. C. J. Then it being such a suspicious time when that little Man with the black Beard came to thee, didst thou not ask what that *Hicks* was?

Dunne. No, my Lord, I did not.

L. C. J. And when *Mr. Hicks* and the other Man that is call'd by the Name of *Mr. Nelthorpe* came to thy House, didst not thou ask their Names?

Dunne. No, my Lord.

L. C. J. Nor didst not thou ask upon what Occasion they were to be conducted to my Lady *Lisle's*?

Dunne. No, my Lord: *Hicks*, the fat Man, told me they were in Debt.

L. C. J. Did not the Man that first came to you, and employ'd you to go on this Message; Did not he know *Hicks*?

Dunne. I cannot tell, my Lord.

L. C. J. Did not he tell you, *Hicks* desired you to go, and that he was in Debt, and therefore desired to be concealed?

Dunne. Yes, my Lord, he did.

L. C. J. How came you to be so impudent then as to tell me such a Lie?

Dunne. I beg your pardon, my Lord.

L. C. J. You beg my pardon? That is not because you told me a Lie, but because I have found you in a Lie. Come Sirrah, tell me the Truth; What did *Hicks* and *Nelthorpe* with their Horses when they came to my Lady *Lisle's*?

Dunne. My Lord, I cannot tell.

L. C. J. Why, you impudent Rascal, did not you tell me just now that they left them at the Door?

[F f f f]

Dunne.

Dunne. My Lord, I said I believ'd they might, but cannot directly tell what they did with them, I know not but one or other might have them away, but I did not see it.

Mr. Pollexfen. Prithee Friend tell the Truth, What did become of the Horses?

Dunne. I cannot tell truly, my Lord, if any body had them away, I did not see them.

L. C. J. Where didst thou lie that Night?

Dunne. In one of the Chambers.

L. C. J. Who shew'd thee the way to thy Lodging?

Dunne. The Girl.

L. C. J. Who else didst thou see in the House?

Dunne. I saw no body at all.

L. C. J. Then who shew'd thee the way to the Stable, and help'd thee with Horse-meat?

Dunne. No body helped me with Horse-meat.

L. C. J. Why, thy Horse did not feed on thy Cake and Cheese, did he?

Dunne. There was Hay in the Rack, my Lord.

L. C. J. Was the Stable-door lock'd or open?

Dunne. The Stable-door was latch'd, and I pluck'd up the Latch.

L. C. J. How came you to know the way to the Stable then?

Dunne. Because I had been there before, my Lord.

L. C. J. Thou hadst need to know it very well, for it seemeth thou wentest without a Candle or any thing in the World, and put in thy Horse; Didst thou see that Man Carpenter the Bailiff that thou spokest of?

Dunne. Mr. Carpenter gave my Horse Hay.

L. C. J. Was there any Light in the Stable?

Dunne. Not when I put in my Horse first.

L. C. J. Who brought the Light thither?

Dunne. Goodman Carpenter.

L. C. J. Did not he give thy Horse Hay?

Dunne. Yes, he did.

L. C. J. And did he not give him Oates too?

Dunne. No, my Lord, he did not.

L. C. J. Did not he conduct you into the House?

Dunne. Who, my Lord?

L. C. J. That same Goodman Carpenter.

Dunne. No, my Lord.

L. C. J. Did you see any body else but that Girl you speak of?

Dunne. My Lord, I did see the Girl there.

L. C. J. But you Blockhead, I ask you whether you did see any body else.

Dunne. I do not know but I might see Goodman Carpenter.

L. C. J. Why, thou saidst he brought the Light, and gave thy Horse Hay, but I see thou art set upon nothing but Prevarication: Sirrah, tell me plainly, Did you see no body else?

Dunne. No, my Lord.

L. C. J. Not any body?

Dunne. No, my Lord, not any one.

L. C. J. Did you not drink in the House?

Dunne. No, my Lord, not a drop.

L. C. J. Did not you call for Drink?

Dunne. No, my Lord, I did not, I had nothing but my Cake and Cheese that I brought thither myself.

L. C. J. Who went up to the Chamber with you?

Dunne. The Girl, my Lord.

L. C. J. And no body else?

Dunne. No, my Lord.

L. C. J. Was the Bed made?

Dunne. Yes, my Lord, it was.

L. C. J. You eat nothing in the House, you say?

Dunne. Nothing but my own Cake and Cheese, my Lord.

L. C. J. But you did not drink in the House at all?

Dunne. No, my Lord, I did not.

L. C. J. Did you drink at Marton where you did call upon Fane?

Dunne. Yes, I did, but not afterwards.

L. C. J. Did you see any Body there the next Morning before they were taken?

Dunne. No, my Lord, but after the House was beset, I saw my Lady and Mr. Hicks, and I think I saw Goodman Carpenter.

L. C. J. They and you were taken there together, were not you?

Dunne. Yes.

L. C. J. Did you see Carpenter's Wife, upon your Oath, that Night?

Dunne. My Lord, I did not.

L. C. J. Nor no Woman-kind besides the Girl you speak of?

Dunne. No, my Lord.

L. C. J. Nor no Man besides Carpenter?

Dunne. No, my Lord.

L. C. J. You are sure of this?

Dunne. I am so, my Lord.

L. C. J. You are sure you did not drink there?

Dunne. I am, my Lord.

L. C. J. And you say he brought the Light into the Stable, and gave your Horse Hay?

Dunne. He did, my Lord.

L. C. J. Now prithee tell me truly, where came Carpenter unto you? I must know the Truth of that; remember that I give you fair Warning, do not tell me a Lye, for I will be sure to treasure up every Lye that thou tellest me, and thou mayst be certain it will not be for thy Advantage; I would not terrifie thee to make thee say any think but the Truth: But assure thy self I never met with a lying, sneaking, canting Fellow, but I always treasure up Vengeance for him, and therefore look to it that thou dost not prevaricate with me, for to be sure thou wilt come to the worst of it in the end?

Dunne. My Lord, I will tell the Truth as near as I can.

L. C. J. Then tell me where Carpenter met thee?

Dunne. In the Court, my Lord.

L. C. J. Before you came to the Gate, or after?

Dunne. It was after we came to the Gate, in the Court.

L. C. J. Then tell me, and I charge you tell me true, Who was with you when Carpenter met you?

Dunne. Hicks and Nelthorpe.

L. C. J. Was there any body else besides them two in the Court?

Dunne. There was no body but Hicks and Nelthorpe, and I and Mr. Carpenter.

L. C. J. You are sure of that?

Dunne. Yes, my Lord.

L. C. J. Consider of it, are you sure there was no body else?

Dunne. Truly, my Lord, I did not mind that there was any body else.

L. C. J. Recollect your self, and consider well of it.

Dunne. Truly, my Lord; I do not know of any body else.

L. C. J. Now upon your Oath tell me truly, who it was that opened the Stable door, was it *Carpenter* or you?

Dunne. It was *Carpenter*, my Lord.

L. C. J. Why, thou vile Wretch didst not thou tell me just now that thou pluck'd up the Latch? Dost thou take the God of Heaven not to be a God of Truth, and that he is not a Witness of all thou sayst? Dost thou think because thou prevaricatest with the Court here, thou canst do so with God above who knows thy Thoughts, and it is infinite Mercy, that for those Falshoods of thine, he does not immediately strike thee into Hell? Jesus God! there is no sort of Conversation nor human Society to be kept with such People as these are, who have no other Religion but only in Pretence, and no way to uphold themselves but by countenancing Lying, and Villany: Did not you tell me that you opened the Latch your self, and that you saw no body else but a Girl? How durst you offer to tell such horrid Lyes in the Presence of God and of a Court of Justice? Answer me one Question more: Did he pull down the Hay or you?

Dunne. I did not pull down any Hay at all.

L. C. J. Was there any Hay pull'd down before the Candle was brought?

Dunne. No, there was not.

L. C. J. Who brought the Candle?

Dunne. Mr. *Carpenter* brought the Candle and Lanthorn.

L. C. J. It seems the Saints have a certain Charter for Lying; they may lye and cant, and deceive, and rebel, and think God Almighty takes no notice of it, nor will reckon with them for it: You see, Gentlemen, what a precious Fellow this is, a very pretty Tool to be employ'd upon such an Errand, a Knave that no body would trust for half a Crown between Man and Man, but he is the fitter to be employ'd about such Works; What Pains is a Man at to get the Truth out of these Fellows, and it is with a great deal of Labour that we can squeeze one Drop out of them: A *Turk* has more Title to an Eternity of Bliss than these Pretenders to Christianity, for he has more Morality and Honesty in him. Sirrah, I charge you in the Presence of God, tell me true, What other Persons did you see that Night?

Dunne. My Lord, I did not see any than what I have told you already.

L. C. J. Then they went out and brought word that thou wert come, and so he came out to meet thee; very well: I would have every body that has but the least Tang of Saintship to observe the Carriage of this Fellow, and see how they can cant and snivel, and lie, and forswear themselves, and all for the good old Cause: They will stick at nothing if they think they can but preserve a Brother or Sister Saint forsooth; they can do any thing in the World but speak Truth, and do their Duty to God and their Governours: I ask you again, Did not *Carpenter* meet you before you left *Hicks* and *Nelthorp*?

Dunne. No, he did not.

L. C. J. Then I ask you again once more, Did not *Carpenter* ask you to drink?

Dunne. No, he did not.

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L. C. J. Did not he light you with a Lanthorn and Candle into the House?

Dunne. I went into the House.

L. C. J. Dost thou believe we think any body thrust thee in: Did he light thee in, I ask thee?

Dunne. I went in along with Mr. *Carpenter*.

L. C. J. What Room did he carry you into?

Dunne. My Lord, he carry'd me into no Room, the young Woman shew'd me into a Room.

L. C. J. What Room was it?

Dunne. Into the Chamber.

L. C. J. Was not thou in the Hall or Kitchen?

Dunne. No, my Lord.

L. C. J. It is hard thou hadst not one Cup of Drink to thy Cake and Cheefe.

Dunne. My Lord, I had never a Drop.

L. C. J. No, nor did no body ask you to eat or drink?

Dunne. No, my Lord.

L. C. J. Thou art the best natur'd Fellow that ever I met with, but the worst rewarded: Come, I will ask thee another Question: When was the first time thou heardst *Nelthorp's* Name?

Dunne. Not till he was taken.

L. C. J. What Name did the Fellow with the black Beard tell thee he had?

Dunne. My Lord, he never told me any Name?

L. C. J. Didst thou never ask him his Name?

Dunne. No, my Lord, that Man that was afterwards found to be *Nelthorp*, I did not know to be *Nelthorp* till he was taken, nor what his Name was, nor any Name he had.

L. C. J. No, prithee tell the Truth, Did not *Nelthorp* go by the Name of *Crofts*?

Dunne. He did, my Lord.

L. C. J. Then prithee, when did he first go by that Name in thy Hearing?

Dunne. My Lord, I only heard *Hicks* say he went by the Name of *Crofts*.

L. C. J. When was that?

Dunne. When they were taken.

L. C. J. Did you not hear him call'd by that Name any time of the Journey?

Dunne. I cannot recollect, my Lord, that I ever did.

L. C. J. Thou canst recollect nothing of Truth: Is this as much as you can say?

Dunne. It is, my Lord.

Mr. *Jennings*. You say *Carpenter* met you very civilly, and took Care of your Horse: Did he make no Provision for *Hicks* and *Nelthorp's* Horses? What became of them?

Dunne. I cannot tell, my Lord.

Mr. *Rumsey*. Did you see their Horses afterwards?

Dunne. No, my Lord, I did not.

Mr. *Rumsey*. When they alighted from them, were they ty'd fast to the Gate, or how?

Dunne. They were not ty'd at all, as I know of.

Mr. *Jennings*. Did you tell *Carpenter* that their Horses were there?

Dunne. I did not tell him any such thing.

L. C. J. Thou art a strange prevaricating, shuffling, snivelling, lying Rascal.

Mr. *Pollexfen*. We will set him by for the present and call *Barter*, that is the other Fellow.

L. C. J. Will the Prisoner ask this Person any Questions?

Lisle. No.

L. C. J. Perhaps her Questions might endanger the coming out of all the Truth, and it may be she is well enough pleased to have him swear as he does; but it carries a very foul Face, upon my Word.

Then Barter was sworn.

L. C. J. Is this *Barter*?

Mr. Pollexfen. Yes, my Lord, for his part we have his Examination before two Justices of Peace, but we hope he is an honest Fellow and will tell the Truth.

L. C. J. That is all one whether you have his Examination or not: I expect he should tell me the Truth, and the whole Truth here. Friend, you know your Soul is at pawn for the Truth of what you testify to us; the other Fellow thou seest has been prevaricating with us all this while, and swearing off and on, and scarce told one Word of Truth, I know very well: Now I know as much of thee as I do of him, therefore look to thy self, and let the Truth, and nothing but the Truth come out?

Barter. May it please your Honour, my Lord, this Man *Dunne* came to my House upon the *Saturday*, and spoke to me to ride along with him to *Moyle's-Court*, where my Lady *Lisle* liv'd, and I having no other Business at that time, did go along with him: He had a Letter in his Pocket, and I saw him produce the Letter to my Lady's Bailiff, *Mr. Carpenter*, but he would not meddle with it, so I suppose he went in with it to my Lady; and while I was in the Kitchen my Lady came thither, and asked me, saith she, What Countryman art thou? Said I, Madam, I am a *Wiltshire* Man, saith she, Do'st thou make Bricks? No said I, Madam, I cannot, I can help in Husbandry Work; saith she, If thou could'st make Bricks, I will give thee Ten Acres of Ground in such a Place: I told her, no, I could not: And then she goes to this Man *Dunne*, and there she was laughing with him, and looked upon me, and afterwards when we were going along, I asked him what she laughed at?

L. C. J. Ay, and now tell me what he said to thee about it?

Barter. He told me, my Lord, my Lady ask'd whether I knew any thing of the Concern, and that he answer'd her, No, this the Fellow told me was that she laughed at: After this I could not eat, nor drink, nor sleep for Trouble of Mind till I had discover'd this to some Justice of the Peace, and I resolv'd at last to go to Colonel *Penruddock* and consult with him about it, so I went over and told him of it.

L. C. J. What did you tell Colonel *Penruddock*, let us hear?

Barter. Where I had been the *Saturday* before, and where I should meet them again upon *Salisbury-Plain* upon the *Tuesday*, for I did expect to meet them there according to Appointment, and we did agree he should come and take them there; but afterwards missing them there, or, for some other Reason I do not know what, his Mind altered, and he came to take them in the House: So when I met them, we rode on about Ten Miles, and they would have had me to have led them a private Way over the *Fording Bridge* towards *Moyle's-Court*, but I told them, in Case they intended to have me for their Guide, they must go the Way that I could

tell, but they would go that private way, and so lose their way; then they sent back this *Dunne* to *Marton*, to one *Fane*, that was the fat Man that sent him, but I finding that I was of no more Value then, rode away from them, and having a Relation that liv'd on that Side of the Country, I went to let Colonel *Penruddock* know that they were at the House, but before I went away from them, *Nelthorp* gave me five Shillings, half a Crown, and two Shillings and a Six-pence.

L. C. J. Now thou say'st *Nelthorp* did, Didst thou hear his Name named?

Barter. I never could find any of their Names till they were taken.

Mr. Pollexfen. Pray *Barter* what Discourse had you with *Dunne* the first time you were going to and from my Lady *Lisle's*, concerning the Men that he was to bring thither, and what Estates they had?

Barter. My Lord, he said they had half a Score of Thousands of Pounds a Year a piece.

Mr. Pollexfen. Did he tell you they were to come to my Lady's?

Barter. Yes, he told me they were to come upon the *Tuesday*, and they were to come such a Way, and were to come to my Lady's in the Evening.

L. C. J. What wert thou to have for thy Pains?

Barter. I made no Bargain, my Lord.

L. C. J. You are all very free, kind-hearted People, I say that for you.

Mr. Pollexfen. What did *Dunne* say about his Gains?

Barter. He told me he had a very fine Booty for his Part, and that he should never want Money again, and that I should be very well paid, and gave me half a Crown.

L. C. J. Then let my honest Man *Mr. Dunne* stand forward a little. Come, Friend, you have had some time to recollect your self; let us see whether we can have the Truth out of you now: You talked of carrying a Message from *Hicks* to my Lady *Lisle*: Did not you carry a Letter?

Dunne. No, my Lord, I did not.

L. C. J. Did not you shew a Letter to the Bailiff, *Carpenter*?

Dunne. No, my Lord, I did not.

L. C. J. What say you, *Barter*, to that?

Barter. My Lord, I did see him produce the Letter to the Bailiff.

L. C. J. Then I will ask you another Question: Did you not tell *Barter* that you should be at *Salisbury Plain*, with two People, upon the *Tuesday*?

Dunne. No, my Lord, I said between *Compton* and *Fovant*.

L. C. J. Did not you tell him, that they were brave Fellows, and had God knows how many Thousand Pounds a Year apiece?

Dunne. No, my Lord, I did not.

L. C. J. Then one thing more: Did not you tell him, that you told my Lady, when she ask'd whether he was acquainted with the Concern, that he knew nothing of the Business?

Dunne. My Lord, I did tell him so.

L. C. J. Did you so? Then you and I must have a little further Discourse: Come now, and tell us, what Business was that? and tell it us so, that a Man may understand and believe that thou dost speak Truth.

Dunne.

Dunne. Does your Lordship ask what that Business was?

L. C. J. Yes, it is a plain Question; What was that Business that my Lady asked thee, whether the other Man knew; and then you answered her, that he did know nothing of it?

Then he paused a while.

L. C. J. Remember, Friend, thou art upon thy Oath; and remember withal, that it is not thy Life, but thy Soul that is now in danger: Therefore I require from thee a plain Answer to a very plain Question; What was that Business my Lady enquired after, whether the other Fellow knew, and thou toldst her, he did not?

Dunne made no Answer, but stood musing a while.

L. C. J. He is now studying and musing how he shall prevaricate; but thou hadst better tell the Truth, Friend: Remember what thou hast said already; Thou hast said, that thou didst tell that Man, that the Lady asked you, whether he knew any thing of the Business, and thou toldst her, he did not. Now I would know what that Business was?

Still he made no Answer, but seemed to muse.

L. C. J. Look thee, if thou canst not comprehend what I mean, I will repeat it to thee again; for thou shalt see what Countreyman I am, by my telling my Story over twice: Therefore I ask thee once again. Thou saidst thy Lady asked thee, whether he knew of the Business; and thou toldst her, he did not. Now let us know what that Business was?

Dunne. I cannot mind it, my Lord, what it was.

L. C. J. But mind me prithee: Thou didst tell that honest Man there, that my Lady Lisle asked thee, whether he knew any thing of the Business, and thou saidst, no. What was that Business?

Dunne. That Business that Barter did not know of?

L. C. J. Yes, that is the Business; be ingenuous, tell the Truth: Oh! How hard the Truth is to come out of a lying Presbyterian Knave. Prithee, Friend, consider the Oath that thou hast taken; and that thou art in the Presence of a God that cannot endure a Lie, nor whose Holiness will not admit him to dispense with a Lie: Consider that that God is an infinite Being of Purity, Holiness and Truth; and it would be inconsistent with his Being to dispense with the least Untruth; and thou hast called him to witness that thou wouldst testify the Truth, the whole Truth, and nothing but the Truth. I charge thee, therefore, as thou wilt answer it to that God of Truth, and that thou mayst be called to do, for ought I know, the very next Minute, and there thou wilt not be able to palliate the Truth; what was that Business you and my Lady spoke of?

Then he paused for half a quarter of an Hour, and at last said:

Dunne. I cannot give an Account of it, my Lord.

L. C. J. Oh blessed God! Was there ever such a Villain upon the Face of the Earth; to what Times are we reserved? Do'st thou believe that there is a God?

Dunne. Yes, my Lord, I do.

L. C. J. Do'st thou believe that that God can endure a Lie?

Dunne. No, my Lord, I know he cannot.

L. C. J. And do'st thou believe then that he is a God of Truth?

Dunne. Yes, my Lord, I do.

L. C. J. Do'st thou think that that God of Truth may immediately sink thee into Hell-Fire if thou tellest a Lie?

Dunne. I do, my Lord.

L. C. J. Do'st thou believe that he does observe every thing that thou thinkest, sayest or doest; knows the Secrets of thy Heart, and knows whether thou tellest a Lie or not, tho' perhaps it may be hid from us, and knows whether thou do'st prevaricate or not?

Dunne. I know the Lord does know all things.

L. C. J. Do'st thou believe, that he knows the Business that you and my Lady, the Prisoner, were talking of, as well as you do; that he hath an Almighty Power over all his Creatures, an All-piercing Eye, that looks into the Hearts of every one of them, and from which nothing can be concealed? Do'st thou believe it possible to conceal that very Discourse of yours from the knowledge of that infinite Being?

Dunne. My Lord, I do believe that there is a God above.

L. C. J. I ask thee then again; Do'st thou believe that that God above, who is a God of Truth himself, is Omniscient, Omnipresent, to whom all Truth is naked and open, that he knows every thing that is either thought, said or done by any of his Creatures, sees and knows the Hearts of all Hearts; Do'st thou believe all this?

He stood silent for a good while.

L. C. J. Friend, deceive not thy self; the great God does observe and know the secret workings of thy Thoughts now, and how Truth struggles to get out, but Baseness and Villany keep it in: All the private Imaginations of thy Heart are not only known to him, but registered by him, and thy Conscience will bear witness to thy Accusation when thou art called to answer for them, and answer for them thou must; for the Scripture, that is the Word of God, tells us, *That every vain Thought we must account for.* Do'st thou then believe, that any Discourse between you, tho' never so private, is private from the Almighty, All-knowing God?

Dunne. My Lord, I know it is not, nor can be.

L. C. J. I therefore once more adjure thee, as thou wilt answer it to that God that is the Searcher of the Hearts and Trier of the Reins, to whom all Hearts are open, and from whom no Secrets are hid, that thou make me a plain Answer to my Question; and as thou hast called God to bear Witness to the Truth of the Evidence thou givest here in this Court; so I charge thee, in his Name, to declare the Truth, and nothing but the Truth. Now tell us what was the Business you spoke of?

But

But he made no Answer.

L. C. Baron. Friend, mind what my Lord says to you, and consider, how easie a thing it is for a Man to speak Truth, and give a plain Answer to a plain Question. You cannot but understand what my Lord asks of you; you said even now, that you did tell the other Witnesses, *Barter*, that my Lady asked you, whether he knew any thing of the Business, and you told her, he did not. Now my Lord would have you tell us, what that Business was?

He seemed to turn his Head on one side, but returned no Answer.

L. C. J. He is going to ask that Man there, whether he shall tell the Truth.

Dunne. No, my Lord, I ask no Man any such Question.

L. C. J. Prithee tell us the Truth then now: Thou art to know, that thou standest in the Presence of the God of Truth, and hast called him to witness, that thou wouldst tell the Truth.

Dunne. My Lord, I do tell the Truth, as far as I can remember.

L. C. J. Then what was that you told my Lady *Lisle*, *Barter* did not know?

Dunne. What *Barter* did not know, my Lord?

L. C. J. Ay, is not that a plain Question? Of all the Witnesses that ever I met with, I never saw thy Fellow.

He stood a good while, and made no Answer.

L. C. J. I hope, Gentlemen of the Jury, you take notice of the strange and horrible Carriage of this Fellow; and withal, you cannot but observe the Spirit of that sort of People, what a villanous and devilish one it is: Good God! That ever the thing called Religion (a Word that People have so much abused) should ever wind up Persons to such a height of Impiety, that it should make them lose the Belief that there is a God of Truth in Heaven; that sees and knows, observes and registers, and will punish and take vengeance of Falshood and Perjury: It may well make the rest of Mankind, that have any sort of Faith in a Deity and a future Life, to abhor and detest both the Men and their Religion, if such abominable Principles may be called so. A *Turk* is a Saint to such a Fellow as this, nay a *Pagan* would be ashamed to be thought to have no more Truth in him. O blessed *Jesus*! What an Age do we live in, and what a Generation of Vipers do we live among? Sirs, is this that you call the *Protestant* Religion? Shall so glorious a Name be applied to so much Villany and Hypocrisie? Is this the Persuasion you hope to live, and die, and find Salvation in? Will any of you all, Gentlemen, be contented to die with a Lie in your Mouth? Do not you all expect, according to the Orthodox Doctrine of the true Church of *England*, that eternal Damnation will be the Portion of Liars? And thou wicked Wretch, how durst thou appear to give Testimony before even an Earthly Tribunal with so much Impudence and Falshood, when every Lye will cost thee so dear, and except a sincere and

hearty Repentance, and the infinite Mercy of the great God interpose? I charge you once more, as you will answer it at the Bar of the great Judge of all the World, that you tell me what that Business was, you and the Prisoner talked about; do but consider what a Condition thou bringest thy self into by all this Shuffling and Prevarication, even as to any thing of Mercy in this Life, for indeed it is not fit thou shouldst have the least Hopes of Mercy on this side Eternity, and truly there is no Man can imagine less than infinite Mercy can pardon so flagitious a Sin, one that so impudently tells and stands in a Lye.

Still he would make no Answer.

L. C. J. *Jesus* God! Was there ever such a Fellow in the World as thou art: Prithee let me ask thee once again, Dost thou believe that there is a God, that this God is Spotless, Truth and Purity it self? Dost thou believe thou hast a precious and immortal Soul, that is to live in everlasting Bliss or eternal Misery after this Life accordingly as thou carriest it here; if thou dost believe it, ought not the Concerns of that precious immortal Soul of thine to be much dearer to thee than Ten thousand Worlds? Does not the blessed Word of Truth tell thee, *What will it profit a Man to gain the whole World, and lose his own Soul, or what shall a Man give in exchange for his Soul?* Is not this the Voice of Scripture it self? And wilt thou hazard so dear and precious a thing for a Lye, and an unprofitable Lye too? Thou Wretch, all the Mountains and Hills in the World heaped upon one another, will not cover thee from the Vengeance of the great God for this Transgression of false Witness-bearing: What Hopes can there be for so profligate a Villain as thou art, that so impudently stands in open Defiance of the Omnipresence, Omniscience and Justice of God, by persisting in so palpable a Lye, I therefore require it of you, in his Name, to tell me the Truth?

Dunne. I cannot tell what to say, my Lord.

L. C. J. Good God! Was there ever such an impudent Rascal, well, I will try once more, and tell thee what I mean; you said you told that honest Man (for truly he seems so to be) that my Lady asked you whether he knew of the Business, and you told her, he did not, prithee be so free as to tell us what that Business was?

Dunne paused, but would make no Answer.

L. C. J. Prithee what didst thou mean, or thy Lady mean by that Business?

He paused again, but would make no Answer.

L. C. J. Why, prithee dost thou think thou dost her any Kindness by this way of proceeding, sure thou canst not think so, for such a sort of Carriage were enough to convert her, if there were nothing else?

Dunne. Truly, my Lord, I do not think to do her any Kindness at all.

L. C. J. Then prithee let me persuade thee to have some kindness for thy self, look to thy own Soul that is in great peril of everlasting Ruin and

and Destruction by these means ; Dost thou call this Religion ? It is a prodigious piece of Religion ; come, pray tell me what Business it was you talked of ? You should not have asked me a Question so often, but I would have given you a plain Answer, though I were not under the Obligation of an Oath as you are.

Dunne. My Lord, pray ask the Question over again once more, and I will tell you.

L. C. J. I will so, and I will ask it you with all the Calmness, and Seriousness, and Candour that I can, if I know my own Heart, it is not in my Nature to desire the Hurt of any body, much less to delight in their eternal Perdition ; no, it is out of tender Compassion to you that I use all these Words : I would have thee to have some Regard to thy precious and immortal Soul, which is more valuable than the whole World ; reflect upon that Scripture again which I mention'd before, which must be true, because it is the Words of him that is Truth it self : *What shall it profit a Man to gain the whole World and lose his own Soul, or what shall a Man give in exchange for his Soul ?* If that Soul of thine be taken away, what is the Body fit for, but like a putrid Carcase to be thrust into and covered with the Dust with which it was made ; therefore I ask you, with a great Desire that thou mayst free thy self from so great a Load of Falshood and Perjury, tell me what the Business was you told the Prisoner, the other Man *Barker* did not know ?

Dunne. My Lord, I told her, he knew nothing of our coming there.

L. C. J. Nay, nay, that can never be it, for he came along with thee.

Dunne. He did not know any thing of my coming there till I met him on the way.

L. C. J. Prithee mind my Question, Sure enough thou hadst told him whither thou wert going, or else he could not have been thy Guide, so that he must needs know of thy coming there, but what was the Business that thou toldst her, he did not know ?

Dunne. She asked me whether I did not know that *Hicks* was a Nonconformist.

L. C. J. Did my Lady *Lisle* ask you that Question ?

Dunne. Yes, my Lord, and I told her I did not.

L. C. J. But that is not my Question ; What was that Business that he did not know ?

Dunne. It was the same thing, whether Mr. *Hicks* was a Nonconformist.

L. C. J. That cannot be all, there must be something more in it ?

Dunne. Yes, my Lord, it is all, I know nothing more.

L. C. J. What did she say to you when you told her, he did not know it ?

Dunne. She did not say any thing, my Lord.

L. C. J. Why dost thou think, that after all this pains that I have been at to get an Answer to my Question, that thou canst banter me with such sham Stuff as this ? Hold the Candle to his Face that we may see his brazen Face.

Dunne. My Lord, I tell you the Truth.

L. C. J. Did she ask thee whether that Man knew any thing of a Question she had asked thee, and that was only of being a Nonconformist ?

Dunne. Yes, my Lord, that was all.

L. C. J. That is all Nonsense, Dost thou imagine that any Man hereabouts is so weak as to believe thee ?

Dunne. My Lord, I am so baulked I do not know what I say my self ; tell me what you would have me to say, for I am clutter'd out of my Senses.

L. C. J. Why, prithee Man, there's no body baulks thee but thy own self, thou art asked Questions that are as plain as any thing in the World can be, it is only thy own depraved naughty Heart that baulks both thy Honesty and Understanding, if thou hast any, it is thy studying how to prevaricate that puzzles and confounds thy Intellect ; but I see all the Pains in the World, and all Compassion and Charity is lost upon thee, and therefore I will say no more to thee.

Mr. Pollexfen. My Lord, because he pretends to Ignorance what *Hicks* was, I desire to ask *Barter* one Question ; Pray, what did he tell you concerning his Carriage towards these People ?

Barter. My Lord, he told me, that he had concealed them in his House Ten Days before.

Dunne. That I never did in my Life.

Barter. I know not whether you did or no, but you told me so ; and I made Answer to him again, my Lord, I wonder how he were able to keep them without being discovered, there being such Search, and he answered, He did keep them in a Chamber all Day, and then they walked out at Night, for the Searches of the Houses were usually at Night.

Dunne. My Lord, I can bring Testimony to the contrary.

L. C. J. But really I believe it will be no strange thing for me to say, I do believe him rather than thee ; I would I had half as much reason to believe thee, as I have to believe him ; I would fain have thee speak Truth if I could. What say you to the Question I asked you ?

Dunne. I cannot tell what to say, my Lord.

L. C. J. Say the Truth, Man.

Dunne. I do, as I hope for Mercy, my Lord.

L. C. J. Dost thou hope for Mercy ? Thou hast very little reason for it I assure thee. Well, I will try thee with another Question : Didst thou tell that Man, that it was the best Job thou ever hadst in thy life ?

Dunne. No, my Lord, I did not.

L. C. J. Nor nothing to that purpose ?

Dunne. No, my Lord.

L. C. J. What say you, *Barter*, did not he tell you so ?

Barter. Yes, my Lord, he did ; and that he should never lack Money again as long as he lived.

L. C. J. Then I ask you one Question more, *Barter* ; Did you tell this to Col. *Penruddock* ?

Barter. Yes, I did, my Lord.

L. C. J. Then that will fortifie his Testimony ; therefore Swear him, because I would make these concealed Wretches (for in my Conscience I know there are some such in the bottom of this Business) know, that the Truth will out one way or other. And as for this Fellow ; I expect it from all you Gentlemen of the King's Counsel, and others that are concerned, that you take notice and remember what

what has passed here, and that an Information of Perjury be preferred against this Fellow.

Then Col. Penruddock was Sworn.

L. C. J. Col. Penruddock, upon the Oath you have taken; Did that Man *Barter* come to you, and what did he say to you?

Col. Penruddock. My Lord, That Man *Barter* came to my House in the Morning, upon *Monday*, and told me, he had been with one *Dunne*, upon a Journey to Mrs. *Lisle's* House, to get Entertainment for some People; and that they had appointed to meet him the *Tuesday* following, between 9 and 11, upon *Salisbury Plain*, and there, if I pleased, I might take them. I ordered him to go according to the Appointment, and withal, I sent a Servant of my own to watch when they came by; but it happen'd, I suppose, by their taking another way, that he missed of them; but *Barter* left word, that in case he did not find them there, we must conclude, that he was gone with them to my Lady *Lisle's* House; and he told me withal, says he, I believe they are Rebels, because he that desired me to be their Guide, said the same to me. So early the next Morning I took some Soldiers with me, and beset my Lady *Lisle's* House; it was a pretty while before I could get any body in the House to hear; at length that Man that they say was the Bailiff, *Carpenter*, came out, and I said to him, Friend, you had best be free and ingenuous, and discover who are in your Lady's House, for I am sure there were some Strangers came thither last Night; let me know who they are, and shew me what part of the House they are in? He did confess to me there were Strangers in the House, and pointed to such a part of the House; but pray, says he, do not tell my Mistress of it. Accordingly we went in, and immediately we took Mr. *Hicks* and this same *Dunne* in the Malthouse.

L. C. J. Was *Dunne* taken in the Malthouse?

Col. Penruddock. Yes, he had covered himself with some sort of Stuff there.

L. C. J. Well, what did you do then?

Col. Penruddock. My Lady afterwards coming to us, I told her, Madam, you have done very ill in harbouring Rebels, and giving Entertainment to the King's Enemies: Saith she, I know nothing of them, I am a Stranger to it. Pray, said I, Madam, be so free and ingenuous with me, and so kind to your self, as if there be any other Person that is concealed in any part of your House (for I am sure there is some body else) as to deliver him up, and you shall come to no further trouble. She denied it, and said, I know nothing of them: But we went on, and searched, and at last discovered the other Man *Nelthorpe*, hid in a Hole by the Chimney.

L. C. J. *Dunne*, How came you to hide your self in the Malthouse?

Dunne. When I heard the stir and bustle, I went thro' the Chamber where I lay, and came into that Room where I was taken.

L. C. J. When thou heardest a stir and a bustle: Why, wert thou afraid of any thing?

Dunne. My Lord, I was frighted at the noise.

L. C. J. Prithee, what needest thou be afraid, for thou didst not know *Hicks*, nor *Nelthorpe*; and my Lady only asked thee whether *Hicks* were a Nonconformist Parson: Thou

art a very innocent Soul, and surely needest no occasion to be afraid: I doubt there was something of that *Business* in the case that we were talking of before, if we could but get out of thee what it was.

Dunne. My Lord, I heard a great noise in the House, and I did not know what it meant, and so I went and hid my self.

L. C. J. Alack-a-day! That is very strange, that thou shouldst hide thy self for a little noise, when thou knewest nothing of the *Business*, nor wert acquainted with any thing of the matter at all. But *Col. Penruddock*, I would ask you one Question more: Did that honest Man tell you, that *Dunne* had told him, it was the best Job that ever he had in his Life; and that he should want no Money?

Penruddock. I cannot tell that truly, my Lord, I do not remember that, but he said, he apprehended them to be Rebels, and that *Dunne* had told him as much.

L. C. J. What do you say to that, *Dunne*? It seems you told *Barter* that you apprehended them to be Rebels?

Dunne. I apprehend them for Rebels, my Lord!

L. C. J. No, no, you did not apprehend them for Rebels, but you hid them for Rebels. But did you say to *Barter* that you took them to be Rebels?

Dunne. I take them to be Rebels!

L. C. J. You Blockhead, I ask you, did you tell him so?

Dunne. I tell *Barter* so!

L. C. J. Ay, is not that a plain Question?

Dunne. I am quite cluttered out of my Senses, I do not know what I say.

[A Candle being still held nearer his Nose.]

L. C. J. But to tell the Truth would rob thee of none of thy Senses, if ever thou hadst any, but it should seem that neither thou, nor thy Mistress the Prisoner had any, for she knew nothing of it neither, though she had sent for them thither.

Mr. Pollexfen. Pray Colonel *Penruddock*, did you tell her you came to search for Rebels?

Col. Penruddock. Yes, Sir, I told her as soon as I saw her, but we had a good while beset the House before any body answered us; at length, there were some Ladies, or Gentlewomen, I imagined them to be her Daughters, that upon our noise looked out at the Window; and I told them there were Rebels in the House, and I required them in the King's Name to be deliver'd to me; but I saw not my Lady till after I had brought out *Hicks* and *Dunne*.

L. C. J. What said she to you?

Col. Penruddock. She said, she knew nothing of their being in the House; but I told her there was some body else besides, and she would do well to deliver him without trouble; but she denying of it, we searched further, and found *Nelthorpe*, as I told you.

L. C. J. But she denied it at first, it seems?

Lisle. My Lord, I hope I shall not be condemned without being heard.

L. C. J. No, God forbid; Mrs. *Lisle*; that was a sort of Practice in your Husband's time; you know very well what I mean: But God be thanked, it is not so now, the King's Courts of Law never condemn without hearing. *Col. Penruddock*, have you any more to say?

Col.

Col. Penruddock. No, my Lord, but here is one Mr. Dowding, that was with me when I searched the House.

L. C. J. Swear him. [*Which was done.*]

Mr. Pollexfen. Mr. Dowding, Pray did you go with Col. Penruddock to Mrs. Lisle's House?

Mr. Dowding. Yes, my Lord: We came to the House and beset the House round, some to the back Gate and some to the fore-Gate; we called almost half an hour before we got in; and had found two, and we came to my Lady, she said, she knew nothing of any body being in the House——

Lisle. My Lord, This Fellow that now speaks against me broke open my Trunk, and stole away a great part of my best Linnen; and sure, my Lord, those Persons that rob me, are not fit to be Evidences against me, because it behoves them that I be convicted, to prevent their being indicted for Felony.

L. C. J. Look you, Friend, you say you went with Col. Penruddock to search the House, did you find any body there?

Dowding. Yes, my Lord, I found this same Dunne in a little Hole in the Malthouse.

L. C. J. Was he covered, or not?

Dowding. He had taken some stuff or other to cover him.

L. C. J. Did you find Hicks there?

Dowding. Yes, my Lord, we did find one that said his Name was Hicks.

L. C. J. Is that the same Hicks that is in Salisbury Gaol?

Dowding. Yes, my Lord, it is, I saw him yesterday at the George in Salisbury, when he had that Discourse with those other Gentlemen.

Mr. Pollexfen. Swear Carpenter and his Wife.

[*Which was done.*]

Dowding. My Lord, Hicks acknowledged before me, that he was at Keinsham, in the Duke of Monmouth's Army.

Mr. Pollexfen. Come, Mrs. Carpenter, tell my Lord and the Jury; Did you know the time when these Men came to your Lady's House?

L. C. J. Is this the Bailiff's Wife?

Mr. Pollexfen. Yes, my Lord, it is.

L. C. J. Well then, what say you to the Question: Do you know the time when they came?

Mrs. Carpenter. Yes, my Lord, they came at night.

L. C. J. Did you see them there?

Mrs. Carpenter. Yes.

L. C. J. Were they lodged there?

Mrs. Carpenter. Yes but I never made the Bed.

L. C. J. Who did?

Mrs. Carpenter. My Lord, I cannot tell.

L. C. J. Had they any Supper, or Victuals there?

Mrs. Carpenter. Yes, they had.

L. C. J. Who dress'd it?

Mrs. Carpenter. I did.

L. C. J. By whose Order did you dress it?

Mrs. Carpenter. By my Lady's Order.

L. C. J. Prithee where did they eat their Meat?

Mrs. Carpenter. In the Chamber, my Lord, where they lay.

L. C. J. Who was with them?

Mrs. Carpenter. My Lord, I cannot tell, for I did not stay in the Room.

L. C. J. Didst thou see them when they came into the Room?

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Mrs. Carpenter. My Lord, I dress'd the Meat, and carried it within the Door, and my Husband set it upon the Table.

L. C. J. Prithee tell me who was with them? Was thy Lady there?

Mrs. Carpenter. My Lady was in Presence there then.

L. C. J. How long did they stay below stairs before they went up?

Mrs. Carpenter. Truly, my Lord, I cannot tell.

L. C. J. Did your Lady use to sup below stairs or above?

Mrs. Carpenter. She used to sup below, my Lord.

Mr. Pollexfen. My Lord, if your Lordship please, this Woman and her Husband are both unwilling Witnesses; but we will examine the Husband, and see what we can get out of him: Hark you, Carpenter, did you meet with this Fellow Dunne, at his first coming to your Lady's House?

Mr. Carpenter. Yes, my Lord, I did see him there on the Saturday.

L. C. J. Well then, let me ask you a Question; and be sure you tell me Truth, for it may be I know it already: Did he offer you a Letter to be delivered to your Lady?

Mr. Carpenter. No, my Lord.

L. C. J. What do you say Barter?

Barter. I saw him produce it to Mr. Carpenter, but he refused to meddle with it.

Mr. Carpenter. My Lord, he asked me, if my Lady would give Entertainment to one Hicks, and another Person, but he did not know who that Person was.

L. C. J. Did he speak of another Person?

Mr. Carpenter. Yes, he did.

L. C. J. Who was that other Person?

Mr. Carpenter. I did ask his Name, but he said, he did not know him.

L. C. J. Well then, when they came there on the Tuesday night, how did you receive them?

Mr. Carpenter. I did not receive them.

L. C. J. Did not you light the Candle, and bring it in a Lanthorn, to light him into the Stable?

Mr. Carpenter. My Lord, that was afterwards.

L. C. J. Did not you bring the Men into the House?

Mr. Carpenter. No, my Lord, indeed I did not.

L. C. J. Did not you see them all night?

Mr. Carpenter. Yes, my Lord.

L. C. J. Then where did you see them first?

Mr. Carpenter. In the Room where they supp'd and lay.

L. C. J. Did not you meet them in the Courtyard?

Mr. Carpenter. No, my Lord.

L. C. J. Who gave you Directions to light Dunne into the Stable?

Mr. Carpenter. They told me his Horse was out in the yard.

L. C. J. Who told you so?

Mr. Carpenter. The Men did.

L. C. J. Where did they sup?

Mr. Carpenter. In the Room above stairs.

L. C. J. Who supp'd along with them?

Mr. Carpenter. I cannot say any body supp'd with them.

L. C. J. Was not my Lady there?

[G g g g]

Mr.

Mr. Carpenter. She was in the Room, but I did not see her eat any thing.

L. C. J. What time of the night did they come?

Mr. Carpenter. About Ten of the Clock.

L. C. J. And where did they lie?

Mr. Carpenter. In the Room where they supped.

L. C. J. Who lay there?

Mr. Carpenter. Hicks and Nelthorpe lay there.

L. C. J. Was Nelthorpe named there?

Mr. Carpenter. No, I never heard of his Name till after he was taken.

L. C. J. What a kind of Man was he?

Mr. Carpenter. A tall, thin, black Man.

L. C. J. Well, what can you say more?

Mr. Carpenter. My Lord, this Person has sworn, that a Letter was offered me, but I refused it; but I assure your Lordship I never saw any Letter.

Barter. I am sure he met you, and, as I remember, there was a Letter produced.

L. C. J. Thou shouldst not be angry with him for he spoke very kindly of thee, that thou refusedst to meddle in it, and thereupon Dunne went in to thy Lady, and delivered his Message to her.

Mr. Carpenter. That, my Lord, I acknowledge.

L. C. J. Then, prithee let me ask thee another Question: Did you carry any Beer up into the Room?

Mr. Carpenter. My Lady gave order for the Provision.

L. C. J. Did you make Dunne drink?

Mr. Carpenter. No, I did not.

L. C. J. Did you offer him any Drink?

Mr. Carpenter. My Lord, I did not see him drink at all.

L. C. J. What say you, good Woman; Did not your Lady sup there?

Mr. Carpenter. My Lord, my Wife was little there at all.

Mr. Rumsfey. Now, my Lord, Dunne says he will tell all, whether it make for him or against him.

L. C. J. Let him but tell the Truth, and I am satisfied.

Dunne. Sure, my Lord, I never entertained these Men a Night in my House in my life; but this Hicks sent that Man to me, to go to my Lady Lisle's, to know, whether she would please to entertain him: And when I came, my Lady asked me, whether he had been in the Army or no? I told her, I could not tell, I did not know that he was. She then asked me, if he had no body else with him? I told her, I believed there was; this is the very Truth of it, my Lord: I asked her, Might the Men be entertained? She said they might. So when we came to my Lady Lisle's, on the Tuesday night, some body took the two Horses, I cannot tell who if I were to die; the two went in, and after I had set up my Horse, I went in along with Carpenter up into the Chamber to my Lady, and to this Hicks and Nelthorpe; and when I came there, I heard my Lady bid them welcome to her House; and Mr. Carpenter, or the Maid, I cannot tell which, brought in the Supper and set it on the Table.

L. C. J. And didst thou eat or drink with 'em in the Room, or not?

Dunne. My Lord, I will tell every thing that I know; I confess I did both eat and drink there in the Room.

L. C. J. I pity thee with all my Soul, and pray to God Almighty for thee to forgive thee, and to the blessed Jesus to mediate for thee; and I pray for thee with as much earnestness, as I would for my own Soul; and I beg of thee once more, as thou regardest thy own eternal Welfare, to tell all the Truth.

Dunne. My Lord, I did never know these Men were in the Army when I carried the Message to my Lady Lisle's, nor never did entertain them in my House in my lifetime, so much as one Night.

L. C. J. Prithee, I do not ask thee what thou didst not, but what thou didst?

Dunne. My Lord, I will tell all I know.

L. C. J. What Discourse had you that Night at the Table in the Room?

Dunne. I cannot tell what Discourse truly, my Lord, there was.

L. C. J. Was there nothing of coming from beyond Seas, who came from thence, and how they came? Come, I would have it rather the Effect of thy own Ingenuity, than lead thee by any Questions that I can propound, come, tell us what was the Discourse?

Dunne. I do not remember all the Discourse.

L. C. J. Prithee let me ask thee one Question, and answer me it fairly, Didst not thou hear Nelthorpe's Name named in the Room?

Dunne. My Lord, I cannot tell whether he were called Nelthorpe, but it was either Crofts or Nelthorpe, I am sure one of them.

L. C. J. Prithee be ingenuous and let's have the Truth on't?

Dunne. My Lord, I am ingenuous, and will be so.

L. C. J. I will assure you Nelthorpe told me all the Story before I came out of Town?

Dunne. I think, my Lord, he was called Nelthorpe in the Room, and there was some Discourse about him.

L. C. J. Ay, there was unquestionably, and I know thou wert by, and that made me the more concern'd to press upon thee the Danger of Forswearing thy self.

Dunne. My Lady asked Hicks who that Gentleman was, and he said it was Nelthorpe, as I remember.

L. C. J. Very well, and upon that Discourse with Nelthorpe, which I had in Town, did I give particular Direction that the Outlawry of Nelthorpe should be brought down hither, for he told me particularly of all the Passages and Discourses, of his being beyond Sea, and coming from beyond Sea? I would not mention any such thing as any piece of Evidence to influence this Case, but I could not but tremble to think, after what I knew, that any one should dare so much to prevaricate with God and Man, as to tell such horrid Lyes in the Face of a Court.

Dunne. What does your Lordship ask me?

L. C. J. Come, I will ask thee a plain Question; Was there no Discourse there about the Battle, and of their being in the Army?

Dunne. There was some such Discourse, my Lord.

L. C. J. Ay, prithee now tell us what that Discourse was?

Dunne,

Dunne. My Lord, I will tell you when I have recollected it, if you will give me time till to morrow Morning.

L. C. J. Nay, but we cannot stay so long, our Business must be dispatched now, but I would have all People consider what a Reason there is, that they should be pressed to join with me in hearty Prayers to Almighty God that this Sin of Lying and Perjury may never be laid at thy Door: What sayst thou? Prithee tell us what the Discourse was?

Dunne. My Lord, they did talk of Fighting, but I cannot exactly tell what the Discourse was.

L. C. J. And thou saidst thou didst eat and drink with them in the same Room?

Dunne. I did so, my Lord, I confess it.

L. C. J. And it was not a little Girl that lighted thee to Bed, or conducted thee in?

Dunne. It was not a little Girl.

L. C. J. Who was it then?

Dunne. It was Mr. Carpenter, my Lord.

L. C. J. And why didst thou tell so many Lyes then? Jesu God! that we should live to see any such Creatures among Mankind, nay, and among us too, to the Shame and Reproach be it spoken of our Nation and Religion: Is this that that is called the Protestant Religion, a thing so much boasted of and pretended to? We have heard a great deal of Clamour against Popery and Dispensations, what Dispensations pray does the Protestant Religion give for such Practices as these? I pity thee with all my Soul, and pray for thee, but it cannot but make all Mankind to tremble and be filled with Horror that such a wretched Creature should live upon the Earth: Prithee be free and tell us what the Discourse was?

Dunne. My Lord, they did talk of Fighting, but I cannot remember what it was.

L. C. J. Did you lie with them?

Dunne. No, my Lord, I did not.

L. C. J. Well, I see thou wilt answer nothing ingenuously, therefore I will trouble my self no more with thee: Go on with your Evidence, Gentlemen.

Mr. Jennings. My Lord, we have done, we have no more Witnesses.

L. C. J. Then you that are for the Prisoner at the Bar, now is your time to make your Defence; you hear what is charged upon you, and you see what a kind of Shuffling here has been to fiddle the Truth, and I am sorry to find the Occasion to speak it, that under the Figure and Form of Religion such Practices should be carried on. What have you to say for your self?

Lisle. My Lord, that which I have to say to it, is this, I knew of no Body's coming to my House but Mr. Hicks, and for him, I was inform'd that he did abscond, by Reason of Warrants that were out against him for preaching in private Meetings, but I never heard that he was in the Army, nor that *Nelthorp* was to come with him; and for that Reason it was that I sent to him to come by Night, but for the other Man *Nelthorp*, I never knew he was *Nelthorp*, I could die upon it, nor did not know what Name he had till after he came into my House, but as to Mr. Hicks, I did not in the least suspect him to have been in the Army, being a Presbyterian Minister that used to preach and not to fight.

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L. C. J. But I will tell you, there is not one of those lying, snivelling, canting Presbyterian Rascals but one way or other had a Hand in the late horrid Conspiracy and Rebellion, upon my Conscience I believe it, and would have been as deep in the actual Rebellion, had it had any little Success, as that other Fellow *Hicks*, their Principles carry them to it; Presbytery has all manner of Villany in it, nothing but Presbytery could lead that Fellow *Dunne* to tell so many Lies as he has here told, for shew me a Presbyterian, and I will engage to shew a lying Knave.

Lisle. My Lord, I abhorred both the Principles and Practices of the late Rebellion.

L. C. J. I am sure you had great Reason for it.

Lisle. Besides, my Lord, I should have been the most ungrateful Person living, should I have been disloyal, or acted any thing against the present King, considering how much I was obliged to him for my Estate.

L. C. J. Oh then! Ungrateful, ungrateful adds to the Load which is between Man and Man, and is the basest Crime that any one can be guilty of.

Lisle. My Lord, had I been try'd in London, I could have had my Lady *Abergavenny*, and several other Persons of Quality, that could have testified how much I was against this Rebellion, and with what Detestation I spoke against it during the time of it, for I was all that time at London, and stay'd there till after the Duke of *Monmouth* was beheaded; and if I had certainly known the time of my Tryal in the Country, I could have had the Testimony of those Persons of Honour for me: But, My Lord, I am told, and so I thought it would have been, that I should not have been try'd as a Traytor for harbouring him, till he was Convict for a Traytor; My Lord, I would take my Death of it, that I never knew of *Nelthorp's* coming, nor any thing of his being *Nelthorp*, I never asked his Name, and if he had told it me, I had then remembred the Proclamation. I do assure you, my Lord, for my own part I did abhor those that were in that horrid Plot and Conspiracy against the King's Life, I know my Duty to my King better, and have always exercised it, I desire any body in the World that ever knew the contrary to come and give Testimony.

L. C. J. Have you any more to say?

Lisle. As to what they say of my denying *Nelthorp* to be in my House, I was in great Consernation and Fear of the Souldiers, who were very rude and violent, and could not be restrained by their Officers from Robbery and plundering my House: And I beseech your Lordship to make that Construction of it; and I humbly beg of your Lordship not to harbour an ill Opinion of me, because of those false Reports that go about of me, relating to my Carriage towards the old King, that I was any ways consenting to the Death of King *Charles I.* for, my Lord, that is as false as God is true; my Lord, I was not out of my Chamber all the day in which that King was beheaded, and I believe I shed more Tears for him than any Woman then living did; and this the late Countess of *Monmouth*, and my Lady *Marlbrough*, and my Lord Chancellor *Hyde*, if they were alive, and 20 Persons of the most eminent Quality, could bear Witness for me. And I do repeat it, my Lord, as I hope to attain Salvation,

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vation; I never did know *Nelthorp*, nor never did see him before in my Life, nor did I know of any body's coming but Mr. *Hicks*, and him I did know to be a Nonconformist Minister; and there being, as is well known, Warrants out to apprehend all Nonconformist Ministers, I was willing to give him shelter from these Warrants. I was come down but that Week into the Countrey, when this Man came to me from Mr. *Hicks*, to know if he might be received at my House; and I told him, if Mr. *Hicks* pleased, he might come upon *Tuesday* in the Evening, and should be welcome; but withal I told him, I must go away the *Monday* following from that place, but while I staid I would entertain him. And I beseech your Lordship to believe, I had no intention to harbour him but as a Nonconformist, and that I knew was no Treason: It cannot be imagined, that I would venture the hazard of my own Life, and the ruin both of my self and Children, to conceal one that I never knew in my Life, as I did not know Mr. *Nelthorp*, but had heard of him in the Proclamation. And for that white-headed Man that speaks of my denying them, as I said before, he was one of them that rifled and plundered my House, and tore open my Trunk; and if I should not be Convicted, he and the rest of them may be called to account for what they did, for they ought not to have meddled with my Goods: Besides, my Lord, I have a Witness that can testify what Mr. *Nelthorp* said, when he was examined before——

L. C. J. Look you, Mrs. *Lisle*, that will signify little; but if you have any Witnesses, call them, we will hear what they say: Who is that Man you speak of?

Lisle. George Creed his Name is; there he is.

L. C. J. Well, what do you know?

Creed. I heard *Nelthorp* say, That my Lady *Lisle* did not know of his coming, nor did not know his Name; nor had he ever told his Name, till he named himself to Col. *Penruddock* when he was taken.

L. C. J. Well, this is nothing; she is not indicted for harbouring *Nelthorp*, but *Hicks*: Have you any more Witnesses?

Lisle. No, my Lord.

L. C. J. Have you any more to say for your self?

Lisle. My Lord, I came but five days before this into the Countrey——

L. C. J. Nay, I cannot tell when you came into the Countrey, nor I do not care; it seems you came time enough to harbour Rebels.

Lisle. I staid in *London* till all the Rebellion was past and over; and I never uttered a good Word for the Rebels, nor ever harboured so much as a good Wish for them in my Mind: I know the King is my Sovereign, and I know my Duty to him, and if I would have ventured my Life for any thing, it should have been to serve him, I know it is his due, and I owed all I had in the World to him: But tho' I could not fight for him my self, my Son did; he was actually in Arms on the King's side in this Business; I instructed him always in Loyalty, and sent him thither; it was I that bred him up to fight for the King.

L. C. J. Well, have you done?

Lisle. Yes, my Lord.

L. C. J. Have you a mind to say any thing more?

Lisle. No, my Lord.

L. C. J. Then command Silence.

[Which was done by Proclamation.]

Lisle. My Lord, may I speak one word more. My Lord, I beseech you afford me your Patience and your Advice; *Keinsham*, where Mr. *Hicks* is said to be in Arms, does not lie in this County.

L. C. J. That is nothing: But the Treason you committed was in this County.

Lisle. But I assure your Lordship I never knew he was in the Army; and for any Talk or Discourse in private about his or *Nelthorp*'s being there, I never heard any; indeed one of them asked me, whether the Duke of *Monmouth* was beheaded, and I told them, yes, for so he was before I came out of Town: And that is all the Discourse that I can remember, wherein he is concerned.

L. C. J. Well, have you any more to say now?

Lisle. No, my Lord.

L. C. J. Then Gentlemen of the Jury: This is a Case of very great Example, and withal, of very great Weight and Moment; wherein the Interest of the Publick, and the Life of a Person of Quality and Fortune are put into your Hands: And the great Business which has detained both us and you so long, has been an endeavour (if it were possible) to find out the Truth; which indeed is the business of all Enquiries of this nature: We sit not here, nor are you there upon any other Errand; nor is any thing desired by the Court, or required of you, but that the Truth may be made manifest: 'Tis that you are bound to by the Oaths you have taken in this Service; and in that Inquiry you are to be guided by the Evidence that has here been given forth unto you; for your Oath is, *That you shall well and truly try, and true deliverance make, between our Sovereign Lord the King and the Prisoner at the Bar, according to your Evidence, as you shall answer it to God.* So that, Gentlemen, this Oath of yours being your Direction what is your Duty, and you being all Persons of Quality and Reputation in your Countrey, Men of great Understanding and known Integrity, it is to be hoped, that not any thing can move you, either to Compassion of the Prisoner on the one hand, or her Allegations and Protestations of Innocence; nor on the other hand, to be influenced by any thing that comes from the Court, or is insinuated by the learned Counsel at the Bar; but that you will entirely consider what Evidence has been given to you, and being guided by that Evidence alone, you that are Judges of the Fact, will let us know the Truth of that Fact by a sincere and upright Verdict.

And inasmuch, Gentlemen, as the Evidence has been long in giving (tho' the Substantial part of it, perhaps, be in a narrow compass) I will repeat it to you, as near as I can, with all Faithfulness and Integrity, as I shall answer it to the great Judge of Heaven and Earth, before whom you, and we, and all must stand to be judged; without any Aggravation or Alteration on the one side, and without any Omision on the other: And I shall do it, purely to help your Memories who are to determine the Fact; and I do pray and adjure, that you would do equally, according to the Trust reposed in you, and according to the Oath that you have taken: And I would repeat it once more,

more, that you are not to be led by any Insinuations of the Prisoner, nor by any Allegations from the Learned Counsel, whose Business it is to open the Fact; but that Fact so opened is no further to guide you in your Enquiry than as it is proved.

Gentlemen, Before I come to the particular Evidence of this Fact, I must crave leave to say something of a Matter in general that is very well known: It was very well observed by that Learned Gentleman that opened the Cause at the beginning, that we are all of us here unspeakably oblig'd to bless the great God of Heaven, the Father of Mercies, and praised for ever be his Holy Name, for his infinite Goodness in preserving and protecting us from the imminent Ruin which the late horrid and detestable Rebellion would (had it succeeded) have inevitably brought upon us, had not he of his own infinite Mercy and gracious Goodness protected and delivered us from our Enemies, they had undoubtedly swallowed us up quick: But as the Attempts of our Enemies were very malicious, so the Preservation and Deliverance of our good God was very great and signal.

And we have Reason to bless that great God for many Deliverances he has been pleased to give us; We are by no Means to forget his Mercy towards our late Sovereign of blessed Memory, and with him towards us, when he brought him out of Exile and Bondage, and us out of that State of Confusion and Misery, which our Country had for many Years groan'd under: When all Religion as well as Sovereignty, and all Obedience, Duty and Deference to Superiors were quite lost, God of his infinite Mercy, and of his own most gracious bountiful Disposition brought our blessed Sovereign (now in Heaven) and his gracious Majesty that now reigns, and all the Royal Family after a long and tedious Rebellion, into a quiet and peaceable Possession of their undoubted Rights and Inheritances, and with him restored to us our Religion, the best of Religions, the true Protestant reformed Religion, the Religion established by Law, which now is, and I hope will ever remain established among us, as now professed and practised in the Church of *England*; and when we reflect on that Deliverance, we are to this Circumstance to heighten both our Admiration and our Gratitude, that it was brought about without the least drop of Blood shed, by a miraculous Providence, and by the Strength of an Almighty Arm.

Besides, Gentlemen, we cannot be sufficiently thankful to our God, for the Mercies we enjoy'd under that blessed King, for we are to consider we liv'd in all the Affluence of Peace and Plenty, we safely and uninterruptedly enjoyed our Religion, the greatest Blessing on this side Immortality, our Lives, Liberties and Properties inviolably were secured; every Man safe under the Shadow of his own Vine, and eat the Fruit of his own Labour; and while our Neighbours suffered the Calamities of War, we were surrounded with all the Blessings of Peace, and slept securely under the Government of a gracious and merciful King: Every one of us had even what our own Hearts could desire, and if we wanted any thing, it could be only thankful and dutiful Hearts to our God

and our Prince, during whose Life we continued in a happy State and Condition.

But, it having pleased God, the King of Kings, the great Ruler both of Heaven and Earth, to take that blessed Prince to himself, What Thanks ought we to pay him for his gracious Goodness, in leaving so great and so glorious a Successor as his Royal Brother, our present Sovereign, whom I pray Almighty God may long live and happily reign among us: This gracious Prince, as soon as ever he came to the Possession of his undoubted Right and Inheritance, upon his Brother's Death, in the Imperial Crown of this Realm, to Entitle himself to the good Opinion of his People, and to engage them to the Expression of that Duty which the Christian Religion, and I am sure particularly the Religion of the true Church of *England* does oblige all it's Followers to: What does he? Even before he was ask'd, in the very first Minutes of his Reign, he begins with Bounty to his Subjects and declares his Resolution to preserve them safe in their dearest and most precious Enjoyments, in their Religion, and not only in that, but in the Laws, Liberties, Rights and Properties, with the most inviolable Security to their Lives and all that is dear unto them: And this gracious Declaration came from his Royal Mouth without any Solicitation or any Inducement, save only the generous and gracious Inclination of his own Royal Heart, and to give it the greater Edge, to the Honour of the Church of *England's* Religion be it spoken, he was pleas'd to tell what Opinion he had of our Religion and its true Professors, that they were the true Friends and faithful Supporters of the Government, an Opinion which I hope every honest Church of *England-man* will endeavour to cherish by a suitable Practice of what is certainly the Doctrine of that Religion, Loyalty and Obedience.

But alas! without Horror and Confusion, we cannot but remember that instead of making good Returns of Respect and Duty to so gracious a Sovereign for his great Bounty, Faction and Sedition, Hypocrisy and Malice had besotted and bewitched a great Part of his Subjects, and corrupted, blinded, and bigotted them to such an Height of Impiety, that a Rebellion must begin his Reign, and all the poisonous Arts of Disobedience are made use of to instigate the King's Subjects, with all the Rancour and Vengeance in the World to rise against him.

Blessed God! What is the way that this Devil of Sedition comes to bewitch People to such a height, when Almighty God had so lately delivered us from the Misery and Confusion of a Civil War? It is that way surely, we find it but too plain, which he had always found very successful, the Pretence of Saintship, Conscience, and that glorious Name, Religion; What Religion can it be? The Christian Religion had this Form of it's great Rule; *Render to Caesar the things that are Caesar's, and to God the things that are God's.* But these Men act as though that were not Scripture, when yet pronounced by our blessed Lord himself, and both joined in one Sentence as indispensable Duties; and they will hardly be brought to believe that Rebellion is the Sum of Witchcraft, though the Scriptures have directly given it that Character. Good God!

God! that we should live to such an Age; when Men can call God to assist and protect them in a Rebellion, for not to reflect upon what was done in former times, it is late enough for us to remember, but not without Horror, that Men have been ty'd by all the Bonds and Contracts Hell could invent in a Combination and Confederacy to murder both the late King and his present Majesty, and all this while this must be sanctified with the Name of Religion: So that a Man that is a Murderer by the Law of God, and an Offender against the first Precept that God Almighty enjoined, Not to shed Innocent Blood, shall yet be a Saint for an Assassination upon the Account of Religion, and this shall be accounted a pious Cause to obtain Heaven.

Who did these Miscreants, that were justly by Law condemned for that barbarous Conspiracy, when they came to die, invoke? The great God to testify for them, that they died for the sake of Religion, when they come to suffer for Treason: They can bless God Almighty for the Honour he does them in dying in his Cause, and call themselves Martyrs for it.

Nay, is it not yet more strange and horrid, that some Men who call themselves Ministers of the Gospel shall come to be Belwethers of Rebellion, and cry out, they are fighting the Lord's Battle, when they are attempting to kill the Lord's Anointed?

Jesus God! that ever we should have such a Generation of Vipers among us, that can plunge themselves into the most horrid Impieties, and yet think to escape Confusion here, and purchase a Crown of Glory hereafter.

When we consider, Gentlemen, the Ring-leader of this late Rebellion, the Center of all our Trouble, the Arch-Rebel and Traitor, *Monmouth* I mean, should arrive to such a Height of Impudence and Villany as to bless God that he could with Satisfaction reflect upon a two Year's Life very regularly spent; But how? In manifest Adultery and Uncleaness, nor can it be spoke or thought of without inexpressible Horror.

Alack! Gentlemen, when we find Religion made use of as a Subterfuge and Cloak for such impious Practices, it gives too much Occasion for our Enemies to think us Atheists; the very *Turks* will hate us, and *Pagans* detest us, as the most irreligious prophane People in the World. When we who profess Love and Duty to Jesus Christ as our Holy and Blessed Redeemer, do these things and even boast of them, whom they that deny him blush at the very thoughts of, and never so much as name, much less act without Horror and Confusion.

Gentlemen, I do not speak this for the sake of speaking, but I should fain deliver my own Soul and yours from having any hand in such horrible Impieties, and that, by testifying our Abhorrence of them, by publicly declaring our selves to be Enemies to those Hypocrites the Nonconformist Parsons; I mean, that pretend indeed pure Religion to be their great Aim and End, and through a Scrupulosity of Conscience, cannot conform to that Decency and Duty which is required of them in the Church; but yet, without remorse, can kill, or be the occasion of the Death of Ten Thou-

sand People, as in the Consequence of this late Rebellion perhaps it may prove. For do but consider how many Families by this means are utterly ruined, how many innocent Babes starved, or exposed to the utmost Penury and Want; how many Widows left in a distressed desolate Condition, destitute of all manner of Provision and Maintenance; and all this by the instigation of these Villains that have preached and pray'd them into it, gilding the Bait that has drawn them into it, by the specious pretence of Religion and Conscience?

Consider, Gentlemen, this is that which has brought this poor unfortunate Gentlewoman, the Prisoner at the Bar, into this deplorable Condition: What could prevail upon her to run such a Hazard as this, but only her Affection and deluded Zeal for that Wretch, that had nothing but the name of Religion, for his Soul is blacker in the Eyes of God, and the Thoughts of all honest Men, than ever his Coat was? You see by the Proofs what an impudent unsanctified Villain he was; for when these Gentlemen that have given Evidence, were in the Custody, and under the Power of the Rebels, he must tempt and provoke them to leave off and forsake their Duty to their natural Lord and lawful Sovereign the King, whom God had set over them, and submit to an Usurper, a King of their own making; and such a King too, that I dare boldly affirm, the meanest Subject within the Kingdom that is legitimate, has a better Title to the Crown than he had; and this all under the pretence of Religion, and the Protestant Religion too, and that same Prince of theirs must have the Title of a Protestant Prince; and an excellent Protestant he lived and died, living in the open Violation of the Law of God, and in manifest Rebellion against his lawful Sovereign; and he died without any Remorse for either, boasting of his own Wickedness beyond the bounds of common Modesty and Humanity.

Gentlemen, Let us all join in hearty Prayers to our God, the God of infinite Mercy; that as he has yet once more delivered our Sovereign, and us with him, out of the Jaws of these Lions and ravenous Wolves; so he would still please to preserve him and us from the hands of all our Enemies; and I pray God it may have that good effect upon all of us, as to make us more careful and conscientious in our Duty to him, and his Vicegerent the King: To him alone must all the Glory be ascribed; it was not our Hand, or Arms of the King that could have saved or protected us, had not the special Interposition of the Divine Power and Goodness wrought this Deliverance for us.

But now, Gentlemen, to come to the particular Case here before you; and the Fact, upon the Evidence, stands thus: It is very notorious this Fellow *Hicks* was actually in this Rebellion; you have it Sworn by three several Persons that saw him, and they particularized to you such Tokens of their Knowledge and Remembrance, that sure, if any thing can, must make him blush at the repetition of them; for they tell you, when they were in Prison he would have corrupted them from their Duty; and yesterday they saw him in Prison, and upon discourse of some Circumstances, he could not deny but he was there.

This

This Person, *Mrs. Lisle*, the Prisoner at the Bar, she is accused for receiving and harbouring this Person: And, Gentlemen, I must tell you for Law, of which we are the Judges, and not you; That if any Person be in actual Rebellion against the King, and another Person (who really and actually was not in Rebellion) does receive, harbour, comfort and conceal him that was such, a Receiver is as much a Traitor, as he who indeed bore Arms: We are bound, by our Oaths and Consciences, to deliver and declare to you what is Law; and you are bound, by your Oaths and Consciences, to deliver and declare to us, by your Verdict, the Truth of the Fact.

Gentlemen, That he was there in Rebellion is undeniably and unquestionably proved: That there are sufficient Testimonies to satisfy you, that this Woman did receive and harbour him, is that which is left to your Consideration; and for that, the Proofs lie thus. And truly I am sorry to have occasion for repeating the Circumstances of the Proof; I mean, the great Art that has been used to conceal it; how difficult a thing it was to come at it; what time has been spent in endeavouring to find out Truth in a Fellow, that in defiance of all Admonition, Threats and Persuasion, would prevaricate and shuffle to conceal that Truth; nay lie and forswear himself to contradict it: But out of true Christian Charity, as I told him, so I tell you; I do heartily pray (and all good Christians I hope will join with me in it) to the God of infinite Mercy that he would have mercy upon his Soul, upon which he hath contracted so great a Guilt by the impudence of his Behaviour, and pertinacious Obstinacy in those Falshoods which he hath made use of in this Case.

Gentlemen, I would willingly forget all his Prevarications, but I must take notice of them in short, to come to the Truth. First, he says, He came upon an Errand from a Man he knows not whom, to my Lady *Lisle's* House; and thither he is brought by one *Barter*; and when he comes there, he tells her, he comes in the Name of one *Hicks*, who desired to be entertained there: Then she asks the Question, whether *Hicks* had been in the Army; and he told her he did not know; and he swears now he did not: But at last it came out, that it was to entertain *Hicks* and another Person; but it should seem that other Person was not named; and *Barter* tells you, that *Hicks* and another Person (who afterwards proved to be *Nelthorpe*) are promised to be entertained, and ordered to come in the Evening. But not to go backward and forward, as he has done in his Evidence, denying what he afterwards acknowledged, that he saw any Body besides a little Girl; That he pulled down the Hay out of the Rack for his Horse; That he eat any thing but Cake and Cheese that he brought with him from home; That he was ever made to drink, or to eat or drink in the House, or ever meddled or made with any body in the House. At last we are told that *Carpenter* met with him, and came out with a Lanthorn and Candle, took care of his Horse, carried him into the Room where *Hicks* and *Nelthorpe* were, and the Prisoner at the Bar, *Mrs. Lisle*; there they all supp'd to-

gether; there they fell into Discourse; there *Nelthorpe's* Name was named, and they talked of being in the Army, and of the Fight; and so it is all come out, and makes a full and positive Evidence.

But then, Suppose there was no more than the other Evidence, and that the Fellow remain in an hard-hearted Obstinacy, then you are to consider the Circumstances even from his first Evidence, that this was after the Rebellion was all over; for it seems during the Rebellion she was in *London*, and it was notoriously known the King's Forces were in pursuit of the Rebels, and this without any positive Proof would be in it self a sufficient Testimony to convince any considerate Person, that she was to Conceal those she ought not to Conceal; because she directed the particular time wherein they should come, and that was at Night; and no Prudent Person would receive Strangers in the Night, and give such directions in such a Season, without some Extraordinary ground for it. When they came there she provided a Supper for them, and you see what Care is taken, that the Woman only is permitted to bring that Supper to the Door, and the Husband must set it on the Table; no body is permitted to attend there but he. Works of Darkeness always desire to be in the Dark: Works of Rebellion and such like are never done in the Light.

But then comes that Honest Fellow *Barter* (I call him so because he appears so to be, and he ought to be remembred with a great Remark for his Honesty) he tells you, he conducted him to the House, and what Discourse pass'd there in his hearing: The Prisoner asked him, what Countreyman he was, and whether he was a Brick-maker, and promised him so many Acres of Land in *Carolina*: The Fellow, upon Observation and Consideration, found himself under a great Load, could not sleep nor eat quietly, as Men that have honest Minds are uneasy under such things; Falshood, and Treason, and Hypocrisie are a heavy Load; and, blessed be God, things were by this means discovered; for he goes and tells Col. *Penruddock*; and withal, *Dunne* swears to *Barter*, it was the bravest Job that ever he had in his Life; whereas in the beginning of his Story, he would have told you a strange Story of a black Beard, and I do not know what, and that he got not one Groat by it; that he gave the Man half a Crown out of his own Pocket, and was so industrious, as when he knew the way no further, then he would hire one himself to shew him the way, and all for nothing, but only for the kindness he had for a black Beard.

Besides, Gentlemen, I am sorry to remember something that dropped even from the Gentlewoman her self, she pretends to Religion and Loyalty very much, how greatly she wept at the Death of King *Charles* the Martyr, and owns her great Obligations to the late King and his Royal Brother; that she had not had a Being, nor any thing to maintain it for twenty Years last past but from their Bounty, and yet no sooner is one in the Grave, but she forgets all Gratitude, and entertains those that were Rebels against his Royal Successor: I will not say what Hand her Husband had in the Death of that

that blessed Martyr, she has enough to answer for of her own Guilt; and I must confess it ought not one way or other to make any Ingredient into this Case what she was in former Times: And I told a Relation of hers, Mr. *Tipping* by Name, that came to me last Night to desire that she might not lie under some Imputations that were gone Abroad of her, that she rejoiced at the Death of King *Charles I.* nor that any false Report of that Nature might influence the Court or Jury against her, that it should not: Be the thing true or false, it is to be of no Weight one way or other in the Tryal of this Case, nor is she to be accountable for it.

But I must remember you of one Particular, that is plain upon this Evidence, and is of very great Moment in this Case, that after all these private Messages and Directions given to come by Night, and the kind Reception they met with when they came, and after all this Care to lodge them and feed them, when Colonel *Penruddock*, after the Discovery made by *Barter*, came to search her House, then she had no body in it truly, which is an Aggravation of the Offence testified by Colonel *Penruddock* himself, whose Father likewise was a Martyr and died for his Fidelity to the Crown, and who was the Judge of that Father we all very well know. God Almighty is a just God, and it may be worth considering (especially by her) how God has been pleased to make use of him as the Instrument in this Business, and she would likewise do well to consider the Finger of God in working upon the Heart of that Man *Barter*, who was imploy'd in all this Affair, and that all the Truth has been told by *Nelthorp*, that blackest of Villains *Nelthorp*, that would have murdered the late King and his Royal Brother; that he that was one of those barbarous, malicious Assassins in that black Conspiracy, and Outlaw'd, should be harbour'd by one that pretends a Love for the Royal Family, and entertained and discoursed with at Night about being in the Army; yet that he and that other Villain *Hicks*, who pretends to Religion and be a Preacher of the Gospel, but is found in Rebellion and in the Company of Traytors should be deny'd the next Morning.

I hope they themselves are all by this time satisfied Truth will come out, and I hope you will not be deceived by any Specious Pretences. Our fore-Fathers have been deluded, but the Deception, I hope, is now at an end; and I must needs say, if all these Witnesses that have freely discovered their Knowledge, joined to that Truth which is at length drawn from that *Dunne*, be worthy of any Credit, it is as plain a Proof as can be given, and as evident as the Sun at Noon-day.

Gentlemen, Upon your Consciences be it: The Preservation of the Government, the Life of the King, the Safety and Honour of our Religion, and the Discharge of our Consciences as Loyal Men, good Christians and faithful Subjects, are at stake, neither her Age nor her Sex are to move you, who have nothing else to consider but the Evidence of the Fact you are to try: I charge you therefore, as you will answer it at the Bar of the last Judgment, when you and we

must all appear, deliver your Verdict according to Conscience and Truth: With that great God the Impartial Judge, there is no such thing as respect of Persons, and in our Discharge of our Duty in Courts of Justice, he has enjoined us his Creatures, that we must have no such thing as a Friend in the Administration of Justice, all our Friendship must be to Truth, and our Care to preserve that inviolate.

Lisle. My Lord, if your Lordship please—

L. C. J. Mistress, you have had your Turn, you cannot now be heard any more after the Jury is charged.

Lisle. My Lord, I did not know *Nelthorp* I declare it before he was taken.

L. C. J. You are not indicted for *Nelthorp*, but we are not to enter into Dialogues now, the Jury must consider of it.

Jury-man. Pray, my Lord, some of us desire to know of your Lordship, in point of Law, whether it be the same thing, and equally Treason, in receiving him before he was convicted of Treason, as if it had been after?

L. C. J. It is all the same, that certainly can be no Doubt; for, if in case this *Hicks* had been wounded in the Rebels Army, and had come to her House and there been entertained, but had dy'd there of his Wounds, and so could never have been convicted, she had been nevertheless a Traytor.

Then the Jury withdrew, and staying out a while, the Lord Jefferies expressed a great deal of Impatience, and said, he wonder'd that in so plain a Case they would go from the Bar, and would have sent for them with an Intimation, that if they did not come quickly, he would adjourn and let them lie by it all Night; but after about half an Hour's Stay the Jury returned, and the Foreman addressed himself to the Court thus:

Foreman. My Lord, we have one thing to beg of your Lordship some Directions in, before we can give our Verdict in this Case: We have some Doubt upon us whether there be sufficient Proof that she knew *Hicks* to have been in the Army.

L. C. J. There is as full Proof as Proof can be, but you are Judges of the Proof, for my part I thought there was no Difficulty in it.

Foreman. My Lord, we are in some Doubt of it.

L. C. J. I cannot help your Doubts: Was there not proved a Discourse of the Battle and of the Army at Supper-time?

Foreman. But, my Lord, we are not satisfied that she had Notice that *Hicks* was in the Army.

L. C. J. I cannot tell what would satisfy you, Did she not enquire of *Dunne* whether *Hicks* had been in the Army? And when he told her he did not know, she did not say she would refuse him if he had been there, but order'd him to come by Night, by which it is evident she suspected it, and when he and *Nelthorp* came, discoursed with them about the Battle and the Army: Come, come, Gentlemen, it is a plain Proof.

Foreman.

Foreman. My Lord, we do not remember that it was proved that she did ask any such Question when they were there.

L. C. J. Sure you do not remember any thing that has passed? Did not *Dunne* tell you there was such Discourse, and she was by, and *Nelthorp's* Name was named? But if there were no such Proof, the Circumstances and Management of the thing is as full a Proof as can be, I wonder what it is you doubt of.

Lisle. My Lord, I hope——

L. C. J. You must not speak now.

Then the Jury laid their Heads together for near a quarter of an Hour, and at length agreed, and being call'd over, deliver'd in this Verdict by the Foreman.

Cl. of Arraignments. *Alice Lisle*, Hold up thy Hand. Gentlemen of the Jury look upon the Prisoner, How say ye, Is she guilty of the Treason whereof she stands indicted, or not Guilty?

Foreman. Guilty.

Cl. of Ar. What Goods or Chattels, Lands, or Tenements had she?

Foreman. None that we know of.

Cl. of Ar. Look to her Gaoler, she is found guilty of High Treason, and prepare your self to die.

Then the Verdict was Recorded.

L. C. J. Gentlemen, I did not think I should have had any Occasion to speak after your Verdict, but finding some Hesitancy and Doubt among you, I cannot but say, I wonder it should come about, for I think in my Conscience the Evidence was as full and plain as could be, and if I had been among you, and she had been my own Mother, I should have found her Guilty.

Then the Court adjourn'd till the next Morning.

Die Veneris 28 Augusti, 1685.

THIS Day *Alice Lisle* was brought to the Bar, and being asked what she had to say for her self why Judgment of Death should not pass upon her, being convicted of High Treason, but offering nothing, she was, with the rest of the Prisoners that were to receive the Sentence of Death, Condemn'd by the Lord *Jefferies*, who passed Sentence thus:

L. C. J. *Alice Lisle*, and you the several Prisoners now at the Bar, you have been severally Indicted, Arraigned, and now stand severally Convicted of Crimes that by the Laws of the Land are to be punished with Death, you stand Convicted by your Equals, by a Jury of your Country, against whom you might have had, and were allow'd to make (and one of you did make) what Challenges you could, but upon full Evidence, by that Jury of your own Country-men you have been found guilty of those Crimes for which you are to die; and there remains now no more with the Court

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but to perform their Duty, which is to pronounce that Sentence, that dismal Sentence of Death, which the Law has provided for such Offenders.

And sure I am it cannot but be thought uneasy, and far from pleasant, not only to me, but to every Body else that sees such a lamentable Object, such a Number of Persons that might have acquired to themselves an honest Livelihood by Diligence in their lawful Callings, being dutiful to God and obedient to their Sovereign and the Laws of the Land, who yet in Desiance of all these have brought themselves to a shameful untimely End by their own wicked Courses.

Particularly, I cannot but lament the deplorable Condition of you, *Mrs. Lisle*, a Gentlewoman of Quality and of Fortune, so far stricken in Years, therefore ought to have had more Discretion: One, who all your Life-time have been a great Pretender to, and Professor of Religion, and of that Religion which bears a very good Name, the Protestant Religion, but that Name has been perverted to very ill Purposes by some People who have had nothing but the Name to protect themselves under.

There is no Religion whatsoever (except that hypocritical Profession of theirs which deserves not the Name of Religion, I mean the canting, whining, Presbyterian, Phanatical Profession) that gives the least Countenance to Rebellion or Faction; and I cannot but lament to find you involved in that Herd.

And I cannot but deplore it withal, as a most sad and dismal thing; that in this little Case so many Perjuries should be added to the Crime of Treason, such, as for my part I cannot but tremble to remember; Perjuries in defiance of all the Instruction and Admonition that true Christian Charity could express, and in defiance of the Omniscience and Justice of the All-seeing God of Truth: You ought to reflect upon whose Account those Perjuries were committed, and to lay them seriously to Heart, for e'er long, in a few Hours (deceive not your self) you are to give an Account at a greater Bar for all your Thoughts, Words and Actions.

You would likewise do well to bethink your self with all Seriousness and Remorse, of your own false Asseverations and Protestations, that you upon your Salvation should pretend Ignorance in the Business, when since that time, even since the last Night, there has been but too much discover'd how far you were concern'd; no, 'tis not unknown who were sent for upon the Monday Night, in order to have that rebellious, seditious Fellow to preach to them; what Directions were given to come through the Orchard the back and private way, what Orders were given for Provision, and how the Horses were appointed to be disposed of: I only speak this, that you should bethink your self in this short time that you have left here upon Earth, to get these Sins of yours duly repented of, and truly pardoned, and not only so, but consider you have it now in your Power to make some Recompence to the publick Justice of the Nation, by discovering the Truth in this Matter, and all Religion enjoins you to do what you can: For without the infinite

[H h h h]

Mercy

Mercy of the great God you are in a deplorable Condition, and without true Contrition and Repentance, of which all the Recompence you can make, both for publick and private Injuries, is a part, you can never hope for the Mercy of that God to be extended to you.

Sirs; It is not in my Province to advise you in your Preparation for that Eternity you are all suddenly to enter into; but out of pure Charity, and hearty Compassion to you, and the miserable Condition you have brought your selves into, and out of a tender regard to your precious immortal Souls, I cannot but assure you of my own, and recommend you to the earnest and fervent Prayers of all good Christians, to the God of infinite Mercy, that he would be merciful unto you all.

And the great God of his gracious Goodness grant, that all we that are here may learn such Lessons as are proper from such Examples: From that Woman the sad and dismal Effects of Disloyalty and Treason; and from all the rest the deplorable Mischiefs that attend Licentiousness and Debauchery: For by the Course of Nature, most of these might have lived a much longer time, and that with Comfort to themselves and their Relations; but now, to the anguish of their own Hearts, and the unspeakable Grief of all their Friends, they have shortened their own Days, and brought a dismal Sentence upon themselves.

And I recommend them not only to my self and others, but chiefly and especially to the Pious, Orthodox and Learned Ministry, to give the best Assistance they can, during the short remainder of their time; for their Abode here upon Earth is but short, and God grant they may meet with a blessed Immortality.

There remains no more for me to do, I say,

but to pronounce the Sentence of the Law, which is this; and the Court does award,

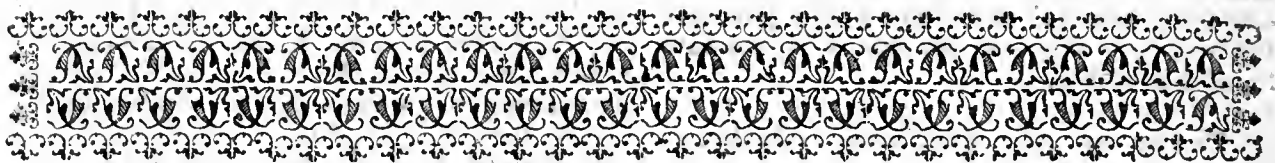
That you, Mrs. Lisle, be conveyed from hence to the Place from whence you came, and from thence you are to be drawn on a Hurdle to the Place of Execution, where your Body is to be burnt alive till you be dead. And the Lord have Mercy upon your Soul.

The rest of the Prisoners had the usual Judgment, as in Cases of Felony.

L. C. J. Look you, Mrs. Lisle, when I left his Majesty, he was pleased to remit the Time of all Executions to me; that wherever I found any Obstinacy or Impenitence, I might order the Executions with what speed I should think best: Therefore, Mr. Sheriff, take notice, you are to prepare for the Execution of this Gentlewoman this Afternoon: But withal, I give you, the Prisoner, this Intimation; We that are the Judges, shall stay in Town an Hour or two; you shall have Pen, Ink and Paper brought you, and if in the mean time you employ that Pen, Ink and Paper, and this Hour or two well (you understand what I mean) it may be you may hear further from us, in a deferring the Execution.

Then the Prisoner was taken away.

But afterwards, upon the Intercession of some Divines of the Church of Winchester, she was Reprieved till Wednesday the Second of September.



On Sunday the Thirtieth of August, the following Letter was sent to the Right Honourable the Earl of Clarendon, Lord Privy-Seal, at Windsor; [Which the Earl did then read to the King; who answered, That he would do nothing in it, having left all to the Lord Chief Justice.]

My Lord,

Understanding that Mrs. Lisle is Condemned, and that many false things are reported of her, that may hinder the King from shewing her Mercy; particularly, that she was an Enemy to the King's Friends in the time of the late Wars: As to that, we can assure your Lordship, that she was a Favourer of them in their greatest extremities; and particularly of us, and of some others that are since dead: And for these late Years we have often been in her Company, and never heard her say any thing but what became a Loyal

Subject. This we desire your Lordship would be pleased to represent to the King, and to intercede for her Reprieve; which will be a great Obligation to your Lordship's humble Servants,

M. St. Johns.

E. Abergaveney.

On Monday the Thirty first of August, the following Petition was presented to the King.

To the King's most Excellent Majesty:

The Humble Petition of Alicia Lisle:

Humbly Sheweth,

THAT Your Petitioner lieth under a Sentence of Death for Harboursing one John Hicks; and is sentenced to be Burnt on Wednesday next.

That she is the Daughter of Sir White Beconsaw, descended of an Ancient and Honourable

able Family, and related to several of the best Families of the Nobility of this Kingdom.

Wherefore your Petitioner humbly begs your Majesty, that Execution may be altered from Burning to Beheading, and may be Repited for four Days :

And your Petitioner shall pray, &c.

To which his Majesty answered: *That he would not Reprieve her One Day; but for altering the Sentence, he would do it, if there were any Precedents for it.*

Thereupon the following Precedents, for the altering of the Sentence, were offered to the King.

That Execution may vary from the Judgment, see the Register, Fo. 165. in Felony, *Parl. 8. E. 3.* where the Judgment always is *Suspendatur per collum*, yet the Party may be beheaded, which is no Part of the Sentence; so was the Duke of Somerset in the Time of Edw. VI. for Felony; so was the Lord Audley, 7. Car. I. for Felony (Rape.)

Queen Katherine Howard for Treason, Hen. VIII. and Jane Grey, *primo Mariæ*: The Countess of Salisbury being attainted of Treason, Anno 1541. was Beheaded 32 Hen. VIII.

Whereupon his Majesty was pleased to sign the following Warrant.

James R.

Whereas we are informed that *Alicia Lisle* has received Sentence of Death for High Treason at the Sessions of Oyer and Terminer, and Gaol-Delivery, held at our City of Westminster, for Harboursing of *John Hicks* a Rebel, and that the Sentence is to be executed upon her the Second of September next, by burning her alive; And whereas the said *Alicia Lisle* has humbly petitioned Us to alter the Manner of the said Execution, by causing her head to be severed from her Body: We being graciously pleased to condescend to her Request; have thought fit hereby to signify Our Will and Pleasure accordingly: And our further Will and Pleasure is, that you deliver the Head and Body to her Relations to be privately and decently interred: And for so doing this shall be your Warrant.

Given at Our Court at Windsor, the Thirty first Day of August, 1685. in the First Year of our Reign.

SUNDERLAND.

To our Trusty and Well-beloved the High Sheriff of our County of Hampts, and to all others whom it may concern.

Which Warrant being delivered to the Sheriff, she was, on Wednesday the Second of September, in the Afternoon, brought to Execution, which was perform'd upon a Scaffold erected in

the Market-place of the City of Winchester, where she behaved herself with a great deal of Christian Resolution: She then delivered a Paper to the Sheriff, a Copy of which follows; and after some little time was executed, having her Head severed from her Body.

A Copy of the Paper delivered to the Sheriff!

Gentlemen, Friends and Neighbours,

I T may be expected that I should say something at my Death, my Birth and Education being near this Place: My Parents instructed me in the Fear of God, and I now die of the reformed Religion, always being instructed in that Belief, That if Popery should return into this Nation, it would be a great Judgment, I die in the Expectation of Pardon of my Sins, and Acceptation with the Father; by the imputed Righteousness of Jesus Christ, he being the End of the Law for Righteousness to every one that believes: I thank God, through Jesus Christ, I depart under the Blood of Sprinkling, which speaketh better things than the Blood of Abel, God having made this Chastisement an Ordinance to my Soul.

I did as little expect to come to this Place on this Occasion as any Person in this Nation, therefore let all learn not to be High-minded, but fear the Lord; the Lord is a Sovereign, and will take what way he sees best to glorifie himself by his poor Creatures, therefore do humbly desire to submit to his Will, praying him, that in Patience I may possess my Soul.

My Crime was entertaining a Nonconformist Minister, which is since sworn to have been in the late Duke of Monmouth's Army: I am told, if I had not denied them, it would not have affected me; I have no Excuse but Surprise and Fear, which I believe my Jury must make use of to excuse their Verdict to the World.

I have been told, the Court did use to be Counsel for the Prisoner, instead of which, there was Evidence from thence, which, though it were but Hearsay, might possibly affect my Jury: My Defence was such as might be expected from a weak Woman, but such as it was, I did not bear repeated again to the Jury, but I forgive all Persons that have done me Wrong, and I desire that God will do so likewise.

I forgive Colonel Penruddock, though he told me he could have taken those Men before they came to my House.

As to what may be objected, that I gave it under my Hand that I had discoursed with Neliborp, that could be no Evidence to the Court, or Jury, it being after my Conviction and Sentence.

I acknowledge his Majesty's Favour in altering my Sentence, and I pray God to preserve him that he may long Reign in Peace, and the true Religion flourish under him.

Two things I have omitted to say, which is, that I forgive him that desired to be taken from the Grand Jury to the Petty Jury, that he might be the more nearly concerned in my Death.

Also I return humble Thanks to Almighty God, and the Reverend Clergy that assisted me in my Imprisonment.

*Primo Gulielmi & Mariæ :
Anno 1689.*

**An Act for annulling and making void the Attainder of
*Alicia Lisle, Widow.***

WHEREAS Alicia Lisle, Widow, in the Month of August, in the first Year of the Reign of the late King James the Second, at a Sessions of Oyer and Terminer, and Gaol-delivery, holden for the County of Southampton, at the City of Winchester in the said County, by an irregular and undue Prosecution, was Indicted for entertaining, concealing and comforting John Hicks, Clerk, a false Traytor, knowing him to be such: Though the said John Hicks was not, at the time of the Tryal of the said *Alicia Lisle*, Attainted or Convicted of any such Crime: And, by a Verdict injuriously extorted and procured by the Menaces and Violences, and other illegal Practices of George Lord Jefferies, Baron of Wem, then Lord Chief Justice of the Kings Bench,

and Chief Commissioner of Oyer and Terminer and Gaol-delivery within the said County, was Convicted, Attainted and Executed for High-Treason. May it therefore please your most excellent Majesties, at the humble Petition of Triphena Lloyd and Bridget Usher, Daughters of the said Alicia Lisle: That it be declared and enacted by the Authority of this present Parliament: And be it Enacted by the King and Queens most excellent Majesties, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons in this present Parliament assembled, and by the Authority of the same, That the said Conviction, Judgment and Attainder of the said *Alicia Lisle* be, and are hereby Repealed, Reversed, made and declared Null and Void to all Intents, Constructions and Purposes whatsoever, as if no such Conviction, Judgment or Attainder had ever been had or made, and that no Corruption of Blood, or other Penalty or forfeiture of Honours, Dignities, Lands, Goods or Chattles, be by the said Conviction or Attainder incurred: any Law, Usage or Custom to the contrary notwithstanding.

Ex^o Job. Brown, Cleric^o
Parliamentor^o.



THE

The Tryals of John Fernley, William Ring, Elizabeth Gaunt, and Henry Cornish, Esq; October 19. 1685. Publish'd by Authority.



On day, Octob. 19th. 1685. at the Sessions-House in the Old-Bayley, London; The Court being met, and Proclamation made for Attendance, the Proceedings were as follow.

Clerk. Set *John Fernley* to the Bar. (Which was done.)

Cryer. O Yes. All manner of Persons are commanded to keep Silence, upon pain of Imprisonment.

Clerk. *John Fernley*, hold up thy hand. (Which he did.)

Thou standest indicted by the Name of *John Fernley*.

Middlesex. **T**H E Jurors for our Sovereign Lord the King upon their Oaths do present, That *John Fernley*, of the Parish of *St. Mary Matfellow*, otherwise *White-Chappel*, in the County of *Middlesex* Barber, as a false Rebel and Traitor against the most Illustrious and most excellent Prince King *James* the Second, by the Grace of God of *England, Scotland, France, and Ireland*, King, and his natural Lord, not having the fear of God in his Heart, nor his due Obedience any wise regarding, but being mov'd and seduced by the Instigation of the Devil, and his faithful Duty and natural Obedience which a true and loyal Subject ought to have towards his said Lord the King, and by Law ought to observe, utterly withdrawing; and intending with all his Endeavours the Peace and Tranquillity of this Kingdom of *England* to disturb, and War and Rebellion against our said Lord the King to incite and move, and the Government of our said Lord the King in this Kingdom of *England* to subvert, and our said Lord the King from his Title, Honour, and Regal, and Imperial Crown of this his Kingdom of *England* to depose and deprive, and our said Lord the King to Death and utter Destruction to bring; the 20th day of *August* in the Year of the Reign of our Sovereign Lord *James* the Second, by the Grace of God of *England, Scotland, France, and Ireland*, King Defender of the Faith, &c. the first, and divers other days as well before as after, at the Parish of *St. Mary Matfellow*, otherwise called *White-Chappel*, in the County of *Middlesex*, falsely, maliciously, devilishly, and traiterously, with divers Rebels and Traitors to the Jurors aforesaid unknown, did conspire, imagine, and intend, our said Sovereign Lord the King, now his supreme and natural Lord, not only of his royal State, Title, Power, and Government of this his Kingdom of *England* to deprive and depose, but also the same Lord the King to kill and murder, and the ancient Government of this Kingdom of *England* to change, alter, and totally subvert, and a miserable Slaughter amongst the Subjects of our Lord the King

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throughout all this his Kingdom of *England* to cause and procure, and an Insurrection and Rebellion against our Lord the King to procure, promote, and assist, and the same his most wicked, most inhuman, and most devilish Treasons and Conspiracies, Purposes and traiterous Imaginations to fulfill and to effect, he the said *John Fernley*, as a false Traitor, then and there, viz. on the said 20th day of *August*, in the Year of the Reign of our said Lord the King, the first as aforesaid, at the Parish aforesaid, in the County aforesaid, well knowing one *James Burton* to be a false Traitor, and as a false Traitor traiterously to have conspired and imagined the Death and utter Destruction of our said Lord the King, and War and Rebellion against our said Lord the King within this Kingdom of *England* traiterously (with divers other Rebels to the Jury unknown) to have levied and stir'd up; he the said *John Fernley* afterwards, (viz.) on the said 20th day of *August*, in the Year of the Reign of our said Lord the King now the first aforesaid, at the Parish aforesaid, in the County aforesaid, the said *James Burton* in the Mansion house of him the said *John Fernley*, situate in the Parish and County aforesaid, knowingly, secretly, wickedly, devilishly, and traiterously, did harbour, conceal, comfort, sustain, and keep; and then and there, for the comforting, sustentation, and maintenance of the said *James Burton*, the said *John Fernley* Mear and Drink to the said *James Burton* maliciously and traiterously did give and deliver, and did cause to be given and deliver'd, against the Duty of his Allegiance, against the Peace of our said Lord the King, his Crown and Dignity, and also against the Form of the Statute in the like Case made and provided, &c.

Clerk. How sayest thou, *John Fernley*, art thou guilty of the High Treason whereof thou standest indicted, or not guilty?

Fernley. Not guilty.

Clerk. Culprit, how wilt thou be tryed?

Fernley. By God and my Country.

Clerk. God send thee a good Deliverance.

Set *William Ring* to the Bar. (Which was done.)

William Ring, Hold up thy hand. (Which he did.)

Thou standest indicted by the Name of *William Ring*, of the Parish of *St. Clements Danes* in the County of *Middlesex*, Taylor.

Middlesex. **T**H E Jurors for our Sovereign Lord the King do present upon their Oaths, That *William Ring*, late of the Parish of *St. Clements Danes* in the County of *Middlesex*, Taylor, as a false Traitor against the most Illustrious and excellent Prince *James* the Second, by the Grace of God of *England, Scotland, France, and Ireland*, King, and his natural

E e e

‘ natural Lord, not having the fear of God in
 ‘ his Heart, nor the Duty of his Allegiance
 ‘ any ways weighing, but being mov’d and
 ‘ seduced by the Instigation of the Devil, and
 ‘ the true, due, and natural Obedience which
 ‘ true and faithful Subjects of our said Lord the
 ‘ King towards our said Lord the King, should
 ‘ and of right ought to bear, wholly withdraw-
 ‘ ing; and with his whole Strength intending
 ‘ the Peace and common Tranquillity of this
 ‘ Kingdom of *England* to disquiet, molest, and
 ‘ disturb, and War and Rebellion against our
 ‘ said Lord the King within this his Kingdom
 ‘ of *England* to incite and stir up, and the Go-
 ‘ vernment of our said Lord the King in this his
 ‘ Kingdom of *England* to subvert, and our said
 ‘ Lord the King from his Title, Honour, and
 ‘ regal Name of his Imperial Crown of this his
 ‘ Kingdom of *England* to depose and deprive,
 ‘ and our said Lord the King to Death and final
 ‘ Destruction to bring and put; the 20th day of
 ‘ *July*, in the first Year of the Reign of our So-
 ‘ vereign Lord *James* the Second, by the Grace
 ‘ of God of *England, Scotland, France, and Ireland*
 ‘ King, Defender of the Faith, and divers other
 ‘ days and times, as well before as after, at the
 ‘ Parish of *St. Clements Danes* in the County of
 ‘ *Middlesex*, falsely and maliciously, devilishly
 ‘ and traiterously, with divers other Rebels and
 ‘ Traitors to the Jurors unknown, he did con-
 ‘ spire, imagine, and intend, our said Lord the
 ‘ King, our supream and natural Lord, not only
 ‘ from his royal State, Title, Power, and Go-
 ‘ vernment of his Kingdom of *England* to de-
 ‘ prive and depose, but also our said Lord the
 ‘ King to kill and put to death, and the ancient
 ‘ Government of this Kingdom of *England* to
 ‘ change and alter, and wholly to subvert, and
 ‘ a miserable Slaughter among the Subjects of
 ‘ our said Lord the King throughout this whole
 ‘ Kingdom of *England* to cause and procure,
 ‘ and Insurrection and Rebellion against our said
 ‘ Lord the King to procure, move, and assist:
 ‘ And his said most wicked and devilish Treasons
 ‘ and traiterous Conspiracies, Compassings, Ima-
 ‘ ginations and Purposes aforesaid to fulfil, effect,
 ‘ and perfect, he the said *William Ring*, as a false
 ‘ Traitor, then and there, to wit, the said 20th
 ‘ day of *July* in the said first Year of the Reign
 ‘ of our said Lord the King that now is, afore-
 ‘ said, at the Parish and County aforesaid, well
 ‘ knowing *Joseph Kelloway* and *Henry Lawrence*
 ‘ to be false Traitors, and as false Traitors trait-
 ‘ erously to have conspired and imagined the
 ‘ Death and final Destruction of our said Lord
 ‘ the King, and War and Rebellion against our
 ‘ said Lord the King within this his Kingdom of
 ‘ *England*, traiterously, with divers other Traitors
 ‘ to the Jurors unknown, to have levied and
 ‘ raised and stirred up; and he the said *William*
 ‘ *Ring* afterwards (to wit) the said 20th day of
 ‘ *July*, in the first Year of the Reign of our
 ‘ said Sovereign Lord the King aforesaid, at the
 ‘ Parish aforesaid, the said *Joseph Kelloway* and
 ‘ *Henry Lawrence*, in the dwelling House of him
 ‘ the said *William Ring* situated in the Parish and
 ‘ County aforesaid, knowingly, secretly, wick-
 ‘ edly, devilishly, and traiterously, he did har-
 ‘ bour, conceal, comfort, sustain, and maintain;
 ‘ and then and there, for the comforting, sustain-
 ‘ ing, and maintaining of the said *Joseph Kelloway*
 ‘ and *Henry Lawrence*, he, the said *William Ring*
 ‘ Meat and Drink to the said *Joseph Kelloway*

‘ and *Henry Lawrence* maliciously and traiterously
 ‘ did give and deliver, and did cause to be given
 ‘ and delivered, against the Duty of his Alle-
 ‘ giance, against the Peace of our said Sovereign
 ‘ Lord the King, his Crown and Dignity, and
 ‘ against the Form of the Statute in this Case
 ‘ made and provided, &c.

How sayest thou, *William Ring*, art thou guilty
 of the High-Treason whereof thou standest in-
 dicted, or not guilty?

Ring. Not guilty.

Clerk. Culprit, how wilt thou be tried?

Ring. By God and my Country.

Clerk. God send thee a good Deliverance.

Set *Henry Cornish* to the Bar.

Henry Cornish, hold up thy Hand.

Mr. *Cornish*. My Lord, I have been confined
 without any notice given me until *Saturday* about
 noon of my Tryal. My Lord, I do hope, see-
 ing I appear before your Lordships and this Ho-
 nourable Bench, who have known something of
 my Conversation, that you will be pleased to
 consider me, and grant me what is customary,
 and commonly done to Persons in my Circum-
 stances.

Mr. *Jones*. Mr. *Cornish*, if you please you
 shall have your time of speaking hereafter, but
 now you are only to plead without any more
 ado.

Mr. *Cornish*. My Lord, I beseech you hear me
 a little; I have been so confined —

Lord Mayor. Mr. *Cornish*, you must observe the
 Rules of the Court.

Mr. *Cornish*. My Lord, I hope I shall be allow-
 ed what is customary in such Cases.

Lord Mayor. What is it you would have?

Mr. *Cornish*. My Lord, I do desire, if your
 Lordship will please to consider me —

Mr. *Jones*. Would you not be arraign’d, Mr.
Cornish? After you are arraign’d and have plead-
 ed, you may speak.

Mr. *Cornish*. Let me tell your Lordship what
 my Case is: Is it reasonable not to have above
 half a-days time for Preparation for my Tryal,
 and no Counsel allowed me?

* Mr. Recorder. Nor ought, with-
 out leave of the Court, or by his
 Majesties special Appointment.

* Sir Thomas
Fenner.

Mr. *Cornish*. I have not had a Friend to come to
 me, but in the Presence of Major *Richardson*.

Mr. Recorder. None have in your Circum-
 stances.

Mr. *Cornish*. My Lord, ought not I to have a
 Copy of the Pannel? it is a thing never denied.

Recorder. It hath been denied very often.

Mr. *Cornish*. My Lord, it is a matter wherein
 my Life is concern’d; and therefore I hope your
 Lordship will hear me.

Mr. *Jones*. After you are arraign’d you may
 speak, and put off your Tryal if you can.

Mr. *Cornish*. My Lord, I cannot go from this
 before I possess your Lordship with a right Un-
 derstanding of it; it is beyond Precedent: no
 such Precedent, that any Man should be kept
 with that Strictness I have been.

Recorder. Mr. *Cornish*, I wonder you will say
 so: I tell you there is no Man accused of your
 Crime but is so kept.

Mr. *Cornish*. If your Lordship pleases to allow
 me a little time, I do not question but I can
 very well satisfy your Lordship, and this honou-
 rable Court, that I am a very innocent Person.

Mr. Recorder.

Mr. Recorder. You will have your proper time for that, but now you must plead, that you may hear the Particulars of your Charge, and have an Opportunity to make out your Innocence; for we must keep the same Method with you we do with all other Persons in your Circumstances; and therefore you must plead as other Persons do.

Mr. Jones. Will you, or will you not, Sir, without any more ado? the Law gives you advantage, you may challenge any body; there are fourscore returned, honest Men, and you may challenge who you please.

Mr. Cornish. Alas! my Lord, what can I do?

Council. He disputes out of time; he is to be arraign'd.

Recorder. Come, Mr. Cornish, you must plead.

Mr. Cornish. I did understand last Night His Majesty was graciously pleased to refer these matters, as to my Trial, to my Lords the Judges; and, my Lord, I do hope that the Judges, when they hear this matter, that I shall have some time allowed.

Recorder. Pray, Mr. Cornish, take the Rule of the Court; your business is now to plead; when you have pleaded, what you have to offer for the putting off your Trial may be heard then.

Clerk. Henry Cornish, hold up thy Hand.

Mr. Cornish. My Lord, I would do nothing that should be a dishonour to your Lordship and the Court.

Sir James Smith. You know the way of the Court, Mr. Cornish; you must plead.

Mr. Jones. If you will not plead, I will move the Court to record your standing mute.

Mr. Cornish. I have known that this Court hath heard what the Prisoner hath to say at the Bar; and I have more to say perhaps than any Man that ever stood at this Bar.

Recorder. Mr. Cornish, when you have pleaded, you have time to speak for your self.

Clerk. Henry Cornish, hold up thy Hand. (Which he did.)

Thou standest indicted by the Name of Henry Cornish.

THAT Henry Cornish, late of the Parish of St. Michael Bassishaw, London, Merchant, as a false Traitor against the most Illustrious Prince Charles the Second, late King of England, Scotland, France and Ireland, Defender of the Faith, then his natural Lord, not having the fear of God in his Heart, nor weighing the Duty of his Allegiance, but moved and seduced by the Instigation of the Devil, and the cordial Love, and true due and natural Obedience, which a true and faithful Subject of our late Sovereign Lord the King towards our late Sovereign Lord the King should and of right ought to bear, altogether withdrawing; and minding, and with all his Strength intending, the Peace and common Tranquillity of this Kingdom of England to disquiet, molest, and disturb, and War and Rebellion against our late Sovereign Lord the King, within this Kingdom of England to stir up, move, and procure; and the Government of our said late Sovereign Lord the King of this Kingdom of England to subvert, change, and alter, and our said late Sovereign Lord the King from the Title, Honour, and Kingly Name of the Crown Imperial of this Kingdom of England to depose and deprive; and our said late Sovereign Lord the King to Death, and final Destruction to bring

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and put: the 30th day of May in the 35th Year of the Reign of our said Sovereign Lord the King, and divers other days and times, as well before as after, at the Parish of St. Michael Bassishaw, London, falsely, maliciously, devilishly, and traiterously, with divers false Traitors to the Jurors unknown, did conspire, compass, imagine, and intend, our said late Sovereign Lord the King, his supream and natural Lord, not only of his Kingly State, Title, Power and Government of this Kingdom of England to deprive and throw down; but also the said late King to kill and put to Death, and the ancient Government of this his Kingdom of England to change, alter, and altogether subvert, and a miserable Slaughter amongst the Subjects of our late Lord the King thorough this Kingdom of England to cause and procure, and Insurrection and Rebellion against our said late Lord the King to procure, promote, and assist: And the same most wicked and devilish Treasons and traiterous Compassings, Imaginations, and Purposes aforesaid to fulfil, perfect, and bring to effect, He the said Henry Cornish, as a false Traitor, then and there, to wit, the said 30th day of May in the Year aforesaid, at the Parish and Ward aforesaid, falsely, maliciously, and traiterously knowing James the late Duke of Monmouth, William Russel, Esq; and Thomas Armstrong, Knight, and divers other Rebels and Traitors, then lately before in the Parish and Ward aforesaid within the said City of London, falsely unlawfully, devilishly, and traiterously, to have conspired the Death and final Destruction of our said late Sovereign Lord the King; he the said Henry Cornish, as a false Traitor, then and there, to wit, the said 30th day of May in the Year aforesaid, within the Parish and Ward in the said City of London, falsely, unlawfully, wickedly, and traiterously, did promise to the said divers false Traitors and Rebels, then and there present, That he the said Henry Cornish would be aiding and assisting in the Treasons aforesaid, to be done, perfected, and brought to effect; against the Duty of his Allegiance, against the Peace, and against the form of the Statute, &c.

Clerk. How say'st thou, Henry Cornish, art thou guilty of this High-Treason whereof thou standest indicted, or not guilty?

Mr. Cornish. This is an heinous Charge.

Council. Answer. You know you must answer.

Mr. Cornish. I am perfectly innocent.

Council. Are you guilty, or not guilty? You must take the Words.

Mr. Cornish. Not guilty.

Clerk. Culprit, how wilt thou be try'd?

Mr. Cornish. By the great God of Heaven, and my Country.

Clerk. God send thee a good Deliverance.

L. C. J. Jones. I don't know in what state things are here in the Court; I can't tell whether there be a Jury return'd or not.

Clerk. He is arraign'd.

L. C. J. Jones. Why don't you go on with the Jury?

Mr. Cornish. My Lord, I humbly pray your Lordship. I have some ground for it.

L. C. J. Jones. You shall be heard in good time, Sir.

Mr. Cornish. My poor Children last night prefer'd a Petition to His Majesty, and he was pleas'd to refer it most graciously to my Lords the

Judges; and I now make my Application to Your Lordships.

L. C. J. Jones. Have you any Answer to the Petition, from the King?

Mr. Cornish. It was refer'd to your Lordships the Judges, to consider my Case.

L. C. J. Jones. We may hear more of your Business anon, when Mr. Attorney and Mr. Solicitor do come: we will stay here till they come, to know whether there be any Order from the King to them concerning you.

Mr. Cornish. My Lord, I hope it will not be offensive if I should acquaint your Lordships what Usage I have met with since I have been under Confinement. I have been under very close Confinement, I had no notice of my Tryal till about twelve a Clock on *Saturday*; no Friend came to me till Eight a Clock at night; and I had no time for Preparation for my Tryal. My Lord, these are hard things; but tho' I am denied Council, I trust in God I shall not need Council, for I hope, if your Lordship pleases to allow me time, to clear my self of all matters; and I hope with such Satisfaction to your Lordships, that you will acquiesce in whatsoever I shall lay before your Lordships. I do not come to make an Harangue and Talk; my Case was such, that I had neither Pen, Ink nor Paper.

Mr. Just. Withins. *Mr. Cornish,* Mr. Attorney and Mr. Solicitor will come, we must hear them.

L. C. J. Jones. You shall be heard in your proper time: it is a strange thing you won't be satisfied: you shall be heard, I tell you, in your proper time.

Mr. North. We have arraign'd one *Fernley*, if you please to try him, who (with *Ring*) was brought to the Bar.

Clerk. You the Prisoners at the Bar, those Persons you shall hear call'd, and appear, are to pass between our Sovereign Lord the King and You, upon your several Lives and Deaths; if you will challenge them, or any of them, your time is to challenge them when they come to the Book to be sworn, before they be sworn.

Cryer. O Yes, all manner of Persons are commanded to keep silence upon pain of Imprisonment.

The Middlesex Jury.

<i>Nehemiah Arnold</i>	<i>William Thompson</i>
<i>Francis Stevens</i>	<i>William Read</i>
<i>Richard Fisher</i>	<i>Samuel Peacock</i>
<i>John Howlet</i>	<i>Richard Fitz-gerrard</i>
<i>John Viguers</i>	<i>Richard Bromfield</i>
<i>Samuel Birch</i>	<i>John Haynes</i>

Cryer. O Yes, If any one can inform my Lords the King's Justices, the King's Serjeant, or the King's Attorney, before this Inquest be taken between our Sovereign Lord the King and *John Fernley* and *William Ring*, the Prisoners at the Bar, let them come forth and they shall be heard; for now the Prisoners stand at the Bar upon their Deliverance: and all Persons that are bound by Recognizance to give Evidence against either of the Prisoners at the Bar, let them come forth and give their Evidence, or else they forfeit their Recognizance, and all Jury-men of *Middlesex* that have appear'd and are not sworn, let them depart.

Clerk. Set *William Ring* to the Bar, and set by the other.

William Ring, hold up thy Hand, You that

are sworn look upon the Prisoner and hearken to his Charge, he stands indicted by the name of *William Ring*, &c. (*prout ante.*) Your Charge is, to enquire whether he be guilty of the Treason whereof he stands indicted, or not guilty, &c.

Mr. Phipps. You the Gentlemen that are sworn, the Prisoner at the Bar is indicted for that knowing one *Joseph Kelloway* and one *Henry Lawrence* to be false Traitors, and to have levied War against the King, on the 20th of *July* did harbour, conceal, and relieve those Traitors, against the Duty, &c. Upon this he hath pleaded, not guilty, &c.

Mr. Att. Gen. Gentlemen of the Jury, the course of our Evidence will be thus; *Kelloway* and *Lawrence* were in the late Rebellion in the West, in the late Duke of *Monmouth's* Army; and after that Battle when they were overthrown, they came up to *London*, and the Prisoner at the Bar receiv'd and comforted them, and not only provided a Lodging, and Meat and Drink for them, but afterwards provides another Lodging for them; and this he knew, for they were very merry, telling the whole Story of the Fight; and notwithstanding this he entertains them. We will first shew you the Record of the Conviction of *Kelloway* and *Lawrence*, and then call Witnesses to prove the other things upon the Prisoner. (The Record produced) *Mr. Harcourt* sworn.

L. C. J. Jones. Is that a true Copy of the Record? *Mr. Harcourt* answered Yes: whereupon the Clerk reads:

Joseph Kelloway stands indicted by the Name of *Joseph Kelloway* of *Taunton* in the County of *Somerset*, Yeoman, and *Henry Lawrence* of the same Parish and County Yeoman, with a great many others.

L. C. J. Jones. See what they have done.

Clerk. They are indicted of Treason for levying War against the King, and they have confessed the Indictment upon their Arraignment; and the Judgment upon the Indictment is, That the said *Kelloway*, and the rest of them there, should be led to the Prison from whence they came, and from thence to be drawn to the place of Execution, and upon the Gallows there to be hanged, every one of them in the said Indictment, and living to be cut down, and their Entrails to be taken out of their Bodies, their Heads to be taken off from their Bodies, and their Bodies divided into four Quarters.

Mr. Att. Gen. This shews they were Traitors. Now we will shew you, that in the mean time between their Treason and Conviction, this Prisoner did receive them. Call *Mr. Barrington*. (Who was sworn.)

Mr. Jones. *Mr. Barrington*, what do you know concerning *Mr. Ring*?

Mr. Barrington. If it please you my Lord, on the 11th of *July* last I was abroad about my Master's Business, and in the mean time when I was absent, as I was inform'd, there came *Mr. Ring*, who lives in *Witch street* at the Sign of the Bible, and when I return'd I was told that *Mr. Ring* was at our House to speak with me, and that there was one *Mr. Lawrence* there at *Mr. Ring's* at the Bible in *Witch street*; and when I came there, there was *Mr. Lawrence* at *Mr. Ring's* House; and when I came to the House on the right-Hand there was his Wife, as I take it; I asked for *Mr. Lawrence*, and she was a little at a stand: said I, I understand *Mr. Ring* was in such a place to inform me *Mr. Lawrence* desired to speak

Speak with me, upon that she shewed me where he was: I went up to him, and he was lying upon the Bed very weary and tired; and when I had been there a while there came in one *Kelloway*, and they said they came both out of the West Country, and came on *Friday* night, and I saw them on *Saturday*. If it please your Lordship, I called there after and knocked at Mr. Ring's Door, and there came a Woman and made Answer, That they were gone from thence both of them, and that they were to go on Ship-board to see some Friends; and I call'd there upon *Wednesday* the 15th day at night, to see Mr. Lawrence at Mr. Ring's House, and Mr. Lawrence told me he was going from thence to the Pewter-Platter in Saint John; and when Mr. Common Serjeant came to examine me about these men, I made a true Confession that they were at Mr. Ring's, and removed to the Pewter-Platter; and when we came to search at the Pewter-Platter, at first they did not know any such men, till we described them; then they confessed there were such men there on *Tuesday* and *Wednesday* night, but not the night before which was *Thursday* night, from thence we went without *Temple-bar* to Mr. Ring's, where they were at first, and Mr. Crisp and I went together to enquire for these men, and there was a Woman, which I think is Mr. Ring's Wife, I can't tell. I enquired for these men, and she made Answer, That they were not there at present, and said she could not tell at present, but that they lay there the last night which was *Thursday* night; that was Ring's Wife, I take it, should say they were there the night before; so after that she had owned they lay there on *Thursday* night, she asked me what this Gentleman was, so I told her he was a Friend of mine; so afterwards we were at the Castle Tavern without *Temple-Bar* by *St. Clements* Church, and Mr. Common Serjeant was pleased to send for Mr. Ring to examine him about these men, what Lodgers he had in his House on *Friday* night, *Saturday* night, *Sunday* night, and *Monday* night. Mr. Ring knew nothing of any men that came out of the Country; so upon that, he denying it, Mr. Common Serjeant ordered his House to be searched, and in searching they found a Paper upon the Chamber Window that was brought to the Castle Tavern, where Mr. Ring was, and the Paper was produced, and Mr. Ring would confess nothing till such time as they found that Paper.

L. C. J. Jones. See, is that the Paper you speak of?

Mr. Barrington. That is all I have to say, if it please your Lordship.

L. C. J. Jones. Did you see them in the Company of Ring?

Mr. Barrington. I did not see him when I was at the House.

Mr. Finch. Mr. *Sol. Gen.* You say Mr. Ring would confess nothing till such time as the Paper was found; What did he say after the Paper was found?

Mr. Jones. Ring was by, what did he say upon producing that Paper?

L. C. J. Jones. Was the Paper shewed to him?

Mr. Barrington. I think not; he would have seen it.

Mr. Just. Withins. You say he would confess nothing till that Paper was produced.

Mr. Barrington. Truly, I can say no more of it.

Mr. Jones. When the Paper was produced at the Castle Tavern, what did he say then?

Mr. Just. Withins. What did Ring say at the Castle Tavern?

Mr. Barrington. I can't remember, but that he denied every thing,

Clerk. Call Mr. Barrow. (Who was sworn)

Mr. Barrow. Sir, I heard Ring confess to my Lord-Mayor in July last, that he lodged Lawrence and Kelloway, and that Lawrence and Kelloway did tell him, that they had been both in the late Western Rebellion in Monmouth's Army; and that after that he had lodged them two or three Nights, this I heard him confess.

Council. Pray speak it again.

Mr. Barrow. That Lawrence and Kelloway had told Mr. Ring, they had been in the late Western Rebellion in Monmouth's Army, and that he had lodged them two or three nights in his own House.

Mr. Common Serjeant. What did you hear him say concerning Mr. Herle?

Mr. Barrow. There was some talk concerning Mr. Herle or Hurle.

L. C. J. Jones. Did he say he lodged them, after they had told him that?

Mr. Barrow. After that. That is all I can say.

Clerk. Call Mr. Crisp. (Who was sworn.)

Council. Give my Lord and Jury an Account of what you know concerning Mr. Ring.

Mr. Crisp. I went to search Mr. Ring's House, my Lord, and in the Window there was that Letter under Mr. Lawrence's own Hand, sealed up and directed to Newberry for a Horse which he had stole from his Master, and left at Newberry; which Letter I brought to the Tavern, and when we came to the Tavern, we examined him, and he denied every thing; but at last we shewed him the Letter, and he owned he had such a Cousin, and another that he did not know, but that he did not lodge there then; and when he came to the Sessions-House, Lawrence and Kelloway were produced before him, and were examined what Account they had given to him when they came to his House; they told him after the Duke of Monmouth was beaten they ran away to London, and Kelloway being his Cousin brought Lawrence with him; they told him the Duke was beaten, and lay there *Friday* night, *Saturday* night, *Sunday* night, and *Monday* night.

Mr. Jones. He owned he knew Kelloway?

Mr. Crisp. Yes.

L. C. J. And that Kelloway had been in the Duke's Army, and that he was beaten?

Mr. Crisp. Yes.

L. C. J. What did Ring say upon it?

Mr. Crisp. Ring said nothing there to it; he confess'd he lodg'd them two or three nights.

Council. Swear Mr. Hardisty. (Which was done)

Mr. Att. G. Mr. Hardisty, pray will you give my Lord and the Jury an account of his Examination?

Mr. Hardisty. I was directed to attend my Lord Mayor at the Examination of Mr. Ring, the Prisoner at the Bar, above here in the Room, and did accordingly: and upon Examination, my Lord, he did make this Confession. This is the Examination, and it is as he gave it in himself, and signed by himself.

L. C. J. Jones. And read to him?

Mr. Hardisty. Yes, half a dozen times I believe.

Mr. Comm. Serj. My Lord, upon the appearing of Lawrence and Kelloway before him, then he confessed all.

The Examination of *William Ring* of the Parish of *St. Clement Danes* in the County of *Middlesex*, Taylor, taken before the Right Honourable Sir *James Smith*, Kt. Lord-Mayor of the City of *London*, this 18. day of *July*, 1685. who being examined, saith as followeth:

That *Joseph Kelloway*, and one *Henry Lawrence*, the said *Kelloway's* Acquaintance, came to this Examinants House on *Friday* or *Saturday* last; That this Examinant did ask of *Kelloway* (being this Examinant's Kinsman) what did drive them to Town? That they told this Examinant, that they went to *Monmouth*, that he was routed, and that brought them to Town, or to that purpose; That they were in *Monmouth's* Army: That the night they came, he this Examinant told them, he was unwilling to lodge them; That he this Examinant did lodge them after this Discourse, *Saturday*, *Sunday*, and *Monday* nights, and they dined twice with this Examinant; That they were at his House on *Friday* morning; but where they lay on *Wednesday* and *Thursday* saith, he knows not. Saith, that *Lawrence* sent this Examinant to a Glover in *St. Bartholomews* Close who was a Journey man in the House, as this Examinant supposeth, and told the Master of the House, that there was a Kinsman of his Journey man's would speak with his Journeyman. Saith, *Kelloway* and his Acquaintance told this Examinant, that they left their Horses at *Newberry*. That a Note being produced, directed to this Examinant, to deliver several Goods therein mentioned, and being examined upon the said Note, this Examinant saith, That he this Examinant was sent for to the *Castle Tavern* near *Shoe-lane* in *Fleetstreet*, and one *Bond* brought this Examinant the Note above-mentioned, and now produced to him; believes the Note to be the hand writing of *James Hooper*. That this Examinant was there to enquire of one *Hearne*, but expected to meet *James Hooper*, who formerly told this Examinant that he went by the Name of *Hearne*. That being in Discourse with *James Hooper* about the time of the late Duke of *Monmouth's* Landing, *James Hooper* told this Examinant, that his the said *Hooper's* Brother was with the Duke of *Monmouth*, and that he the said *James Hooper* would go to him the said Duke, or to that purpose. Further, this Examinant saith, That about a Fortnight ago he carried, according to a Note from *Hooper* to that purpose, to a Joyner's House in *Ivy-lane*, *London*, a Cravat and a pair of Cuffs, and then enquired for *Hooper* of a Woman of the said house; and saith, that then he this Examinant did speak with *James Hooper* who lay private there, because, as this Examinant believes, the said *Hooper* was concerned in the Rebellion. Saith, he hath not seen him the said *Hooper* this Fortnight, nor heard from him otherwise than by the Note now produced. *Will. Ring.*

Taken before me Sir *James Smith*, Lord-Mayor.

Mr. Att. Gen. Call Mr. *Richardson*, to prove that these were the same men that were carried down. (Who was sworn.) Mr. *Richardson*, pray give an account, whether these were the men you carried down into the *West*.

Mr. *Richardson*. My Lord, those two Persons, that is, *Joseph Kelloway* and *Henry Lawrence*, that were committed for being in the late Rebellion: I carried them both down into the *West*, where they were both Convicted; one is executed, and the other hath a Reprieve.

Mr. *Just. Withins*. *Henry Lawrence* was Capt. *Hunt's* man.

Mr. *Richardson*. The same, he ran away with his Horse and Arms.

L. C. J. *Jones*. Can you tell these were the same men, that were present at his Examination?

Mr. *Richardson*. The very same men; they were committed at the same time; he was examined before them, for they were all committed at the same time together.

L. C. J. *Jones*. What do you say Sir, you the Prisoner at the Bar, what do you say for your self?

Mr. *Ring*. I did not understand what they were.

L. C. J. You knew the Prisoners, one of them was your Kinsman?

Mr. *Ring*. I did know him, but the other I did not know; I did not know what Design they had been upon.

L. C. J. *Jones*. Your own Examination says, you did.

Mr. *Ring*. Then my Examination is wrong.

L. C. J. *Jones*. Hear, hear again: You did receive them, and then they told you that they were in *Monmouth's* Army, and that *Monmouth* was beaten; and afterwards you continued to harbour them in your House three nights.

Mr. *Just. Withins*. And dined twice with them.

Mr. *Ring*. My Lord, I never heard of it.

L. C. Baron. That Gentleman heard you say, they had told you they had been in *Monmouth's* Army, and you lodged them after.

Mr. *Crisp*. Yes my Lord; and when we were there, the Woman would not own them.

L. C. J. *Jones*. Why did you hide them in your House, and not confess it?

Mr. *Ring*. At first I did deny it.

Council. Yes, and did deny it, till *Lawrence* and the other man were brought before you.

Mr. *Ring*. My Lord, what I did was ignorantly done.

L. C. J. *Jones*. Did you hear your Examination now read?

Mr. *Ring*. I heard most of it, I believe.

L. C. J. *Jones*. Pray let it be read again.

Council. It was read over and over 4 or 5 times.

Mr. *Hardisty*. He was upon it, I believe, an hour together: it was taken first in parts, and as he recollected himself it was compared, and afterwards my Lord Mayor desired him to consider with himself: and then the Examination was written fair over, and he signed it, and it was read several times, 6 or 7 times.

Mr. *Ring*. My Lord, I do acknowledge I did lodge them, but I did not understand what Design they had been upon.

L. C. J. *Jones*. But you see here you have acknowledged, they said they were in the Army, and you did lodge them afterwards; they were of *Monmouth's* Party, they had told you so. Read that part again.

Mr. *Hardisty*. *Joseph Kelloway*, and one *Lawrence* the said *Kelloway's* Acquaintance, came to this Examinant's House on *Friday* or *Saturday* last; that this Examinant did ask *Kelloway* being this Examinant's Kinsman, What did drive them to Town? that they told this Examinant, that they went to *Monmouth*, that he was routed, and that that brought them to Town.

Mr. *Ring*. I never said that Word.

Mr. *Just. Withins*. It is under your Hand.

Mr. *Ring*. If it be under my hand, I never said it.

Mr. Sol. Gen. Was that part read to him?

Mr.

Mr. *Hardisty*. Yes.

L. C. J. *Jones*. Read on.

Hardisty. That they were in *Monmouth's* Army; that the Night they came, this Examinant told them, he was unwilling to lodge them, and that this Examinant did lodge them after this Discovery, Saturday, Sunday, and Monday night, and they dined twice at this Examinant's House.

L. C. J. *Jones*. What do you say now to this? Can there be any thing more plain?

Mr. *Ring*. I do acknowledge, my Lord, I did lodge them, but I was not sensible what the issue of this Business would be.

L. C. J. *Jones*. You did not know, That to harbour known Traitors was High Treason.

Mr. *Ring*. My Lord, I don't know whether they came from *Monmouth* or no.

L. C. J. *Jones*. It is no great matter whether you do or no; they told you so.

Mr. *Ring*. I never heard such a Word from them.

L. C. J. *Jones*. How came it to be put in your Examination?

Mr. *Ring*. I don't know, my Lord, when it was taken I was in a maze. I think the Parish knew well enough, that I never kept any such Company, nor had any such Design.

Mr. *Just. Withins*. He confesses it over-night, causes it to be writ down next Day, and sets his Hand to it too: Nothing can be more plain.

L. C. J. That is a great Argument you were not in such surprize, that you had not the use of your Understanding; for you confessed the same thing over Night, and you had time to consider of it all Night, and you came the next Morning, and then confessed as now it is written, and put your Hand to it.

Mr. *Ring*. I was ordered to put my Hand to it.

L. C. J. *Jones*. That is, if you acknowledged it to be true.

Mr. *Ring*. I did not know what was put down.

Mr. *Just. Levins*. The matter is so plain, that nothing can be more. When they came to you, they inform'd you where they had been, and afterwards you were unwilling to lodge them; you knew therefore they had been in the Rebels Army, and so the matter is plain: and for ought I can hear, this is not the first time you have harboured such Men.

L. C. J. *Jones*. There is another thing touching one *Hurle*; but you are not charged with it in the Indictment, and so we don't trouble the Jury with any Evidence concerning that: Have you any more to say?

Mr. *Ring*. I do acknowledge, my Lord, that I lodg'd them; but I did not understand any thing else.

L. C. J. *Jones*. Why! did not you confess it?

Mr. *Ring*. I did not confess it.

Mr. *Just. Withins*. And you shifted Lodging for them, after they were known to you.

Mr. *Ring*. I did not.

L. C. J. *Jones*. Gentlemen of the Jury, the Prisoner stands indicted of High-Treason for receiving *Joseph Kelloway* and *Henry Lawrence*, who were Traitors, and known to him to be Traitors, and harbouring them in his House, and giving them Entertainment and Comfort: this, Gentlemen, is clearly High-Treason by Law; and tho' this Man himself were not in actual Rebellion, yet, if he do receive any that he knows to have been so, he is equally guilty;

he is a principal Traitor by the Judgment of the Law, and however he would now pretend his Ignorance, that he did not know that they were in the Army, or, if he did know they were in the Army, that he had incur'd so great a Danger as the forfeiture of his Life, which now he stands as well as he can to defend; yet it does appear plainly to you, not only by his own Confession taken upon his Examination, but likewise by the Testimony of the Witnesses, who were present at the time when he did confess that these Men had discoursed with him, and acknowledged that they were in *Monmouth's* Army, and that he was routed, and that yet he did entertain and receive them: The first Witness indeed does not say the very thing, but it is very much inducing to the Evidence that is given more express by the other Witness, for he says, that he was at his House, and he enquir'd for them there, tho' he did not see him at all, but his People; and they not only did confess that they had lodged there, but that there was a Lodging provided for them elsewhere: But however, if that were quite laid aside, and not taken at all into Consideration, yet what is testified by the other Witnesses, and upon his own Examination, makes it as clear and plain as can be, that he did receive these Persons into his House, and comfort them, and entertain them, knowing them to have been guilty of High-Treason, that is, to have been in the Army of *Monmouth*, of that Party, and that they came to *London*, and went away from the *West* because he was beaten; and there is an Expression in the Examination to that purpose: so that I take the Indictment to be very fully and clearly prov'd upon him; and it is not his Ignorance of the Law that will excuse him, that is, his Ignorance of the Danger that he hath incur'd by entertaining these People; altho' you cannot but take notice, that he was in some dread and fear that it was an Offence to do so; for at first he says by his Examination, that he did refuse to entertain them, which shews that he had some Consideration of the Danger that he might incur by receiving them: and yet after this plain Discourse of theirs, that they were in the Army, he entertains them: That they were the same Men that were in the Army, appears plainly; for though at first he did deny it, and did stand in it, before he was confronted by the Men, they being present; yet afterwards he did confess, that they were the Men that were entertain'd by him; and that they were the same Men, doth appear by the Testimony of Captain *Richardson*, who saw them and afterwards caused them to be brought down to the *West*, where one of them was executed for Treason. So I must leave it to you, Gentlemen. I think it is a very plain Case.

Mr. *Ring*. Here is abundance of these things that I know nothing of.

Council. Set *John Fernley* to the Bar.

(Which was done.)

Clerk. *John Fernley*, hold up thy Hand. You that are sworn, look upon the Prisoner, and hearken to his Charge: He stands indicted by the Name of *John Fernley*, &c. (*prout ante*.)

Mr. *Phipps*. This is an Indictment of High-Treason against *John Fernley*, the Prisoner at the Bar: It sets forth, that the said *John Fernley*, knowing one *James Burton* to be a Traitor, and to have conspir'd against the Life of the King, did traiterously conceal the said *Burton* two Days and

and two Nights, and gave him Meat and Drink, against the Duty, &c.

Mr. Sol. Gen. May it please your Lordship, and you Gentlemen of the Jury, this Prisoner stands indicted of Treason for receiving and harbouring one *James Burton* who was guilty of Treason, he knowing him to have been guilty of Treason. And the course of our Evidence will be this: We will prove that this *James Burton* stood out lawed for Treason before he committed a new Treason, when he went into the *West*, and was there with *Monmouth* in the late Rebellion; and tho', Gentlemen, the very Outlawry against the said *Burton* is enough to satisfy any man, that this Man could not be ignorant that he was a Traitor, for no man can imagine, when a Man stands out a Process till he become out-lawed for High-Treason, that any should be ignorant that he is guilty of Treason, and that it would be very dangerous to receive a Man after that, without any more Evidence: But this *Burton*, after he was out-lawed and fled, came again, and was in Arms with *Monmouth* in the Rebellion; and after their Defeat he came up to Town: and *Fernley* knowing he had been then in the *West* with *Monmouth*, he received him, and harboured him; and this we will prove by Witnesses. First, we will shew the Record of the Outlawry.

Clerk.—*An Indictment prefer'd against James Burton and divers others for High-Treason, for which the said Burton and divers others stand out lawed, by the Return of Samuel Dashwood, Esq; and Sir Peter Daniel, Sheriffs. This is the Record it self, my Lord.*

Council. Swear Mr. Ward.

Which was done.

Mr. Just. Withins. Look upon it, Mr. Ward, is that the Record?

Mr. Ward. Yes, it is, my Lord.

Mr. Just. Withins. Pray see when the Outlawry was.

Mr. Hardisty. Upon Monday next after the Feast of St. Martin, Bishop, the said Richard Rumbold, Richard Goodenough, Francis Goodenough, here are the Names of a great many Men.

Mr. Just. Withins. Is *James Burton* among them?

Mr. Hardisty. On Monday next after the Feast of St. Michael, the said Richard Rumbold, *James Burton*, Richard Nelthorpe, are out lawed, and every one of them is out lawed.— It is November was Twelve-month.

Call *James Burton*. (Who was sworn)

Mr. North. *James Burton*. stand up there: Do you give my Lord and the Jury an account concerning your being in the *West*, and your being entertain'd here at Mr. *Fernley's* House, with all the Circumstances.

Mr. Burton. I came out of the *West* into London on Wednesday Night from *Monmouth's* Army.

L. C. J. Jones. What Wednesday Night?

Mr. Burton. Truly, I have forgot the Day of the Month, but it was about three Weeks after the Rout, and I came home to my Wife and stayed two Nights, and she was not satisfied I should be there, and went to endeavour to get a Lodging for me for two or three Nights, and she went to get leave at Mr. *Fernley's* for me to be there two or three Nights; and I went thither on Friday Night, and on Sabbath-day in the Evening I was taken there.

Mr. Sol. Gen. Speak aloud, say that again.

Mr. Burton. On Wednesday Night I came out of

the Country, after I had been in the Army, I came home to my Wife, and stayed till Friday Night, and on Friday Night she got me a Lodging at Mr. *Fernley's*; there I went about ten a Clock at Night, and stayed there till Sunday Night, and I was taken.

Mr. Just. Withins. Did you see Mr. *Fernley*?

Mr. Burton. I saw him at Dinner on Sunday, and not before.

L. C. J. Jones. What Acquaintance had you before? He does not keep a Publick House, does he?

Mr. Burton. I had been gone two Years, or very nigh.

L. C. J. Jones. What was the occasion of your going?

Mr. Burton. My Wife was acquainted there.

L. C. J. Jones. What was the occasion of your going away, and your Absence for two Years?

Mr. Burton. The occasion of my going then, was, I was in the Proclamation for being with *Rumbold* at the *Mitre Tavern* within *Aldgate*.

Mr. Just. Levins. *Fernley* knew you before, did not he?

Mr. Burton. He knew me by sight.

Mr. Just. Levins. Had you any Acquaintance with him?

Mr. Burton. I lived pretty near to him for a while.

Mr. Just. Levins. How near?

Mr. Burton. I lived within two or three Doors of him.

Mr. Just. Levins. Did he know you?

Mr. Burton. Yes, Yes, he did know me.

Mr. Just. Levins. You came to lodge at his House on Friday Night?

Mr. Burton. Yes, an't please you.

Mr. Just. Levins. Had you no Discourse till Sunday you dined together?

Mr. Burton. No, not till Sunday at Dinner.

Mr. Just. Withins. Tell your Discourse at Dinner.

Mr. Burton. My Lord, I have forgot what altogether the Discourse was; I had some Discourse of the Army; he knew I was in the Army.

L. C. J. Jones. I would have you speak the Sense, so far as you remember of the Discourse at that time with him.

Mr. Burton. The Sense, as far as I remember, was, That the Army was routed.

L. C. J. Jones. And that you were there.

Mr. Burton. He knew I was there.

L. C. J. Jones. How came he to know you were there?

Mr. Burton. I believe I told him so my self.

Mr. Just. — Upon your Oath, did he know you fled upon the Account of the Proclamation before?

Mr. Burton. It is like he might know it by others, but not by me.

L. C. J. Jones. When were you taken? What Day?

Mr. Burton. I was taken on Sunday in the Evening: I had been four Days in London; two Days at Home, and two Days at his House.

L. C. J. Jones. Did you not see him before Sunday at Dinner?

Mr. Burton. My Lord, he was in the Shop all Saturday; he is a Barber.

Mr. Just. Withins. You lay privately at his House all Saturday?

Mr.

Mr. Burton. Yes, my Lord, privately.

Council. Call Mary Burton.

(Who was sworn)

Mr. North. How came this Man to lodge at Mr. Fernley's House, can you give an account? and why it was?

Mrs. Burton. Because I thought he was not safe at home; and having Acquaintance with Mrs. Fernley, lodging pretty near, and she being a young Woman, and having Children, I had Acquaintance going to and fro, and we having a close House and no Yard, I had the Privilege of going to dry Linnen there, so that we had Acquaintance and a little Familiarity, and, being acquainted, I thought I might have Entertainment there; that is all I can say.

L. C. J. Jones. Were you at Dinner upon Sunday?

Mrs. Burton. Yes, I was at Dinner.

L. C. J. Jones. What Discourse had they at Dinner?

Mrs. Burton. Indeed I can't say they had any Discourse, I was very ill and laid me down upon the Bed, and fell asleep.

L. C. J. Jones. You are upon your Oath.

Mrs. Burton. I know I am, Sir.

L. C. J. Jones. What Discourse was at Dinner?

Mrs. Burton. Whilst I was eating, I did not mind.

Mr. Just. Levins. You liv'd close by, why did you ask for a Lodging there?

Mrs. Burton. We do not live close by now, I live with my Daughter, I have no House now.

Mr. Just. Levins. She knew he was your Husband, why should you lodge your Husband at another House than where you lodged your self?

Mrs. Burton. What was it you said, my Lord?

Mrs. Just. Levins. Sure you would give the Woman some account, why you lodged your Husband at another House than where you lodged your self?

Mrs. Burton. She was not altogether a Stranger, and upon the account of the Proclamation there were none of them Strangers.

L. C. J. Jones. For whom did you ask a Lodging?

Mrs. Burton. For my Husband.

Mr. North. Did you speak with Mr. Fernley himself?

Mrs. Burton. I did not speak with Mr. Fernley himself.

Mr. North. On Sunday you saw him at Dinner?

Mrs. Burton. Yes, I saw him at Dinner.

Mr. Just. Levins. Had you any Discourse with them about the Proclamation?

Mr. Att. Gen. About your Husband's going away upon that Proclamation?

Mrs. Burton. An't please you, my Lord, my distress was so great, that I was hardly in my Senses to discourse with any body; but, I thank God, I am now in my Senses between whiles.

Mr. Att. Gen. Had you any Discourse with your Neighbours about that Proclamation, your Husband went away upon?

Mrs. Burton. I had not indeed.

Then Mr. Reynolds was sworn.

Mr. North. Mr. Reynolds, What do you know concerning Mr. Burton's being lodged at Mr. Fernley's House?

Mr. Reynolds. Towards the beginning of August last, hearing that there were several that were in the West lurk'd about Wapping, I took the

Lieutenant of the Tower's Warrant, and we had some Intimation, that a suspected Person lay at Mr. Fernley's House; I went on Sunday about eight a Clock at Night, and took Mr. Burton in Mr. Fernley's House.

Mr. Just. Withins. You took him there, did you?

Mr. Reynolds. I took him there, my Lord?

Mr. Att. Gen. Did you speak with Fernley before you took Burton?

Mr. Reynolds. I took Burton; and Mr. Fernley being Master of the House, I wished the Constable to secure him for harbouring him.

Mr. Att. Gen. What did Fernley say?

Mr. Reynolds. Says I, Mr. Fernley, how come you to harbour Mr. Burton that is in the King's Proclamation; he is a Traytor you know; says he, I did not know it was Mr. Burton, but my Wife desired me to lye out of the Chamber where I lay before, that a Friend of hers might lye there for two or three Days.

Mr. Att. Gen. Where did you find him?

Mr. Reynolds. He was in a Room up one pair of Stairs, up the Chimney, and while we were there he fell down the Chimney, with all the Soot about him: Mr. Fernley was then one pair of Stairs higher; I desired the Constable to go up to see for him.

Mr. Att. Gen. Had you no discourse with him about the business of being in the Army? with Fernley, I mean.

Mr. Reynolds. No my Lord.

L. C. J. Did you hear no Discourse between Burton and him?

Mr. Reynolds. No, my Lord.

Mr. Just. Withins. He was very friendly to lye out of his own Chamber for him.

Mr. Reynolds. They were put in two separate Chambers, by the King's Direction, till they were sent to Newgate.

Mr. Att. Gen. Did he tell you on Sunday Night that he did not know it was Burton?

Mr. Reynolds. To the best of my Remembrance, he did so, when I brought him to the Tower.

Mr. Att. Gen. And yet he dined with him on Sunday.

Mr. Reynolds. I looked upon it as an Excuse.

Mr. North. What Day was Burton taken?

Mr. Reynolds. It was Sunday.

Mr. North. What time on Sunday?

Mr. Reynolds. Sunday about eight a Clock at Night. He had been in Bed, my Lord, I believe, and before we could get open the Door I believe he got out of Bed and went to get up the Chimney.

Mr. Sol. Gen. Gentlemen, you observe in the course of the Evidence, that the first Evidence we produce is James Burton; now James Burton stood outlawed for Treason, and as he stands outlawed he is not a competent Witness, but now to take off that Objection which the Prisoner ought to make, but we make it for him, we shew you here a Pardon whereby that Outlawry is discharged, so that he stands now a very legal Witness.

Mr. Just. Withins. You understand, Gentlemen, what Mr. Solicitor mentions.

(The Pardon produced) and Read.

L. C. J. Jones. What say you?

Mr. Fernley. My Lord, I am charged for entertaining Burton. My Lord, I knew nothing of him

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when he came into my House till Sabbath day at Dinner. I asked my Wife what time *Burton* came in, she told me he came on *Friday Night*, *Saturday* was a busie Day with me, my Lord, on *Sunday Morning* I got up and went to Church, when I came from Church, I went up to Dinner, and when I came in and saw him, I asked him, what in the name of God brought him there? it hath pleased God, said he, to preserve me hitherto, and my Wife interceded so far as to procure me a Nights Lodging, which I hope may be no Detriment to you. I wish it may not, said I, and at Dinner I asked him, how he made his escape, and he told me how he did escape. Says I, what do you mean to do? says he, some Friends will procure me a Passage beyond Sea, upon this I considered with my self, and discours'd with him about the *West*, and his escape out of it, and about half an Hour after we had dined, one knocked at the Door.

Mr. *Just. Levins*. What Day was this?

Mr. *Fernley*. Sabbath day at Noon, some body knocked at the Door, and they told me there was one would speak with me, and I came down, and there was one *Gaunt* in the Shop; says he, is Mr. *Burton* within? may I speak with him? Yes, said I: up I went, and *Gaunt* with me; and when we came into the Room they embraced one another, and were very glad to see one another, and *Burton* gave Mr. *Gaunt* thanks for a Guinea he had sent him; says *Gaunt*, Mr. *Burton*, I am glad to see you; I hope in a little time I shall have a Passage for you beyond Sea; says he, if you had been here a while sooner you might have gone; there are some Gentlemen went away a while ago; says I to Mr. *Gaunt*, Who were they? he told me it was Major—— and his Son, and another: says I to Mr. *Gaunt*, Do you hear of *Ferguson*? no says he, I hear nothing of him as yet, but in a little time I may hear from him; and *Burton* asked, when he thought he might be going; in a Day or two's time said he: says *Burton*, I have no Money nor no Cloaths; says he, take no care for that, so he named some Gentlemen that were to go: He told him of Colonel *Danvers* and Major *Wildman*. Upon this Discourse, within my self I did consider what way I might do his Majesty a piece of Service: I thought it better to forbear, and not to seize him presently, till I had acquainted some Magistrate; and I did think in the Morning to have gone to a Justice of Peace and have had him apprehended: *Burton*, my Lord, I knew was secure, for he could not escape my Hands. I had no Design of concealing him; I have several eminent Gentlemen to testify for my Loyalty: I thank God, I never had an ill Thought against His Majesty in my Life, only this Misfortune hath befallen me upon the account of my Wife. I am as innocent as a Child unborn, as to any thing against the King.

L. C. J. *Jones*. But he plainly told you, he came from the Army.

Mr. *Fernley*. He did acquaint me, my Lord, he did so; as soon as I saw him, I was startled; I did look upon it as a thing sent from God Almighty; for I knew my Lord, that there was 100*l.* for him; I knew there was a Proclamation out against him; but as for the Outlawry, I knew nothing of that: a Proclamation I knew there was against him, and being a poor Man, there was no Obligation upon me to conceal him and ruine my self and Family.

L. C. J. *Jones*. What was the reason, you were so kind as to part with your own Lodging to entertain him?

Mr. *Fernley*. My Lord, I had fitted my Chamber before he came to the House.

Mr. *Just. Withins*. It is proved, you did it upon his account.

Mr. *Fernley*. My Lord, no body will offer to say that.

L. C. J. *Jones*. That you quitted your Lodging, and that he came into the same Lodging, is clearly proved.

Mr. *Fernley*. My Lord, my Chamber was fitted above a Week before he came, not knowing of him, for I had no Thoughts of him.

L. C. J. *Jones*. Pray, what Servants have you?

Mr. *Fernley*. Only a Boy, my Lord.

L. C. J. *Jones*. Could not you have sent out your Boy when he had discoursed thus treasonably with you, but keep him in your House seven or eight Hours after you had entertain'd him at Dinner?

Council. Are you a Constable?

Mr. *Fernley*. I am a Constable my self, and upon the account of my Office I was the more secure. It was certain he could not escape my Hands, and I thought to do his Majesty more Service.

L. C. J. *Jones*. How could you do His Majesty more Service?

Mr. *Fernley*. *Gaunt* told him, he would come again to him.

L. C. J. *Jones*. When did he come to you?

Mr. *Fernley*. About half an Hour after Dinner.

L. C. J. *Jones*. But you should have seized him immediately after Dinner. How came this Man to take so much Freedom before you that were an Officer, as to talk High-Treason?

Mr. *Fernley*. My Lord, I thank God if I were to die this Minute, I never harbour'd a Thought against the King.

L. C. Baron. If you had had a loyal Heart, you should have kept *Gaunt*, if you had any Thoughts to have done it.

Mr. *Fernley*. My Lord, I will tell you why I let *Gaunt* go, because he promised to come again the next Day.

L. C. J. *Jones*. Would you, being a Constable, let a Man go upon his Word, that had confessed himself guilty of Treason?

Mr. *Fernley*. My Lord, if I did any thing, it was ignorantly. My Lord, as for *Gaunt*, when I knew there was a Proclamation out against *Danvers* and *Wildman*, I hearing *Gaunt* discoursing about their Design, I thought (promising to come the next Day) to know how they were to go.

Mr. *Just. Levins*. For God's Sake, would you trust all this to your own Breast? If you had had an honest Intention, you would have gone to some Officers, and acquainted them with it; some of the King's Justices of the Peace, or some of the Privy-Council, that such Persons would be at your House the next Day.

L. C. Baron. By your own Discourse, after you had heard all this Discourse, and after *Burton* had told you this, you could let him go quietly to his own Chamber: If you had such a Design as you say, you should have first seized *Burton*.

Mr. *Fernley*. Another Chamber; no, he dined in his Chamber, my Lord.

Mr. *Just. Withins*. You went into another Chamber from him. Have you any Witnesses?

Mr.

Mr. *Just. Levins*. They had a Confidence in you, otherwise *Burton* and *Gaunt* would not have talk'd so freely before you.

L. C. J. Jones. There was a great Confidence in lodging him in your House, being a Constable: no body would search a Constable's House. Have you any Witnessees to call?

Mr. *Fernley*. Mr. *William Rush*, Captain *Haddock*, (who were call'd.)

L. C. J. Jones. Did *Burton's* Wife dine with you and him?

Mr. *Fernley*. Yes, my Lord.

L. C. J. Jones. Where did you dine?

Mr. *Fernley*. In the Chamber, my Lord.

L. C. J. Jones. And was this Discourse concerning *Monmouth's* being beaten in the *West*, at the time of Dinner?

Mr. *Fernley*. The Discourse of it? Yes, my Lord; what Discourse was, was at Dinner?

Mr. *Just.*—Was *Burton's* Wife at Dinner, or was she upon the Bed?

Mr. *Fernley*. She din'd at the Table, my Lord. My Lord, she went to sleep when *Gaunt* came in.

Mr. *Just. Levins*. Where did she go to sleep, in the same Room?

Mr. *Fernley*. Yes, my Lord.

L. C. J. Jones. Where do you use to dine at other times?

Mr. *Fernley*. In the Kitchen, my Lord. My Lord, when I came from Church, the Dinner was sent up thither.

L. C. J. Jones. Woman, you are upon your Oath, remember that you are oblig'd by your Oath to confess the Truth, let it concern whom it will: The Discourse between your Husband and this Man you could not but be privy to; there was only you three at Dinner, your Husband, you and *Fernley* the Prisoner at the Bar: All this Discourse was at Dinner-time, how is it possible that you should not hear it?

Mr. *Just. Levins*. *Fernley* himself owns he did discourse with your Husband at Dinner that he came from the Rebels in the *West*.

Mrs. *Burton*. An't please you, my Lord, I did not hear. As I said before, I must say again, I did not hear.

Mr. *Just. Withins*. Nothing about *Monmouth*?

Mrs. *Burton*. No, not one Word, if I were to die as I stand here.

Mr. *Just.*—You were at Dinner?

Mrs. *Burton*. Yes, my Lord.

Mr. *Just.*—And this Discourse was at Dinner-time.

Mrs. *Burton*. I did not hear it.

Mr. *Just. Withins*. What would you ask him, Sir?

Mr. *Fernley*. What account he can give of my Life and Conversation, how I have behaved my self, and carried my self.

L. C. J. Jones. What are you, Sir? What is your Quality?

Mr. *Rush*. I am a Distiller, Sir.

Mr. *Just. Levins*. Where do you dwell?

Mr. *Rush*. I did dwell two Years ago in *Wapping*, but not now: I live now at *Walsham-Stow*.

Officer. He is a very great Whig.

Mr. *Just. Withins*. If he be a Whig, he can't be a little one.

L. C. J. Jones. How long have you liv'd at *Walsham Stow*?

Mr. *Rush*. Two Years and upwards, Sir.

L. C. J. Jones. That is long before any thing that this Man is charged withal.

Mr. *Rush*. I formerly knew the Man, he was a Barber, and us'd to trim me: I always looked upon him to be a good sober Man.

Mr. *Just. Withins*. A *Wapping-Man*, a sober *Wapping-Man*.

Mr. *Rush*. I hope there is a great many there.

L. C. J. Jones. That is all you can say for him.

Mr. *Rush*. I have nothing to say to his Fact: He demeaned himself always well among his Neighbours; I know nothing of the Fact for which he is here.

Mr. *Att. Gen.* Did you know *Burton*?

Mr. *Rush*. Yes, Sir.

Mr. *Att. Gen.* What was *Burton*? was he reputed an honest Man?

Mr. *Rush*. I never knew him otherwise; I never was in his Company; I know he dwelt close by where I liv'd.

L. C. J. Jones. And you took him to be a very honest Man?

Mr. *Rush*. Before this: He has not been so lately, it seems. He is a Person I never had any Company or Conversation with in my Life.

Cryer. Captain *Haddock*.

Officer. He won't come in, my Lord.

L. C. J. Jones. Well, well, let him stay there.

Cryer. Mr. *Dove*.

Officer. He won't come in, I can't make him come in.

L. C. J. Jones. Here are none that give any Testimony for you, at least will.—What are you?

Mr. *Whittal*. I dwell in *Wapping*, Sir.

Mr. *Just. Levins*. What trade are you?

Mr. *Whittal*. A Plumber.

Mr. *Just. Levins*. Who knows you?

Mr. *Whittal*. I am well known there, Sir.

Mr. *Just. Levins*. Do you go to Church?

Mr. *Whittal*. Here's Mr. *Tanner* knows me, the Clerk of the Peace.

Mr. *Tanner*. Yes, Sir, I know him.

Mr. *Just. Levins*. Do you go to Church?

Mr. *Whittal*. Always went to Church.

Mr. *Just. Withins*. There were a parcel of them that went constantly to Church trimmily.

L. C. J. Jones. Prisoner, what would you ask him?

Mr. *Fernley*. Only to give an account how I behaved my self.

Mr. *Just. Withins*. Well, Sir, what do you say?

Mr. *Whittal*. All I know is, he behav'd himself very well, and went to Church as other Neighbours did; and I never heard him speak against the Government.

Mr. *Just. Withins*. Did you know *Burton*?

Mr. *Whittal*. No, Sir; he was gone before I came to live there.

L. C. J. Jones. Have you any more to say?

Mr. *Fernley*. This, my Lord, may give some account that I had no Design against the Government. I am a poor Man, my Lord, and upon that account I owe a great deal of Money: I knew there was 100 l. for securing *Burton*, there was no gain by concealing him; he was not a Person could requite me, that I should harbour him, and lose 100 l. which was certain for taking him; which (my Lord) shews I had no Design.

L. C. J. Jones. No, this argues you to be a stronger Confederate; and that you were so firm

to your Parry, you would not gain 100 l. though you might have it for doing your Duty.

Mr. *Fernley*. My Lord, I look'd upon it as sure as if I had it in my Pocket. I knew nothing of him till *Sabbath-day* at Noon, and I did not design to conceal him afterwards, any farther than to serve the King.

L. C. J. *Jones*. You tell us a Story of your self, it is to no purpose to try any Prisoner, if his Saying must be taken for Evidence: We will hear what Witnesses you have to produce, or if you can object to the Evidence that's against you.

Mr. *Fernley*. My Lord, I own it to be true, I have declared more than the Witnesses have said against me; but my Lord, I am innocent in it, God knows my Heart, I had no design in it. It was but six Hours I knew of him.

Mr. *Just. Withins*. You lay out of your Bed before.

Mr. *Fernley*. My Lord, not upon his account, I was a Week before out of that Bed, to prepare it for my Wife to lie-in.

L. C. J. *Jones*. Is your Wife delivered?

Mr. *Fernley*. No.

L. C. J. *Jones*. You made great haste.

Mr. *Fernley*. It was my Wife's fault.

L. C. J. *Jones*. Gentlemen of the Jury, this Prisoner stands indicted for harbouring and relieving one *James Burton*, knowing him to have committed Treason. Gentlemen, you are to be acquainted, that this *James Burton*, was not only guilty of the late Rebellion in the *West*, but he was likewise charg'd by Process with being guilty of the Plot at the *Rye-house*, and thereupon there was such Proceedings by Law, that he was Outlawed, the Record of which Outlawry hath been produced to you; so that if there were no more, if you be perswaded that he is the Person guilty, whether he were in the Rebellion in the *West* or no, that may induce you to find this Indictment, for the Prisoner receiving him after the Rebellion in the *West*, and knowing him to have committed Treason, whereupon he was Outlawed, it equally makes him liable to the Offence where-with he is charg'd. But, Gentlemen, that is not all; you have express Testimony from *Burton* himself, who it seems was acquainted with him, and who had fled from his Neighbourhood, by the space of two Years almost, and yet he receives this *Burton* into his House: I will not say, at the first time that he came into his House, it doth appear by any Evidence, that he knew him to have been in the Rebellion in the *West*, but when he came thither upon *Friday*, he was so kind to him as to leave his own Chamber, and to let him have that for his Lodging, although now he gives you another Excuse plainly frivolous and false, that is, a Pretence of making way for his Wife to lie-in, who yet is not delivered. He lies there upon *Saturday* Night, and dines with him upon *Sunday*. *Saturday* perhaps might be a busy Day, and there is no Testimony at all given by any Evidence of any Discourse that was between them upon that Day, but upon *Sunday*, when they dined together, *Burton* swears, that he did tell him that he had been in the *West* in the Rebellion there, and he came thither for shelter: This Man being acquainted with this, allowed him to dine with him, and harboured him in his House for the space of seven or eight Hours more, without bringing him before any Justice of Peace, or any Magistrate who had Authority to commit

him, although he had a particular Authority of his own (as he was Constable) for the Conservation of the Peace, yet he forgets his Oath as well as his Duty and Allegiance, and suffers him still to remain there. It is true the Wife of *Burton* dined with them, as *Burton* himself says; and the Woman confesses, but she was so busie at her Victuals, that she can remember nothing, she did not hear that there was any Discourse concerning *Monmouth*. But lest you should want another Witness, for *Burton* is but one Witness to that particular, you have him plainly confessing it himself, which is above a Thousand Witnesses, you have him confessing that *Burton* did acknowledge he had been in the *West*, and that *Monmouth* was Roured, and yet he continues him in his House: nay more, this Man doth appear to be a Person in whom there was that great Confidence, that another Person, *Gaunt* came, and he bids him come into his House, and there he discours'd of some Traytors, and the means of conveying away *Burton*, though he had confess'd it himself. Gentlemen, what he tells you, is, that he did mean to discover; when did he intend to discover? He did not discover to any body, before the Man was apprehended by an Officer: he lets *Gaunt*, who plainly appears to be as arrant a Traytor as could be in the World, to go away merely upon his own Parole, without taking any course to apprehend him. He pretends he is a poor Man, and he might have gain'd 100 l. if he had discover'd him, and surely he would have discover'd him, to gain 100 l. but this is a strong Argument, that he was deep in the Rebellion himself, and one in great Esteem with them, that being a poor Man, he would not do his Duty, for which he might have had a Reward of 100 l. but suffers him to escape. This is the Case, Gentlemen, that is before you, if you believe he did knowingly, as he himself upon the matter doth confess, give any comfort or relief to *Burton*, knowing him to be a Rebel, you ought to find him guilty.

Then the Jury withdrew to consider the Evidence.

Clerk. Set *Elizabeth Gaunt* to the Bar, (which was done.) *Elizabeth Gaunt*, hold up thy Hand, (which she did.)

THou standest indicted by the Name of *Elizabeth Gaunt*, Wife of *William Gaunt*, of the Parish of *St. Mary White-Chappel*, in the County of *Middlesex* Yeoman: As a false Traytor against our late Serene Lord *Charles* the Second, by the Grace of God her then natural Lord; not having the fear of God in her Heart, nor weighing the Duty of her Allegiance, but moved and seduced by the Instigation of the Devil, and the true and natural Obedience which a true and faithful Subject of our said Sovereign Lord the King towards our said late Lord the King of right ought to bear withdrawing, and with all her Strength intending the Peace and common Tranquillity of this Kingdom of *England* to disquiet, molest and disturb, and War and Rebellion against our said late Sovereign Lord the King, within this Kingdom of *England* to stir up and move, and the Government of our said late Sovereign Lord the King in this his Kingdom of *England* to subvert, and our said late Sovereign Lord the King from the Title, Honour, and Kingly Name of the Crown Imperial of this Kingdom of *England*

to depose and deprive, and our said late Sovereign Lord the King to Death, and final Destruction to bring and put. The 24th Day of September, in the 36th Year of the Reign of our said late Sovereign Lord (Charles the Second, and divers other Days and Times as well before as after, within the Parish, &c. Falsly, maliciously, devilishly and traiterously with divers Rebels and Traitors, to the Jurors unknown, she did conspire, imagine, and intend our said late Sovereign Lord the King, her then supream and natural Lord, not only from his Kingly State, Title, Power and Government of this Kingdom of England to deprive and throw down, but also our said late Sovereign Lord the King to kill and put to Death, and the ancient Government of this Kingdom of England to alter and wholly subvert, and a miserable slaughter amongst the Subjects of our said late Sovereign Lord the King throughout this Kingdom of England to cause and procure, and Insurrection and Rebellion against our said late Sovereign Lord the King to procure and assist. And the said most wicked and devilish Treasons and traiterous Compassings, Imaginations, and Purposes aforesaid, to fulfil, perfect, and bring to pass, the said Elizabeth Gaunt, as a false Traytor, then and there, to wit, the said 24th Day of September, in the Year aforesaid, at the Parish and Ward aforesaid, well knowing one James Burton to be a false Traytor, and as a false Traytor traiterously to have compassed and imagined the Death and Destruction of our said late Sovereign Lord the King, and War and Rebellion against our said late Sovereign Lord the King within this Kingdom of England, together with other Traytors (to the Jurors unknown) to have intended to be raised; she the said Elizabeth Gaunt afterwards, to wit, the said 24th Day of September, in the Year aforesaid, within the City of London aforesaid, the said James Burton, in a certain House of a Person to the Jurors unknown, knowingly, secretly, wickedly, devilishly and traiterously, did entertain, conceal, comfort, sustain, and maintain, and then and there, for the comforting, sustenance, and maintenance of him the said James Burton, Meat, Drink, and 5 l. in Money for the Maintenance and Sustenance of him the said James Burton, unto the said James Burton, maliciously, and traiterously, she did give and deliver, and cause to be given and delivered, against the Duty of her Allegiance, and against the Peace, &c. and against the Form of the Statute, &c.

Clerk. How sayest thou, art thou guilty or not guilty?

Mrs. Gaunt. I desire to have more time to consider of it.

L. C. J. Jones. You know whether you be guilty of this Offence; what need you have any time of Consideration for that?

Mrs. Gaunt. I don't know, Sir; I am ignorant in the Law, and in things of that nature.

L. C. J. Jones. But this is not matter of Law; it is, whether you did receive these Traytors or no knowingly; this James Burton, knowing him to have committed Treason: Can't you tell whether you did or no?

Mrs. Gaunt. Not guilty.

Clerk. How wilt thou be try'd?

Mrs. Gaunt. By God and my Country?

Clerk. God send thee a good Deliverance.

Then the Middlesex Jury returning, Mrs. Gaunt was set aside, and Ring and Fernley brought to the Bar, who were both brought in guilty by the Jury.

Clerk. Set Henry Cornish to the Bar, and Elizabeth Gaunt, (which was done).— You the Prisoners at the Bar, these Men that have been now called, and here appear, are to pass between our Sovereign Lord the King and you, upon your several Lives or Deaths: If you challenge any of them, you must speak as they come to the Book to be sworn, before they are sworn.

Mr. Cornish. My Lord, I must humbly beg leave of your Lordship and this honourable Court, that I may renew my Request. The time of notice given me for my Tryal being so short, it hath no Precedent, I think: I humbly pray your Lordship I may have time allowed for my Tryal; I have had no Council, no Pannel, no help in the World; I had not Pen, Ink, nor Paper, my Lord, these are very hard things. My Lord, His Majesty was petitioned last Night by my Children, and he was graciously pleas'd to say, that he would refer it to my Lords the Judges. I only pray your Lordships, that you would be pleas'd to allow me time: Though here is a grievous Indictment brought against me, yet I doubt not but to clear my self of what is alledged against me, if I have but time to prepare my self for it: therefore I humbly pray I may have time allotted.

L. C. J. Jones. You told us so before, that you had exhibited a Petition to the King and that the King did refer it to the Judges, you shew us nothing of that.

Mr. Cornish. My Lord, I can but only signify to your Lordship what I hear; my Children were with me, and told me they had petitioned the King, and his Majesty was pleas'd graciously to receive it.

Mr. Att. Gen. The King left you to the course of the Law.

Mr. Cornish. It is very hard measure; I have no preparation at all, no more than at the first moment; but I bless God I hope I shall in time satisfy you of my Innocency.

L. C. J. Jones. You were apprehended and seized upon Tuesday last, this is almost a week; you knew what you were charged withal.

Mr. Cornish. My Lord, I did not know what I was charged withal. I had no liberty of Friends to come to me; my Wife at length obtained leave, but it was in the presence of Major Richardson; I had no Friend with my Wife, no Pen, Ink, nor Paper.

L. C. J. Jones. Was Pen, Ink, and Paper deny'd you? did you ask it?

Mr. Att. Gen. As soon as he petition'd for it he had it.

Capt. Richardson. He had Pen, Ink, and Paper.

L. C. J. Jones. When was that?

Capt. Richardson. On Saturday.

Mr. Cornish. My Lord, it was eight a clock at night.

Mr. Just. Levins. Mr. Cornish, I would not have you think you are used otherwise than other men are; for I must tell you it is not usual to have Pen, Ink, and Paper, without leave.

Mr. Cornish. I know it hath been allowed in the like case.

Mr. Just. Withins. Ay, upon petition, never else.

Mr. Just. Levins. There are many men, and of as good quality as you, tried for killing men: does

does any body give them notice? Is there any more necessity of notice in point of Treason, than in point of Murther?

Mr. *Just. Withins*. I told you what your offence was, when you were committed.

Mr. *Cornish*. My Lord, I remember in my Lord *Russel's* Case he had at least seven or eight days allowed him.

Mr. *Just. Levins*. It may be so; but it is not necessary. Prisoners that are tried here generally have no notice at all; if one man hath a singular favour, another man cannot claim it.

Mr. *Cornish*. My Lord, I have a material Witness above 140 miles off.

L. C. *J. Jones*. My Lord's Trial, I think, was put off but till the afternoon.

Mr. *Cornish*. With submission to your Lordship, I think he had eight days assign'd him. But my Lord, I humbly conceive I have a Witness that is very material in my Case, that is 140 miles out of Town, in *Lancashire*; I humbly pray I may have time allotted me to send for him.

L. C. *J. Jones*. Why did not you set forth that in your Petition to the King?

Mr. *Cornish*. My Lord, I did not understand the case.

L. C. *J. Jones*. Were not you committed for High-Treason?

Mr. *Just. Withins*. I told you so my self: I shew'd you the Commitment; therefore you can't pretend you were ignorant of it.

Mr. *Cornish*. My Lord, it did not mention this King or the last: And I am not a Lawyer, I am not skill'd in these things; I am very ignorant, and hope your Lordship will consider me; my Innocence will appear as bright as any mans that ever stood at this Bar.

L. C. *J. Jones*. I don't believe you want that Evidence 140 miles off. Is he the only man that can make your Innocence appear?

Mr. *Cornish*. My Lord, by what I apprehend he will be the most material Witness I have. My Lord, I shall desire nothing but with submission to your Lordship and the Bench; but I humbly conceive it is very reasonable I should have time, I humbly pray your Lordship to consider it.

L. C. *J. Jones*. Mr. Attorney, have you any directions?

Mr. *Att. Gen.* No, my Lord.

Mr. *Cornish*. I do not doubt, if I might have a little time, to make my defence.

Mr. *Just. Withins*. You should have applied your self to the King, it does not lie in our power.

Mr. *Cornish*. My Lord, I humbly pray you to consider my case.

Mr. *Just. Withins*. Mr. *Bridgman* here on the Bench says, there was a Petition before the King for putting it off, and the King absolutely refus'd it.

Mr. *Just. Levins*. We have nothing to do, Sir; we are here by Commission to try you.

Mr. *Cornish*. My Lord, I have been denied a copy of the Pannel, I hope that is reasonable; I must desire a copy of the Pannel.

Mr. *Att. Gen.* That is none of your right, Mr. *Cornish*.

Mr. *Cornish*. Mr. Attorney, with submission, I hope I ought to have it.

Mr. *Att. Gen.* No, you ought not to have it; You have your peremptory challenges, you may challenge 35 without cause.

L. C. *J. Jones*. You shall have a copy of the Pannel here.

Mr. *Att. Gen.* Yes, here he may.

Mr. *Cornish*. It is a very hard case, when I have a material Witness so far out of Town, that I can't have a little time allotted.

L. C. *J. Jones*. Can't every man that comes here to be tried say the very same thing, that he hath a material Witness in *France*, *Spain*, or any where else, and that when that Witness comes his Innocence will be as clear as the Sun?

Mr. *Cornish*. My Lord, my Witness is in *Lancashire*, I cannot help it; I beseech your Lordship to consider me: I apt to believe that he would so much vindicate my Reputation in this matter, that it would be a very great satisfaction to your Lordships; and I am sure you are not for oppressing any man.

L. C. *J. Jones*. No, Sir, that we are not.

Mr. *Cornish*. I am sure you are for the just vindication of the Government, for executing of Justice, and I will desire no other than that.

L. C. *J. Jones*. Mr. Attorney, if you pray he may be tried, we can't deny it.

Mr. *Att. Gen.* Mr. *Cornish*, I cannot defer it, I have no authority; and why you should be in another condition than other Prisoners, I don't know; you have not deserved so well of the Government.

Mr. *Cornish*. I have not the names of the Wards where these men live, and their Trades.

Mr. *North*. He hath a copy of the Pannel, and that is sufficient.

L. C. *J. Jones*. You may ask them where they live.

Mr. *Cornish*. I hope I may have Pen and Ink, my Lord.

L. C. *J. Jones*. Ay, ay.

Then the Jury were called, and after Mr. *Cornish* had challenged 35 of them, the Jury sworn were as followeth:

Thomas Rawlinson	William Clowdissy.
Thomas Langham.	Richard Holford.
Ambrose Istead.	William Longboat.
Thomas Pendleton.	Steven Coleman.
John Grice.	Robert Clavel.
Thomas Oneby.	William Long.

Proclamation being made, If any one can inform, &c. Mr. *Cornish* was set aside, and *Elizabeth Gaunt* at the Bar.

Clerk. *Elizabeth Gaunt*, hold up thy hand. (which she did.) — You of the Jury, look upon the Prisoner, and hearken to her Cause: She stands indicted by the name of, &c. (as before in the Indictment.) Upon this Indictment she hath been arraigned, and thereunto pleaded not guilty, and for her Trial hath put her self upon her Country, which Country you are. Your Charge is, to enquire whether she be guilty of this High-Treason whereof she stands indicted, or not guilty. If you find her guilty, &c.

Mr. *Phipps*. May it please your Lordship, and you Gentlemen that are sworn, *Elizabeth Gaunt* the Prisoner at the Bar stands indicted, for that she knowing *James Burton*, together with other Traitors traiterously to have conspired the death of the late King, and to raise Rebellion in this Kingdom, did harbour the said *James Burton*, and gave him five Pounds in Money.

Mr. *Att. Gen.* May it please your Lordship, and you Gentlemen that are sworn, the Prisoner stands indicted for harbouring of *Burton*, who was

a great Traitor, and for procuring a way for his escape beyond-sea, and also for giving him *5l.* to bear his charges. In the former Trial you had an account of her Husband, and in this you will hear she and her Husband were the great Brokers for carrying over such Traitors, as my Lord *Shaftsbury* and others; these have taken care to convey them over at all times. We will produce our Witnesses. Call *Burton* and his Wife.

Mr. *Burton* sworn.

Mr. *Att. Gen.* Do you know Mrs. *Gaunt*?

Mr. *Burton.* Yes, Sir.

Mr. *Att. Gen.* Pray give my Lord and the Jury an account how she harbour'd you, and all the passages that pass'd between you and Mrs. *Gaunt*. Pray tell first whether you were engag'd in the matter of the *Rye*?

Mr. *Burton.* How I came concerned I will tell you, if it please you.

Mr. *Att. Gen.* Speak.

Mr. *Burton.* The first time I knew any thing of it, Mr. *Keeling* came to me one Saturday morning, and asked me if I was to go to *London*: I said, Yes, I was to go to the *Exchange*; and he desir'd me to meet him at the *Miter-Tavern* within *Aldgate*, and ask for *Number Five*. I came at the time, and no body being there, I was going away, and met with a Countrey-man with a stick in his hand, that had but one Eye; he came and ask'd for the same Number: So the Gentleman sent his Boy after me, and told me one stay'd for me: When I came, he ask'd me if I ask'd for *Number Five*; and I said, Yes. By whose appointment? By *Jesiah Keeling's*, said I. So he ask'd the man of the house to shew a Room: He shew'd a Box, but he would have a Room, and went up stairs, and call'd for Pipes and a Candle, and a pint of Wine. In a little while *Keeling* came in, and brought *Barber* and *Thompson*; and no body spake almost any thing but *Rumbold*, (that was *Rumbold* with one eye, for *Keeling* when he came in call'd him Capt. *Rumbold*) and *Rumbold* talk'd about Priviledges and such things at first and he said his house was a convenient house, and there they might do the business: but before they had done, I found they design'd to kill the King, but nothing troubled him but killing the *Pottillion*, to kill a man in cold blood. But then says we, If you are for killing, we have done, and so broke up; that was the end of that. A while after Mr. *Keeling* went in, and made a Discovery: I never came among them afterwards. So after Mr. *Keeling* had discovered, I was in the Proclamation for being there at that meeting, and absconded my self, and lay hid. A matter of two months after, Mrs. *Gaunt* came to enquire of my Wife where I was, to speak with me; she brought her to me. She told me there were some persons about to make an escape, and would have me go along with them. I told her with all my heart: So I ask'd her which way and how they intended to go: She told me they had provided Horses to ride down to *Rochford-Hundred*, and there was a Vessel to carry them over; and, says she, be ready by such an evening, and I will call for you. Accordingly she did and had me into *Bishopsgate-street*, and in *Half-moon-Alley* in a little Brew-house, up stairs in a Chamber, there were both the *Rumbolds*, one of them did not go, and the other and I lay there all night, and in the morning a man came and called us away, and we went to *White-Chappel* to take Horse, to ride down to

Rochford-Hundred, and staid for the Vessel two days; and when we met the Vessel, it was a small Vessel, and bad weather, and the Master of the Vessel had but one hand, and two Boys, one a very little one; and we went down the Creek, and I asked the man where he did intend to land us; and he told us at *Ostend*. said I, I understood we were to go for *Holland* to the *Brill*. Says he, My Vessel is only able to go to *Ostend* or *Dunkirk*, either of them. Says *Rumbold*, I don't understand the Sea. Says I, This is a very small Vessel, and leaky, and the man not able to manage it. Says I, I will go back again to *London*. Says he, I will do as you do; and we both parted at *London*, and I never saw him afterwards, till I saw him at *Amsterdam*. I lay by a great many months after; then Mrs. *Gaunt* came to me again, and told me there was two other persons going and I might have a passage if I would go: So she bid me be ready by such an evening, and I was ready, and a Boat being ready at the water-side, carried me to *Gravesend*, where I went in a Vessel to *Amsterdam*.

Mr. *Att. Gen.* Where were you?

Mr. *Burton.* I was with my Wife at my Daughters: I had a Daughter married, her Husband was drown'd.

Mr. *Att. Gen.* How came Mrs. *Gaunt* to take so much care of you? give the Court an account.

Mr. *Burton.* She might think I knew something of her Husband if I should be taken; I suppose that might be the chief thing.

Mr. *Att. Gen.* What had her Husband done?

Mr. *Burton.* Her Husband, I suppose, knew something of the business.

Mr. *Att. Gen.* What business?

Mr. *Burton.* About seizing the *Tower*: He came to me, and would have had me gone with him with Capt. *Walcot* to the *Tower*, to see what force there was of Soldiers; and Capt. *Walcot* said he had a design to take an house over against the *Tower*, to put in some men there to break in upon the *Tower*, and *Gaunt* was with him.

L. C. J. *Jones.* What discourse had you with her about the Plot?

Mr. *Burton.* Nothing with her.

Mr. *Att. Gen.* What was it she would help you away for?

Mr. *Burton.* I suppose this was the reason, because she knew I knew her Husband was concern'd.

Mr. *North.* Did she assist you with any money?

Mr. *Burton.* Yes.

Mr. *North.* How much?

Mr. *Burton.* She gave me a parcel of money just as I was going away; I put it among other money.

Mr. *North.* How much? 30 or 40 s.?

Mr. *Burton.* More than that.

Mr. *Sol. Gen.* Were you gone from your own house when this woman came to you?

Mr. *Burton.* My own house was broke up a great while before.

Mr. *Sol. Gen.* Did you appear publickly when she came to you?

Mr. *Burton.* No an't please you.

L. C. J. *Jones.* Had there been any search for you before?

Mr. *Burton.* Yes.

Mr. *North.* You were in the Proclamation at this time?

Mr. *Burton.*

Mr. *Burt n.* Yes an't please you, Sir.

Mr. *Att. Gen.* Did she carry you to *Rumbold*?

Mr. *Burton.* Yes.

Mr. *Att. Gen.* Was there any discourse between *Rumbold* and her?

Mr. *Burton.* No. There was an elderly man in the house, I did not know him, carried me up to *Rumbold*, there was both of them.

Mr. *Att. Gen.* What money had you of her?

Mr. *Burton.* I believe about 5*l.* I told her I had lain a great while, and money was very bare with me; and she told me she would get me a little.

Mr. *Att. Gen.* Did she know what you were conceal'd for?

Mr. *Burton.* Every body knew that, because I was in the Proclamation.

Mr. *North.* What directions did she give you how you should behave your self when she went with you to *Bishopsgate-street*? how did she say you must carry your self?

Mr. *Burton.* Nothing there, she gave no order about that.

L. C. *J. Jones.* Did she tell you you were concern'd in the Plot with her Husband?

Mr. *Burton.* She did not tell me so, Sir.

L. C. *J. Jones.* Did you tell her you were concern'd in the Plot with her Husband?

Mr. *Burton.* I did not tell her so.

Mr. *Att. Gen.* Who were the two Men that were prepared to go with you that time?

Mr. *Burton.* One *Patchil*.

Mr. *Att. Gen.* He was kill'd in the Fight. Was *Patchil* in the Fight?

Mr. *Burton.* Yes, an't please you, he was killed.

Mr. *Att. Gen.* And who was the other?

Mr. *Burton.* T'other was a Man liv'd in *South-wark*; I never saw him before.

Mr. *Com. Serj.* What Directions did she give you about your own Name, or any others when you went in the Boat?

Mr. *Burton.* If I knew any body, that I should not take notice I knew them.

L. C. *J. Jones.* You were not to take any Acquaintance of any body in the Boat?

Mr. *Just. Withins.* Hark you, Sir, you looked upon all those to be engaged in the Plot. All that she endeavour'd to save were of the same level?

Mr. *Burton.* *Rumbold* was; *Rumbold* was in the Proclamation.

L. C. *J. Jones.* Did she tell you, that you were in the Proclamation?

Mr. *Burton.* No, an't please your Lordship, she did not tell me so.

Mr. *North.* Did she never discourse of your being in the Proclamation?

Mr. *Burton.* No, not as I remember; it was a general thing.

Mr. *Just. Withins.* But why should she come to you to transport you, if it were not for such a thing?

Mr. *Burton.* Her Husband was with me about going to the *Tower*.

Mr. *Att. Gen.* *Burton*, pray thus, when you came from the *West*, what Overtures were to help you here from her or her Husband?

Mr. *Burton.* Her Husband was with me at *Fernley's* House, and he told me there were two or three Persons to go in two or three Days, and I should go along with them.

Mr. *Att. Gen.* You named your Daughter, what is her Name?

Mr. *Burton.* *Mary Gilbert.*

Then Mary Gilbert was called and sworn.

Mr. *Att. Gen.* Do you know Mrs. *Gaunt*?

Mary Gilbert. Yes, Sir, I know her; she was our Neighbour.

Mr. *Att. Gen.* Then give an account of her coming to you about your Father.

Mary Gilbert. She came to our House that Night my Father went away. I never heard a Word of the Discourse that past, for I always went out of the way.

Mr. *Just. Withins.* Why did you go out of the way?

Mary Gilbert. Because they were not willing I should hear the Discourse.

Mr. *Com. Serj.* You are upon your Oath, Mistress, you must tell the Truth.

Mary Gilbert. I do, Sir, I will tell no more.

Mr. *Sol. Gen.* Did you see your Father go away? Who did he go with, in what Company?

Mary Gilbert. I can't tell.

Mr. *Att. Gen.* Did Mrs. *Gaunt* go with him?

Mary Gilbert. I met my Father and Mrs. *Gaunt* in *Houndsditch*, my Mother and I were to meet them in *Bishopsgate-street*.

Mr. *Com. Serj.* Well, what was the reason why you did not meet?

Mary Gilbert. We were to meet at seven a Clock, and we went to the House, and they were not come; and we were coming home, and met them in *Houndsditch*, and my Father had Mrs. *Gaunt* under the Arm, and went back to a House without *Bishopsgate*.

Mr. *Sol. Gen.* Did Mrs. *Gaunt* carry him thither?

L. C. *J. Jones.* Do you know why your Father was to go away?

Mary Gilbert. He went upon the account of the Proclamation.

L. C. *J. Jones.* Then you knew of the Proclamation?

Mary Gilbert. Yes, Sir, I knew of the Proclamation.

Mr. *Com. Serj.* Whose Acquaintance was the Man in *Bishopsgate-street*?

Mary Gilbert. He was none of mine.

Council. When your Father went up Stairs into a Room, did you see any body with him?

Mary Gilbert. Yes, Sir, it was a Man that had but one Eye, a full set Man, full of Pock-holes; but I never saw him before nor after.

Council. How came you to see him?

Mary Gilbert. By going up Stairs to see my Father.

Mary Burton sworn.

Mr. *Att. Gen.* Do you know Mrs. *Gaunt* there?

Mrs. *Burton.* Yes, Sir.

Mr. *Att. Gen.* Pray will you tell the Court, how she came to enquire after your Husband?

Mrs. *Burton.* Yes, Sir, at my Daughter's House.

Mr. *Att. Gen.* What Discourse happened between you?

Mrs. *Burton.* No Discourse, but she said if I was willing, my Husband should go away, and she would take care.

Mr. *Att. Gen.* But why should he go away?

Mrs. *Burton.* I don't know why, but only upon the Proclamation.

Council. Woman, did she take notice your Husband was gone from home, and had left his House?

Mrs. Burton. I knew my self, my Lord.

Mr. Just. Levins. Where did you go?

Mrs. Burton. My Husband went out of Doors by his own self, by Appointment, and we were to meet, my Child and I together, without *Bishopsgate* by the *Catherine-wheel*.

Mr. Com. Serj. Who made that Appointment?

Mrs. Burton. Mrs. Gaunt.

Mr. Com. Serj. Upon what account did she come to you to secure your Husband?

Mrs. Burton. Upon the account he was in the Proclamation, and I thought within my self, for fear my Husband should know any thing against her Husband; but I never said so, for I was glad my Husband should be helped away, willing to save his Life, for I knew it was Death.

Mr. Just. Levins. And you took that to be the meaning of it in reference to the Proclamation.

Mr. Att. Gen. How far did you live from her?

Mrs. Burton. Formerly we dwelt pretty near one another, when Mr. Gaunt kept a Tallow Chandlers Shop.

L. C. J. Jones. Woman, do you verily believe she knew your Husband was in the Proclamation?

Mr. Just. — Did you never see the Prisoner at the Bar at any time in Holland?

Mrs. Burton. No.

Mr. Att. Gen. Nor her Husband?

Mr. Burton. Nor her Husband.

Mr. Att. Gen. I ask you at this time when your Husband went away, and his House was search'd, how far did she live from you then?

Mrs. Burton. She had but Lodgings, I don't know where her Dwelling-house was.

Mr. Att. Gen. Where were her Lodgings?

Mrs. Burton. At the upper end of *Old-Gravel-Lane*, and my Daughter in the middle of *Gravel-Lane*, in *Worster-street*, as far as it may be to *New-gate*, thereabouts.

Mr. Att. Gen. Was it taken notice of all over the Street that the House was searched and your Husband gone? Was that taken notice of in the Neighbourhood?

Mrs. Burton. Yes, yes.

Council. Between the time your Husband went first away, and the time she came to take care of him, had you no Discourse about the reason of his going away, nor of the Proclamation?

Mrs. Burton. No.

L. C. J. Jones. What say you Woman, to this Evidence, several Witnesses say you were very busie in contriving the escape of *Burton*, what was the reason why you would send him away?

Mrs. Gaunt. I did not contrive to send him away.

L. C. J. Jones. The Woman says so, *Burton* says so, the Daughter says the same.

Mrs. Gaunt. Where Sir?

L. C. J. Jones. At *Bishopsgate* or *Houndsditch*.

Mrs. Gaunt. I deny it.

L. C. J. Jones. And you gave him Money afterwards.

Mrs. Gaunt. Who saw me give it him?

L. C. J. Jones. He swears it.

Mrs. Gaunt. He was the more beholden to me.

L. C. J. Jones. Did you or did you not?

Captain *Richardson*. She says she is not come here to tell your Lordship what she did.

L. C. J. Jones. Woman, did not you hear that *Burton's* Name was in the Proclamation about *Rumbold's* Plot?

Mrs. Gaunt. It is like I might.

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L. C. J. Jones. You might hear it.

Mrs. Gaunt. Yes.

L. C. J. Jones. And yet you would by all means help him to escape?

Mrs. Gaunt. I can say nothing against it, if they swear it.

L. C. J. Jones. Do you know what you are charg'd withal? You are accused for relieving and comforting *Burton*, whom you knew to have committed Treason.

Mrs. Gaunt. My Lord, he says so.

L. C. J. Jones. And for helping him to escape, and giving him Money in order to it.

Mrs. Gaunt. He says so.

L. C. J. Jones. He swears so; what do you say?

Mrs. Gaunt. Is that sufficient?

Mr. Just. — Ay, and another swears it, that is sufficient.

Mrs. Gaunt. I have not heard any body else swear it.

Mr. Justice — Yes, his Wife.

Mrs. Gaunt. Not about the Money.

Mr. Justice — You came and solicited him to go several times.

Mrs. Gaunt. It is very untrue, my Lord.

L. C. J. Jones. Did you know his House had been search'd to find him?

Mrs. Gaunt. I did not know it a great while, since I might know.

Here *Burton's* Pardon was produced again.

Mr. Just. *Wishins*. It is a Pardon for *Burton*, now he is a good Witness, Gentlemen.

L. C. J. Jones. Have you any more, Woman, to say for your self? if you can, tell us any other Cause than that he was guilty of Treason wherein your Husband was concern'd.

Mrs. Gaunt. No, I deny that, that I knew my Husband was concern'd in any thing of that kind.

L. C. J. Jones. Wherefore then would you take so much care to send him away?

Mrs. Gaunt. I don't tell you, my Lord.

L. C. J. Jones. You don't tell us, but the Witnesses have sworn it.

Mrs. Gaunt. I must leave it to them.

L. C. J. Jones. Gentlemen of the Jury, this Woman stands indicted for High Treason for concealing, comforting and relieving one *James Burton*, a Person that had committed High-Treason; and for endeavouring that he might make his escape, and giving him 5 *l.* in Money. Gentlemen, the Evidence that is given, is by *Burton*, his Wife and his Daughter. *Burton* says that this Woman was very solicitous several times to help to send him beyond Sea. He does tell you, that when there was a Plot against the Life of the King, wherein *Rumbold* was concern'd, and one of the chief Actors, that he himself was present at one of the Consultations concerning it, and that afterwards he did withdraw himself from the Company, as he says; but he says, that this Woman's Husband being likewise concern'd in the Plot, and this Woman, as he believes, knowing that he was able to make some Discovery concerning her Husband, and knowing also his danger in respect of his own guilt, she endeavours to send him away first to *Roehford*, and so to go beyond Sea. And afterwards in another place in *Houndsditch*, and from thence he was to be conveyed beyond Sea. It is true, there is no direct Proof that there was any particular mention that *Burton* was in the Proclamation for that Treason, but the Woman says, and *Burton* him-

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self

self says, that they do both verily believe, that the Prisoner at the Bar did know he was in the Proclamation, and therefore there was no particular Discourse concerning it; and she her self being examined, says, she might hear that his Name was in the Proclamation, and she might hear that his House was searched; and that he could not be found; and yet notwithstanding all this, she endeavours to conceal him. What can be the meaning of all this in this Woman, but that she was very zealous to maintain the Conspiracy, and was a great Assistant to all Persons that were concern'd in it? She will not tell you any other Cause wherefore she should be concerned to convey this Man beyond Sea, and therefore in all reason you ought to conceive it was for this; it was a known Cause, made known to all People by the King's Proclamation. If you believe she did know or believe *Burton* to have been guilty of that Treason, and that she did help to convey him away, as the Witnesses have proved that she did, by giving him Money, and soliciting him several times to be gone, then you ought to find her guilty.

Then the Jury desiring to ask a Question, *Burton* was called again, but being gone out of Court, was sent for, and *Mr. Cornish* was set to the Bar.

Clerk. *Henry Cornish*, Hold up thy Hand; you of the Jury, look upon the Prisoner and hearken to his Cause; he stands indicted by the Name of *Henry Cornish*, late of the Parish of *St. Michael Bassishaw*, in the Ward of *Bassishaw*, London, Merchant, &c. as before in the Indictment. Upon this Indictment he hath been arraign'd, and thereunto pleaded Not Guilty, &c.

Mr. Phipps. May it please your Lordship, and you Gentlemen that are sworn, *Henry Cornish*, the Prisoner at the Bar, stands indicted, for that he knowing that the late Duke of *Monmouth*, *William Russel*, Esq; the late Lord *Gray*, and other Traytors, had conspired the Death of the late King, and to raise Rebellion in this Kingdom, did promise to aid and assist them in compassing this wicked Imagination, against the Duty of his Allegiance, &c. to this he hath pleaded not guilty, &c.

Mr. Cornish. I am innocent of the whole matter.

Officer. *Burton* is come.

L. C. J. Jones. Let us make an end of that first. In the Evidence that you give against *Elizabeth Gaunt*, you said that you did receive Money from her, 5 l. or some such Sum.

Mr. Burton. Yes, an't please your Lordship.

L. C. J. Jones. Did she owe you any Money?

Mr. Burton. No, my Lord.

L. C. J. Jones. Upon what accompt was it you receiv'd that Money?

Mr. Burton. She gave it me.

L. C. J. Jones. Upon what accompt was it? To assist you in your escape?

Mr. Burton. She knew I was bare of Money, and gave it me of her free Will.

L. C. J. Jones. And it was at that time you went away?

Mr. Burton. Yes.

Mr. Just. Withins. It was to assist you in your escape?

Mr. Burton. Yes, I believe so.

Mr. Corn. Serj. Who paid your Boat-hire?

Mr. Burton. I paid none, I don't know, the Waterman can tell.

Mr. Att. Gen. May it please your Lordship, and

you Gentlemen of the Jury, *Mr. Cornish*, the Prisoner at the Bar, stands indicted for contriving the Death of the late King, and for raising Rebellion in the Kingdom, and is charged that he did consent to be assisting to that Rebellion that was then designed; it is not unknown to you, Gentlemen, for there have been several Tryals of that Conspiracy, that there was a great Rebellion design'd in England by the late Duke of *Monmouth*, the Lord *Russel*, and *Sir Thomas Armstrong*; and particularly Gentlemen, there was a Meeting (which already hath appeared in publick) at *Mr. Sheppard's House*, where the Lord *Russel*, the late Duke of *Monmouth*, *Sir Thomas Armstrong*, *Mr. Rumsey*, and the late Lord *Gray*, met to consider and adjust matters. At that Meeting *Mr. Cornish* indeed came in very late (for he was invited and knew their Design then) he came in late, and so was not at the whole Discourse; but there was a Declaration framed to be put out when they should Rise, and they did acquaint *Mr. Cornish* with it, and they read it to *Mr. Cornish*, and *Mr. Cornish* did like it very well, and promised he would be assisting, as we will prove to you Gentlemen. Another instance of *Mr. Cornish's* Rebellion, for I need not tell you what part he acted when he was Sheriff, and maintain'd That that was the ground Work of the Rebellion, setting the Commonalty against the Government of the City. Another instance we will give you is, His Under-Sheriff that was employed to divide the City, and to raise Men within the City, having discourse with *Mr. Cornish* about settling that matter, he liked it very well, and promis'd he would be assisting to him, and you may easily presume *Mr. Goodenough* the Under-Sheriff was very privy to all the Acts of *Mr. Cornish* at that time. We will call our Witnesses. *Mr. Rumsey*.

Mr. Cornish. I desire the Witnesses may be kept apart.

Mr. Att. Gen. They are so two times.

Mr. Cornish. You will find me guilty of neither; I am as innocent as any Person in this Court.

Mr. Att. Gen. So was my Lord *Russel* to his Death, *Mr. Cornish*: do you remember that?

Mr. Cornish. *Mr. Attorney General*, I speak in the Presence of the great God, I am as innocent as any Man in this Court.

Mr. Att. Gen. *Mr. Rumsey*, pray will you give my Lord and the Jury an account of the Insurrection that was to have been in England, in the late King's Time, and what concern the Prisoner had in that Affair.

Mr. Rumsey. My Lord, about the latter end of October, or the beginning of November, my Lord *Shaftsbury* desired me to go to *Mr. Sheppard's House*, where there was a Meeting of those Gentlemen that I did name before, the Duke of *Monmouth*, my Lord *Russel*, my Lord *Gray*, *Sir Thomas Armstrong*, and *Mr. Ferguson*, and *Mr. Sheppard*, and accordingly I went; I came late there my self, for they were just going away, when I came in; I told them my Message, and they told me they were disappointed by *Mr. Trenchard*. I had not been there a quarter of an Hour, but we were going away, and *Mr. Sheppard* was call'd for by his Man, and he went down Stairs and brought up *Mr. Cornish*; and when he came into the Room, he told the Gentlemen there met, that *Mr. Alderman Cornish* was come; so as soon as *Mr. Alderman Cornish* came into the Room, he made his Excuse to the Gentlemen that he did not come sooner,

sooner, and that he could not stay with them; the reason why he could not stay with them, he told them, was, that they were to meet that Night about their Charter, and there was never another Alderman in Town but himself, and therefore he could not stay, there was a necessity of an Alderman to be there. And upon that Mr. *Ferguson* opened his Bosom, and from under his Stomacher pull'd out a Paper; they told him, they had that Paper read, and desired to read it to him: Mr. *Ferguson* read it, and Mr. *Sheppard* held the Candle all the while that it was reading; and after they had read it, they asked him how he liked it, and he did say he liked it very well.

L. C. J. Jones. What were the Contents of that Paper?

Mr. Rumsey. The first part of it was complaining of the misgovernment of the late King; there were two Points in it that I do remember very well, that they would declare for: One was, *Liberty of Conscience*; and t'other was, That all those that would assist in that Insurrection, that had any Lands of the Church, or the Kings, in the late War, should have them restored to them.

L. C. J. Jones. Was there any thing in that Paper that did engage any Body to an Insurrection?

Mr. Rumsey. I did not hear all the Paper, nor did I take great notice of it; but those two Points were in it, to engage them that would assist.

Mr. Att. Gen. What was the effect of the Paper?

Mr. Rumsey. It was to be a Declaration upon the Rising; when the Rising was to have been, this was to have been dispersed abroad.

Mr. Att. Gen. Mr. *Rumsey*, was there a Rising intended at that time?

Mr. Rumsey. Yes, and they met there for that purpose; and Mr. *Trenchard* was the Man to manage the Business about *Taunton*, and he dis-appointed them.

Mr. Att. Gen. What was your Message from my Lord *Shaftsbury* to them?

Mr. Rumsey. It was to know what issue they had come to about the Rising, and to press them to it, for such a matter as that was not to be long kept afoot; either let them come to a Resolution to rise, or let it fall for good and all.

Mr. Att. Gen. After Mr. *Cornish* had expressed his liking of this Business and Declaration, what follow'd?

Mr. Rumsey. He did say, he liked it very well; and that poor Interest he had, he would joyn with it.

Mr. Att. Gen. Speak that again.

Mr. Rumsey. Mr. *Cornish* did say, he did like the Declaration, and with the small Interest he had, he would appear to back it, or Words to that Effect.

Mr. Cornish. My Lord, since he takes the Freedom to charge me with these things, I never was at a Consult in my Days.

Mr. Just. Levins. You were not then at Mr. *Sheppard's* that Night?

Mr. Att. Gen. Will you deny you were at Mr. *Sheppard's* that Night?

Mr. Cornish. I do declare, I never was at Mr. *Sheppard's* in any Consult in my Life, as he declares; but I have had great Dealings with Mr. *Sheppard*.

L. C. J. Jones. You shall be allowed your Liberty; pray, Sir, be not transported with Passion.

I doubt, before this time, notwithstanding the Confidence you seem to have, there are few believe you to be as innocent as any Person present.

Mr. Att. Gen. You will hear more from his Oracle.

Mr. Just. Levins. Were you there when my Lord *Russel* was there?

Mr. Cornish. I was not there when my Lord *Russel* was there, as I remember.

L. C. J. Jones. Were you present, hear, hear, Sir: were you present at *Sheppard's* when *Ferguson* was there?

Mr. Cornish. My Lord, I have been at *Sheppard's* several times, but I never liked the Man for his Morals, and therefore never liked to be in his Company.

L. C. J. Jones. He pull'd the Paper out of his Bosom.

Mr. Cornish. It is as great an untruth as ever was told in the World; bur, my Lord, seeing he takes this Freedom to charge me, I desire to know whether he stands here as a lawful Evidence?

L. C. J. Jones. What is your Exception?

Mr. Cornish. He stands charged guilty of Treason.

L. C. J. Jones. That it self does not disable him to be a Witness.

Mr. Cornish. Before he hath his Pardon, my Lord?

L. C. J. Jones. I don't know whether he hath his Pardon or not.

Mr. Att. Gen. There is no Indictment at all upon him.

Mr. Just. Levins. If he were convicted, or outlawed of Treason, it were something; an innocent Man may be charged.

Mr. Rumsey. My Lord, Mr. *Cornish* and I have been very well acquainted these fourteen Years or thereabouts, and have had great Concerns together; for during the time that I managed the King's Customs at *Bristol*, six Years I was there Collector, he did return between three and four hundred thousand Pound for me; he is a very honest Gentleman, and I appeal to himself, whether I take delight to appear here to accuse him.

Mr. Cornish. But Colonel, what is the reason that you have not accused me all this while?

Mr. Rumsey. Mr. *Cornish*, I hope that is not an Objection, I think I suffer for it and not you; it was Compassion, and the same Compassion makes you deny it to save others; if you would deal openly, I make no doubt, but you might partake of the King's Favour yet, as well as I have done.

Mr. Cornish. I do thankfully accept of His Majesties Favour at all times, but I thank God I am innocent in this matter, and do not stand in need of it.

Mr. Rumsey. And you say I accuse you falsely; then Mr. *Cornish*, you don't stand there nor I here.

Mr. Att. Gen. Pray, will you ask him any Questions?

L. C. J. Jones. But pray don't enter into a long Harangue.

Mr. Cornish. My Lord, I do humbly conceive, that he does not stand here as an Evidence.

L. C. J. Jones. You have the Judgment of the Court for that.

Mr. Cornish. Before he is pardon'd?

L. C. J. Jones. I don't talk of a Pardon; what Record have you against him?

Mr. Att. Gen. You were present and heard that resolv'd before in my Lord *Russel's* Case.

Mr. Cornish. My Lord, *Mr. Rumsey* did upon his Evidence give in, and he was obliged by his Oath to speak the whole Truth.

L. C. J. Jones. Now you are making your Speech, it is not your proper time; you shall urge any thing against *Mr. Rumsey's* Evidence, or the credibility of it when it is your time.

Mr. Cornish. My Lord, I do here design it.

Mr. Att. Gen. *Mr. Rumsey*, pray recollect; had you never any Discourse with him at other times?

Mr. Rumsey. We have had a long Acquaintance, fourteen Years, but in my Life, I never heard him speak any thing before or since that, to my Knowledge.

Mr. Att. Gen. *Mr. Cornish*, will you ask him any more Questions?

Mr. Cornish. I desire to know —

Mr. Rumsey. What would you know?

Mr. Cornish. Whether did you and I discourse of these matters at any other time?

Mr. Rumsey. No.

Mr. Just. Levins. You must not stand to dialogue between one another, but speak as we may hear you.

L. C. J. Jones. You shall argue if you will, when you come to make your Defence in the proper time, the improbability of any thing that he hath said, or the impossibility, or repugnancy to any Truth, or any Evidence that you can give to the contrary; but I say, this is not your time.

Mr. Cornish. I never was at any Consult in my Life.

Mr. Att. Gen. That is a Name he gives it; was you never at a Meeting about a Rising?

Mr. Goodenough sworn.

Mr. Att. Gen. *Mr. Goodenough*, are you acquainted with *Mr. Cornish*?

Mr. Goodenough. Yes, Sir.

Mr. Cornish. My Lord, I humbly conceive he is not a Witness, he stands indicted upon an Outlawry; I can produce it.

Mr. Att. Gen. We do admit it.

L. C. J. Jones. They admit your Exception, and will answer it by producing a Pardon.

Mr. Cornish. I need not say any thing against him, he is known well enough.

Mr. Just. Withins. He was your Under Sheriff, *Mr. Cornish*.

Mr. Cornish. Much against my Will; I oppos'd him to the utmost; and this is nothing but Malice against me.

Mr. Goodenough's Pardon Read.

Mr. Cornish. I do humbly conceive this can't be done, but by a Writ of Errour, or an Act of Parliament.

L. C. J. Jones. Can't the King pardon an Outlawry?

Mr. Just. Withins. That is no piece of Law, I am sure of it.

Mr. Att. Gen. *Goodenough*, pray what do you know of a Rising intended against the late King?

Mr. Goodenough. All that I have to give an account of is a Discourse —

Mr. Att. Gen. Answer what I ask you; what do you know of a Rising by others?

Mr. Goodenough. I know nothing of that Business of my Lord *Russel's*; but there was a Design

to rise, Sir, in *London*; we design'd to divide it into twenty parts, and out of each part to raise five hundred Men, if it might be done, to make an Insurrection.

L. C. J. Jones. What were these Men to do when they were raised?

Mr. Goodenough. They were to take the *Tower*, and drive the Guards out of *Town*.

Mr. Att. Gen. Pray, acquaint my Lord and the Jury what Discourse you had with *Mr. Cornish*.

Mr. Goodenough. Before this was agreed on by us, I chanced to be at *Alderman Cornish's*; Sir, said I, now the Law won't defend us, tho' we be never so innocent; but some other way is to be thought on; upon this, said he, I wonder the City is so unready, and the Country so ready. I said to him again, Sir, there is something thought of to be done here; but, says I, in the first place, the *Tower* ought to be seized, where the Magazine is; upon this he made a little Pause, and said, I will do what I can, or what good I can, to this purpose he answered me; and about some time after, he met me upon the Exchange, and asked me, how Affairs went? which I understood to be relating to what we discours'd; this is all that I can say. I never met after this, but only upon the Exchange, he ask'd how matters went.

Mr. Att. Gen. Was there any Discourse about seizing the Guards?

Mr. Goodenough. I have told you the whole Discourse.

Mr. Att. Gen. Pray, repeat it.

Mr. Goodenough. I told him, says I, Sir, now it is plain, the Law will not defend us, tho' we are never so innocent, or to this purpose.

Mr. Sol. Gen. Upon what occasion was that Discourse?

Mr. Goodenough. Every thing going against us.

Mr. Sol. Gen. How?

Mr. Goodenough. This was in *Easter Term*, as near as I can remember, 83.

Mr. Att. Gen. Ay, 83.

Mr. Goodenough. Therefore, says I, something else is to be thought on, some Course else is to be taken: to this purpose he answered me, I wonder the City is so unready, and the Country so ready.

L. C. Baron. What Country?

Mr. Goodenough. He had been in the Country, as I understood before, that I don't know.

Mr. Cornish. What time was this, Sir?

Mr. Goodenough. In *Easter Term*, or thereabouts, 83. I told him then, Sir, there is something thought of to be done here in *London*, to this purpose; but says I, in the first place, the *Tower* is to be seiz'd, where the Magazine is; so he answered me, after some Pause (he paused upon it) says he, I will do what good I can, or what I can, to this purpose.

Mr. Sol. Gen. Did he seem to dislike seizing the *Tower* at all?

Mr. Goodenough. Not at all, Sir, it did not appear so to me.

Mr. Sol. Gen. What Discourses had you any other time?

Mr. Goodenough. I never had any Discourse of this matter, or any thing relating to it at any other time, but only when I came upon the Exchange, how things went.

Mr. Sol. Gen. And did you give him an account?

Mr. Goodenough. I said, Well. I gave him a general Answer, for that was not a place to talk in, and that I apprehended of this Discourse.

Mr.

Mr. Sol. Gen. Had you any other matters?

Mr. Goodenough. I had some other matters of managing the Riot, that was brought against him, and several others, and my self also.

L. C. J. Jones. Will you ask him any Questions, *Mr. Cornish*?

Mr. Cornish. Whether his Pardon be allowed?

L. C. J. Jones. We heard it read.

Mr. Cornish. This being a Court inferiour to the King's Bench—

L. C. J. Jones. Here is a Pardon under the Great Seal, Sir, and here is a Pardon of that Offence which you charge him with, and which you take to be a sufficient Exception against his being a Witness, we are satisfied it is sufficient.

Mr. Cornish. Pray, my Lord, is not this Pardon special?

L. C. J. Jones. What do you mean by that?

Mr. Cornish. Because, my Lord, he hath been in an Act of Treason since; therefore, my Lord, if he be not pardoned of that—

L. C. J. Jones. No, no, he is not indicted for it; we can't try him now for any Treason of that nature.

Mr. Cornish. I humbly conceive he hath not had a Pardon for his last Treason.

L. C. J. Jones. I must tell you, if he be guilty of Treason, till he is tried and convicted, it doth not take off his Testimony.

Mr. Cornish. Pray, *Mr. Goodenough*, remember all your Tricks, whether or no, was there any body present when this Discourse past between you and I?

Mr. Goodenough. No body but you and I.

Mr. Cornish. You were not so conversant in my House, I know.

Mr. Goodenough. Sir, I came to you about the business of the Riot.

Mr. Cornish. How many times might you be at my House? not three times, I believe.

L. C. J. Jones. You ask a Question, and answer it your self.

Mr. Cornish. My Lord, I desire to know, where it was these Words were spoke.

Mr. Goodenough. Sir, in your lower Room.

Mr. Cornish. In my own House?

Mr. Goodenough. Yes, Sir.

Mr. Cornish. And no Company there?

Mr. Goodenough. And no Company.

Mr. Cornish. That is very strange, and that afterwards you should meet me, and discourse this matter again.

Mr. Goodenough. No, Sir, all I say, is this, you met me upon the Exchange, and asked me how things went.

Mr. Cornish. That might be in Reference to the Suit you were managing for the Rioters; I know of nothing else.

Mr. Just. Withins. And I tell you, *Mr. Cornish*, that was a Branch of the Plot; take that from me.

Mr. Cornish. My Lord, he was Attorney in that Cause, and I might ask, how matters went in reference to that Tryal, but I take God to witness, nothing else, as I remember.

L. C. J. Jones. But here you say, it was a strange thing that *Mr. Goodenough* and you should be in a Room alone, when you acknowledge him to have been the Attorney in a Cause of mighty Consequence among you.

Mr. Cornish. He was concern'd for all, and I steadfastly believe he was never with me twice about that Suit; but he hath been at Sir Thomas

Player's; there he often went about that Affair, and I do not believe that ever he came to me about that Business.

L. C. J. Jones. Is that all you have to say to him, Sir?

Mr. Att. Gen. Will you ask him any more Questions? if not, go on, we have done.

Mr. Cornish. My Lord, Colonel *Rumsey* is a Person that hath acquainted the Court, that there was a long acquaintance between him and me. I have served His Majesty in my Place, and do it to this Day. My Lord, it is a very improbable thing, that I should meet him at *Mr. Sheppard's*, where I saw such wicked horrible Doings; and that he should never afterwards speak to me about that affair; he came to my House, I remember, about the return of some Monies for his own private Use; for he was then out of his Majesties Employment. He does declare here, he never said a Word to me, never spake to me any thing of it but there. My Lord, it is a very strange thing, that there should be such a Contrivance to ruin the King and Kingdom, and that I should be one in this Business, this Villany, and not be consulted how to carry it on, it is very strange, they should see me, and never say a Word of it afterwards to me. My Lord, I hope, and you Gentlemen of the Jury, that you will consider the improbability of it; it is as improbable as any thing in the World. I hope it doth appear to your Lordship and this Bench, that there is no probability in it; he owns we had a great deal of Freedom; he owns we were acquainted for fourteen Years together, and that I should be at such a wicked villainous place once, and see him so often afterwards, and never speak of it, and never say any thing of it, the Great God of Heaven and Earth, before whom I stand, knows that I know nothing of all that he hath sworn against me: He must swear these things to save his own Life; if he will take away my Life, he will take away many others, without question, if he can save his own. I should not urge this, but God is my Witness, I never heard any thing of a Contrivance or Plot, till my Lord *Russel's* Tryal: These are very strange things, if so be so good a Government as we have, shall not protect such innocent Men; truly, my Lord, I am as innocent as any Man in this Court, if I were to appear before the great God in Judgment this Moment.

L. C. J. Jones. Look you, *Mr. Cornish*, I would with all my Heart allow you all the Liberty imaginable, to speak pertinently to your Defence, but to oppose Confidence, and very great Assurance, upon your being in the Presence of Almighty God, against express Testimony, is the weakest Defence that can be; if you have any Witnesses, if you have any thing to urge against the Testimony of any of these Persons, besides the improbability of it, which you have often mentioned over and over again; you shall be heard with all Patience, if you have Witnesses that you will call, we will hear them likewise.

Mr. Cornish. My Lord I think his Treason being confessed, and not being pardoned—

Mr. Just. Withins. Is that all you will say, *Mr. Cornish*?

Mr. Cornish. I hope you will bear a little with me, I am highly concerned.

L. C. J. Jones. You are so.

Mr. Cornish. I have had no help, and it is well known, I am not skilful in the Law. I don't understand what to say, nor how to plead my Cause, having no help, nor no assistance allowed me. My Lord, it is a most improbable thing that I should be at this place, where this horrible Wick- edness was, and that it should lie all this time never mention'd : I have been my Lord, several times in Prison this Year, and I think my Vertue will be so much the greater, to be again and again purged, as I have been ; that which hath pleased me very much, hath been my innocency : Would any Man in my Circumstances have stay'd and continued in this Nation, if he had not known himself perfectly innocent ? Others have gone away, and I could as freely have gone, after I have been taken up four times.

L. C. J. Jones. I doubt there are a great many are not gone, Mr. Rumsey hath told you plainly, it was Compassion to you, though Injury to him- self, that he did not accuse you sooner.

Mr. Just. Levins. Here is Gaunt stay'd here till within this Week or Fortnight, and never stir'd.

Mr. Just. Withins. Mr. Cornish, my Lord hath put you in the right way for your Defence, if you can invalidate the Testimony, or call any Witnesses, do it, but to talk at this rate, you may do it this Month (for ought I know) and 'twill signifie no more than it hath done already.

Mr. Cornish. The improbability is so manifest.

L. C. J. Jones. Is it enough to say, improbability, improbability, improbability ? Is that enough ? Have you said any more ?

Mr. Cornish. My Lord, I have said this, that this Gentleman that should be so conversant in the Town, I in his Company, and he in mine. Is it not improbable ? —

Mr. Just. Levins. Look you, Mr. Cornish, I will tell you what the Method is, to give Evidence first, and then apply it in summing up the Evidence ; if you were summing it up, the Court hath all the reason in the World to hear you ; if you have Evidence, the way is to give your Evidence, and apply it if you can.

Mr. Just. Withins. Have you any Witnesses.

Mr. Cornish. Against Mr. Rumsey.

Mr. Just. Withins. Against any body, Mr. Rumsey if you will.

Mr. Cornish. My Lord, I humbly conceive that this Witness, Mr. Rumsey, ought not to stand ; if your Lordship satisfies me I shall be very much obliged to your Lordship : He declared upon his Oath, when he swore against my Lord Russel, that he had nothing else to swear against any Man.

Mr. Just. Withins. How does it appear ?

Mr. Cornish. I will produce it, if your Lordship please to give me time.

Mr. Just. Withins. But afterwards he discover'd a great deal more.

L. C. J. Jones. Look you, Sir, if you have any Exception against Mr. Rumsey's Testimony, we will hear you, propound a legal Exception.

Mr. Cornish. My Lord, I humbly conceive, he not producing his Pardon, his Evidence is not good.

L. C. J. Jones. You have had the Opinion of the Court.

Mr. Cornish. If your Lordship over-rule me.

L. C. J. Jones. We must over-rule you.

Mr. Cornish. If that will not be granted me.

L. C. J. Jones. Then you have no more to say ?

Mr. Cornish. But for my innocency, for that (I know) I have enough to say.

L. C. J. Jones. That is in your own Breast, the Jury can't see that ; will you call any Wit- nesses ?

Mr. Cornish. I have some Witnesses to call here ; as to Mr. Goodenough, my Lord.

L. C. J. Jones. What is your Exception a- gainst Mr. Goodenough ?

Mr. Cornish. My Lord, it was my most great Unhappiness and Misfortune, that this Goodenough was admitted into the Office of Under-Sheriff ; and my Lord, that I might fully convince your Lordship and this Court, all that I desire is, some few Men may be call'd ; besides, I think there are a thousand, I may say, that will bear me wit- nesses, I did oppose him.

L. C. J. Jones. But pray, Mr. Cornish, is that an Exception that he does not swear true, because you would not let him be your Under-Sheriff ?

Mr. Cornish. It looks like Malice.

L. C. J. Jones. You did admit him to be Under- Sheriff, all the World knows that.

Mr. Cornish. But I can set forth that I did op- pose him, and the reasons why I did oppose him.

L. C. J. Jones. You may, if you will, give Evidence, what an Instrument he was to you, and how he served you in your Office, when you were Sheriff : is this to the purpose ?

Mr. Cornish. Yes.

L. C. J. Jones. It is not at all to the purpose.

Mr. Cornish. My Lord, I was impos'd upon by my Partner.

L. C. J. Jones. You could not be impos'd upon, you had equal Power with your Partner.

Mr. Cornish. If your Lordship pleases to con- sider the Temper of that Man.

L. C. J. Jones. What Man ?

Mr. Cornish. Bethel, I mean, what an obstinate Man he was. My Lord, I hope I can purge my self greatly in these matters.

L. C. J. Jones. If you will, tell to what you will call them.

Mr. Cornish. The great Aversion that I had.

Mr. Att. Gen. We will admit that, he did op- pose him, because he would have had more Money.

Mr. Just. Withins. You have heard the Opinion of the Court.

Mr. Just. — It is not material whether he came in with or without your Consent.

Mr. Cornish. Mr. Gosfright, will you be pleas'd to declare to my Lord, how I was impos'd upon, by suffering Goodenough to be Under-Sheriff ?

Mr. Gosfright. My Lord, after that Bethel and Cornish were chosen Sheriffs, they had some Meet- ings together concerning an Under-Sheriff ; Mr. Bethel he named Goodenough, Mr. Cornish he named another ; they could not agree, the dif- ference did arise in three or four, or more Days Debate, as I remember, and Mr. Cornish did tell Sheriff Bethel, He was resolv'd if Goodenough were Under-Sheriff he would fine, and not hold, and told him the reason why : He said he was a Man that he would not trust a hair of his Head with, and he had no Knowledge he believ'd of the Bu- siness, but withal, he told him, he was a Man obnoxious to the Government, and he was an ill Man,

man, and had done ill things, and he would not trust his Estate and his Reputation in the hands of such an Under-Sheriff: *Bethel* he insisted upon it, and he was resolved he would have *Goodenough*, and *Cornish's* Man should not be.

L. C. F. Jones. Who was *Cornish's* Man?

Mr. Gosfright. I know the Man, but forget his Name—

Millman.

L. C. F. Jones. Can you tell what *Goodenough* was to give for the Under-Sheriffwick?

Mr. Gosfright. No, indeed.

L. C. F. Jones. Was there no discourse?

Mr. Gosfright. Not in my hearing.

L. C. F. Jones. Was *Goodenough* Under-Sheriff to *Cornish* at last?

Mr. Gosfright. Yes Sir.

L. C. F. Jones. How did they agree?

Mr. Gosfright. I believe the animosities were so great, that they were never reconciled, for *Cornish* had so bespatter'd *Goodenough* that he was so ill a man, that *Goodenough*, I believe, could never digest it well.

L. C. F. Jones. Did you hear any angry words, after he was admitted to be Under-Sheriff?

Mr. Gosfright. Truly, I never was at Alderman *Cornish's* while he was Sheriff: But I heard that character of him.

L. C. F. Jones. And that was the reason you did not go to Mr. *Cornish*.

Mr. Gosfright. No, I believe *Goodenough* never came there, but I was at neither of their Houses.

Mr. Just. Levins. Pray, how many Juries did you help him in?

Mr. Gosfright. Truly I was so little acquainted, I could not help him.

Mr. Just. Levins. I hear other People say the contrary.

Mr. Gosfright. I was but newly come into England, and could know no Man.

Mr. Cornish. Alderman *Love*.

L. C. F. Jones. To what purpose do you call him, Sir? To the same?

Mr. Cornish. It is evidently to declare how much I was imposed upon.

L. C. F. Jones. Psha, I will tell the Jury, I will do this for you, upon this Man's Testimony, that you were unwilling that *Goodenough* should be Under-Sheriff.

Mr. Cornish. My Lord, there is a great deal more in it.

L. C. F. Jones. What is there more? he never heard an angry word between you, during the time, he says, afterwards you admitted him to be Under-Sheriff?

Mr. Cornish. Mr. *Love*, will you please to declare to the Court, what aversion I had to Mr. *Goodenough* being the Under-Sheriff.

Mr. Love. My Lord, I did receive a Sub-pœna last Night, and I wonder'd at it, I confess, ever since I was so happy to get out of publick Employment, having apply'd my self to my private Affairs, I never came to *Guild-Hall*. But all I can say, is this, that when it was publicly talkt upon the *Exchange*, meeting Mr. *Cornish* upon the *Exchange*, I did hear him inclined to have another Man (one I don't know,) to be his Under-Sheriff, and that he did not like Mr. *Goodenough*, but was inclin'd to another Man, but it is so long ago, I believe I might perswade him, having been Sheriff above twenty years ago, to Mr. *Hastings*, an honest Man, I got my *quietus est*,

without trouble: But I must say this for the Gentleman, I did hear him complain, that he was imposed upon to take this Man.

L. C. F. Jones. How long was this after the time?

Mr. Love. It was before they had pitched upon a man, and he was much inclined to one Mr. *Milbourne* or *Millman*, or some such name, that is all I can say.

L. C. F. Jones. Do you think we sit here to hear impertinencies; God forbid, Sir, I should hinder you from giving any Evidence: but this is not at all material.

Mr. Cornish. If your Lordship please to let Mr. *Jekyl* come, he will tell you what this man did declare, why I was against him.

L. C. F. Jones. If you had not entertain'd Mr. *Goodenough*, then there might be something of malice in it, but you did receive him.

Mr. Cornish. I had private Covenants with *Bethel*, before I would let him come into the Office. Mr. *Jekyl*, pray will you declare to my Lord, and the Jury, what aversion I had against Mr. *Goodenough's* being Under sheriff?

Mr. Jekyl. Truly, my Lord, Alderman *Cornish* and I, living near together, I had occasion to go to him, several times, about Bills of Exchange; and he told me, when he was Sheriff, how he was troubled with *Bethel*, because he would put *Goodenough* upon him, for I don't intend to have him, says he, for I know he is obnoxious to the King and Government, and desired me to speak to Mr. *Bethel* about it, but I had no acquaintance with him 'till he was Sheriff: And some came to me, to desire me to speak to Alderman *Cornish* to receive *Goodenough*. Truly, says I, I find him so averse against him, that it is not for me to persuade him, to take a Servant he must put such trust and confidence in, for I saw Alderman *Cornish* was so averse to it, that I would not do it.

Mr. Sol. Gen. Pray do you think, in your Conscience, he was more obnoxious to the Government than his Partner, Sheriff *Bethel*, was?

Mr. Jekyl. I must confess, I have heard much of Sheriff *Bethel*, but I never heard that *Cornish* was any disaffected man to the Government.

Mr. Sol. Gen. But which was the most disaffected man to the Government, *Bethel*, or *Goodenough*?

Mr. Jekyl. Truly, as I remember, he said, he would not have him, because he was obnoxious to the King and Government.

Mr. Just. Withins. This Gentleman was in a limb of the Plot himself, as great a Rioter, and as hot as any of them, this Evidence that they call: I remember you, Mr. *Jekyl*, I'll assure you.

Mr. Cornish. If Sir *William Turner* be upon the Bench, I desire him to speak.

L. C. F. Jones. We will hear Sir *William Turner* any thing.

Mr. Cornish. I desire he would declare how I was used.

Sir William Turner. I don't remember that ever I saw Mr. *Goodenough's* face before this time, so I have nothing at all to say against him, nor can I say any thing, but what Mr. *Cornish* told me, and that was, he once came to my House some time after he was chosen Sheriff, and told me, that Mr. *Bethel* pressed very much for taking *Goodenough* to be his Under-sheriff, that he had no mind to accept him, and he would propose

pose another, and it caused a great difference, but it was at last composed, but how I can't tell.

L. C. J. Jones. Now, Mr. *Cornish*, by my consent, if you will, call all the Aldermen upon the Bench; whether they will, or will not, say the same thing, for my part, I will agree, that they have given Evidence (if they will be contented themselves) to the same purpose.

Mr. Cornish. My Lord, I shall not give your Lordship unnecessary trouble, but I think it is convenient to call some Witnesses, to prove the manner of my Life and Conversation.

L. C. J. Jones. Your Life hath not been in the dark.

Mr. Cornish. The Dean of *Canterbury*, Dr. *Tillotson*, (who did not appear.)

L. C. J. Jones. Will any man attest your Loyalty in *London*?

Mr. Cornish. The Dean of *Norwich*, Dr. *Sharp*. Is the Dean of *Norwich* here?

Officer. No, Sir.

Mr. Cornish. My Lord, hear is Mr. *Lane*, I desire he may be asked what he knows.

Mr. Lane. Upon the Tryal of my Lord *Russel*, according as Mr. *Cornish* desires I may be heard, it is with respect to Colonel *Rumsey's* Evidence; Colonel *Rumsey* says, in my Lord *Russel's* Tryal, he did not hear the Declaration read, because it was read before he came there.

Mr. North. Were you present at my Lord *Russel's* Tryal?

Mr. Lane. No, Sir.

Mr. Justice Levins. Sir, that signifies nothing.

Mr. Cornish. That is a very material thing, my Lord.

L. C. J. Jones. What is? it is no proof at all.

Mr. Cornish. Not the Printed Tryal?

L. C. J. Jones. No.

Mr. Cornish. It is by Authority.

L. C. J. Jones. Any body that was present may swear it.

Mr. Cornish. My Lord, I desire I may have the Minister of the Parish, Dr. *Calamy*, for my constancy at my Parish Church, and receiving the Sacrament, according to the Rites of the Church of *England*, that I am, to all appearance, a Person that does as well affect the Government as any man.

L. C. J. Jones. I doubt you are all appearance.

Dr. Calamy. My knowledge of Mr. *Cornish* hath been since I came to be Minister of the Parish, which is about two years, a little above two years; whenever he was in Town he did use to come to Church as constantly as any one, and come with his Family to Prayers, and did come to the Sacrament, and he did not only come at *Easter*, to save himself from a Presentment, but at our monthly Communion, and since I have been Minister of the place, I have often conversed with him: All that I can say, is, that I never heard him say a disrespectful word of the Government.

L. C. J. Jones. I hope he took you to be a man of another Kidney.

Dr. Calamy. I marked his words, because of the Character I had heard of him.

Mr. Att. Gen. Pray, what was the Character he had before those two years?

Dr. Calamy. That was what was publick.

Mr. Cornish. Joseph Reeve, *Esq*;

Mr. Reeve. My Lord, I received a Sub-pœna, from the Prisoner at the Bar, yesterday. I have been acquainted with him about fourteen or

fifteen years, and had a considerable trade with him, and sometimes we had some conversation, and drank a glass of Wine together; I thought he was always very Loyal, and drank the late King's Health, and this King's Health, and all the Royal Family. I have no more to say.

Mr. Cornish. Mr. *John Cook*.

L. C. J. Jones. What do you examine this Witness to?

Mr. Cook. My Lord, I have dealt with him for these twenty years last past, I always found him a very honest man, and a just man, and very upright in his dealing, I always reckon'd him a very honest just man: I have dealt with him for great sums, and always knew him very just and upright.

L. C. J. Jones. Your Observation of him, as to the Government.

Mr. Cook. I never knew any thing to the contrary, but that he was always very Loyal.

Mr. Cornish. Mr. *John Knap*.

L. C. J. Jones. Mr. *Cornish*, it is not impossible for you to produce men enough, that shall say, they know nothing against you, concerning the Government, and that you have been a Loyal man, sure those you chuse will say so, you have chose them; and, perhaps, if it were the business of the King's Council, they could do contrary: you are not accused touching your general Conversation, but concerning a particular Fact.

Mr. Cornish. It is improbable I should be a Person ever concern'd in these matters, if you consider, you find *Cornish* mentioned only about being there.

L. C. J. Jones. Does not Mr. *Rumsey* tell you the meaning why?

Mr. Cornish. It is very strange a Man should be at such a Hellish Meeting, and I see him over and over so many times, and never speak of it again.

L. C. J. Jones. Mr. *Cornish*, Do not you know that *Goodenough* could not be produced, till the Rebellion in the *West*?

Mr. Cornish. Is it probable that I should entertain any Treasonable Discourse with Mr. *Goodenough*, when I had so much opposed him in coming in to the Office?

L. C. J. Jones. But you let him in.

Mr. Cornish. It is known to hundreds in this Town, that I was imposed upon by an unreasonable Man, my Innocency is as great as any Man's, and my Virtue should be considered, when I have been under these impositions; I have been Loyal and Dutiful to my Prince, and Faithful to the Government in all respects; I have opposed all manner of Heats, as much as any Man whatsoever; I can bring hundreds to shew, that where I heard Heats I allay'd them, and it is strange I should be such a Man as I am represented here.

L. C. J. Jones. Have you done, Sir?

Mr. Cornish. My Lord, I have thus much further to say, that I do think there is no probability that I could be at this Meeting; though a Man should have a care how he takes Gods Name in vain, I have said it, and I do in the presence of the Great God of Heaven declare it, I was never at the Debate about these Affairs; I take the Great God to Witness, I would not do it for a whole World, if I were not innocent. My Lord, it is most improbable what Mr. *Rumsey* says.

L. C. J.

L. C. F. Jones. It is a probable thing that *Rumsey* should forswear himself, it is a probable thing that *Goodenough* should forswear himself, who have taken the Great God to witness to the truth of what they swear against you, but it is improbable that *Mr. Cornish* should not speak the truth.

Mr. Cornish. I will call some other Friends, if your Lordship please, to prove my Loyalty.

Mr. Knap. I ever found him a fair, good Pay-master.

Mr. Attor Gen. He calls you for his Loyalty. Did you never hear him speak any thing against the Government?

Mr. Knap. I have not been in his Company but now and then.

Mr. Cornish. Did you ever know me speak any thing against the Government?

Mr. Knap. No Sir.

L. C. F. Jones. I marvel that you, who have been an Alderman a great while, don't call some of the Aldermen; you have call'd *Sir William Turner*, a very worthy Alderman, I wonder you don't call some others of your Brethren, that are known Persons.

Mr. Cornish. *Mr. Carleton.*

Mr. Carleton. I have been acquainted with my Cousin *Cornish* ever since the year 61, when, being a Merchant, Trading in Cloth, I began my acquaintance with him, and afterwards, he recommended me to the Party I married, and being Relations, we had great intimacy together; I have been several times at his House, he did always assure me of his Loyalty; I have told him what I have heard People say abroad, but he did assure me he was Loyal, and I do hope the very same of him.

L. C. F. Jones. But you remember you have heard that he was not a Person of such eminent Loyalty.

Mr. Carleton. That was upon the account, my Lord, of his being in with *Besbel*, but he he did always assure me of it.

Mr. Cornish. My Lord, I hope your Lordship will consider what temper the Man was of that I was to be with, and how obstinate he was, and I hope I shall not answer for his Crimes.

Mr. Just.—*Mr. Cornish,* Why did you qualifie your self to serve with him? for you were not at first qualified.

Mr. Cornish. I had been Travelling up and down in the Country.

Mr. Just.—At that time to qualifie your self to be an Officer, then you could lay aside all your Scruples, and receive the Sacrament.

Mr. Cornish. *Joseph Smart*, Esq;

Mr. Smart. I have known *Mr. Cornish* above these twenty years, and dealt with him considerably, I never knew him but a very fair Dealer.

Mr. Cornish. *Mr. William Crouch.*

Mr. Crouch. I have had acquaintance a great while with *Mr. Cornish*, and have had several dealings, I found him a very honest Dealer, and a good Pay-master.

L. C. F. Jones. What know you of his Loyalty?

Mr. Croub. For his Loyalty, I took it as the Town did, though I never knew any Disloyalty from him.

Mr. Cornish. *Mr. James West.*

L. C. F. Jones. Do you think you profit your self with this Testimony?

Mr. Cornish. I would not offend you.

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L. C. F. Jones. No, no, you don't offend, I would gladly hear you, if there were any thing pertinent to your Defence.

Mr. Just. Withins. *Mr. Cornish,* you have this happiness, that you will be Tried by your fellow Citizens, of very good Quality and Understanding, I must needs tell you.

Mr. Cornish. I am satisfied I have appeared here with all the Care and Caution that becomes an honest Man, I have spoke nothing but what I have consider'd as I have been in Presence of the great God, I never was at any Meeting, nor never heard any thing of this till the Tryal about my Lord *Russel*, never heard one Word.

L. C. F. Jones. Gentlemen of the Jury, The Prisoner at the Bar, *Mr. Cornish*, is indicted, that knowing that there was an Insurrection intended to be against the late King, of Blessed Memory, he did promise to be aiding and assisting in it, this is the substance of the Indictment, there have been two Witnesses produced, *Mr. Rumsey* and *Mr. Goodenough*: *Rumsey's* Testimony (so far as I am able to remember, after so long a Discourse, and so much time that hath been spent) was to this purpose; That the Duke of *Monmouth*, the Lord *Russel*, *Ferguson*, and others, being in *Mr. Sheppard's* Houle, there came at length *Mr. Cornish*, and excus'd himself for coming late, and said, That he was to depart from them very speedily, because he was to go to attend the Business (as I take it) of the Charter, where the Presence of an Alderman was necessary, and none like to be there but himself; That *Ferguson* pull'd a Paper out of his Bosom, so says *Mr. Rumsey*, and upon the desire of the Company, it was read to *Mr. Cornish*, and *Sheppard* held the Candle; there were these two Points, *Rumsey* says, they had agreed on in that Paper, when the Rising should be, they would declare for Liberty of Conscience, and for the Restitution of those Lands, Bishops Lands, and King's Lands, to those Persons from whom they had been taken after the King's Restauration: This Paper being read to *Mr. Cornish*, he said, He did like it very well (these were the very words of *Rumsey*) and with that poor interest that he had in the World, he would join in the Assistance of them, for those Ends and Purposes that were mentioned in that Declaration. Then comes *Goodenough*, and he tells you, That he came to him in his Parlour, when he was Sheriff, said, Now there was no safety, no defence at all by Law, all was gone, there must be some other Course taken, for the Law would not sufficiently protect them: Why? says *Mr. Cornish*, I marvel they are so slow in the City, when they are so ready in the Country: Ay, but says *Goodenough* again to him, there hath been something done in the City; this was after the time that the City had been put into several Divisions: I don't see there is any Testimony from *Mr. Goodenough*, that *Mr. Cornish* knew any thing of that, but says he, There is something done here, the Tower is to be seiz'd, there is the Magazine, and that is to be seized upon, and then we shall be able to do something: says he, I will do what good I can, or says he, what I can, he is not confident whether of these Expressions he did use, I will do what good I can, or I will do what I can. Afterwards he meets *Mr. Cornish* upon the Exchange, here I confess, it is not so expressly to be applied to this Purpose, that it doth fasten directly upon the point in the Indictment; but

H h h h

says

says he, How do Affairs go? How do our Affairs go? says he, very well: This is the Testimony given against him. If this be true notwithstanding Mr. Cornish's Protestations of his innocency, sure there is nothing doth more plainly prove this Indictment, than this Testimony. He says it is improbable, very improbable that I in my Circumstances, that I should say so, it is improbable, because Mr. Rumsey had Acquaintance with me for fourteen Years together, that I have dealt with him for vast Sums, and that I should say it in his Presence never but once, and that Rumsey does say, He never heard him speak any thing to that purpose, but that one time; and therefore it is mighty improbable I should say so. But what is the reason, says he, that this was not discover'd before? To this Rumsey gives a positive answer, Truly, says he, Mr. Cornish, I had more Compassion for you, than for myself, I have suffer'd for it, you have not suffer'd for my silence. Then Goodenough ought not to be allowed to be a competent Witness, because when Mr. Cornish and Bethel were chosen Sheriffs of the City, Mr. Cornish was much against receiving Goodenough to be his Deputy, and Goodenough must say all this maliciously against him, because he so much oppos'd his being Under-Sheriff to him and Bethel. He hath produced several Witnesses to that purpose, and they say there was some reluctancy in him to the receiving Goodenough to be his Under Sheriff, but it is plain and clear to you all, Gentlemen, and every body in the City knows that Goodenough was his Under Sheriff, and how well he serv'd him, and to what purposes I believe many of you very well know. Another improbability is, That he should admit Goodenough to come into his Parlour alone, a Man that he had so much displeas'd, but if so be he was once against him, he did afterwards take him not only to be his Under Sheriff, but employ'd him to be his Attorney, and then he might very well admit him into his Parlour alone, to discourse of his Business as an Attorney, and this might fall in among other Discourse: Gentlemen, there are several other Witnesses produced concerning the honesty of his Dealing, and the honesty of his Conversation, that they have nothing at all to say against; but Gentlemen in a popular City, where he is, and hath been so well known, it is a very easie matter to bring Millions of Men to give the very same Testimony, and certainly he will bring none, having the choice of them, but such as shall speak in his Favour; but he speaks in the Presence of God, he speaks from the bottom of his Heart, that he never had any such disloyal Thought entred into his Mind: Gentlemen, hath no body any Sense of the Presence of God but Mr. Cornish? Hath not Rumsey call'd God to be a Witness to his Oath? and Goodenough hath done the like? Why is it maliciously against the Life of Mr. Cornish? for I don't know he does, in the least, object any thing against Rumsey, that there was ever any Displeasure between them two: Why should he deliver this Testimony if it were not the Testimony of his Heart? and that which he says himself, he had too long conceal'd out of the Compassion he had for him. Gentlemen, if a great many Protestations and Asseverations should make a Man as innocent as confident, no Man should die by the Sentence of the Law; it is an easie matter

for any Man to take up the same Assurance and Confidence that he hath done: And for his being such a Church-man, as he now pretends himself to be; for that is one thing by which he would argue the improbability of the thing, and he would have you believe very much of his Loyalty from it. Gentlemen, all the Evidence he hath given, is but of two Years standing, and since the Tryal of my Lord Russell; and such a Man as he, and many Men that were conscious to themselves of their guilt, did think it very fit to purge themselves that way, to gain themselves a good Opinion that they were loyal to the Government. But it is not deny'd by Mr. Cornish, that before that time he did not frequent the Church, nor receive the Sacrament.

Mr. Cornish. These seven Years, my Lord.

L. C. J. Jones. Who did say so? Sure no body said so yet. I repeat the Evidence truly, all you said of that was out of the Mouth of Dr. Calamy.

Mr. Cornish. Dr. Calamy came in but lately, and his Predecessor Dr. Whitchcot is dead.

Mr. Just. Withins. Sir, you were not qualified for your Office if you had not took the Sacrament.

L. C. J. Jones. You did lay aside all your Scruples to qualify your self to be Sheriff by receiving the Sacrament, which otherwise you could not have been. Others that have spoken of your Conversation likewise say, That the report was abroad, that you were not so loyal and firm to the Government as you ought to have been. Gentlemen, you have heard the Evidence; I have done my endeavour to repeat it faithfully, if you believe that he did Promise to aid or join, or agree with that Rebellion or Insurrection, then you ought to find him guilty of this Indictment.

Mr. Cornish. I am as innocent as any mortal Man.

Then the Jury withdrew, and after a considerable time return'd.

Mr. Cornish. My Lord, I hope I may have one word.

Mr. Just. Withins. No, not till your Verdict.

Mr. Bar. Gregory. No, no, Mr. Cornish, we can't.

Mr. Cornish. I had a Witness more that was very material, but I would not offend your Lordship: Mr. Rumsey said Mr. Sheppard held the Candle.

Mr. Just. Withins. Why did not you call him? You called a great many impertinent Witnesses.

Mr. Cornish. I was not come to him, I would have call'd them in order.

Mr. Bar. Gregory. Why did not you produce him then?

Mr. Cornish. Because your Lordship seemed to be angry.

Mr. Bar. Gregory. No, not at all.

Mr. Cornish. I did forbear purely upon that account. I pray, my Lord, let him be call'd.

Mr. Bar. Gregory. Here were eight Judges and my Lord Chief Justice, and now here is only two: Do you think we will defer things of this Nature? It is never asked. Apply your self to the Judges: It is a strange thing.

Mr. Just. Withins. This is only to delay time.

Mr. Bar. Gregory. If he does so, the Jury must go out again.

Mr.

Mr. *Just. Withins.* After the Jury hath been out an Hour, we must have new Allegations.

Mr. *Cornish.* I was tender of offending.

Mr. *Just. Withins.* That is a Reflection upon the Court; under favour, Mr. *Cornish*, I told you my self, over and over to call your Witnesses.

Clerk. *Elizabeth Gaunt*, hold up thy Hand.

Mrs. *Gaunt.* My Lord, I beseech you, hear me, you won't take advantage I hope of me.

Mr. *Just. Withins.* I declare my Opinion freely, it ought not to be done.

Recorder. I think she ought to have it as well as t'other.

Mr. *Bar. Gregory.* You call'd never a Witness.

Mrs. *Gaunt.* No, Sir, I could not tell, I have some to call.

Mr. *Just. Withins.* I am of that Opinion you ought to take the Verdict.

The Judges came again upon the Bench, and the Jury found Mrs. *Gaunt* guilty.

L. C. *J. Jones.* Is *Rumsey* come in?

Captain *Richardson.* I have sent for him, he will be here presently.

Mr. *Cornish.* My Lord, I must pray your Lordship, to consider my Tenderness in offending you, which made me omit calling Mr. *Sheppard*, I had him in my paper, he is in my paper.

L. C. *J. Jones.* Don't you begin your Preface something untowardly, as though the Court would not do you all the Kindness possible, half a dozen times you were admonish'd to call for pertinent Witnesses, you did call I am sure a great many impertinent Witnesses. Had you Mr. *Sheppard's* Name in your paper?

Mr. *Cornish.* Yes, my Lord, but I was tender of offending; pray, my Lord, be pleased to remember Mr. *Rumsey's* Evidence.

L. C. *J. Jones.* Is Mr. *Rumsey* here? Sir, pray hold your Tongue.

Mr. *Att. Gen.* I would acquaint you, my Lord, I sent a Subpœna for Mr. *Sheppard*, but could not find him, but I understand that Mr. *Cornish's* Son was with him Yesterday, and he has absconded; this I will give an account of upon Oath: This my Lord, is a dangerous Practice after Examination, and after the Jury is withdrawn.

Mr. *Cornish.* I pray do not aggravate the matter.

Mr. *Att. Gen.* I must do my Duty for the King.

Mr. *Cornish.* My Son went to him, and found him at Church.

Mr. *Att. Gen.* Now Mr. *Atterbury* is gone. I desire you should have all your right, but not have Tricks put upon the King's Evidence.

Mr. *Cornish.* His Evidence was, Mr. *Sheppard's* holding the Candle.

Mr. *Just. Lewins.* For God's sake, could you examine so many to your Reputation, and forget an evidence that was material; but I must tell you, if you will bring Mr. *Sheppard* to be examined, sure it is requisite, that the Witness that swears what you did there, should be face to face with him, therefore Mr. *Rumsey* should be here certainly.

Mr. *Just. Withins.* It is fit to have *Atterbury* here, to enquire if he did abscond; if Mr. *Cornish's* Son was with him, and he absconded upon that account, it is very material. This is a meer Trick put upon the King's Evidence.

L. C. *Baron.* Mr. *Cornish*, if, you intend to produce Mr. *Sheppard* for that, to contradict *Rumsey's* Testimony, I wonder that you should mis him, without you have had some notice since.

Mr. *Cornish.* My Lord, I was not come to him: my Lord, though I have such a vile Charge, I am perfectly innocent.

Mr. *Just. Withins.* Now you may see what we have got.

Mr. *Cornish.* I beseech you, my Lord, consider me, it is as improbable a thing as any in the World.

L. C. *J. Jones.* This is running over the same thing twenty times. Where is *Sheppard*?

Mr. *Cornish.* He was here within this quarter of an Hour.

Mr. *Just. Withins.* Mr. *Cornish*, Is this fairly done, when you said he was upon the spot?

Mr. *Att. Gen.* He was Subpœna'd by you, he would not be found to be Subpœna'd by the King.

Mr. *Just. Lewins.* To make the Court come down, and then to have no notice of the Person at all; sure you may give the Court leave to take notice that they are not civilly dealt with.

L. C. *J. Jones.* Who told you he was here?

Mr. *Cornish.* This Gentleman says, he saw him. Pray, my Lord, don't be offended.

L. C. *J. Jones.* I never saw such a thing, the time was, you and your Partner would not have allowed it.

Mr. *Att. Gen.* If he comes, I will give him his Oath.

Mr. *Cornish.* My Lord, here is Major *Richardson* can bear Witness, I said I must Subpœna Mr. *Sheppard*; I named him before Major *Richardson* again and again, and said, I must not omit him.

Mr. *Just. Lewins.* Sir, I tell you what; you han't shewed so little skill to Day here, but that you could maintain so long a Discourse with Mr. *Rumsey* as you were allow'd to do, and should not offer to call *Sheppard* to contradict him, you dwelt half an hour upon it.

Mr. *Bar. Gregory.* And relyed only upon the improbability of the thing.

Mr. *Rumsey.* There is another Gentleman in the Tower, the late Lord *Grey*, that was in Company when the Declaration was read.

Mr. *Bar. Gregory.* Have you been in Company at *Sheppard's*?

Mr. *Cornish.* I have been at *Sheppard's* very often. Pray, my Lords, don't be offended, my Life will do you no good, I don't know but here is a Gentleman that hath been in my Company forty times over since that Business.

Mr. *Rumsey.* Pardon me, Mr. *Cornish*, not above three times since, and then there was other Company.

Mr. *Just. Withins.* It is impossible for any, but those that were Complices with you, to give such Evidence, and, because they were your Complices, now you won't believe them.

L. C. J. Jones. Are you Sub-pœna'd by Mr. Cornish?

Mr. Sheppard. I have a Sub-pœna from the King.

L. C. J. Jones. But were you Sub-pœna'd by Mr. Cornish?

Mr. Sheppard. Yes.

Mr. Att. Gen. When?

Mr. Sheppard. Last Night, this Morning I was not at home.

Mr. Att. Gen. Was Mr. Cornish's Son with you Yesterday in the Afternoon?

Mr. Sheppard. Yes, Sir.

Mr. Att. Gen. And what Discourse had you with his Son?

Mr. Sheppard. He was very pressing and urgent with me to be here to Day, and I told him, I could not tell whether I could or not.

Mr. Att. Gen. Is there any Account between you and Mr. Cornish?

Mr. Sheppard. Yes, Sir.

Mr. Att. Gen. To what Sum?

Mr. Sheppard. We were always Trading.

Mr. Att. Gen. That is very true, you were Trading—To what Value?

Mr. Sheppard. About one or two Hundred Pounds.

Mr. Att. Gen. Who is Debtor?

Mr. Sheppard. I am Debtor.

Mr. Sol. Gen. Mr. Sheppard, since when did you Contract that Debt?

Mr. Sheppard. Since when, Sir;

Mr. Sol. Gen. Ay.

Mr. Sheppard. I believe it was some six or eight Months ago.

Mr. Sol. Gen. For what was it? Upon what Account?

Mr. Sheppard. For Cloth, Sir?

Mr. Sol. Gen. Was there no Money lent?

Mr. Sheppard. Money lent me?

Mr. Sol. Gen. Ay, Sir.

Mr. Sheppard. No, Sir.

L. C. J. Jones. Is the Debt due to Mr. Cornish?

Mr. Sheppard. My Lord, the Debt is due to him.

L. C. J. Jones. Of some body for whom he is a Factor?

Mr. Sheppard. I am indebted to Mr. Cornish, for whom it is I can't tell.

Mr. Sol. Gen. Did you leave word, whither you went, when you went out Yesterday?

Mr. Sheppard. No, Sir.

Mr. Sol. Gen. Which Sub-pœna was served first upon you?

Mr. Sheppard. Mr. Cornish's Yesterday.

Mr. Sol. Gen. What time was it served upon you?

Mr. Sheppard. Presently after I came out of Church in the Afternoon, Sir.

L. C. J. Jones. What have you to say?

Mr. Cornish. My Lord, Mr. Rumsey was pleased to give in his Evidence, that I had been at a Consult or Meeting at Mr. Sheppard's House, where Mr. Ferguson should pluck out a Declaration out of his Bosom, and should read it by the Candle, and Mr. Sheppard should hold the Candle to him while he read it.

L. C. J. Jones. Do you remember Mr. Cornish was ever at your House?

Mr. Sheppard. At one of those Meetings that was at my House, Mr. Cornish came into the House to speak a few Words with the Duke of Monmouth, or some other, I can't be positive in

that, it is so many Years ago, and did not stay half a quarter of an Hour in the House; I came up Stairs, and went out with him, and there was not one word read, and no Paper seen while he was there.

Mr. Just. Levins. Was Mr. Cornish in the Room with the Duke of Monmouth and those others?

Mr. Sol. Gen. Mr. Sheppard, Do you remember that the late Duke of Monmouth, the Lord Russell, the Lord Grey, and Sir Thomas Armstrong were there together, and the Declaration read?

Mr. Sheppard. I remember there was a Declaration read, Ferguson pull'd out a Declaration out of his Shoe, he pull'd off his Shoe, and pull'd it out there.

Mr. Sol. Gen. Do you remember Mr. Cornish was by, any time that Night?

Mr. Sheppard. Truly I can't say whether it was that Night when the Paper was read, but I do positively say, that there was no Paper read, for he was not looked upon to be of the Company: Mr. Ferguson told me positively, there is the Duke of Monmouth, my Lord Grey, my Lord Russell, Sir Thomas Armstrong, Col. Rumsey, my self and you.

Mr. Sol. Gen. Who did Mr. Cornish come to speak with, when he came to your House?

Mr. Sheppard. Truly I don't know whether it was with the Duke of Monmouth.

Mr. Sol. Gen. How came Mr. Cornish to know the Duke of Monmouth was there?

Mr. Sheppard. Truly my Memory will not call it.

Mr. Sol. Gen. Did his Coach stand publickly at your Door?

Mr. Sheppard. Whose Coach?

Mr. Sol. Gen. The late Duke of Monmouth's.

Mr. Sheppard. No, Sir, they all came private, there was no Coaches at the Door as I saw, I let none of them in.

Mr. Sol. Gen. Was Mr. Cornish but once there, when the Duke of Monmouth was there?

Mr. Sheppard. But once.

Mr. Sol. Gen. Did he call the Duke of Monmouth out to him?

Mr. Just. Street. How came you to carry him up to the Duke of Monmouth, if he were none of the Company?

Mr. Sheppard. Mr. Cornish did go up into the Room and spake to the Duke of Monmouth, or some other Person, but I think the Duke of Monmouth.

Mr. Sol. Gen. Do you remember he was there in Company, when Col. Rumsey was there?

Mr. Sheppard. No I can't remember that.

Mr. Rumsey. My Lord, when I came to Mr. Sheppard's House, Mr. Sheppard came down and fetch'd me up, and I deliver'd my Message I had to the Duke of Monmouth, and to the Company, and indeed I was not a quarter of an Hour there, I believe, but by that time I had spoke my Words, some body knock'd at the Door, and Mr. Sheppard went down, and immediately brought up Mr. Cornish into the Room, without asking a Question of any body; and when he was come in, to the Room, Mr. Cornish said, he could not come sooner, because he had business; and could not stay, because there was a Committee for the Management of the Charter, to meet that Night, and there was a necessity of his being there, because there was never another Alderman in Town, and there must be an Alderman there.

Mr. Att. Gen. Mr. Sheppard, Do you remember any thing of that?

Mr. Sheppard. No, Sir, I do not remember it, I'll assure you.

Mr. Sol. Gen. Did you let him in at the Door?

Mr. Sheppard. No, Sir, I had word brought me up Stairs, that Alderman Cornish was below, and I went down, and brought him up.

Mr. Sol. Gen. Did you ask for Mr. Cornish to come up?

Mr. Sheppard. I don't remember I did: When Mr. Cornish was there, there was not above three Persons.

Mr. Sol. Gen. Who were they?

Mr. Sheppard. There was the Duke of Monmouth, and there was Mr. Ferguson, and truly I can't tell whether t'other was my Lord Russel or my Lord Grey.

Mr. Just. Levins. You acknowledge now, Sir, you did carry the Prisoner up to the Duke of Monmouth and those Persons. Did you use to carry all Persons up there?

L. C. J. Jones. There was a Cabal of Rebels met together, and you go and bring up this Man to them, without any leave or licence from them, which is incredible certainly, unless you knew him to be one of the Company, and equally engaged with them.

Mr. Sol. Gen. Mr. Sheppard, you say, when Mr. Cornish came up, there was not half the Company there. Had they been there, or were not they yet come?

Mr. Just. Withins. Look you, Sir, it is marvellous how Mr. Cornish, if he were none of the Parties, should have notice that the Duke of Monmouth was there, who came in privately at the Back-Door, and came to speak with him there.

Mr. Sheppard. My Lord, I have no Back-Door.

Mr. Just. Withins. He came in privately.

Mr. Just. Levins. Mr. Sheppard, I think I heard you say, they came privately without their Coaches.

Mr. Sheppard. Yes, Sir, they had no Coaches.

Mr. Just. Levins. They came privately, I suppose, that no body should know they were there.

Mr. Sheppard. I suppose so, Sir.

Mr. Just. Levins. Why then did you carry Mr. Cornish up? If you were below in the House, he might come about your own business; but to be carried into the Chamber where they were, looks as if it were about their business.

Mr. Cornish. I never heard any thing of the Business, my Lord.

Mr. Att. Gen. So far, Gentlemen, you remember he confirms what Mr. Rumsey says, that Gentleman denyed he was there with the Duke of Monmouth.

Mr. Cornish. Pray Mr. Attorney don't strain, I have dealings with Mr. Sheppard, and have often been there, but never at any Meeting.

Mr. Att. Gen. He says, you spake with the Duke of Monmouth.

Mr. Cornish. I never saw the Declaration, he declares it.

L. C. J. Jones. Had you any dealings upon account with the Duke of Monmouth?

Mr. Cornish. Never for a Farthing.

Mr. Just. Withins. What business had you with him then?

Mr. Cornish. I don't know but I might enquire for him in other places.

L. C. J. Jones. Your own Witness carried you up.

Mr. Cornish. My Lord, if he did, I did not stay, he says Mr. Sheppard held the Candle.

Mr. Just. Withins. Mr. Cornish, he confirms great part of what Mr. Rumsey says.

Mr. Cornish. Not one Tittle, for he declares I was not of the Company.

L. C. J. Jones. He says no such thing.

Mr. Sheppard. My Lord, to my Knowledge, I can safely say, he knows nothing of it.

L. C. J. Jones. And yet you could bring him up among them.

Mr. Sheppard. My Lord, I declare I never spake any thing to him in my Life about the Business, nor never in any Company.

Mr. Just. Withins. It is plain, Mr. Rumsey says he was the Man that brought you up; How should Mr. Rumsey know that?

Mr. Att. Gen. Mr. Sheppard, I will ask you this Question; Had you order from that Company not to bring up any Person? Do you remember you swore so at a former Tryal?

Mr. Sheppard. I remember when I was there, they desired I would let none of my Servants up, and that I would go down and fetch up what they wanted, and I fetch'd up Wine and what they wanted.

Mr. Sol. Gen. Mr. Sheppard, Why were none of your Servants to come up?

Mr. Sheppard. Because they were in private, Sir.

Mr. Sol. Gen. Were Strangers to come up therefore?

Mr. Sheppard. It is so long ago, I cannot remember.

Mr. Just. Levins. They came privately, without Coaches, because none should know they were there, and you carry Mr. Cornish up to them.

Mr. Cornish. I think this Witness is confronted.

L. C. J. Jones. Hold your Tongue Sir, he hath not done yet.

Mr. Rumsey. My Lord, as soon as Mr. Cornish had made his excuse for his not coming sooner, and that he could not stay, I could not make that, and Mr. Cornish can't say I would do any thing maliciously or spitefully against him; my Lord, as soon as he had done, all the Company went about him, and some Body did tell him, They would tell him what they had done; they told him the Declaration had been read, that Mr. Ferguson had prepared it, and they said, Look you, Mr. Cornish, you shall hear it read, and with that, this Gentleman, though he denies it, did take the Candle, and held it, they did not come to the Table, but the Company stood round while Mr. Ferguson pull'd it out of his Bosom.

Mr. Just. Withins. Mr. Sheppard, you are very forward.

Mr. Att. Gen. My Lord, I would ask Mr. Sheppard a Question.

Mr. Rumsey. My Lord, the Declaration was read, and Mr. Cornish did approve of it, and did say, With that small Interest, or little Interest, or words to that effect, that he had, he would assist.

Mr. Att.

Mr. Attor. Gen. I wonder why you did not give me notice when you came in the morning. Why did not you give notice?

Mr. Sheppard. I was here attending from Eleven a Clock, till half an hour after three.

Mr. Attor. Gen. Did you send in any word?

Mr. Sheppard. I could not tell who to send in: I was here expecting to be call'd.

Mr. Just. Street. You have had a favour that no Man ever had.

Mr. Sol. Gen. Gentlemen, there hath been a very great indulgence given to the Prisoner, and it is to shew you what tenderness a Court of Justice hath, and always will have, of the lives of the King's Subjects: After a full Evidence, though he had neglected his Defence, yet you were again sent for into Court, to hear what further Evidence he had to offer to you; I cannot but observe, this looks like a subtle Contrivance on the Prisoners part; you see what endeavours have been made by Mr Attorney General, to have had him here a witness for the King, you have observed he hath told you he had a Subpœna for him, but he was absent, in what Company he was absent yesterday, he hath told you, With Mr. Cornish's Son; this morning he was not to be found, after he had received this Subpœna, and a Subpœna from Mr. Cornish; he stays without, and gives no notice, but when you are withdrawn, can send intelligence to Mr. Cornish, that he hath something to say, that he hopes will excuse him; now what that is, I must beg you a little to observe: Truly I am very glad for the satisfaction of all men, that Mr. Sheppard hath now been here, and he is so far from invalidating any one part of the Testimony, that by all the circumstances you can collect from this Evidence that is given, it is a corroboration of it: Mr. Cornish was accused of being present at Consultations that have been held against the Life of the King, and for raising Rebellion at Mr. Sheppard's House; his excusing his not coming there is a sufficient Argument to prove he was privy to their Meeting, he hath gone on further, and proved to you the reading the Declaration; now what says Sheppard to this Witness? Mr. Cornish, by the way, I must observe to you, before, did deny his being there; he had been sometimes in company with *Ferguson*, but he did not like the man, he says, because of his Morals; now the Witness he hath produced hath given you this Testimony, that Mr. Cornish hath been there in that Company, that he came in such a manner, that no man but must be satisfied he was privy to their Designs, and did know of their Meeting, for he comes when the Duke of *Monmouth*, and the rest of the Conspirators, were there met in private, with a direct charge to Mr. Sheppard, that is the Witness, that they should be so private, that no one Servant should come up into the Room, yet Mr. Sheppard tells you, that when Mr. Cornish came he carried him up into the Room, without so much as acquainting any one of the Company that Mr. Cornish had a desire to come, but brings him up as if he were (and I make no doubt but you will imagine, he was) one of the Company; when he comes there, he says his business is with the Duke of *Monmouth*, the Head of that Conspiracy, and he himself tells you he never had any dealings with the Duke of *Monmouth* in his life; What can a man imagine of that man that had no

dealings with the Duke of *Monmouth*, to find him out in a place, where no mortal could know, and none was to know, and coming to him at that time and at that place, under those circumstances of concealment, no man almost but out of his own mouth must believe that he was privy to that Conspiracy; therefore though this Witness doth seem to forget some part of the Evidence, the reading the Declaration, and holding the Candle; yet these are such circumstances that in themselves do carry a proof of the Charge, and do confirm all the rest that the Witness hath said, and this must be a great satisfaction to you, that he was there present and privy to that Design. And so I leave it to your Consideration.

Then the Jury withdrew for a short time, and returning, brought Mr. Cornish in Guilty, and found One Hundred and Forty Pounds for the King in Mr. Sheppard's Hands.

Clerk. Set *Elizabeth Gaunt* to the Bar, (which was done.)

Cryer. Oyez, all manner of Persons are commanded to keep silence, whilst Judgment is giving, upon pain of Imprisonment.

Clerk. *Elizabeth Gaunt*, hold up thy Hand, thou standest guilty of High-Treason, &c.

Recorder. You *Elizabeth Gaunt*, you have here been indicted for that great Crime of High-Treason, and that particular part of it, for Harbouring, and Comforting, and Assisting, and Cherishing of Traytors, more especially of one *Burton*; you have had your Tryal, and a very fair Tryal, and upon that, the Jury have found you Guilty: It is the Duty of my Place to pronounce the Sentence the Law hath provided for such High Crimes as these are, and that is no other but this,

That you are to be carried back to the place from whence you came, from thence you are to be Drawn, upon a Hurdle, to the place of Execution, and there you are to be Burnt to death, and the Lord have Mercy upon your Soul.

Mrs. Gaunt. I say that this Woman did tell several Untruths of me.

Recorder. Is that all you have to say?

Mrs. Gaunt. I don't understand the Law.

Clerk. Bring *Henry Cornish* to the Bar.

Henry Cornish hold up thy Hand, &c.

Mr. Cornish. My Lord, now the Law hath past upon me, I do humbly pray your Lordship, and this Honourable Bench, that you will be pleas'd to intercede for me with his Majesty, I shall lead a Peaceable, Quiet, and Dutiful Life: and I hope, when you come to reflect upon what hath been said to Day, that perhaps you will be of another Mind, and have more Charity for me than you had upon my Tryal, for, in the simplicity of my Heart, and in the presence of God, I do declare, I am Innocent, and if your Lordship, and this Honourable Bench, intercede with his Majesty, it will be an Eternal Obligation upon me, and I shall live Faithfully, Peaceably, and Loyal as long as I Live. I presume to beg this, and I promise my self, and hope it will stir up the Hearts of some Persons, that they will not leave me destitute of Friends in such a Case as this, having a Wife and several Children, it will be an Act of Charity.

Recorder. The Court does give you your Request, and if there be any misery brought upon your Family, it is done by your self.

Clerk. William Ring, hold up thy Hand, &c.

Mr. Ring. I had no notice given me, and please your Lordship.

Recorder. Where is the Executioner, is he here?

Executioner. Yes.

Recorder. Why don't you do your Duty to Mr. Cornish?

Clerk. John Fernley, hold up thy Hand; thou standest convicted of High Treason, for trayterously harbouring one James Burton; what canst thou say for thy self? &c.

Mr. Fernley. It is very hard measure I have had, I have nothing to say, but the King's Mercy.

Recorder. Is that all you have to say?

Mr. Fernley. I have nothing but the King's Mercy.

Recorder. Tye him up then, tye him up.

Crier. Oyez, all manner of Persons are commanded to keep silence, whilst Judgment is giving, upon pain of Imprisonment.

Recorder. You, the several Prisoners at the Bar, you have been severally indicted here of the high Crime of Treason; for you, Mr. Cornish, I apply my self first to you, your Crime is for Treason that was committed in his late Majesty's Life-time, being one of those notorious Conspirators that designed to raise Rebellion, and others some of them immediately designed the Life of his Majesty that then was, and his present Majesty, that was the design of some of them; and others they had another part, that was, to raise Rebellion, and particularly some of them in and about this City, and it was carried on some time before it was discover'd, may be a Year or more, under colour and pretence of Law: For so did they invade the Government first of all by packing of Juries, there was the Foundation laid whereby to bring on that business, which they had at last design'd, when they could bring it to a ripe Head. Too many Persons in that business, I believe, were very busie, meddling with that they had not to do with; clubbing and caballing how to bring their Designs about, in opposition to the Government, not to support it in the least, but to overthrow it if it were possible: But then, at last, then they must take another Course, for no longer could they carry it on by pretence of

Law, as you have heard to Day: Now we must take other Measures, and take down-right Blows. This is the business, Mr. Cornish, that you have been indicted for; and, I must tell you, whatever Apprehensions you have to the contrary, and may please your self in, I am sorry to see such a sort of pleasure in your Countenance, as if you had had no favour shewed you. I believe the Court hath shewed you more favour, and had more patience with you than ever any Man that stood in your place had; for calling a Witness after the Jury hath been out, is a thing I never saw a Precedent for: And I am glad it was done, for I think it hath cleared the thing beyond all manner of Contradiction, before it looked something dark for want of Sheppard, and so it is a Happiness that that Man was called to convince you of many things that you protested so solemnly against, which I am sorry to see in you; in this Condition that you are, to make such solemn Protections, and afterwards call a Witness to confront you in them. For the other two, here is Mr. Ring is very notorious for harbouring a couple of Traytors, knowing from whence they came; and if it were not for such Persons as these are, that do harbour them when they fly, it may be there would not be so many bold Attempts to commit such Crimes as these are: To provide for them, and nourish them, and comfort them, after they have committed their Villanies, this does encourage them to commit their Villanies as they do, and so I reckon Harbourers to be worse than Traytors themselves, they are like Receivers to Thieves; there would not be so many Traytors, if there were no Harbourers: You have been convicted of these great Crimes; it is too late, and not fitting to spend time any longer, but to pronounce the several Sentences against you, which is this,

You must, every one of you, be had back to the place from whence you came, from thence you must be drawn to the place of Execution, and there you must severally be hanged by the Necks, every one of you by the Neck till you are almost dead, and then you must be cut down, your Intraills must be taken out and burnt before your Faces, your several Heads to be cut off, and your Bodies divided into four parts, and these to be disposed of at the Pleasure of the King; and the Lord have Mercy upon your Souls.



The Tryal of Charles Bateman, Chirurgeon, December 9. 1685.



TH E Sessions of Peace, Oyer and Terminer, and Goal Delivery of Newgate, for the City of London and County of Middlesex; beginning at Justice-Hall in the Old-Bayly, on the 9th of December, 1685. Charles Bateman, against whom an Indictment of High Treason had been found, for conspiring the Death of the late King, &c. was brought in the Custody of the Keeper of Newgate in order to his Arraignment; and being ordered to hold up his hand, he desired that he might first say something for himself, in order to put off his Tryal, but was told by Mr. Recorder, he must plead before he could be heard; whereupon desiring to know whether he might have the same advantage after his pleading as before, as to gain longer time for his Tryal, and being answered he might, he held up his Hand, and then the Indictment was read:

Mr. Bateman pleaded not guilty, and desired his Tryal might be put off, saying, *He was not prepared to make his Defence*, and therefore prayed a longer time, saying, *He had been close Prisoner for the space of ten Weeks, and was over and above very much indisposed*; and farther alledged, *He had had no notice nor Pannel of the Jury*; as for notice of Tryal, he was answered, that it was not usual to give any in that Court, but that he ought to have expected it, and prepared for it accordingly, and as for the Pannel it was not denied him; then he prayed a Copy of the Indictment, but was told it could not be allowed; and upon his further alledging his unpreparedness and no notice of Tryal, and the like, the King's Council urged that he had Opportunity enough to take notice of his Tryal, for that it was upon an Indictment of the precedent Sessions: Then he asked what time he might have between his Arraignment and Tryal, and was answered, as much as would stand with the conveniency of the Court; and after several Hours respite, he a second time was brought to the Bar, and then upon his humble Request, Pen, Ink, and Paper was allowed him, and his Son to assist him; and then were sworn to try the Issue,

Richard Aley, Esq;	Edward Rhedish
Richard Williams	George Lilburn
John Cannum	Daniel Foulds
Patrick Barret	Peter Floyer
John Palmer	Lawrence Cole
James Raynor	John Cooper.

And he making no Exceptions to them, then the Indictment was read.

The Jurors, &c.

TH A T Charles Bateman, late of the Parish of St. Dunstan in the West, in the Ward of Farringdon without, London, Chirurgeon, as a false Traytor, against the most il-

lustrious and excellent Prince, Charles the second; late King of England, Scotland, France and Ireland, Defender of the Faith, and his natural Lord; not having the fear of God in his Heart, nor weighing the Duty of his Allegiance; but being moved and seduced by the Instigation of the Devil, the cordial Love, and true due and natural Obedience, which a true and faithful Subject of our late Lord the King, towards him should, and of right ought to bear, altogether withdrawing, and practising, and with all his Strength, intending the Peace and common Tranquillity of this Kingdom, to disquiet, and disturb, and War and Rebellion against our late Lord the King, within this Kingdom to stir up, move, and procure; and the Government of our late Lord the King, of this Kingdom to subvert, and our said late Lord the King, from the Stile, Title, Honour, and Kingly Name, of the Imperial Crown of this Kingdom to depose and deprive, and our said late Lord the King to Death, and final Destruction to bring and put, the 30th Day of May, in the 35th Year of his Reign, and divers other Days and Times, as well before as afterwards, at the Parish and Ward aforesaid, falsely, maliciously, devilishly, and traytorously, with divers other Rebels and Traytors to the Furors unknown, did conspire, compass, imagine, and intend our said late Lord the King, then his supream and natural Lord; not only of his Kingly State, Title, Power, and Government of his Kingdom of England, to deprive and depose, but also our said late Lord the King, to kill, and to Death to bring and put, and the ancient Government of this Kingdom to change, alter, and subvert; and a miserable Slaughter amongst the Subjects of our said late Lord the King, to cause and procure, and Infurrection and Rebellion, against our said late Lord the King to procure and assist, and the same most wicked Treasons and traytorous Conspiracies, Compassings, Imaginations and Purposes aforesaid to effect, and bring to pass: He the said Charles Bateman, as a false Traytor, then and there, (to wit) the said 30th Day of May, in the 35th Year aforesaid, and divers other Days and Times, as well before as afterwards; at the Parish and Ward aforesaid, falsely, unlawfully, most wickedly, and trayterously, did promise and undertake to the said other false Rebels and Traytors then and there being present: That he the said Charles Bateman would be assisting and aiding, in the taking and apprehending the Person of our said late Lord the King, and in taking and seizing the City of London, and the Tower of London, the Savoy, and the Royal Palace of White-Hall, against the Duty of his Allegiance, against the Peace, &c. and against the Form of the Statute in this Case made and provided, &c.

Mr.

Mr. Phipps, Council for the King opened the Nature of it, and was seconded by Mr. Serjeant Selby and Mr. Charles Moley, after which, Mr. Josias Keeling was sworn, whose Evidence was, That he had been at divers Meetings and Consults, where the Methods had been proposed for the Purposes aforesaid; and more particularly one time with Rumbold the Master, since executed for High Treason, and that then, three papers were produced by Rumbold and opened, containing the Model of the Design, to divide the City into twenty Parts, and to raise five hundred Men in each Part, to be under one Chief, and nine or ten Subordinates whom he should appoint, the Names of the Lanes and Streets of each Division being likewise inserted therein; and at that time Rumbold proposed the business of the Rye-House, saying, *He had a House very convenient to plant Men in, to seize the King in his return from New-Market*, but that he somewhat boggled about the killing the Postillion, which had been proposed the better to stop the Coach, because it looked too much like an Exploit in cold Blood: He further deposed, that he had been at divers other places where it had been discoursed to the same Effect, and that Mr. Bateman was looked upon as a Person fitting to manage one Division in order to an Insurrection, to seize the Tower, City, &c. This being the Sum of Mr. Keeling's Evidence; Mr. Bateman said, that what he had sworn, did not affect or charge any Treason upon him; and was answered by the Court that it did not, and bid the Jury take notice, that what Mr. Keeling had sworn, was only to the Conspiracy in general, and did not affect the Prisoner in particular.

Then Thomas Lee was sworn, and gave Evidence, That he being made acquainted with the Design by Mr. Goodenough, &c. and how the City was to be divided into twenty Parts and managed; and being asked who was a fit Man to manage one part, he nominated Mr. Bateman, and thereupon was desired to go to him, and speak with him about it as from Mr. Goodenough; and when he came to discourse him about that Affair, he apprehended very plainly, that he was no Stranger to it, nor boggled to give his Assent, and seem much desirous to speak with Mr. Goodenough about it: That he likewise went one Day to the late Duke of Monmouth's House with Mr. Bateman; and Mr. Bateman, after he had had some Discourse with one of the Duke's Servants, came to him and told him, the Duke was willing to engage in the Business, and assur'd him, that he had divers Houses kept in the Country, to be in a readiness when matters should come to Extremity; and from thence he went with him to the King's Head Tavern, and there had discourse to the same Effect; and from thence, they came to the Devil-Tavern within Temple-Bar, where Mr. Bateman proposed the seizing the City, Tower, Savoy, White-Hall, and the Person of the late King, and promised not to be wanting therein. At another time, he met him at the Half-Moon-Tavern in Aldersgatestreet, where discoursing about the Condition the Conspirators were in, As to the intended Insurrection, he said, *If he could but see a Cloud as big as a Man's Hand, he would not be wanting to employ his Interest*, and

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that there were other Discourses tending to the Insurrection, but were broke off by the coming in of one John Allmeger, before whom Mr. Bateman would not discourse, because he knew not of his coming.

Mr. Lee being asked the Design of that Meeting, replied it was upon the account of carrying on the Conspiracy, and that Mr. Bateman had told him, that he intended to take a House near the Tower, to place men in, in order to surprise it, and that he had held divers Conferences with some Sea Captains on that Affair; and that he had been with them at Coffee-Houses, &c. at sundry other times, but there to prevent discovery, they spoke of the Design at a great distance.

To this Evidence, Mr. Bateman objected, that if he had been conscious of what was laid to his Charge he was fit for Bedlam; saying, *He wonder'd if he had heard him speak such words, he had not accused him sooner*; but was answered, that Mr. Goodenough was not to be had till after the Rebellion in the West; and that Lee's single Testimony in Case of High Treason in so high a nature, was not sufficient.

Then Mr. Richard Goodenough was called, who being sworn, deposed, that being in Company with Mr. Bateman (to the best of his Remembrance) at the King's Head Tavern in St. Swithings-Alley near the Royal Exchange, and having some Discourse about the intended Insurrection, and of Wade and others that had engaged to promote it. Mr. Bateman not only approved of the Design, but promised to use his Interest in raising Men; and not only to be assisting in the Division allotted him, but in surprising the City, Savoy, &c. and in driving the Guards out of Town. To this he objected, that he was not at the King's-Head with Goodenough, to which Mr. Goodenough replied, *He had not sworn positive to the place, though he verily believed that was the place; but however, as to the Discourse and Words then spoken by Mr. Bateman, he was positive*.

The Evidence being thus full against Mr. Bateman, and Liberty granted him to make what Defence he could, he desired that Sir Robert Adams might be heard, in relation to a false Report the said Mr. Lee had raised of Sir Robert and others, and Sir Robert being in Court, gave Evidence that there had been a Report abroad, said to be raised by Mr. Lee, that he (*viz.*) Mr. Lee had beaten three Knights, and that Mr. Lee came to him and asked his Pardon, acknowledging the thing in it self was altogether false.

To the same purpose Sir Simon Lewis was called, but appeared not.

Ames Child being called by Mr. Bateman, to testify his Knowledge of Mr. Lee; and being asked what he could say against him, declared, *That he knew nothing to the contrary, but Mr. Lee was an honest Man*.

One Baker being called by Mr. Bateman, to testify that Mr. Lee would have suborned him against him to his Prejudice, some Years since, of which he had made an Affidavit before Sir William Turner, and the said Baker not then appearing in Court, he desired Sir William Turner to give some account of Baker's Examination, which the said Sir William had taken, but it

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being about two Years since, Sir William declared, He could not charge his Memory with any of the Particulars contained therein.

Mr. Tompkins, Sir William Turner's Clerk, being called, and asked what he could say concerning any Examination of Baker's taken before Sir William, that related to Lee; he said, there was an Examination taken Anno 1683. wherein Mr. Lee was mentioned; but to the best of his Remembrance it was returned before the King and Council, and he could not give any account of the Particulars.

Then Mr. Bateman desired to know upon what Statute he was Indicted, and was informed by the Court, That the Treason wherewith he stood charged, was Comprehended within the 25th. of Edward the 3d. and the 13th of Car. 2. by Overt-Act; and having little more to say in his own Defence, after a favourable hearing of all he had materially to offer, and his Son having been allowed by the Court to assist him, in looking over his Notes, and calling his Witnesses, by reason he through sickness pretended himself incapable. Then the Lord Chief Justice of the King's Bench Sum'd up the Evidence at large, and omitted nothing that might be for the advantage of the Prisoner, whereby the matter was fairly, fully, and clearly left to the Jury; and thereupon Mr. Bateman was taken from the Bar; after which, the other Prisoners being called and Tried, and the Jury ready to go forth to consider of their Verdict, Mr. Bateman's Daughter came in and besought the Court, that Baker, whom she said she had found out, might be heard against Mr. Lee, but Mr. Lee being gone, and the Tryal already over, the King's Council opposed it, unless Mr. Lee could be found (which he could not be at that time) and the Court having deliver'd their Opinion that it was not convenient to examine any Witness after the Jury had received their Charge, it being a very ill President and of dangerous Consequence; yet some of the Jury desiring it, the Court to prevent any Objections that might be made, consented, and Baker had leave to speak, whose Evidence was, that being in Company with Mr. Lee, some time in the Year 1683. and discoursing about divers matters, he had him go to the Sign of the Peacock, and to the Angel and Crown, to a Chirurgeon, and a Linnen-Draper whom he named, the former of which he remembered to be the Prisoner, and to insinuate himself into their Company and discourse them; and when he demanded of Mr. Lee to what end he should do it, or about what he should discourse them, he told him it might be about State Affairs, and by that means he would find a way to make

him a great man; and when he excused his attempting to intrude into such Company as was above him, he being but a Shoemaker, Mr. Lee told him he knew that he kept Company with such and such men, and why could he not as well do it with those he had mentioned, and of this he said his Examination was taken before Sir William Turner; but this being nothing to the purpose, but was rather looked upon as a Design Mr. Lee had to make a discovery of the Conspiracy, if he could have procured further Evidence to have corroborated his own, and Baker being looked upon as a broken Fellow and that he lodged near the Sessions House, and yet came not in before, though often called, the consideration of the whole matter was left to the Jury, and an Officer being sworn to attend them went out, and after about half an hours debating that, and what else was before them, gave in their Verdict, that Charles Bateman then at the Bar, was Guilty of the High Treason as laid in the Indictment, which Verdict was accordingly Recorded, and the Prisoner re-conveyed to Newgate; and being again brought to Justice-Hall, on Friday the 11th. of December, in order to receive Sentence; and upon holding up his hand, being asked What he could say for himself, why the Court should not give Judgment against him according to the Law: He desired to know whether Mr. Goodenough was fully pardoned, and was told, that as for the Out-lawry he was pardoned, and that his Pardon hath been allowed and approved of in that Court, and in the Court of King's-Bench, and for any thing else he was not Prosecuted: Then he said his Opinion was altogether for Monarchy, and that he hoped he should have an Advocate with the King, but had nothing more material to offer.

Then Mr. Recorder, after having spoke several things in aggravation of that great Crime, whereof, after a fair and favourable Tryal, he was Convicted; advised him not to flatter himself with hopes of Life, and thereby delay his Repentance necessary for his future Happiness, pronounced the Sentence, which was, That he should return to the place from whence he came, from thence be drawn to the place of Execution, there to be Hang'd by the Neck, and whilst alive be Cut down, and his Bowels to be taken out and Burnt; his Head to be severed from his Body, and his Body divided into four Parts, and that his Head and Quarters be disposed at the pleasure of the King.

Upon this, he prayed a Divine might have leave to come to him, as likewise his Relations, which being allowed, he departed the Court, and was on Friday the 18th of December, Executed at Tyburn according to Sentence.

Remarks

Remarks upon the Tryals of Edward Fitzharris, Stephen Colledge, Count Coningsmark, The Lord Ruffel, Colonel Sidney, Henry Cornish, and Charles Bateman; As also on the Earl of Shaftsbury's Grand Jury, Wilmer's Homine Replegiando, And the Award of Execution against Sir Thomas Armstrong: By Sir John Hawles afterwards Solicitor General.



THE strange Revolution which hath of late happen'd in our Nation, naturally leads one into the Consideration of the Causes of it. The Danger of subverting the Establish'd Religion, and invading Property, alone could not be the Causes. For if it be true, that the same Causes have generally the same Effect: it is plain, that in the Reign of a precedent Monarch, the Subversion of the Establish'd Religion was as much design'd, or at least was believ'd to be so, as of late; and it is not material whether what was suspected was true, or not; and Property was as much invaded as of late, by imposing Ship-Money, and other Taxes in the Nation, but more especially Ship-Money: which at first was light and easy, but in progress of time was increas'd, according as it was found the Nation would bear it. And at length it was feared, as there was just reason so to do, that it would become as burdensome, as what is now imposed on the *French* Nation by the *French* King; and yet when the War broke out, if the History of those Times, or the Persons who liv'd about those Times, are to be believ'd, the Majority of the Nation took part with the King. There was therefore some other Reasons for the Disaffection of the Nation to the late Government, and they may be rank'd under these six Heads.

Exorbitant Fines; Cruel and illegal Prosecutions; Outrageous Damages; Seizing the Charters, Dispensing with the Test and Penal Laws; and undue Prosecutions in Criminal, but more especially in Capital, Matters.

For the first I shall only observe, That when the House of Commons in the Parliament 1680. took that Matter into consideration, and intended to impeach several Persons for the same, the highest Fine at that time complain'd of, was but 1000*l.* and yet in few Years they were

heightned to 10000*l.* 20000*l.* 30000*l.* and 40000*l.*

For the Second, The Punishment of *Oates*, *Dangerfield*, and Mr. *Johnson*; and the close Imprisonment of Mr. *Hamden*, Sir *Samuel Barnardiston*, and of several other Persons, as they were against the Law, so they were without Precedent.

For the Third, Tho the Damages given to *Bolworth* were the first outrageous Damages given, which were taken notice of, and in truth were such; yet in little time Damages for matters of like kind were quickly improved to 10000*l.* 20000*l.* 40000*l.* nay 100000*l.* The truth of which a great many living Witnesses to their sorrow can testify.

For the Fourth, The seizing the City and other Charters, upon the pretences they were question'd, was without Example.

For the Fifth, The dispensing with the Test and Penal Laws, was as mischievous as it was illegal; it making Persons capable, who were incapacitated by Law of being in Places, of exercising Offices, for whom the Persons who had Power to confer or bestow the same, had more affection than for the Persons who at that present enjoy'd them: the Consequences of which was quickly seen, in turning out the present Possessors to make Room for others; which was the thing which, as a *Scotch* Bishop said of another Matter, *set the Kiln afire*.

Of these five Particulars something hereafter may be said; at present this Treatise is only to consider, how far the Proceedings in Capital Matters of late Years have been Regular, or Irregular: And as to that I shall not at all consider how far the Persons hereafter mention'd were guilty of the Crimes of which they were accus'd, but how far the Evidence against them was convincing to prove them Guilty, and what Crimes the Facts prov'd against them in Law were.

Remarks on Fitzharris's Tryal.

THE first Person I shall begin withal shall be *Fitzharris*; and that it may not be wonder'd, that the Tryal and Condemnation of a Person who was confessedly an *Irish* Papist, should be complain'd of; and one whose Crimes were such, that if the Law declar'd had not made Capital, it had been just, in respect of the Malefactor, for the Legislative Power to have enacted, that he should suffer the severest Punish-

ment usually inflicted for the highest Crime: yet in respect of the Common Good, it had been just and fit to have pardon'd him, if he would have confess'd who were his Conspirators and Setters on; for I am apt to think, that if that Matter had been thorowly look'd into, some Persons afterwards Witnesses in the Lord *Ruffel's*, Colonel *Sidney's*, and Mr. *Hamden's* Trials, had either never been produc'd, or had not been credited,

credited if produc'd; nor would my Lord of *Essex's* Throat have been cut; and my Lord *Ruffel* and Colonel *Sidney* might have worn their Heads on their Shoulders to this Day.

All will agree, that there was a great Struggle between the *Whigs* and *Tories*, as they were then call'd, for hanging or saving that Man: Both agreed he deserv'd to be Hang'd; the first thought it their advantage to save him if he would confess; the last thought it was fit to Hang him for fear he would confess. And to explain the Matter, it is fit to go a little higher: It cannot but be remembred, that before the breaking out of the Popish Plot, Mr. *Claypole* was Imprison'd in the *Tower* for designing to Kill the King, in such place and manner as *Oates* afterwards discover'd the Papists intended to do it. In *Trinity Term* 1678. he had an *Habeas Corpus* to the *King's Bench*, and was brought thither in order to be Bail'd, and produced Persons of Worth to Bail him; but the Penalty of the Bail set by the Court was so high, and the Court so aggravated the Crime for which he was Committed, and the likelihood of the Truth of it, that the Bail refus'd to stand, and *Claypole* was remanded to the *Tower*. But the Term after, when the Matter of which he was accus'd appear'd barefac'd to be the Design of other People, he was let go, for fear the Examination of it should go further in proving the Popish Plot, than any thing at that time discover'd. And if it were now discover'd, upon whose and what Evidence he was committed, it would go a great way in discovering the Truth of many Matters as yet in the Dark (but that Design miscarry'd, because the Intrigue was discover'd before it took effect, and yet a like Design was still carried on; and many of the Clergy of the Church of *England* had been prevail'd with to cry the Popish up as a *Fanaticks* Plot.) The Papists and the Clergy of the Church of *England* being in the late Times equally Sufferers, and oppress'd by the *Fanaticks*, they naturally grew to have a Kindness for each other, and both join'd in hating the *Fanaticks*, and therefore pretended at least that they did not believe any thing of the Popish Plot, but that Report was given out by the *Fanaticks*, whilst they themselves were designing something against the Church of *England*. The Papists having so great a Part of the Clergy of the Church of *England*, ready to believe any thing of a *Fanatick* Plot, which they should forge, and observing that that which gave Credit to the Popish Plot, was Writings concurring with Oral Testimony, which it did; for very little of the Truth of the Popish Plot depended on the Credit of *Oates*, *Bedloe*, or any other Person, most of the Facts of that Design, when discover'd, proving themselves: To instance in one, *Oates* discover'd *Coleman* had Intelligence with *Le Chaise* of a Design on *England*, and that *Coleman* had Papers testifying as much; when those Papers were seiz'd, and own'd by *Coleman*, and the purport of them was what *Oates* said they were, it was not material, whether *Oates* was a Man of Truth or not, the Papers, without *Oates* his further Evidence, sufficiently prov'd the Design. I say, the Papists, having observ'd what the Evidence was which gave Credit to that Plot, resolv'd to pursue the same Steps, and therefore *Dangerfield* was made use of to leave Papers in Colonel *Mansel's* Lodging, who was an Acquaintance of my Lord *Shaftsbury's*, importing

a Plot; but that was so foolishly carried on, and the then *Attorney General*, who had the Examination of that Matter, not being qualify'd with the Assurance his Successor had, to carry on a thing that had neither Sense nor Honesty in it, made such a scurvy Report of the matter to the King and Council, that they were enforc'd to vote *Mansel* Innocent, *Dangerfield* Guilty, and that it was a Design of the Papists to lay a Plot to the Dissenters Charge, and a further proof of the Popish Plot. But that *Attorney General* being remov'd to a place of more Honour, tho' of less Profit, and another put in his place, the Papists resolv'd to carry on the same Design, and no Person a fitter Instrument than *Fitzharris*, in respect of his Religion, and his Acquaintance; but before his Design came to Perfection, it was discover'd.

He was first imprison'd in *Newgate*, where some Persons (amongst whom Mr. *Cornish*, as I remember, then Sheriff, was believed to be one, and it was not the least of his Crime, that he endeavour'd to look into that *Arcanum*) went to Examine him as to the particulars of that Design; which was quickly taken notice of, and the Prisoner, in breach of the *Habeas Corpus Act*, remov'd from thence to the *Tower*, where he was kept close Prisoner.

The Parliament at *Oxford* meeting soon after *Fitzharris* his Apprehension, and the House of Commons being inform'd of as much of his Design as was then discovered, they thought themselves highly concern'd to examine him; but how to do it they knew not; only they resolv'd (upon a Report which one of their Members made them of one *Hubert*, who confessed himself Guilty of Firing the City of *London*, upon which it was resolv'd to examine him in the House of Commons the next Morning, but before the House sat *Hubert* was Hang'd) that *Fitzharris* should not be Hang'd without their Knowledge and Consent; and to effect it, they remember'd a Design to try the five Popish Lords in the *Tower* upon Indictments, whereupon if they should be acquitted, it was thought that those Acquittals might be pleadable to Impeachments: to prevent which, the House had exhibited general Impeachments of High Treason against them in the House of Lords; which had such Success, that the Lords were never, and the Judges gave their Opinion that they could not be, Tried on the Indictments, as long as the Impeachments were in being; for which Reason, the House of Commons exhibited a general Impeachment of High Treason in the House of Lords against *Fitzharris*, which was receiv'd; after which the House of Lords made an Order, that *Fitzharris* might or should be try'd in the *King's Bench* for the same Treason; suddenly after which, that Parliament was dissolv'd. Whether *Fitzharris* his Business was the break-neck of that Parliament, I know not, but it was shrewdly suspected it was.

There was at that time a Chief Justice in the *King's Bench*, who was himself under an Impeachment of High-Treason, and had not for that reason sat in Court for some Terms preceeding: and the Tryal of *Fitzharris* being generally look'd upon to be as Illegal as it was Odious, it was thought convenient to carry it on by a Person of better Credit; whereupon one who had been a puisny Judge of that Court, and had behaved himself very plausibly, and had gained Credit by

being turn'd out, was thought to be the fittest Person to undertake it: and accordingly the then present Chief Justice was remov'd, and the other was preferred to his place.

It being resolv'd that *Fitzharris* should be try'd, the business was how to get Witnesses to give Evidence to a Jury, and how to get Juries to find the Bill, and to convict the Prisoner, which were difficult Preliminaries.

A Person who had been one of the House of Commons which had exhibited the Impeachment, was a principal Witness: but if he should give Evidence on the Indictment, he knew not how far he might be hereafter questionable and punishable for it, when a Parliament should sit again: but at last that Person was prevail'd upon to give Evidence, but by what means is best known to himself. And as for the Juries, Grand and Petty, they were satisfy'd with the Direction of the Court, that they not only might, but ought to find the Bill, and Verdict according to their Evidence. And I think the Court was so far in the Right.

That matter being adjusted, a Bill of High-Treason was found against the Prisoner, whereupon he was presently arraigned; and after much Contest and Declaration of the Court, that they could hear nothing till he had pleaded in chief, (which if he had done, the *Plea* he afterwards pleaded, which was to the Jurisdiction of the Court, had come too late) he had leave given him to plead the special matter of the Impeachment, and accordingly Council were assign'd him to draw up and argue his *Plea* put in to the Jurisdiction of the Court; which was, *That he was impeach'd in a Superior Court for the same Treason.*

Great endeavours were used to have the *Plea* over-ru'd, without so much as hearing the Prisoner's Council for the maintaining it; the pretences were, that the Prisoner on his *Plea* ought to have produced the Record of his Impeachment, and that the *Plea* of the Impeachment for High Treason in general was naught, without specifying what the High Treason was for which he was impeach'd; for an Impeachment or an Indictment of High Treason in general was naught; that the King had power to proceed on an Impeachment or Indictment for the same thing at his Election: That the Allegation, that *Fitzharris* was impeach'd, which Impeachment stood in full force, not having mention'd an Impeachment before, was naught. But afterwards the *Attorney General* demurr'd, and the Prisoner join'd in the Demurrer. And then a Day was given to argue the *Plea* till Saturday the 7th of May, at which time the *Attorney* added to the Exceptions he took to the *Plea*, whether a Suit in a Superiour Court can take away the Jurisdiction of another inferior Court, who had an Original Jurisdiction of the Cause, of the Person, and of the Fact, at the time of the Fact committed?

To maintain the *Plea*, the Council for the Prisoner alledged, that an Impeachment differ'd from an Indictment; the first was at the Suit of the Commons of *England*, and was like an Appeal, or rather an Appeal resembl'd an Impeachment; that the proceedings were different in the Tryals: in the first, the Tryal is by the House of Lords; in the last, of a Commoner, by a Jury of Commons: In the last, but little time was allowed for giving or considering of the Evidence; in the first a much longer time: That

this matter was never practis'd before; that the King may pardon a Criminal prosecuted by an Indictment, but not by an Impeachment, no more than if prosecuted by an Appeal: If he should be acquitted on the Indictment, it might be a Question whether that may be pleaded in Bar to the Impeachment; and if not, the Prisoner should be brought twice in jeopardy of his Life for the same Crime, contrary the Rule of Law.

To the Objection, that the *Plea* was not certain, it being pleaded as an Impeachment of High Treason, not setting forth the High-Treason in particular, it was answer'd, that an Impeachment differ'd from an Indictment: for by the Custom of *Parliament*, which is the Law of the Land, such a general Impeachment is good; but by the Law, a general Indictment of High Treason, without specifying what, when, where, or how, is not good; and therefore the *Plea* of an Indictment and an Impeachment is variant.

To the Objection, that there was no Impeachment mention'd before the averment of *qua quidem impetisio*, it was frivolous; for it was before mention'd that he was impeach'd, and then by a necessary Consequence there was an Impeachment.

As to the Objection, that the King might, in which Court he would, prosecute for High-Treason, it was little to the purpose; for the Case did not come up to it, the Impeachment being the Suit of the Commons, and not of the King; and that the Courts of *Westminster-Hall* had refus'd to meddle with Matters relating to the *Parliament*. That though the Impeachment was general, yet it was made certain by the Averment; that it was for the same Crime for which the Indictment was: That the *Attorney General* might have taken Issue; that there was no such Impeachment as was pleaded; or else he might have said, that the Impeachment was not for the same Treason, for which he was Indicted; but having Demurr'd, he had confess'd both to be true: That at Common Law, if an Appeal of Murder had been brought, the King could not proceed on the Indictment, till the Appeal was determin'd; that the Judges, whereof some were then in Court, had given their Opinions to the King and Council, concerning the five Popish Lords, that they could not be try'd upon Indictments, so long as general Impeachments were depending for the same Treason; and yet their Cases and this differ'd, there the Indictments were found before the Impeachments prefer'd, and here, after the Impeachment.

In the Reply to viciate the *Plea*, it was insisted, that it did not conclude *si curia procedere debeat* as well as *vult*, as was usual for *Pleas* of that nature to do; that perhaps this matter, if the Prisoner had been acquitted upon the Impeachment, might have been pleaded in Bar to the Indictment, but it was not pleadable to the Jurisdiction of the Court; that in the Case of the five Lords the Indictments were removed into the House of Lords; that Appeals in Treason are taken away by the first of *Henry* the 4th; that in the *Plea* it ought to be aver'd; what *Lex & Consuetudo Parl.* are; that till Articles carried up, no Man impeach'd is oblig'd to answer; that in all Cases of Appeals a Man is put twice in jeopardy of his Life, if he be try'd upon an Indictment within a Year.

To take a short Review of what hath been recited, it was thought the King's Council run the Court upon a Rock, and it was hard for them to get off. The Court had advis'd them to take time to consider what Course they would take; but the King's Council were hasty, as they always were when they were resolv'd to carry a matter right or wrong; and having three bad Ways, they chose the worst.

If they had taken issue on the Record, or the Averment, that the Impeachment and Indictment were not for the same Treason, they might have pretended that the Journal of the House of Lords was not a Record, or that the Debates in the House of Commons were not good Evidence; or if they had reply'd the Order of the House of Lords, for trying the Prisoner in the *King's Bench*, to the Plea, they might have insisted on the Power of the House so to do: but having demur'd, they confessed the Truth of all the matter of the Plea, and wav'd the Benefit of that Order, and stood upon Points of Law, either conceded by the Court, or resolv'd by the Judges before, or such necessary Inferences from them as were impossible to be deny'd.

It could not be deny'd, but a general Impeachment of High Treason by the Custom of Parliament was good; it could not be deny'd, but, by the Resolution of the Judges in the Case of the Lords in the *Tower*, a general Impeachment of High Treason stop't proceedings upon an Indictment for the same matter. It did not differ the Case, that the Indictments in the *King's Bench* against the Lords were remov'd into the House of Lords; for every one knows new Indictments might have been prefer'd against them for the same Crimes. And if that had been the Reason of the Judges Resolution, why did not the Judges then in Court, all or most part of whom were Judges at the giving that Opinion, deny the Opinion, or the Reason alledg'd? which they did not. It was not a Reason to disallow the Plea, because particular Articles use to follow general Impeachments, and the impeacht are not bound to answer till the particular Articles were exhibited, which is true; for by the same Reason, a Defendant cannot plead an Action depending against him for the same matter in a superior Court, unless the Plaintiff hath declar'd against him in the superior Court, which is not true. It was not a Reason that all Records in inferior Courts must be pleaded particularly, as Indictments and the like; because such Records must be certain and particular, or else they are erroneous, and cannot be pleaded; but an Impeachment may be general.

Where the matter of a Plea is naught, no Form can make it good; tho' where the matter of a Plea is good, an ill Form may spoil it. If therefore a general Indictment or Record is naught, as in all the Cases cited against the Plea, it was no special Averment to reduce it to a certainty; or any Form can make it a good Plea: but a general Impeachment is good, and therefore it may and must be pleaded generally; and pleading it specially, would make it false, if there were no subsequent Articles, as in this Case there were not to ascertain it.

It is to no purpose, to run thro' all the Ramble of the Counsel or Court against the Plea, when

they all said the matter of the Plea was not in question, but the Form; and yet when so often ask'd in what of the Form it was defective? they were not able to answer. If it be agreed that the matter of a Plea is good, but it is defective in Form, they always shew how it ought or might have been mended, which in this Case was never done: And as this Case was new in several particulars, so it is in this, that in reading all the Arguments of this Plea, no Man knows, by what was discours'd, what was the point in question.

After the Arguments, the Chief Justice, in shew at least, very favourably offers the Prisoner's Counsel Liberty to amend the Plea, if they could; which they (apprehending, as they had Reason, for I think none can shew how it might have been mended, rather a Catch than a Favour) refus'd to do; whereupon the Court took time to consider of it, and on the 11th of May, there being a great Auditory, rather to hear how the Judges would bring themselves off, than to know what the Law of the Plea was, the Chief Justice, without any Reasons, deliver'd the Opinion of the Court, upon Conference had with other Judges, that his Brothers *Jones*, *Raymond*, and himself were of Opinion that the Plea was insufficient, his Brother *Dolben* not resolv'd, but doubting concerning it, and therefore awarded the Prisoner should plead to the Indictment, which he did, *Not Guilty*; and his Tryal order'd to be the next Term.

I think it would puzzle any Person to shew, if ever a Court of *Westminster Hall* thought a matter to be of such difficulty as fit to be argu'd, that they gave their Judgments afterwards without the Reasons: 'Tis true, that the Courts of Civil Law allow Debates amongst the Judges to be private among themselves, but the Proceedings at Common Law always were, and ought to be, in *aperta curia*. Had this Practice taken place heretofore, as it hath of late (but all since this Precedent) no Man could have known what the Law of *England* was, for the Year Books and Reports are nothing but a Relation of what is said by the Council and Judges in giving Judgment, and contain the Reasons of the Judgment, which are rarely express'd in the Record of the Judgment; and it is as much the Duty of a Judge to give the Reasons why he doubts, as it is of him who is satisfied in the Judgment. Men sometimes will be asham'd to offer those Reasons in Publick, which they may pretend satisfy them, if conceal'd; besides, we have a Maxim in Law undeniable, and of great use, that any Person whatever may rectify or inform a Court or Judge publicly or privately, as *amicus curiae*, a Friend to the Court, or a Friend to Justice: But can that be done, if the Standers by know not the Reason upon which the Court pronounce their Judgment? Had the three Judges, who were clear in their Opinion, given their Reasons of that Opinion, perhaps some of the Standers by might have shew'd Reasons unthought of by them, to have made them stagger in, if not alter that Opinion; or if Justice *Dolben* had given the Reason of his doubt, perhaps a Stander by might have shewn him a Reason unthought of by him, which would have made him positive, that the Plea was, or was not, a good Plea.

If a Man swears what is true, not knowing it to be true, tho' it be logically a Truth as it is distinguish'd, yet it is morally a Lye; and if a Judge give Judgment according to Law, not knowing it to be so, as if he did not know the Reason of it at that time, but bethought himself of a Reason for it afterwards, tho' the Judgment be legal, yet the pronouncing of it is unjust.

Judges ought to be bound up by the Reasons given in publick, and not satisfy or make good their Judgment by after-thought-of Reasons. How very ill did it become the Chief Justice Popham, a Person of Learning and Parts, in the attainting Sir Walter Rawleigh, of which Tryal all since that time have complain'd? when he gave his Opinion that the Affidavit of the Lord Cobham, taken in the Absence of Sir Walter, might be given in Evidence against him, without producing the Lord Cobham face to face to Sir Walter (which was desir'd by him, altho' the Lord Cobham was then forth coming.) When he sum'd up the Evidence, he said, *Just then it came into his Mind, why the Accuser should not come face to face to the Prisoner, because he might detract his Evidence, and when he should see himself must dye, he would think it best that his Fellow should live to commit the like Treason, and so in some sort seek Revenge.* Which besides that it is against the Common Law, and Reason, it is against the express Statute of E. 6. which takes care that in Treason the Witness shall be brought face to face of the Person accus'd.

Did it become a just Man to give his Opinion, and bethink himself of a Reason afterwards? And I am mistaken if it will not herein appear, that many Persons complain'd of, have been guilty of the same Weakness or Injustice, call it which you will; so foolish are the best Lawyers and plausible Speakers, when they resolve to carry a Point, whether just or not: However they may deceive the Ignorant, yet they talk and argue very absurdly, to the apprehension of the Majority of Mankind. And they had been sooner discover'd, but that the Discoverers were quickly suppress'd and crushed, as Scandalizers of the Justice of the Nation: And I think this may be justly called the first mute Judgment given in Westminster-Hall.

But to return to Fitzharris's Tryal, which came on the 9th of June; and then the King's Council made use of their Arts in managing the Jury. And first, there were a great many Persons for Jurors, to whom Mr. Attorney had no Stomach; some challenged for Cause, for that they were no Freeholders, as John Kent, Giles Shute, Nathaniel Grantham, and several others; and the Challenge allow'd to be a good Challenge by all the Court; for tho' the Chief Justice only spoke, yet all the Court assent to what one Judge says; if they do not shew their Dissent. I do not take notice of this, as complaining of it, for I think it is a good Cause of Challenge in Treason; but then I cannot but wonder at the Assurance of the same King's Council, who denied it to be a good Cause of Challenge in the Lord Russel's Tryal. It is true, that was a Tryal in the City; but that matter had no Consideration in the Judgment: for after the Lord Russel's Council had been heard, all the Judges deliver'd their Opinions, That at Common Law, No Freehold was no Challenge in

Treason; and that the 1. & 2. Phil. & Mar. had restor'd the Tryal in Treason to be what it was at Common Law: of which number of Judges, Sir Francis Pemberton and Sir Thomas Jones were two; nay, Sir Francis Pemberton ask'd Mr. Pollexfen, *Whether he found any Resolution at Common Law, that no Freehold was a Challenge in Treason.* And that Judgment is afterwards cited in Colonel Sidney's Tryal, fol. 63. as the Opinion of all the Judges of England, That no Freehold was no Challenge to a Juror in Treason at Common Law; and Colonel Sidney's Tryal was in a County at large.

But if it was not a Challenge at Common Law, I would know how it came to be a Challenge in Fitzharris's Case? There was no intervening Act of Parliament to alter the Law between the two Tryals that I know of.

Another Art us'd, was to challenge for the King without Cause, where no Cause could be shewn, such Jurors as they did not like.

The Prisoner was troubled at this, and appeals to the Court, whether the Attorney General was not oblig'd to shew his Cause of Challenge; but is answered by the Court, that he need not till all the Pannel was gone thro', or the rest of the Jurors challeng'd, which is true; but had the Prisoner been advis'd to challenge the rest of the Jury, as he would have been if he had had Council, the Attorney must have wav'd his Challenge, or put off the Trial. And since he was not allowed Council, why should not the Court, according to their Duty, as they have said it is, have advis'd him so to do? I am sure in Count Coningsmark's Tryal, when Sir Francis Winnington challenged a Juror without Cause for the King, the Court presently ask'd the Cause; and such Answer was made by the Prosecutor's Council as was made to Fitzharris: Whereupon the Court told the Count, that the way to make them shew their Cause of Challenge, was to challenge all the rest of the Jury; and thereupon the Challenge was waved. They were different Practices, tending to different Ends; and accordingly it succeeded, Fitzharris was convicted, and the Count acquitted.

Upon the Tryal the Evidence was this, Fitzharris was the 21st Day of February, 1681. with Everard, and gave him Heads by word of Mouth, to write the Pamphlet in the Indictment mentioned, to scandalize the King, raise Rebellion, alienate the Hearts of the People, and set them together by the Ears; the Libel was to be presented to the French Ambassador's Confessor, and he was to present it to the French Ambassador, and it was to set these People together by the Ears, and keep them clashing and mistrusting one another, whilst the French should gain Flanders, and then they would make no Bones of England: For which Libel Everard was to have forty Guineas, and a monthly Pension, which should be some thousands of Pounds; Everard was to be brought into the Cabal, where several Protestants and Parliament Men came, to give an account to the Ambassador how things were transacted. Everard asked what would be the use of the Libels? Fitzharris said, we shall disperse them we know how; they were to be drawn in the name of the Nonconformists, and to be put and fathered upon them; This was the sum of Everard's Evidence.

Mr. Smith prov'd Fitzharris's giving Instructions to *Everard*; and Sir *William Waller* and others prov'd the Libel, and the Discourse about gaining *Flanders* and *England*: Other Witnesses were examin'd to prove Fitzharris's Hand. For the Prisoner, Dr. *Oates* said, *Everard* told him the Libel was to be printed, and to be sent about by the Penny-Post to the protesting Lords and leading Men of the House of Commons, who were to be taken up as soon as they had it, and searched, and to have it found about them. He said the Court had an hand in it, and the King had given Fitzharris Money for it already, and would give him more if it had Success.

Mr. *Cornish* said, when he came from *Newgate* to the King, to give him an account in what Disposition he found the Prisoner to make a Discovery, the King said he had had him often before him and his Secretaries, and could make nothing of what he did discover; that he had for near three Months acquainted the King he was in pursuit of a Plot, of a matter that related much to his Person and Government, and that in as much as he made Protestations of Zeal for his Service, he did countenance and give him some Money; that the King said he came to him three Months before he appeared at the Council-Table.

Colonel *Mansel* said, that Sir *William Waller* gave him an account of the business in the Presence of Mr. *Hunt*, and several others, and said, that when he had acquainted the King with it, the King said he had done him the greatest piece of service that ever he had done him in his Life, and gave him a great many thanks: But he was no sooner gone, but two Gentlemen told him, the King said he had broken all his Measures, and the King would have him taken off one way or other, and said that the Design was against the Protestant Lords, and Protestant Party. Mr. *Hunt* confirm'd the same thing, and added, that he said the Design was to contrive those Papers into the Hands of the People, and make them Evidences of Rebellion; and appealed to Sir *William Waller* who was present, whether what he said was not true. Mr. *Bethel* said, *Everard* before he had seen *Bethel*, or heard him speak a word, put in an Information of Treason against him, at the Instigation of *Bethel*'s mortal Enemy; which Information was so groundless, that tho' it was three Years before, yet he never heard a word of it till the Friday before.

Mrs. *Wall* said, Fitzharris had 250 l. 200 l. or 150 l. for bringing in the Lord *Howard* of *Esrick*; she added, that Fitzharris was looked upon to be a Roman Catholick, and upon that account it was said to be dangerous to let him go near the King, that he never was admitted to the King.

The Lord *Conway* said, that the King had declared in Council, that Fitzharris had been employed by him in some trifling businesses, and that he had got Money of him; but added, as of his own Knowledge, that the King never spoke with him till after he was taken, which was the 28th of February last.

All the Evidence being over, it was sum'd up by the Council, That upon all the Circumstances of it, Fitzharris was the Contriver and Director of the Libel; that it was a treasonable

Libel, and a Jesuitical Design; that the Excuse he made, as if *Everard* drew him into it, or trepanned him into it, was vain, nothing of that being prov'd. That *Everard* could do nothing alone, and therefore Sir *William Waller* must be in the Contrivance; but that was unlikely: That the Prisoner would insinuate that the King hir'd him to do it, because the King gave him Money, but that was out of Charity; and therefore concluded, with a great many words, that an English Protestant Jury of twelve substantial Men, could not but find the Prisoner guilty.

The Court added, that tho' Dr. *Oates* said, *Everard* said it was a Design of the Court, and was to be put on some Lords, and into some Parliament Men's Pockets; yet *Everard* was there upon Oath, and testified no such thing in the World; and for the Impeachment in the Lords House, they were not to take notice of it.

After which the Jury inform'd the Court, that they heard there was a Vote in the House of Commons, that the Prisoner should not be try'd in any inferior Court: To which the Chief Justice said, That that Vote could not alter the Law, and that the Judges of that Court had Conference with all the other Judges concerning that matter; and it was the Opinion of all the Judges of *England*, that that Court had a Jurisdiction to try that Man. After which, Justice *Jones* was of Opinion, that if he were acquitted on that Indictment, it might be pleaded in Bar to the Impeachment; and Justice *Raymond* deliver'd his Opinion to the same purpose. It is strange that all the Judges should be of that Opinion; yet before it was said, Justice *Dolben* doubted. It is more strange, that if Justice *Dolben* was not of that Opinion, he would hear it said he was, and not contradict it. It is most strange, that if the Judges of that Court were of that Opinion, they had not declar'd so, in the arguing or giving Judgment on the Plea; for that was the matter of it, being pleaded to the Jurisdiction of the Court, that they had not power to try the Prisoner for that Crime, so circumstanced.

If the Plea had been over-ru'd as to the matter, none would have been so impertinent, as to go about to maintain the form of it.

Now to say truth in behalf of the Publick, and not on behalf of Fitzharris, the Evidence was unfairly summed up; for *Everard* never pretended Fitzharris drew him in, or was to trepan him: It is true, he ask'd Fitzharris what the design of the Pamphlet was, and whether he was not put upon it to trepan others? who answer'd, he was not. But afterwards being too nearly prest by the Attorney General, he said, Fitzharris told him the use of the Libels was to disperse them he knew how; that they were to be drawn in the Name of the Nonconformists, and put upon them. And *Oates* said, *Everard* said the Libels were to be printed, and sent abroad by the Penny-Post to the protesting Lords, and leading Men of the House of Commons, and the Persons seiz'd with them in their Pockets; which is all strong Evidence that the Libel was design'd to trepan others, and that was all along the import of Fitzharris his Questions, tho' cunningly not answer'd by some of the Witnesses,

nesses, and as cunningly omitted in summing up the Evidence.

It is true, the Chief Justice said, *Everard* said no such thing as *Oates* had said; but why was not *Everard*, who was then present, ask'd whether he said what *Oates* had given in Evidence?

There cannot be shewn any Precedent where a Witness contradicts, or says more or less than a Witness that went before him, by the hearsay of that Witness; but the first Witness is ask'd, what he says to it? Why was not Sir *William Waller*, who was also present, ask'd what he said to the Evidence of Mr. *Manfell* and Mr. *Hunt*? and who it was that inform'd Sir *William* what the King said? It was no way in proof, nor pretended by *Fitzbarris*, that any Person was concern'd in that matter, but *Everard* and *Fitzbarris* tho' it was shrewdly suspected by the House of Commons; and no Man that reads the Tryal, but believes there were many more concern'd, not yet discover'd: but the Council might have brought in any Judge of the Court by the Head and Shoulders to be a Confederate, as well as Sir *William Waller*, who was a *Jack-a-lent* of their own setting up, in order to knock him down again.

It was not pretended by *Fitzbarris* that the King gave him any Money to frame that, or any other Libel; there was Evidence, that he had got Money of the King for some little matters he was employ'd in, perhaps for bringing in Libels dispers'd abroad, or discovering Plots.

Upon the whole Evidence, it was plain that *Fitzbarris* was an *Irish* Papist; it was plain he was the only visible Contriver of the Libel; who were behind the Curtain, is not plain, and to know them, was the design of the Impeachment.

It was plain it was a devilish Jesuitical Design, as the Court and Council, in summing up the Evidence, agreed it to be; it was plain, that the Libel was such, that if dispers'd with intention to stir up the King's Subjects against him, it had been High Treason within the Statute of the 13th of the King: but what the Intention of the contriving the Libel was, was not very certain; and therefore, consequently, what the Crime of it was, was uncertain.

To take the Evidence all the ways, as to the Design of the contriving of the Libel, it is capable of being interpreted; the easiest Construction is to say, he fram'd a Libel with intention to pretend to the King, that he had intercepted a Libel privately dispers'd; and to make it more likely, it should be framed in the Nonconformists Names, to make his Report the more credible (for of Papists or Churchmen it could not be believed) to get more Money of the King; and that matter, by all his Questions to the Witnesses, he most drove at; and that would at most be but a Cheat.

A more criminal, but less credible Construction, is to believe he design'd to disperse them, to excite and prevail upon the discontented to take up Arms.

For what effect had that Pamphlet, when it was, for it was afterwards, dispers'd, upon the Minds of the People? or what effect could any Man of Sense think it could have? for tho' it

was a virulent, yet it was as foolish a contriv'd Libel as ever was writ; yet I own if it had been writ and dispers'd with that Design, it had been High Treason within the Statute of E. 3.

But the most natural Construction of the worst Design of it, was to trepan the Parliament Men, and make the Libels Evidences of a rebellious Conspiracy: This *Everard* confesses *Fitzbarris* told him was the use to be made of them; and *Everard* could not know the Design of them, but by what *Fitzbarris* told him. And *Oates* well explains what *Everard* meant by the Words, in his Evidence, *put the Libel on the Nonconformists*, by what *Everard* told him.

But yet even that, tho' in it self the highest Crime a Man can be guilty of, next to putting it in Execution, is but a Conspiracy, which was mildly punish'd in *Lane* and *Knox* their Case, tho' this exceeded that; that being a design only against one Person, this against many.

Yet tho' this was of no higher Crime by the Law as now establish'd than a Misdemeanor, it was fit for the Legislative Power to have punish'd it in the manner it was punish'd, which yet the Legislative Power ought to resent as an Injury, for an inferior Court's snatching the Exercise of that Power out of their Hands, which only belongs to the supream Authority.

That this Crime, upon Construction of the Evidence taken in the best Sense, is no Treason: tho' the Libel should in all probability incite the Subject to levy War, which it was not likely to do, or in Fact it had been the cause of a Rebellion, yet if it was not designed by the Contriver to that purpose, it was not Treason by the Statute of *Edward the Third*, or *Charles the Second*; for in the last Statute it is designing to levy War, and in the Statute of *Edward the Third*, it is a strained Construction, to make designing to levy War Treason; yet none ever pretended to strain the Sense of that Statute farther than designing to do it.

If the ill Effects the Libel did, or might produce, made it Treason, then Sir *Samuel Astrey*, who read it in Court at the Tryal, and the Printer, that afterwards printed and publish'd it, and Sir *William Waller*, who read it to Mr. *Hunt* and others, were guilty of Treason; for the Libel carried no Venom or Charm with it the more, for being fram'd by *Fitzbarris*, or *Everard*, or for being published by either of them, than if publish'd by another Person.

The difference is, *Astrey* read it aloud, as his Duty; the Printer printed and published it for gain; Sir *William Waller* publish'd it as a Novelty; and if *Fitzbarris* contriv'd it to put it upon the Nonconformists or Parliament Men, and not to stir up a Rebellion, tho' it tended to all the ill Consequences mention'd in his Indictment, yet it was not Treason.

But it will be urged, how shall *Fitzbarris*'s Intention be proved? It was a Question which made a mighty sputter in arguing the Plea. How shall it be proved, that the Impeachment was for the same Treason for which the Indictment was? But in the Tryal of *Fitzbarris*, that Question was fully cleared; for it was proved there, that the very Libel then produced in Court, was the same Libel read in the House of Commons, upon which the Impeachment was voted.

And to say Truth, nothing can be put in Issue, but is capable of Trial: *Quo animo* a thing is done in all overt Acts of a design, is one of the main questions; or to speak in Law Phrase, whether done *proditorie* or not, an Adverb of great use and sense, tho heretofore slighted; and under which I believe a great many Persons will be enforc'd to shelter themselves from being punished by the Law establish'd.

No man will pretend, that Libel did any Man mischief but the Contriver, nor in probability could have done, if not used to the purpose *Everard* said to *Oates*. Yet other Persons have been guilty of as illegal Acts, of worse Consequences in prospect, and much worse in effect, and it did not amount to Treason. I dare say, the Allegation, that they disturb'd the Kingdom by their Acts, and War caus'd to be mov'd against the King, is true of them, and they are guilty of all the Aggravations us'd in Indictments of Treason.

To instance in some of many, did it not make a mighty heart-burning in the City against the Government, and rais'd great Jealousies between the King and People, when the Sheriffs *North* and *Rich* were impos'd on the City? Did not the taking away the City's right of Electing Sheriffs, and the suspicions for what end it was done, besides the Illegalities that followed? If what *Sir Edward Herbert* says in his late Vindication, fol. 16. be Law, as it hath an Aspect as if it were, that Grand Juries return'd by such as are Sheriffs in Fact, but not in Right, are illegal, and Convictions on their Presentments are illegal and void, give great disturbance, and that Opinion seems to be countenanc'd by my Lord *Coke's 3d Instit. Fol. 32.* in his Comment on the 11th of *Henry the 4th*, and consequently my Lord *Russel's* and other Attainders void? Did it not add to the heart-burning, the punishing those Citizens as Rioters, who were at *Guildhall* innocently contesting their right of Electing? Was it not an increase of the mischief, the bringing the *Quo Warranto* against the City, whereby the Credit of the City was lost, and many Orphans starved, and more impoverished; beyond the possibility of recovery? And it was yet heightened by the Judgment given in the highest Case that ever came into *Westminster-Hall*, by two Judges only, and that without one word of Reason given at the pronouncing, according to the pattern of *Fitzharris* his Case, and was the second mute Judgment? Did it not fright all honest Men from being on Criminal Juries, when *Wilmer* was so illegally prosecuted for not giving a Verdict against his Conscience, by an *homine replegiando* and Information? And did not that make all Merchants, who had Transactions beyond Sea, afraid to send their Servants thither, for fear they might be laid by the heels till they fetch'd them back again? Did it not startle the Lords and the Leading Men of the House of Commons mention'd so often in *Fitzharris* his Trial, when the Earl of *Essex*, Lord *Russel*, Colonel *Sidney*, Mr. *Hamden*, and several others were clapt up close Prisoners in the Tower? Did it not deter any honest Man from appearing to witness the Truth, when *Sir Patience Ward* was convicted of Perjury? Did it not provoke two Great and Noble Families, when the Lord *Russel* and Colonel *Sidney* were so illegally and unhand-somely dealt withal, as shall be hereafter declar'd? Did it not provoke all the Nation, except the Clergy and Soldiery, when all the Charters of

England were seiz'd, and not regranted, but at excessive Rates, to the starving the Poor, who should have been fed with the Money which went to purchase the new Charters, and reserving the Disposition of all the places of Profit and Power, within the new Corporations, to the King, but which indeed the Confederates shar'd amongst themselves? Nay the very Election of Burgeses, the freeness of which is the great Fundamental of the Government, was monopoliz'd, and put into a few hands. Did not the unreasonable Fines, and cruel Punishments inflict'd, oppress many, terrify all, and consequently made the Government odious to the Subject? Did not the Cruelties acted in the *West*, enrage above a third part of the Nation? Did not the turning out many of the Soldiery and Clergy, without any reason; and for that purpose erecting Arbitrary Courts, and granting Dispensations to Persons by Law disabled, to enable them to have and enjoy the Places and Offices of such as were illegally turn'd out, and of all who should be in like manner turn'd out? And was it not seen what the Consequences of those things would be, by all who did not wink their Eyes, or who were not blinded by the Profit they made of such illegal and cruel Acts? Was not the King at last sensible, that the Consequence of what is before recited would be what afterwards happen'd? And did he not in less than a Months time, when too late, throw down all that *Babel* of Confusion which had been so long a building, and did all in his Power, and would have done more if he could, to have set things as right as they were before the Parliament of *Oxon*; for from thence the Extravagances may be dated. But alas! more mischief can be and was done by weak Brains, than the best Wits can retrieve; those that were dead could not be brought to Life; the Restitution of the Cities Charters was but in shew a Relief. How shall all those defend themselves who have acted under all the illegal Sheriffs constituted and not elected? How shall those defend themselves, who have acted under Officers appointed by the new Charters, which by the Restitution are gone as if they never had been? How shall Sheriffs, Goalers, and other Officers, who have had, or now have Custody of Prisoners; and having not taken the Test, trust to the validity of a Dispence, behave themselves? Shall they continue to keep their Prisoners in Custody, or let them go? If the last, they are subject to Actions of Escape; if the first, they are liable to false Imprisonment. These and a great many more Mischiefs, not yet seen, are the natural results of these illegal Actions.

I never reflect on these things, but I remember *Tully* in his Offices lays down as a Rule, that nothing is Profitable but what is Honest, and gives many Reasons for it; but nothing so convincing, as the Examples he brings in publick and private Matters: and tho the Empire was vast, and he bore a great Figure in it, and was very knowing, and was well read in the Greek and Roman Histories, yet he was not able to bring a 100th part of Examples, to prove his Position, as have been in this little Island in the space of eight Years. And the Persons, by whose advice these things were transacted, are the more inexcusable, if it be true what a certain Nobleman (who bore a considerable Character in the two late Kings Council) once said to me was true. He was complaining that the King was misled by the Advice of his Lawyers.

I ask'd him whether the King put his Judges and Council upon doing what was done, without considering whether it was Legal; as the common Vogue was he did; or that his Lawyers first advis'd what to be done, was Law? He answer'd me, on his Honor, the King's Council at Law first advis'd the King might do by Law what he would have done, before he commanded them to do it.

Yet I agree, none of those matters, tho so inconvenient and grievous, are Treason by the Statutes of E. 3. or C. 2.

For Profit in some Cases, Revenge in others, the endeavoring means to escape Punishment, and a natural propensity to Cruelty in many, were the true ends driven at, and not the bringing their Prince into the hatred of his Subjects, tho that was a necessary consequent of all recited and of many more matters omitted: And let *Fitzharris* his Crime, and those recited, be but examin'd, his was but a *Peccadillo* to the least of those; tho this was acted by an *Irish Papist*, and these by *English Protestants*, Sons of the Church of England as by Law establish'd, as they call themselves; tho I doubt, not sincere Protestants, as my Lord *Ruffel* said; words which were matter of Laughter to those who brought him to the Block.

But, tho neither *Fitzharris* his Crime, taken in the last Sense, nor the above Crimes were High Treason by any Statute; and the Judges have not Power to punish any other Treasons: yet in all times the Parliaments have practis'd, and it is necessarily incident to all Supreme Powers, in all Governments, to enact or declare extravagant Crimes to be greater than by the established Law they are declared to be, not by virtue of the Clause in the Statute of *Edward* the 3d. whereby some have, by mistake, thought that a Power was reserved to the *Parliament* to declare other matters Treason, than what is therein express'd: for admit that Clause had been omitted, there are none can doubt, but in point of Power, the *Parliament* could (how far in Justice they might, is another Question) have declar'd any other matter to be

Treason; and the words of that Clause are very improper Expressions, either to vest or reserve a Power in the *Parliament*; for the words are only prohibitory to the Judges, to adjudg any other Matters Treason, than those express'd in the Act, tho they were somewhat like those express'd, and therefore might be suppos'd Treasons; and it is a sort of monition to Offenders, that they should not presume to be guilty of Enormous Crimes, upon presumption that they were not Treasons within that Act. For in the Preamble 'tis said, because many other like Cases of Treason (which in Sense are Cases like Treason declared in that Act) may happen in time to come, which could not be thought of or declar'd at that present; therefore if any such should happen before any Justice, the Justice should tarry, and not proceed to give Judgment of Treason on it, til it should be judg'd in Parliament, Treason or Felony. How well the Judges in late days have observed this prohibitory Law, let the World judg; and most certainly the Parliament might have declar'd in *Fitzharris* his Case, as they may in those other, that the Crimes were Treason, Felony, Misprision of Treason, Trespass, or what other Crime known in the Law, and inflict what Punishment they thought fit; and it is no injustice for the Supreme Power to punish a Fact in a higher manner than by Law establish'd, if the Fact in its nature is a Crime, and the Circumstances make it much more heinous than ordinarily such Crimes are. It was not injustice in the Parliament of the second and third of *Philip* and *Mary* to enact, that *Smith* and others, who were suppos'd to be guilty as Accessaries to a barbarous Murder, and were equally if not more guilty than the Principal, to enact, as they did, that if they should be found guilty as Accessaries, they should not have their Clergys, which at the time of committing the Fact Accessaries to Murder were allow'd to have. It is true, to declare or enact a Fact, after it is committed, to be a Crime, which when committed was in it self none, such as transporting Wool beyond Sea, and the like, would be high Injustice.

Remarks upon Colledge's Tryal.

BUT to return whence I have digress'd, *Fitzharris* being Executed according to his Sentence, though there was great grumbling amongst the Protestants, that those who set him on Work were conceal'd, and never like to be discover'd now he was Dead; yet all was quiet, and the Conspirators, who resolv'd, though *Fitzharris* miscarried in his Design, yet the Plot should go on, but what it should be, or where the Scene of it should be laid, or who the Plotters should be, they were not well resolv'd.

Great noise of Warrants being issu'd out there was, but at last all center'd in an considerable Fellow, one *Stephen Colledge*, a *Foyner* by Trade, who for his Honour, as a Prisoner of State, was committed to the Tower for High Treason. At first it was design'd to lay the Scene in London, and accordingly a Bill of Indictment of High Treason was exhibited to the Grand Jury (whereof *Wilmer* was Foreman) at

the Sessions House: But the Business of *Fitzharris* was so new, and smelt so Rank, that the Bill could not be digested, but was spew'd out with an *Ignoramus*; for which *Wilmer* was afterwards forc'd to fly his Country.

Then it was resolv'd the Scene should be at Oxford, and accordingly the King's Council, with *Irish* Witnesses, at the Assizes, post thither, and prevail with the Grand Jury to find the Bill; but by what Arts is not known, for he was privately shut up with them: and I should wonder, if he, who frequently in the hearing of those who understood better than himself, had Assurance enough to impose upon the Courts, should scruple in private to impose any thing on an ignorant Jury.

I know not how long the Practice in that Matter of admitting Council to a Grand Jury hath been; I am sure it is a very unjustifiable and unsufferable one. If the Grand Jury have a Doubt

in Point of Law, they ought to have recourse to the Court, and that publickly and not privately, and not rely upon the private Opinion of Council, especially of the King's Council, who are, or at least behave themselves as if they were Parties.

It is true, it is said they are upon their Oaths; and though it be not express in their Oaths, that they should do right between the King and Subjects, yet that is imply'd in the Oath I agree. But have they behav'd themselves as if they were under an Oath? besides, all Men are not capable of giving Advice to be rely'd on in so great a Matter as Life; but the Manner of doing it being in private, can never be justify'd. I know in *Fitzbarris's* Case, the King's Council were cajoling the Grand Jury in private for some Hours: but I did not think fit to take notice of it in that Tryal, because I think both the Grand and Petty Jury did very well, they acted according to the best of their Understanding, which is all that God or Man requir'd of them; they ask'd pertinent Questions, they were over-rul'd in some, not fully answer'd in others: not that I think either of them gave a Verdict according to Law upon the Fact, as it appear'd upon the Evidence; but that was not the Fault of the Jury, but of the King's Council, and of the Court who misled the Jury. I thought it more proper to take notice of it in this Trial, wherein the first Bill was rejected by an understanding Jury; and all Men wonder'd how the second came to be found *Billa Vera*; and for that reason one of the King's Council boasted at Court of his Service and cunning Management in the Matter.

The Bill being found, the next Matter was to bring the Prisoner to his Tryal: and as he had more Honour than what usually is bestow'd on so mean a Man to be committed to the *Tower*, though in truth it was to keep him from all means of Defence; so to carry the Matter on, he was allow'd to have, by order of the King and Council, a Council and Solicitor to come to him, and advise him for his Defence at all Events; a Favour deny'd to *Fitzbarris*, for his Council was to advise to the Matter of the Plea only: but that Favour in shew was only to betray him, as shall be shewn. And a third Favour he had, which no Man of his Quality ever had; there were then three of the King's Council sent from *London*, and all the Council that could be pick'd up upon the Spot, which were three more, and no less than four Judges to prosecute and try him; but that was to make sure Work of him.

The 17th of *August*, 1681. he came to his Tryal: his Indictment, as to part, was in common Form for Treason, but particularly for designing to seize the King's Person at *Oxford*, mixt with Words he should say, as, That there was no good to be expected from the King, he minded nothing but Beastliness, and that he endeavour'd to establish Arbitrary Power and Popery. To which being requir'd to plead, he desir'd a Copy of the Indictment, a Copy of the Jury, to know upon what Statute he was Indicted, and Council to advise him whether he had any thing pleadable in Bar, all which were deny'd him. Then he desir'd he might have his Papers, which were taken from him after he was brought from the Prison, and before he came into Court, at an House over against the Court; for so it seems the King's Council had order'd

the Matter, that the Goaler *Murrel*, and the Messenger *Sawel*, after they had him out of the Prison, should run him into an House, and take away all his Papers, which they believ'd were the Instructions, as in truth they were, of the Council assign'd him when in the *Tower*, and bring the Papers to them, whereby they would not only disable him of his Defence, but they could be better instructed how to proceed in a way for which he had not provided himself of any Defence.

Murrel and *Sawel* did as the King's Council directed them; much wrangle there was whether he should have his Papers or not, all the Court agreed he should not have them till he had pleaded *Guilty* or not *Guilty*; and afterwards he should have the Use of some, and not of others, because they did not appear to be written by himself, but by some Council or Solicitor; and as they said, none is allowed in Treason, unless assign'd by the Court. The Chief Justice *North* said they were not taken away by him; but says *Colledge*, they were taken away by the Keeper under pretence of bringing them to his Lordship. The Court said they knew not what Papers he meant, and knew nothing of it; he said the Indictment mention'd something of Misdemeanor as well as Treason, but he knew not how to make his Exceptions without his Papers. I have thought fit to mention all these things, because this Tryal was the inlet to all that follow'd, and gave Encouragement to spill nobler Blood. The Injustice of the Violence us'd to the Prisoner, must be measur'd from the Reasons given for it, that the Papers were Instructions from Council and Solicitors, and none in Law was allow'd in Treason. 'Tis true, no Council are allow'd for the Prisoner in a Tryal upon an Indictment of any Capital Matter; but in an Appeal for Capital Matters, Council are allow'd even on the Trial. The reason given, that the Indictment is the Suit of the King, and no Council or Witness is allowable in a Capital Matter against the King, is foolish, as shall be hereafter shown; and as vain is the Reason that the Judges are Council for the Prisoner, which they ought to be: but I doubt it will be suspected, that in this Case and many others, they did not make the best of their Clients Case; nay generally have betray'd their poor Client, to please, as they apprehended, their better Client, the King; for so they say, they are to be Council likewise for the King in Indictments, that is to say, they are to be indifferent and upright between both, so certainly they are to be in Appeals; therefore that is not the Reason why no Council is allowed the Prisoner in the Indictment, but the true Reason in probability is, that the Prisoners in Indictments are generally so very poor that they could not be at the Charge of having Council, and so Non-usage gave Colour of a Law.

The other Reason my Lord *Coke* gives for it, viz. that much of the Truth may be discern'd by the Prisoner's Behaviour, or Answers, which would be conceal'd if he spoke by another, is not satisfactory; for the same is to be said in an Appeal. As to the publick, it is not material whether a Man is prosecuted and punish'd by an Indictment, or an Appeal; and that Appeals are less frequent than Indictments, is only that the first is more chargeable than the last, for though we hear not of late of any Appeals but in Murder, yet they lie in Robbery, Burglary, Felony, and

and in all Crimes at Common Law punishable by loss of Life or Member: but though the Rule in Indictments is, That no Council is allow'd, yet it is confin'd to the Tryal; no Law, Common or Statute, nor any Usage says, a Prisoner shall not have Council to advise him before or after the Tryal; and in Murder and all other Crimes, it is always admitted; and why not in Treason?

In Treason say some, 'tis Criminal for one to Advise or Sollicit for the Prisoner; and the King's Council said, he had known one indicted for being a Solicitor for one in High Treason; and says the Court, it is Criminal for one to be Solicitor or Council in Cases of High Treason, unless assign'd by the Court: and whether it be so or no is worth Inquiry.

First, No Law Book as to this Matter makes any difference between Treason, and other Crimes; and Advising and Solliciting is spoken of in general Terms, which being reduc'd to Particulars, will shew the Absurdity of it.

Suppose I observing the Indictment on which the Prisoner was arraign'd, was erroneous, and should therefore advise him to move and quash it for that Error: for, say I, if you should be try'd on this Indictment, and found guilty, unless you move in Arrest of Judgment, you will be attainted; and then you can take no Advantage of that Error; and if you be acquitted you may be indicted again, and try'd again, because the first Indictment was erroneous.

If this be Law, as none can deny it, is it not lawful to advise him? and is it not fit for the Court to quash the Indictment faulty, notwithstanding all the Cant of Dilatories, Subterfuges, and defending himself by plain Matter of Fact? Or suppose I advise in Fact that I hear that such a Witness is to come against him, I know he is hired to do the Job, and I will prove it on him if call'd. Or suppose I tell him, I know such a Witness is convict of Perjury, and if he will call me, I will produce the Records of his Conviction; can any Lawyer say these things are Criminal? but if I should advise a Prisoner to escape out of Prison, shewing him the Way of doing it, it is criminal.

In all Cases comforting a Traytor is Treason, but it is meant where you do it to keep him from Justice; for else feeding a Traytor in Prison is Treason, which none will affirm. So that reducing general Words to particular Facts, clears the Sophistry of them; nor is it criminal to be a Solicitor in Treason, for where there is no positive Law, as in this Case there is not, natural Reason must take place; and better Reason cannot be given than what the Prisoner in this Case gave: If a Man be coop'd up and not suffer'd to go about his Business himself, and no Friend must be employ'd to do it for him, how is it possible for him to make his Defence? I know it is said his Innocency must defend him, but the Folly of that saying shall be shewn in another place. But say they, The Court shall assign him a Council and Solicitor; but when, and for what? only for a Point of Law. May not a Prisoner want a Solicitor for a Matter of Fact? Suppose he had occasion for a Witness which he could not readily find, or occasion for a Copy of Record, for want of which Mr. Cornish suffer'd; was it not reasonable for him to have a Solicitor? And when shall the Court assign him a Solicitor? only when the

Prisoner comes upon his Tryal, and then it is too late to have any use of him; as Colledge was arraign'd at twelve, and try'd at two a Clock the same Day, and as was Mr. Cornish's Case. But, say the King's Council, they had known one indicted for High Treason for being a Solicitor in such a Case; tho' I do not believe it, yet that Authority goes no farther to prove the Matter, than an Indictment I knew against a Person once, for stealing an Acre of Land; and against another for wickedly and devilishly breaking an Award, whereby two unjust Arbitrators directed the Prisoner to convey his Land to a certain Lord, without any Satisfaction or Recompence, prov'd those Matters to be Felonies.

But tho' a Prisoner may be advis'd, yet that Advice must not be reduc'd to writing. Then suppose one Man's Memory be good, and can bear all the Advice given him, and another Man's Memory bad, and cannot do it: Is not the last hang'd for having a bad Memory, rather than for his Crime? But tho' it may be reduc'd to writing, yet it must be his own Hand writing, and not another's; how ridiculous is the Distinction? Suppose the Prisoner cannot write, then is he hang'd for his Parents Fault or Misfortune, for not educating him, or for not being able to educate him better.

Which is somewhat of kin to the late practice in the West, where many Men were hang'd for having old Jewish Names, as Obadiab, or the like, with a Jelt, that their Godfathers hang'd them. But suppose it is not lawful in general to be a Council or Solicitor, with, or to a Prisoner committed for High Treason; yet the Prosecution being the King's, he may give a Privilege which the Law of Courts doth not allow, and in this Case it was so done; for, to the Confusion of those who did this Injury, and of those Judges who would not do the Prisoner Right, they have printed the Orders of the King and Council, which appointed Mr. West and Aaron Smith to be his Council and Solicitor.

If it was lawful for the Prisoner to have Council, and to have Advice in writing; it was very unlawful, and as high a Misdemeanour in the King's Council to order his Papers to be taken away, as they were capable of being guilty of, both the Prisoner and the Matters of his Defence being under the Protection of the Court.

It is not an ancient Practice the seizing of Papers, tho' of late us'd; it began, I believe, upon my Lord Coke, whose Papers were seiz'd and carry'd to the Secretaries Office, upon the like Pretences as of late, and when return'd, were gelt of many Bonds and other Securities, to a great many thousand Pounds value, which never came to Light. It was afterwards practis'd upon some Members of Parliament, and, as I remember, voted Illegal, as undoubtedly it is: for tho' sometimes you may meet with Papers which may be evidence against the Prisoner; yet it is possible that other Papers than the Prisoner's may be mix'd with his to make good an Accusation; nay, which is worse, some of the Papers may be withdrawn, which may be the only Matter of his Defence, and that hath been often practis'd. And I cannot but remember a Story about this Matter: When Sir William Jones died, it was said, that one from Whitchall offer'd Sir William Jones his Ser-

vant a great Sum of Money but to let him search his Master's Study, to find a Paper which would discover great Matters. A certain Person discoursing with a Privy Counsellor about it, the Privy-Counsellor said, It was not true; for, says he, if we had a mind to have done it, could we not send a Messenger on pretence of searching for treasonable Papers, and bring all the Study to *Whitehall*, and keep what we would of them?

But tho' that hath been often practis'd, yet this was the first time that ever a Prisoner had the Instructions for his Defence taken away from him; and the manner was worse than the thing, it being done just as he was coming to his Tryal, relying upon his Writing, not his Memory, for his Defence; besides the Agony so great an Injury put him in, when he had so great a Concern upon him, as the Tryal for his Life, and he could not but know by all that Preparation, that it was more than ten to one against him: all which is well seen in his Tryal, where he so pathetically and sensibly press'd the Court for Justice in this Matter, which they excus'd with such mean Answers, that all Mankind must see they were satisfy'd of the Injustice, and were resolv'd not to do him Right: They knew not which way he came by the Papers, they knew not but he may be criminal who brought them him; they knew nothing of his Papers, they knew not what Papers he meant; that his Lordship did not take them away, and such like stuff: as if it was not the Duty of the Court to relieve the Prisoner against the Oppression of any such Persons but themselves; else why did they not ask *Murrel* and *Sawel* who stood by, and were charged with taking them, for the Papers, and have satisfy'd themselves of them? but in truth they knew before what they were. And *Colledge* was a true Prophet, when finding his Life so beset, he said, This was a horrid Conspiracy to take his Life: but it would not stop there, for it was against all the Protestants in *England*. And the Rule the Court made at last was as unjust, That he should have the use of some of his Papers after he had pleaded not Guilty, but not before; for suppose there was Matter in them which could not be made use of after such Plea, as a Plea to the Jurisdiction of the Court, a Pardon, otherwise acquitted, and the like, could not be pleaded, or advantage taken of them after not Guilty pleaded; altho' there was not such, yet there might have been such Pleas for ought the Court knew. How unjust then was it for him to plead not Guilty before he should have the use of his Papers? but there was Matter in them for quashing the Indictment; and he hinted so much to the Court, as that the Indictment contain'd Crimes of different nature, as Treason and Misdemeanour, and I think it was good Cause to quash the Indictment.

In all Civil Matters, two Matters of different Natures cannot be put into one Action, as Debt and Trespass; two Capital Crimes of different Natures cannot be join'd in one Indictment, as Murder and Robbery: and for the same, and another Reason, Treason and Misdemeanour cannot be join'd in one Indictment; for the Jury may observe that one part of the Indictment, which in it self is but Misdemeanour, as that he said, The King minded nothing but Beastliness, &c. tho' charg'd in the Indictment

as Treason, was prov'd, and not the material Parts of the Indictment, as designing to seize the King's Person, &c. and finding some part of the Indictment prov'd, might find him guilty generally, which extends to every Article of the Indictment, and so the Jury deceiv'd, and the Prisoner in danger; or suppose he was acquitted of such an Indictment, if it ought to have been quash'd, whether the Prisoner shew the Error or not, he may be try'd again upon another good Indictment for the same Treason. If therefore what he offer'd was an Error, or but like an Error in the Indictment, by the Law which favours Life, and the jeopardy on Life, the Court ought not to have try'd him on that Indictment, but have directed another Indictment to have been found. It is a vain Objection to have said, That that would have been troublesome. Is the Mischief of that comparable to that of putting a Man twice in jeopardy of his Life for the same thing? but it would have been a delay. I say none; for there was a Grand Jury in Court, and within the two hours time the Court adjourn'd (to give the King's Council Opportunity of viewing the Prisoner's Papers which were taken from him, and to consider of the Method of his Prosecution by them, which they did, and alter'd it from what they at first design'd it) the King's Council might have had a new Bill found; but peradventure they could not prevail with that Grand Jury to have found a new Bill; they remembred they had ill luck with the first Bill at *London*, which I believe was the true reason: but I'll do the Court no Injury, in supposing that to be the Cause of the Adjournment which was not; 'tis true, in the printed Tryal 'tis pretended they adjourn'd in order to dine; yet those that knew the Adjournment was by the Direction of the King's Council, and overheard their whispering with the Chief Justice (which is both an indecent and an unjust thing, and is neither better nor worse than a Plaintiff or Defendant's whispering a Judge while his Case is before him trying) and I know that the Judges had breakfasted but a little before, and had no great stomach to their Dinners, and therefore believe, that that before assign'd, and not what was pretended, was the true Cause. They might better have put off their Dinner to their Supper, than their Supper to their Breakfast, as they did, the Tryal lasting till early next Morning.

But because all Irregularities of Court and Council, in all these Matters, are shifted off and excus'd by two Sayings not understood generally; the first whereof is, That the Court is to act for the King, and the Council are for the King, and no Person must come near the Prisoner to the Prejudice of the King, as in *Fitzbarris's* Case was often said; a Witness was permitted to go on in an impertinent Story, of a Transaction between him and my Lord *Shaftsbury*, in my Lord *Russell's* Tryal, of which the Prisoner complain'd that it was design'd to incense the Jury; and tho' the Chief Justice declar'd it was not Evidence, yet a great while afterward he went on in a like manner; nay, the Council in summing up the Evidence, repeated the same Matter, which was permitted because it was for the King; and yet when the Earl of *Anglesey* began to say what the Lady *Chaworth* told him, he was snub'd, and cut short; and Mr. *Edward Howard* was serv'd the same

same Sauce, because it was *against the King*: It is fit therefore to know what is meant in Law by those words. No body doubts what the Courts or King's Council of late Days meant; but in Law they are not so meant, for tho' many things are said to be the King's as the Protector of his People, and more concern'd in their Welfare than any private Persons; yet they are so in Preservation, and not in Property or Interest. The Highways are the King's, in preservation for the Passage of his Subjects; and whoever obstructs them wrongs the King, as he is hurt when his Subjects are hurt: but in Property the Soil generally belongs to private Persons. The King is hurt when his Subjects are oppress'd by Force, because he has engag'd to defend them; and therefore the Offender is punish'd by the King, to deter the Offenders and others from committing the same Offences, which is for the benefit of the Publick. But as a Man may be oppress'd by open Force, so he may be oppress'd by private Insinuations and false Accusations, and the King has engag'd to defend his Subjects from such; not that it is possible to prevent them but by Consequence, that is, by punishing such as shall be found guilty of those Crimes, which heretofore were punish'd with the highest arbitrary Punishments we read of: The Consequence is, That it is for the King to punish Offenders, to acquit the false accus'd, and to punish the false Accusers; that is to say, In all Cases to do right according to Law and Truth.

Surely Queen *Elizabeth* gave the best Explanation of the Words, when the Lord *Burleigh*, seeing Sir *Edward Coke*, the then Attorney General coming towards her, he said, *Madam*, here is your Attorney General, *Qui pro domina Regina sequitur*. Nay (*says she*) I'll have the words alter'd, for it should be, *Qui pro Domina Veritate sequitur*.

For the King and for Truth, they are synonymous words; for the King *against* the Truth is a Contradiction. And the Judges and King's Council having taken an Oath to advise the King according to the best of their cunning, which is according to Law and Truth; if therefore the King's Council use Means, and the Court permit them so to do, to suppress Truth, or to disable the Prisoner from making his Innocence appear, as in *Colledge's* Case was done; if they urge things as Evidence of the Crime whereof the Prisoner is accus'd, which by Law are not Evidence, as in this Case, in the Lord *Russell's* Case, Col. *Sidney's* Case, Mr. *Hamden's* and Mr. *Cornish's* Case, and in many more they did, and as in some of them shall be hereafter shewn, If they insinuate any Fact as Evidence, which is not prov'd, as in my Lord *Russell's* Tryal, That my Lord of *Essex* kill'd himself; if they wrest as Evidence of the Fact, what in Sense is not so, as in Colonel *Sidney's* Case, the writing his Book (nay, for any thing appear'd, it was writ before King *Charles* the Second came to the Crown) they are Council against the King, being against Truth as well as against the Prisoner.

I think no Man will deny the truth of this Proposition. That it is as much the King's Interest to have an Innocent accus'd of Treason, acquitted, as it is to have a Nocent accus'd of Treason, convicted. If that be true, then let any one shew me a reason if he can; for there is no Law against it, why he may not have the same

Liberty of clearing his Innocence, as the Prosecutor hath of convicting him; I mean by free and private access of all Persons to the Prisoner, as is us'd in all other capital Matters. If it be said he may get some to corrupt the Witnesses against him, or suborn others for him, the same may be said in all other Matters; but in Treason that is not a likely matter, for generally the Prisoner never knows what he is accus'd of, and consequently cannot know his Accuser, nor how to provide a Counter-Evidence, till he comes to be arraign'd, and then it is too late: for generally he is presently tried after his Arraignment, as was the Case of *Colledge*, and my Lord *Russell*, and Mr. *Cornish*; and Persons committed for Treason are so much the less able to corrupt or suborn Witnesses than any other Criminals, that they generally, according to the late Practice, have no Accuser brought face to face to them on their Commitment as all other Criminals have, who always are committed upon an Accusation made upon Oath in their hearing, and their Defence heard before their *Mittimus* made; and whatever the Pretence may be, yet in Experience, it is found that more Perjuries are committed in Prosecutions for Treason by the Accusers, than by the Witnesses for the Prisoner.

One reason is, A Witness in Treason is more difficultly convicted than in any other Crime: for Treason is an *Ignis fatuus*, 'tis here and there, as *Colledge* was first in *London*, then in *Oxford*; it is not confin'd to place or time, as all other Crimes are; in all other Crimes, as Murder, Robbery, or the like, it must be prov'd to be within the County where laid; it must be of the Person named in the Indictment, which are Evidences of Fact, which in some sort prove themselves. And there was but one that I remember (for *Oates* I do not count one) was ever justly convicted of Perjury in Treason, and that too was for want of cunning, for he foolishly swore to Time as well as Place, which a Witness in Mr. *Hamden's* Tryal would never be brought to do: Besides, Malice and Revenge, which in Prosecutors and Accusers in Treason are generally the Motives, go farther than Money or Kindness, which if us'd in any Case, are the Motives of false Witnesses for the Prisoner.

Now as for the King and for the Truth are the same, so for the King and for the Law are the same. The Laws are the King's, as he is to see the Execution and Preservation of them; so for the King *against* the Law is a Contradiction.

Therefore to try a Prisoner upon a vicious Indictment, as was done in *Colledge's* and Colonel *Sidney's* Cases, is against the King as it is against Law, for by that means he is in danger to be hang'd if convicted; or tried twice, if acquitted, which is against Law.

It is no Salve of the Matter what the Judges said in *Colledge's* Case, that the Evidence of Misdemeanour is no Evidence of Treason; for the same may be said in an Indictment of Murder and Robbery; nor that the Judges would take care to inform the Jury which was Evidence of Treason, which of Misdemeanour, which they promis'd to do, but were not as good as their Words, as shall be shewn; for the Court may forget so to do, and the Jury may forget what the Court said to them of that Matter.

But notwithstanding all this, if the Prisoner was innocent, there could be no harm done to him, for his Innocence would defend him: This was a Saying, and as mortal it was to *Fitzbarris*, to *Colledge*, to Colonel *Sidney*, to Mr. *Cornish*, and several others, as was the Letter \odot amongst the *Greeks*. It is true, my Lord *Coke* us'd the Expression, but in another Sense than that of late practis'd: I would fain know what they meant by the Expression; Is it, that no Man will or ever did swear falsely against a Prisoner in Treason? If that be true, how came the same Persons to be so violent against *Oates* for what he swore against *Ireland*? Or do they mean, that, let an Accuser swear never so violently and circumstantially against a Prisoner, yet if he be innocent it will do him no harm? If that be true, I would fain know how the Prisoner shall escape; is it that his Innocence shall appear in his Forehead, or an Angel come from Heaven and disprove the Accuser? Neither of which we have observ'd, tho' all have said, and I believe, that some Persons have been very innocently executed. Or shall the Accuser be detected by the bare Questions of the Prisoner? that I think will not be neither; and therefore to instance in the only Person who hath of late escap'd in a Tryal of Treason, where there was a Design against his Life, which was my Lord *Delamere*, if he had not had Witnesses to have prov'd the Persons mention'd to have been with him at the place and time sworn against him to be in other places, it was not his denial had serv'd his turn, but he would have run the same Fate with my Lord *Brandon*. Nay, I am apt to think had he been tried by a Jury of Commoners pack'd, as at that time they usually were, he had not escap'd.

The truth is, when I consider the Practice of late times, and the manner of Usage of the Prisoners, it is so very much like or rather worse than the Practice of the Inquisition, as I have read it, that I sometimes think it was in order to introduce Popery, and make the Inquisition, which is the most terrible thing in that Religion, and which all Nations dread, seem easy in respect of it. I will therefore recount some undeniable Circumstances of the late Practice: A Man is by a Messenger, without any Indictment precedent, which by the Common Law ought to precede, or any Accuser or Accusation that he knows of, clapt up in close Prison, and neither Friend or Relation must come to him; he must have neither Pen, Ink or Paper, or know of what, or by whom he is accus'd; he must divine all, and provide himself a Counter-evidence, without knowing what the Evidence is against him. If any Person advise or sollicite for him, unless assign'd by the Court by which he is try'd, they are punishable: He is try'd as soon as he comes into the Court, and therefore of a Solicitor there is no occasion or use; if the Prisoner desires Council upon a point of Law, as was done in my Lord *Russel's* Tryal, the Council nam'd must be ready to argue presently, and the Court deliver their Judgment presently, without any Consideration. The Prisoner indeed hath liberty to except to thirty five of the Jury peremptorily, and as many more as he hath cause to except to, but he must not know beforehand who the Jury are; but the King's Council must have a Copy of them: He must hear all the Witnesses produc'd to prove him

guilty together, without answering each as he comes, for that is breaking in upon the King's Evidence, as it is call'd; tho' it hold many hours, as it happen'd in most of the Tryals: he must not have any Person to mind him what hath been sworn against him, and forgotten by him to answer; for if that were allow'd, the Prisoner perhaps may escape hanging, and that is against the King: There is a Proclamation to call in all Persons to swear against him, none is permitted to swear for him; all the impertinent Evidence that can be given is permitted against him, none for him; as many Council as can be hir'd are allow'd to be against him, none for him. Let any Person consider truly these Circumstances, and it is a wonder how any Person escapes; it is downright tying a Man's Hands behind him, and baiting him to death, as in truth was practis'd in all these Cases. The Tryal of *Ordeal*, of walking between hot Iron Bars blindfold, which was abolish'd for the Unreasonableness of it, tho' it had its Saying for it too, That God would lead the Blind so as not to be burnt if he were innocent, was a much more advantageous Tryal for the suspected than what of late was practis'd, where it was ten to one that the accus'd did not escape. If any of these things have been legally practis'd, I have nothing to say against it, but I have never read any thing of Common or Statute-Law for it. And I can with better assurance say than any Person who hath practis'd these things, that no Law in *England* warrants them; and if nor, then consider the unreasonableness of these Methods.

There is yet one Objection to be answer'd, which being a very great Hardship upon the Prisoner, gives some colour of imposing other Hardships upon him, to wit, That a Witness cannot be examin'd for the Prisoner on his Oath in a Tryal upon an Indictment of a capital Matter. It is not because the Matter is Capital, for then no Witnesses ought to be examin'd upon Oath for the Appellee in a capital Matter: Neither is it because it is against the King, for then no Witness ought to be examin'd on Oath for the Defendant in a Tryal upon an Indictment of any criminal Matter; yet in Indictments of all criminal Matters, not capital, 'tis permitted to the Prisoner.

To say Truth, never any reason was yet given for it, or I think can be, if you believe my Lord *Coke*, 3d *Instit.* fol. 79. of which Opinion my Lord *Hales* is, in his Pleas of the Crown, that that Practice is not warranted by any *Act of Parliament*, Book Case, or ancient Record, and that there is not so much as *scintilla Juris* for it; for he says, when the Fault is deny'd, Truth cannot appear without Witnesses. As for what is pretended, that it is swearing against the King, and therefore it is not allow'd of; 'tis a canting Reason, which put into sensible English, a Man will be asham'd to own. And as slight is the Reason, that it being a matter of so high moment as a Man's Life, the Prisoner will be the more violent and eager, and the Witnesses may be more prevail'd upon to swear falsely, more than they would be in a matter of less moment: The Weakness of that Reason hath been in part, and shall be further shewn. I think none will deny, but the end of Tryals in any matters Capital, Criminal, or Civil, is the discovery of Truth: Next, 'tis as necessary for the Prisoner

to have Witnesses to prove his Innocence, as it is for the King to have Witnesses to convict him of the Crime; which Proposition is agreed by the Practice, it being always permitted, that the Prisoner shall produce what Witnesses he can, but they are not to be upon Oath. In the last place, since Truth cannot appear but by the Confession of the Party, or Testimony of Witnesses of both sides, it is necessary to put all the engagement as well on the Witnesses of part of the Prisoner, as of part of the King, to say the Truth, the whole Truth, and nothing but the Truth, as the nature of the Matter will bear: and as yet no better means has been found out than an Oath; which if deny'd to the Prisoner's Witnesses, either he is allow'd too great an advantage to acquit himself, or he is not allow'd enough.

If all that his Witnesses say without Oath, shall have equal credit as if they swore it, then he hath too much advantage; for Men may be found who will say falsely what they will not swear, as is plain enough. How often doth a Defendant say in a *Plea* at Law, that a Deed is not his, which yet in an Answer in *Chancery* he will confess to be his? If his Witnesses shall not have Credit because not sworn, to what purpose then is it permitted him to produce them? If they shall have Credit, but not so much as if sworn, I ask how much Credit shall be given? Is it two, three or ten Witnesses without Oath shall be equivalent to one upon Oath? And besides, that Question never was or can be answered, what Credit shall be given them? There is an unreasonable Disadvantage put on the Prisoner, that a Witness produc'd on his part, of equal Credit with the Witness against him, shall not have equal Credit given him, because he is not on his Oath; whereas he is ready to deliver the same things on his Oath, if the Court would administer it to him, and yet that difference was taken in *Fitzharris's* Case, as to the Credibility of *Everard* and *Oates*, the first being upon his Oath, the last not.

I do not offer this as any Reflection upon the late Proceedings, but as a reason why matters in capital Proceedings ought not to have been carried further than heretofore they were, against the Prisoner, by example of so unreasonable a Practice.

But to return to the Trial of *Colledge*, which came on in the Afternoon, when the Attorney insisted that the King's Witnesses ought not to be examin'd out of the hearing of each other; in which he was over ruled, but the Rule not observ'd; nor was it material: for the King's Council having the Prisoner's Writings, and by them observ'd how he intended to make the Witnesses against him contradict themselves, they did not produce such Witnesses as were not instructed to concur in the Evidence of the same matter, but produc'd only such as were instructed to give Evidence of distinct matters. And therefore *Dugdale* was first produc'd, who gave Evidence of vilifying words spoke of the King at several times at *Oxford* and *London*, by the Prisoner to himself alone; that he shew'd the Witness several scandalous Libels and Pictures, and said he was the Author of them; that he had a silk Armour, a brace of Horse Pistols, and a Pocket Pistol and Sword; that he said, he had several stout men to stand by him, and that he would make use of them for the defence of the Protestant Religion; he said the King's Party was but

an handful to his Party. *Stevens* swore the finding of the Original of the *Raree Show* in the Prisoner's Chambers. *John Smith* swore his speaking scandalous Words of the King, and of his having his Armour, and that when he shew'd it the Witness, he said, *These are things that will destroy the pitiful Guards of Rowley*; that he said, he expected the King would seize some of the Members of Parliament at *Oxford*; which if done, he would be one should seize the King; that he said, *Fitzgerald* at *Oxon* had made his Nose bleed, but before long he hop'd to see a great deal more Bloodshed for the Cause; that if any, nay if *Rowley* himself, came to disarm the City, he would be the Death of him. *Haynes* swore he said, Unless the King would let the Parliament sit at *Oxon*, they would seize him, and bring him to the Block; and that he said, the City had one thousand five hundred Barrels of Powder, and one hundred thousand men ready at an hours warning. *Turberville* swore, he said at *Oxford*, that he wish'd the King would begin; if he did not, they would begin with him, and seize him; and said, he came to *Oxford* for that purpose.

Mr. Masters swore, That in discourse between him and the Prisoner, he justified the Proceedings of the Parliament in 1640. at which the Witness wondred, and said, how could he justify that Parliament that rais'd the Rebellion, and cut off the King's Head? to which the Prisoner reply'd, That that Parliament had done nothing but what they had just Cause for, and that the Parliament which sat last at *Westminster*, was of the same Opinion; that he call'd the Prisoner Colonel in mockery, who reply'd, Mock not, I may be one in a little time.

Sir William Jennings swore as to the Fighting with *Fitz Gerald*, and the words about his bleeding.

For the Prisoner.

Hickman said he heard *Haynes* swear God damn him, he car'd not what he swore, nor whom he swore against, for it was his Trade to get Mony by swearing. *Mrs. Oliver* said, *Haynes* writ a Letter in her Father's Name, unknown to her Father. *Mrs. Hall* said she heard *Haynes* own that he was employ'd to put a Plot on the Dissenting Protestants. *Mrs. Richards* said, she heard him say the same thing. *Whaley* said, *Haynes* stole a Silver Tankard from him. *Lun* said, *Haynes* said the Parliament were a Company of Rogues for not giving the King Mony, but he would help the King to Mony enough out of the Phanaticks Estates. *Oates* said, *Turberville* said a little before the Witnesses were sworn at the *Old Baily*, that he was not a Witness against the Prisoner, nor could give any Evidence against him: And after he came from *Oxford*, he said he had been sworn before the Grand Jury against the Prisoner, and said the Protestant Citizens had deserted him, and God damn him he would not starve: That *John Smith* said, God damn him he would have *Colledge's* Blood: That he heard *Dugdale* say, that he knew nothing against any Protestant in England; and being taxt that he had gone against his Conscience in his Evidence, he said it was long of Colonel *Warcup*, for he could get no Mony else; that he had given out that he had been poison'd, whereas in truth it was a Clap. *Blake* said, that *Smith* told him *Haynes* his Discovery was a sham Plot, a Meal Tub Plot.

Bolton said, *Smith* would have had him given Evidence against *Sir John Brooks*, that *Sir John* should say there would be cutting of Throats at

Oxford, and that the Parliament-men went provided with four, five, six, or ten Men apiece; and that there was a Consult at *Grantbam*, wherein it was resolv'd, that it was better to seize the King than to let him go, whereas he knew of no such thing; that he would have *Bolton* to be a Witness against *Colledge*, and told him what he should say, lest they should disagree in their Evidence; that he heard *Haynes* say he knew nothing of a Popish or Presbyterian Plot, but if he were to be an Evidence, he car'd not what he swore, but would swear any thing to get Money. *Mowbray* said, *Smith* tempted him to be a Witness against *Colledge*, and was inquisitive to know what discourse passed betwixt him and my Lord *Fairfax*, Sir *John Hewly*, and Mr. *Stern* on the Road; and said, that if the Parliament would not give the King Money, and stood on the Bill of Exclusion, that was Pretence enough to swear a Design to seize the King at Oxford.

Everard said, *Smith* told him he knew of no Presbyterian or Protestant Plot, and said, Justice *Warcup* would have persuaded him to swear against some Lords, a Presbyterian Plot, but he knew of none; he said, *Haynes* told him it was Necessity and hard Pay drove him to speak any thing against the Protestants; and being question'd how his Testimony agreed with what he formerly said? answer'd he would not say much to excuse himself, his Wife was reduc'd to that necessity, that she begg'd at *Raufe's* Door, and mere necessity drove him to it, and self-preservation, for he was brought in Guilty when he was taken up, and was oblig'd to do something to save his Life, and that it was a Judgment upon the King or People; the *Irishmens* swearing against them was justly fall'n on them, for ousting the *Irish* of their Estates.

Parkhurst and *Symons* said, they had seen at *Colledge* his House his Arms, about the latter end of November. *Yates* said, *Dugdale* bespoke a Pistol of him for *Colledge*, which he promis'd to give *Colledge*. And upon Discourse sometime after the Oxford Parliament, *Yates* said *Colledge* was a very honest Man, and stood up for the good of the King and Government. Yes, said *Dugdale*, I believe he does, and I know nothing to the contrary. *Deacon* and *Whitaker* said they knew *Colledge* was bred a Protestant, and went to Church, and never to a Conventicle that they knew of, and thought him an honest Man. *Neal*, *Rimington*, *Fanner* and *Norris* to the same purpose; and *Norris*, that *Smith* (in company where was discourse of the Parliament Mens being agreed to go to Oxford) said, he hop'd they would be well provided to go, if they did go. *El. Hunt* said, a Porter in her Master's absence brought the Prints taken in *Colledge's* House eight Weeks before; and said, *Dugdale* told her, after her Master was in Prison, he did not believe *Colledge* had any more hand in any Conspiracy against his Majesty than the Child unborn, and he had as lieve have given an hundred pounds he had never spoke what he had, and that he had nothing to say against her Master, which would touch his Life.

Having summed up all the material part of the Evidence in the order it was given, for or against the Prisoner, let us see whether upon the whole, an honest understanding Jury could, with a good Conscience, have given the Verdict the then Jury did; or whether an upright Court could, with a good Conscience, have

decla'd they were well satisfied in the Verdict given, as all the four Judges in that Case did, tho the Chief Justice *North* only spoke the words. And tho it is too late to advantage the deceased, yet it will do right to the Memory of the Man, to whose dexterous management on his Trial many now alive owe the continuance of their Lives to this Day: it was not their Innocence protected the Lord *Fairfax*, Sir *John Brooks*, and many others before mention'd, and many not named in the Tryal, but *Colledge's* baffling that Crew of Witnesses, and so plainly detecting their falshood, that the King's Council never durst play them at any other Person but the Earl of *Shaftsbury*, as shall be shewn; and failing there, they were paid off, and vanish, and never did more harm visibly; what under hand Practices they might be afterwards guilty of, I know not.

Who could believe any one of those four Witnesses, *Dugdale*, *Haynes*, *Turberville*, and *Smith*, if it were for no other reason than the improbability of the thing; for (as *Colledge* said) was it probable he should trust things of that nature with Papists, who had broke their Faith with their own Party, who could lay greater Obligations of secrecy upon them than he was able to do? That he, a Protestant, should trust People who had been employed to cut Protestants Throats? And neither of them ever discovered any of the things they swore, till after the Oxford Parliament, tho most of them were pretended to be transacted and spoken before.

Who could believe *Dugdale* in any of his Evidence against the Prisoner, when *Oates* testified against him, that he said he knew nothing against any Protestants in England? And being tax'd by *Oates*, that he had gone against his Conscience in his Evidence against *Colledge* to the Grand Jury at London, he said, it was long of Colonel *Warcup*, for he could get no Money else; which was a plain Confession he had sworn wrong, and of the Cause for which he did it, and of the Person who induced him to do it? That he had given out that he was poison'd, whereas his disease was a Clap; which was an ill thing in him, as it imply'd a Charge of poisoning him on other Persons? And when *Elizabeth Hunt* testified against him, that he said, after *Colledge* was in prison, that he did not believe *Colledge* had any more hand in any Conspiracy against the King, than the Child unborn; and that he had as lieve have given an fool. he had never spoken what he had, and that he had nothing to say against *Colledge* which could touch his Life? And when *Yates* testify'd against him, that when *Yates* said *Colledge* was an honest Man, and stood up for the good of the King and Government; Yes, said *Dugdale*, I believe he does, and I know nothing to the contrary?

Who could believe *Haynes* in any part of his Evidence against the Prisoner, when Mrs. *Hall* and Mrs. *Richards* said, he own'd he was employ'd to put a Plot upon the Dissenting Protestants? when *Whaley* testified against him that he was a Thief, and had stole *Whaley's* Tankard? when *Lun* testify'd that *Haynes* said the Parliament were a Company of Rogues, for not giving the King Money, but he would help the King to Money enough out of the *Phanaticks* Estates? when *Hickman* testified against him he heard him say, God damn him he car'd not what he swore, nor against whom he swore, for 'twas his Trade to get Money by swearing? when Mrs. *Oliver* said that he had writ a Letter in her Father's name, without her Father's knowledge? when

Bolton testified against him, that he said he knew nothing of a *Popish* or a *Presbyterian-Plot*, but if he were to be an Evidence, he cared not what he swore, but would swear any thing to get Money? when *Everard* testified against him, that he said Necessity and hard Pay drove him to say any thing against the *Protestants*; and being taxt that his Evidence against *Colledge* agreed not with what he had formerly said, he said, he could not excuse it, but his Poverty and self-Preservation drove him to it? which was a plain Confession of the falshood of his Evidence, and of the reason of it? and added, it was a Judgment upon the King or People, the *Irish* Mens swearing against them, for outing the *Irish* of their Estates: which can have no other sence, than the *Irishmens* forswearing themselves against the *English* was a Judgment, &c.

How could *Turberville* be believed in any part of his Evidence against *Colledge*, when *Oates* testified against him, that he said a little before the Witnesses were sworn against *Colledge* at the *Old-baily*, that he was not a Witness against him, nor could give any Evidence against him: and yet afterwards at *Oxon* *Turberville* told him he had sworn against *Colledge* to the Grand Jury, and said the Protestant Citizens had deserted him, and God damn him he would not starve: which words I think need no explanation.

And lastly, how could *Smith* be believed in any part of his Evidence against the Prisoner, when it was testified against him by *Blake*, that he said *Haynes* his discovery was a Sham-Plot, a Meal-Tub-Plot; The meaning of the words I think are well known. That he would have had *Bolton* swear against Sir *John Brooks*, the Lord *Shaftesbury*, and *Colledge*, things of which he knew nothing, and told him what he should swear, lest they should disagree in their Evidence. When it was testified against him by *Oates*, that he said God damn him he would have *Colledge's* Blood? when it was testified against him by *Mowbray*, that he tempted *Mowbray* to be a Witness against *Colledge*, and Sir *John Brooks*, and was very inquisitive to know what discourse he had with the Lord *Fairfax*, Sir *John Hewly*, and Mr. *Stern* on the Road to *Oxon*; and said, if the Parliament did not give the King Money, but stood on the Bill of Exclusion, that was pretence enough to swear a design to secure the King at *Oxon*? when *Everard*, and many others testified he said he knew of no *Presbyterian* or *Protestant Plot*. Now if *Colledge* his Witnesses were credited, it was impossible the King's Witnesses could be credited, that was agreed by the Court to be true upon the Trial. The answer on the Trial was, that the King's Witnesses were on their Oaths, the Prisoner's were not; which was a Reason but in Words and not in Sense.

And surely what *Colledge* said on that matter; without any knowledge in the Law, cannot be answer'd. It is not fair dealing, said he, with a Man for his Life, because the Witnesses against him upon their Oaths deny the things the Witnesses for him prove, therefore the Witnesses against him must be believed, and the Witnesses for him disbelieved, when yet the Witnesses for him were ready on their Oaths to maintain what they said for him.

Nor is the Law so: for taking the Law to be, that a Witness for the Prisoner shall not be sworn, which is only made good by practice; the same Law, that is to say Practice, is, that

a Witness without Oath for the Prisoner, is of equal Credit with the Witnesses against him upon Oath, and none can shew the contrary till of late days.

To give one Example of many, where it was necessary for the Prisoner to produce a Witness to prove his Innocency, and where the Witness for him was as much believed as the Witness against him. There was a Person, whose name I do not remember, arraign'd (at the same time that an Indictment of High Treason was endeavour'd to be found against the Lord *Shaftesbury*) for robbing another of Money and of a hired Horse, of which likewise the Person was rob'd; the robbing of the Money and a Horse was prov'd by himself and several others, but that the Prisoner was the Person that committed the Robbery, none positively swore but the Person rob'd, who likewise swore that the Horse on which the Prisoner was taken, was the Horse taken from him; against which the Prisoner prov'd, by the Person of whom the Horse was agreed to be hired, that the Horse the Prisoner was taken upon was not the Horse he let to hire to the Person rob'd: whereupon the Prisoner was acquitted; and yet the Prisoner's Witness was not on his Oath; and the Person robbed was on his Oath: which, besides that it proves the matter for which it is brought, shews the Folly as well as Injustice of the Practice of imprisoning Men without letting them know for what, and without confronting them with the Witnesses against them, upon the Commitment. For how could this Man have known what Witnesses to produce, unless he had known what in particular he was indicted for? and how could he have sent to such Witnesses, unless he had had the liberty of sending to the Persons who were to be Witnesses for him? And it shews the Folly of those sayings, that a Man's Innocence must defend him; and that the Evidence against the Prisoner must be as clear as the Sun at noon Day: All will agree that the Prisoner in this Case was innocent, and yet that alone, without producing a Witness to prove his Innocence, would have stood him but in little stead; and how could he have known what sort of Evidence to have ready, unless he knew what he was accus'd of?

I do not mean what Crime he was accus'd of, as Treason, Murder, Robbery, Theft, or any other Crime; but unless he knew the Person robbed, when, where, and other Circumstances: which, say some, is not to be permitted in Prosecutions of High Treason; for if so, then no Man shall be hanged for High Treason; unless there was as strong proof against him, as is requir'd in any Indictment of any Capital matter; and that; they say, is not to be expected in Treason; for no Man will call two Witnesses to be Evidences of his Words or Actions; being Overt Acts of his Design of High Treason. The Objection is too foolish to be answer'd; for it is neither better nor worse, than that if a Man shall not be hang'd for Treason without Evidence, he shall never be hang'd for Treason; for no Evidence, and Evidence which the Law rejects, is the same in sence, tho different in words; and as the intent of the mind is difficult to prove on the part of the King, so is the Prisoner's part of producing Counter-Evidence much more difficult: and therefore the Law hath taken care by the Statute of *Edward* the 3^d, that the Intent shall be prov'd by an Overt Act;

and by the Statute of *Edward the 6th*, that that Overt Act shall be proved by two Witnesses. And therefore, since the Law hath taken care that there shall be a stricter proof in High Treason than in any other Crime, for the Judges to say a less proof may be admitted to convict one of High Treason than of any other Crime, is very ridiculous; unless they will at the same time say, that the Parliament who made those Statutes, were Men of little Understanding, and not to be regarded. And certainly it was a good Counter-evidence, which was given in behalf of the Prisoner by some Witnesses, tho' slighted by the Court, and not permitted by the Court to be given by others, that there were great endeavours to set up sham-Plots, and charge the *Protestants* with them: For let any one shew me a Reason, why the Evidence of sham-Plots, tho' they do not immediately concern the Prisoner, is not as good Evidence for him, as the Evidence of a real Plot, in which he was not concerned, is against him. The last was permitted to be given in Evidence against my Lord *Russel*, Colonel *Sidney*, and others; tho' the first was not permitted to many Witnesses in this Tryal, and it was a material Objection which Colledge made, *That there was no proof of any Persons being concerned with him in the Design of seizing the King.*

It was an unadvised answer the Court gave; that he alone might be so vain as to design it alone: For if from thence an Inference is made, as was insinuated by the Court to the Jury, that therefore he did alone design it, it was an Evidence of his being a Mad-man, not a Traytor. Had the Evidence been of the mischiefing the King by means which a single Person is capable of using, as Stabbing, Shooting, and the like, the matter is not impossible; but it being by means which it is impossible for a single Person to execute, it carries such disbelief with it, that it is impossible to find a Man in his Senses at the same time guilty of it: And a Man that is *non compos mentis*, if my Lords *Coke* and *Hales* are to be believ'd, cannot be guilty of High Treason within that Branch of the Statute, *Compassing, and imagining, &c.*

It is true, a Mad-man may be guilty of Treason, in attempting the King's Person; but for that he is no more said to be punish'd, than Beasts of Prey are when kill'd, which are more properly said to be destroy'd than punish'd for the publick good. But if so good a Counter-proof in Colledge's Case was not made, as ought to have been, some Allowances ought to be made for the Prisoner's ignorance of what he was accus'd of, his usage and strict Imprisonment before his Tryal, the ruffling him just before his Tryal in the manner before declar'd, the depriving him of his Notes, the giving an Evidence of many Hours long against him, before he was permitted to answer any part of it. And the use of Pen, Ink and Paper, was but of little advantage to him; for a Man that hath not been used to do it, cannot take Notes of any use. And in Truth, he complain'd he had not taken Notes of half said, but relied on the Court to do him Justice in summing up the Evidences, which they promised to do, but broke their Words.

It must likewise be consider'd, that the concern a Man hath upon him, when he is upon Tryal for his Life, is so far from fortifying that it

weakens his Memory: Besides, the foul Practice, without any remorse, put upon him and his Witnesses; some of them imprison'd, that he could not have them at the Tryal; others so threaten'd, that they durst not appear for him, and the Cry of the Auditory against him and his Witnesses, were mighty Discouragements. All these things being consider'd, how could any understanding Jury take it on their Oaths, *That the Evidence against the Prisoner, of a Design to seize the King, &c. was as clear as the Sun at noon Day?*

As for the Evidence which Mr. *Masters* gave, if it were true, it was no Evidence of Treason; an erroneous Opinion may make an *Heretick*, but not a Traytor: it is a very distant Consequence, that because he affirm'd that the Parliament in Forty had done nothing but what was just in respect of King *Charles the First*, therefore the Prisoner was guilty of a Design against King *Charles the Second*: besides, that in all probability, tho' Mr. *Masters* might inveigh against the Parliament, Colledge might only justify them, by throwing the ill things done in that time upon the *Papists*, as Colledge in his Defence says; and Mr. *Masters*, after much pumping, recollected himself, and said he thought the Prisoner said, the *Papists* had a Hand in those things; which prov'd the Truth of Colledge's Assertion.

As for the Evidence of Colledge's saying he might be a Colonel in time; if he hop'd for what he said, it was no Crime, or Proof of a Crime, 'tis no more than what every private Soldier hopes for, and he himself had been one.

As for the Evidence of *Atterbury*, *Sawel*, and *Stevens*, of their seizing the Pictures; admit they swore true, it did not amount to the Proof of the Treason in the Indictment, or of any sort of Treason: And yet if Colledge's Maid said true, it looks as if the Finders or some other Person sent them to Colledge's House, in order to find them there.

Of all sorts of Evidence, the finding Papers in a Person's Possession is the weakest, because no Person can secure himself against Designs upon him in that kind. And after *Dangerfield's* Design upon Colonel *Mansel*, and the Evidence in *Fitzbarris's* Tryal, that the Design of that Pamphlet was to convey Copies of it into some Members of Parliaments Pockets, and then seize them, that piece of Evidence ought to have been spar'd, till those and other Practices of like kind had been forgotten.

The last Witness was Sir *William Jennings*, of Colledge's saying he had lost the first Blood in the Cause; but it would not be long before more would be lost; what was that more, than that he thought more would be lost in the Cause, which he interpreted the Protestant Cause? Suppose he thought so without Reason, and was mistaken; where was the Crime? But if he thought so upon good Reason, and good Reason he had to think so, there was no pretence of a Crime in it. I believe most Men thought as Colledge did, from the time of the Business of *Fitzbarris*; and what Imputation was it to him? Why were not all the Expressions he us'd in his Tryal as good Evidence against him as that Saying? For he then said *it was an horrid Conspiracy to take away his Life, and would not stop at him, for it was against all the Protestants of England, and the like*; which was his Opinion, and after times shewed him a true Prophet.

One thing was very dishonestly insinuated, that the Prisoner was a *Papist*, which was only to incense the Jury against him, and it had its Effect; whereas it was very plain that he was a *Protestant*, tho' perhaps a Dissenter, and therefore had not lately come to the publick Church; and under that notion the *Papists* and some *Protestants* were contented that Dissenters should be punish'd as *Papists*; yet if they could have prov'd him a *Papist*, no doubt they would have done it; for the Destruction of the Man was the Design of the Prosecution, and it matter'd not for what Treason he was convicted, so he was convicted. And he himself gave a pretty sort of Evidence against himself, if they could have prov'd him a *Papist*: he prov'd, and confess'd, he was educated a *Protestant*; and if they could have prov'd him reconcil'd to the *Popish* Religion, which was Treason, he helpt them a great deal in their Proofs: It was therefore very disingenuous in the Chief Justice to reproach him at his Condemnation, that he had not made that Proof of his Religion as it was expected, when his Religion was not the Matter of which he was indicted; that was sily insinuated to exasperate, and no Proof pretended to be made of his being a *Papist*. But he had more Reason to complain of the Injustice of the Court in summing up the Evidence, who did it in such a manner, that if they had been Council for the Prisoner, as they pretended, they would have been justly suspected to have taken a Fee of the other side to betray their Client.

For, as *Colledge* readily said, if the Chief Justice had looked on his Notes, he would have found more Evidence against *Turberville* and *Dugdale* than he had repeated. And it was a lame Excuse for the Chief Justice to say, he refer'd it to the Memory of the Jury, for he could not remember more; when as I dare say, after about thirteen Hours Evidence, the Jury remember'd no more than that they were to find him Guilty.

The Truth is, upon the whole, what *Colledge* said was true; they took away all helps from him for defending himself, and therefore they had as good have condemn'd him without a Tryal. Notwithstanding all which, the Courage of the Man never faint'd, but after he was condemn'd, boldly ask'd, *when he was to be executed?* To which the Lord Chief Justice reply'd, it depended on the King's Pleasure; but smoothly said, in those Cases of High-Treason they did not use to precipitate the Execution, it should not be so sudden but that he should have Notice to prepare himself. And in truth he had from the eighteenth, on which he was condemn'd, to prepare himself, to the one and thirtieth of *August* 1681, on which he was executed; a much longer time than was allow'd my Lord *Russel*, or Mr. *Cornish*, and many others. And the true Reason of so long a Reprieve, was to see how the Nation would digest the matter, and whether the Man by the Terror of Death could be prevail'd upon to become a Tool to destroy other Innocents: but when it was found that the People were quiet, and that the Prisoner could not be prevail'd upon to do an ill thing to save his Life, his Execution was order'd; yet, as a shew of Mercy, his Quarters were permitted to be bury'd; a Favour he slighted, with saying that he car'd not whether he was eaten up with Flies or Worms. The same Favour was likewise shew'd *Fitzbarris*, but the true Reason of both was, That they had a mind that the Tryals and pretended Crimes, for which *Fitzbarris* and *Colledge* were condemn'd, should be forgotten; which would not be so soon done, if their Quarters were always expos'd to view. But tho' all People were quiet, yet there was great grumbling, and most honest Men were afraid; and the constancy of *Colledge* at his Execution was such, that it made the most violent against him relent.

Remarks on the Earl of Shaftsbury's Grand Fury.

THE next Person question'd was the Earl of *Shaftsbury*, against whom a Bill of High Treason was prefer'd to the Grand Jury, at the *Sessions House*, on the 24th Day of *November* 1681. The Evidence was publickly given in Court, and was this; Mr. *Blathwaite* swore he found the Papers then produc'd in a Velvet Bag in the great Trunk, which was taken by Mr. *Gwynne* in the Lord *Shaftsbury's* House. Mr. *Gwynne* swore, all the Papers in the Velvet Bag, when he deliver'd them to Mr. *Blathwaite*, were taken by him in the Lord *Shaftsbury's* House: Sir *Leoline Jenkins* swore, the Paper produc'd was the Paper deliver'd him by Mr. *Blathwaite*, and it was unalter'd. Then the Paper was read, the Effect of which was a Project of an Association sign'd by no Person, and whose Hand-writing it was none knew. *John Booth* swore, that he was engag'd to Captain *Wilkinson*, who pretended to have a Commission from the Lord *Shaftsbury* and several others to go for *Carolina*;

he was about that time introduc'd into the Earl's Acquaintance by the Captain, where was a Discourse about *Carolina* Business; he was four or five times between *Christmas* and *March*, with the Earl and the Captain: that the Captain told him he was to command fifty Men to be the Earl's Guard at *Oxon*, and would have had him to be one: That if the King did not consent to several Acts of Parliament and other things, they were to purge the Guards and Court of several Persons; and tho' the Captain told him that first, afterwards he heard the Earl say the same things, particularly about a Week or ten Days before the Parliament sat at *Oxon*, he gave some Intimation of this to *Walter Banes*, and then writ it down, and sent it to the Council sealed in a Cover. *Turberville* swore, that the Lord *Shaftsbury* said about *February*, there was but little good to be done with the King as long as his Guards were about him. *Smith* re-stify'd a great deal of Discourse between him and

and the Lord *Shaftsbury* of something said reflecting on the King; and that he should say, that if the King should offer any Violence to the *Parliament* at *Oxford*, he would meet with a strong Opposition, for that the Gentlemen, who came out of the Country, came well provided with Horse and Arms to oppose, and that they might lawfully do it, if he offer'd any Violence to them whilst they sat. *Haynes* swore, that the Earl said if the King did not give *Haynes* his Pardon, he and others would raise the Kingdom against him; that *Haynes* gave the Earl an exact account of Transactions since King *Charles* the First's coming to the Crown, and that the Earl said the Duke of *Buckingham* had as much Right to the Crown as any *Stuart* in *England*. *John Macnamarra* said, the Earl said, the King was popishly affected, and took the same Methods his Father did, which brought his Father's Head to the Block, and they would bring his thither; and this was said in the Presence of *Ivey*, and he thought of his Brother; and said, the King deserv'd to be depos'd as much as King *Richard* the 11d. *Dennis Macnamarra* likewise testify'd the last Words, and that it was the latter end of *March*, or beginning of *April*. *Ivey* said, the Earl said, if the King deny'd *Haynes* a Pardon, they would rise upon him and force him to give one, and that they design'd to depose him and set up another in his stead. *Bernard Dennis* said, he had a great deal of Discourse with the Earl, who bid him speak to his Friends in *Ireland* to be in a readiness to assist the Commonwealth of *England*; for they intended to have *England* under a Commonwealth, and extirpate the King and his Family.

Then the Court told the Jury the Indictment was grounded on the Statute of King *Charles* the 11d, but they ought to consider of that Statute, as also the 25th of *Edward* the 11d.

The Question is, whether the *Grand Jury* ought to have found the Bill on this Evidence. First it ought to be consider'd, what the Duty of a *Grand Jury* is; and I think it is not what the *Chief Justice* said, to consider only whether there be probable ground for the King to call the Person accus'd to an account, much less do I think, that the reason of finding a Bill by the *Grand Jury* was for the Honour of the King, or Decency of the Matter, lest Persons accus'd should be call'd to an account by the King, where there is no kind of Suspicion of the Crime committed by them, as the Court said (which last Matter was never assign'd as a Reason of finding a Bill by the *Grand Jury* before) but I take the Reason of a *Grand Jury* to be this, that no Man for a capital Matter shall ever be question'd by the King, unless a *Grand Jury* take it on their Oaths that they believe the Matter of the Accusation true; I put an Emphasis on the Words question'd by the King.

It is true, it is generally said, that the Business of a *Grand Jury*, in capital Matters, is *in favorem vite*; but that taken simply is not true, for then what Reason can be assign'd, why a Man shall be arraign'd on an Appeal of Murder, Robbery or the like, which touches his Life, as much as an Indictment of those Crimes, without having the Matter of the Appeal first found to be true by a *Grand Jury*? But the true Reason of a *Grand Jury* is the vast Inequality of the Plaintiff and Defendant, which in an Indictment is always between the King and his

Subjects; and that doth not hold in an Appeal, which is always between Subject and Subject: and therefore the Law in an Indictment hath given a Privilege to the Defendant, which it hath done in no other Prosecution, on purpose, if it were possible, to make them equal in the Prosecutions and Defence, that equal Justice may be done between both. It considers the Judges, Witnesses and Jury are more likely to be influence'd by the King than the Defendant; the Judges as having been made by him, and as it is in his Power to turn them out, punish, to prefer or reward them higher; and tho' there are no just Causes for them to strain the Law, yet they are such Causes, which in all Ages have taken place, and probably always will. This was the Reason of running *Prerogative* so high in their Judgment of *High Treason* before the Stat. of *Ed. III.* that no Man, as that Statute says, knew what was not *High Treason*: This was the Reason of expounding that Statute oftentimes between the making of it, and the making of the Statute of *Queen Mary*, that People were at as great a loss, till the last Statute, as they were before the making of the first; and even since the Statute of *Queen Mary*, the Exposition on the Statute of *Ed. III.* has been so extravagant and various, that People are at this Day as much at a loss to know what is not *High Treason*, as they were before the Statute of *Ed. III.* Nor was it, nor is it possible, but that the great Power of enriching, honouring, rewarding and punishing lodg'd in the King, always had, and yet must have an Influence on the Witnesses and Jury; and therefore it is that the Law has order'd, that at the King's Prosecution no Man shall be criminally question'd, unless a *Grand Jury*, upon their own Knowledge, or upon the Evidence given them, shall give a Verdict, that they really believe the Accusation is true.

I own of late Days, they have said the Duty of the *Grand Jury* is to find, whether the Accusation be probable or no. But that Saying is warranted by no positive Law, or ancient Authority; and therefore the Duty of the *Grand Jury* must be founded in the Oath administer'd to them, which is as strict as the Oath administer'd to the *Petit Jury*: and to say Truth, the Verdict of the *Petit Jury* takes credit from the Verdict of the *Grand Jury*; which is not only the Reason of the difference in the Names of the two Juries, but is likewise the Reason why an Attaint for a false Verdict doth not lie against a *Petit Jury*.

The Oath of the *Grand Jury* is, *To present the Truth, the whole Truth, and nothing but the Truth*: The Oath of the *Petit Jury* is, *well and truly to try, and true Deliverance make, between the King and the Prisoner at the Bar, &c.* which signifies the same thing as to present the Truth, &c. It is true, some Reasons have been offer'd, which if consider'd, are Words without Sense; as that the Presentment of the *Grand Jury* is but in order to bring the Prisoner to his Tryal, and he is not before the *Grand Jury* to make his Defence himself: but that can be no Reason why Probabilities should satisfy the Jury, because it doth not answer the Design of the Law, which will have a Man convicted by the positive Oaths of two Juries, consisting of more than twenty four, in all Indictments.

Next, why is a *Grand Jury* compos'd of more substantial and understanding Men than a *Petit Jury*, if their Business be mere Formality, or a Matter of less weight than the business of a *Petit Jury*? In the last place, why is less Evidence requir'd to convict a Man in his absence, than is requir'd to convict him if present? It is far from an Argument, that less Evidence is requir'd to convict one if absent than if present, that it seems to me that more Evidence should be requir'd to do it. Men may, and often do make very fair Stories in the absence of a Person accus'd, that when present, he easily answers; and there being no positive Law for the Direction of a *Grand Jury* in that Matter, a *Grand Jurymen* is excusable, nay, it is his Duty to give a Verdict according to the plain understanding of the Words of his Oath, which is to present the Truth, as far as he is convict of it; and that Truth must be found according to his Knowledge, or as it is represented to him by Witnesses.

And as for the Witnesses, they must be Persons of Credit; and all Persons are suppos'd to be so, unless the *Grand Jury* know the contrary, or have been so credibly inform'd. 'Tis true, a *Grand Jury* ought not to believe *Coffee-house* Stories, or light Stories; but common Fame by credible Persons, which is *vox Populi*, ought to prejudice them against a Witness, so as to disbelieve him: and it is no Answer to say, as the *Chief Justice* in this Case said, that the Credibility of the Witness is not to be consider'd by the *Grand Jury*, because the King is not present to defend the Credit of his Witnesses; tho' the Fact in that Case was not true, for the King's Attorney, Solicitor and Council were present, and I think the King is no otherwise present at any Criminal Prosecution; and the Jury knew by *Colledge's* Tryal and by *Wilkinson's* Depositions before the King, that the Evidence of all the Witnesses produc'd, except what were to the Paper, was question'd, but even that was afterwards quitted by the Court: when it would not be swallow'd by the *Grand Jury*; for afterwards the Court told them, that if they of their own Knowledge, knew any thing against the Witnesses, they might consider of it, but not of what they were credibly inform'd by others: and besides the Credibility of the Witnesses, the Possibility or Probability of the thing sworn is to be consider'd by the *Grand Jury*; an impossible thing they ought not to believe, tho' sworn by never so many credible Witnesses, and a very improbable thing they cannot positively on their Oaths swear they believe.

And not only the Fact, but what the Crime of the Fact alledg'd in the Bill of Indictment, the *Grand Jury* as far as they are capable of judging Matter of Law, ought to consider; so they were told in the Charge given them. 'Tis true, if they were ignorant in the Law, and the Court in their Directions misled them, as if the Court should tell them stealing a Horse is High Treason, and the *Grand Jury* find it accordingly, it is excusable in the *Grand Jury*, tho' punishable in the Court. But wrong Directions by the Court in finding a Fact where there is no Evidence, do not excuse the *Jury*.

Now to examine the Matter in hand by these Rules, could any Person who knew my Lord Shaftsbury, or that had heard of, or believ'd his Character to be what it was, believe that it was possible for him to discourse with the Witnesses

at the rate they swore, to some of them at the first, to others of them the second time he saw them; to discourse of Matters of Policy, with *Booth* at one time, and afterwards with *Haynes*, and afterwards with *Macnamarra*, Fellows of so little Sense, that he would have been asham'd to have entertain'd them in the meanest Office about him; and yet as they pretended, he makes them his Privadoes in the Secret, of not so much what he would have had them, but of what he intended himself to do?

Who could believe any thing, *Turberville*, *Smith* or *Haynes* should say, where there was so much of their Falshood and of their Designs to swear falsely, prov'd against them in *Colledge's* Tryal? or of *Ivey* and the three *Macnamarras* after that Tryal, who tho' they were not produc'd at it, because the King's Council by *Colledge's* Notes saw he was able to falsify them, yet some Witnesses in that Tryal prov'd their Design of swearing falsely?

Who could believe *Booth's* Story of listing so many Men under *Wilkinson*, to be at my Lord Shaftsbury's dispose at *Oxon*, after *Colledge's* Tryal, and after what *Wilkinson* had testify'd to the King and Council, tho' not then prov'd to the *Grand Jury*?

A Judge indeed cannot take notice of any thing not prov'd (tho' he may and ought to be a Witness, if he knew any thing material of the Matter try'd before him and others) but a *Grand Jury* may take notice of any thing they know or believe. The Passages at *Colledge's* Tryal were pretty notorious, being authentically publish'd by *Fra. North*, and the Examination of *Wilkinson* by as authentick a Paper.

It was unaccountable, that the Witnesses conceal'd what they heard the Earl speak so long, of which none of them pretended to give any Reason; nor was it any Excuse to those who sign'd a Petition to the City, in which they suggested they were tempted to swear against their consciences, to say they knew not what was in the Petition: he that sets his Hand to a thing as if he assented to it, but doth not, is a Man of Falshood. Suppose one sets his Hand to a Bond, said to be seal'd and deliver'd, not having seen it seal'd and deliver'd, is not he guilty of little less than *Forgery*? But admitting those Witnesses had sworn Truth, yet the Jury ought not to have found the Bill; for they ought to find the Bill true according to all the material Circumstances of it, as well as the Substance of it, which was *High Treason*: One material Circumstance of it was, that it was said to be High Treason within the Statute of *Charles II.* And that made another Circumstance of the Indictment material, which was the time when that Treason was committed; because by that Statute the Prosecutions of Treason on that Statute ought to be within six Months after it is committed, and the Indictment ought to be within three Months after the Prosecution: and he being imprison'd in *July*, and the Bill suggesting that the suppos'd Treason was committed the 18th of *March* before, and divers other times both before and after, which might be interpreted to have been after the Prisoner's Commitment; had the Jury found the Bill as laid, they had found the Treason to have been committed, not only within the time the Prosecution by that Statute ought to be, but also within the time the Indictment ought to have been prefer'd; whereas in truth

the Earl had been imprison'd above three months before the *Indictment* prefer'd, and there was no Evidence of any Treason committed by him after his Imprisonment : and therefore the finding the Bill as laid had been injurious, to bring a Man in question for his Life on that Statute, whereas by Law he ought not to have been.

For it was resolv'd in *Colledge's Case*, that the Prosecution for Treason on that Statute ought to be within six Months, and the Indictment within three Months, tho' the Court was of another Opinion in the *Lord Russell's Tryal*.

And that this Indictment was on that Statute, was expressly said to the *Grand Jury*, and upon good Reason ; for the Court in their Charge said, that the Intention of levying War, or designing to imprison the King, was not Treason, till the Statute of *Charles the Second* ; tho' in the *Lord Russell's Tryal* it was held to be Treason by the Statute of *Ed. 3.* and therefore the Time of the Treason committed was material to be found by the *Jury*.

As for the Writing found in the Earl's Study, it was no manner of Evidence of Treason, admitting what the Witnesses swore as to the finding it to be true ; because it was not prov'd that it was prosecuted or compos'd by the Earl of *Shaftsbury*, or by his Order, and that piece of Evidence was in that particular a meer Original.

In *Fitzharris's Case*, it was prov'd the Libel was compos'd by his Direction ; Colonel *Sidney's* Book was prov'd to be like his Hand ; it was

pretended that *Colledge* said he was the Author of the *Raree-show*, and no Example of this Evidence was ever made use of before.

Neither was it Evidence of Treason as to the Matter, for there was not one word against the present King, but his Successor, if he should be such a Person.

It is true, one of the King's Council said that one Passage in it was, that they would join to destroy the Mercenary Forces about *London*, and thence infer'd it was down-right levying War against the King and his Guards ; whereas there is not any such word or thing in the Paper as he pretended to cite : and if it had been in the Paper, it would have been but Evidence of a Treason within the Statute of the late King. And then the time of writing it ought to have appear'd ; and if that had been clear'd, yet for the above Reasons it was no Evidence ; and the *Grand Jury*, tho' some of them afterwards smarted for it upon other Pretences, did like honest understanding Gentlemen ; and had they done otherwise, to avoid the Ignominy of being call'd, tho' in truth it was an honour to be, an *Ignoramus Jury*, they had justly deserv'd the Reproach which since have lighted on other Juries, such as Mr. *Cornish's*, and the like. And having spoken of this *Ignoramus Jury*, for which two of them, if not more, were afterwards upon other Pretences severely handled ; I think fit to say something of the Sufferings of one, for being in a preceding *Ignoramus Jury*, because it was a meer Novelty, and that was Mr. *Wilmer*.

Remarks on Mr. Wilmer's Homine Replegiando.

HIS Prosecution, tho' it was but Criminal and not Capital, did as much Mischief, as it struck a Terror into all *Grand Juries*, as any the before mention'd Matters ; and it was by the *Homine Replegiando* issued out against him. As for the Information against him I shall say nothing, because the Injustice of both will appear in the Discourse of the first. Mr. *Wilmer* had sent a Boy beyond Sea by Agreement, as Mr. *Wilmer* said, whether true or not as to this Matter is not material ; a *Homine Replegiando* is granted against Mr. *Wilmer* for this, at whose Prosecution is not material : for any Person upon Suggestion, back'd by an *Affidavit*, may have it granted. The *Sheriff* would have return'd on the Writ, that the Boy was sent by his own Agreement and Consent with Mr. *Wilmer* ; which Return was not allow'd, and the *Sheriffs* were told that they must either return they had replevied the Boy, and they must have him in Court, or else they would be laid by the Heels ; or else they must return that Mr. *Wilmer* had *Essoign'd* him, which is carrying him away, where the *Sheriff* could not find him ; and then a *Writbernám* would issue against Mr. *Wilmer*, upon which he would be taken and kept in Prison till he produc'd the Boy : and no other Return should be allow'd than one of those two, and if they did not make one of those two Returns, they should be committed. Now if the Law be so, the Court were innocent, but the

Law ought then to be reform'd in that Particular ; but if the Law was not so, as I think it is not, I think Mr. *Wilmer* and the Nation had great Injustice done them ; for it was quickly seen what the mischief of that Judgment was, and therefore it was endeavour'd to be reform'd by an Act of King and Council afterwards : First, I say, it is lawful for a Master to covenant with a Servant to serve him beyond Sea ; in the next place it is lawful for a Master to send his Servant beyond Sea according to such Agreement. And if both these Propositions be true, as I think no Man will say they are not, it is a natural Consequence to say, that the Law hath provided a Return upon a Writ of *Homine Replegiando*, if it should be sued out against such Master for a Servant so sent beyond Sea, which may indemnify the Master in so doing ; and that Return can be no other than the special Matter, which in this Case was refused to be accepted. 'Tis no Argument that no such Return is ever read of in any Book : For the Law hath determin'd, that some Returns are good, and others bad ; yet it hath not said what are all the good Returns which may be made on an *Homine Replegiando*, and the *Sheriff* is no more confin'd to Returns, than a Man in the pleading of his Case, which my Lord *Coke* says may vary according to the nature of his Case ; and yet the Law hath said what is a good Plea, and what a bad one, but hath not express'd all

all the good or bad Pleas. And therefore it is no Argument against such a Return, that no Precedent of it can be found, 'tis enough that no Judgment can be produc'd against it; and the reason of both may be, that the Case never happen'd before, that is to say, that never any Person was so malicious before, as to sue out an *Homine Replegiando* against a Master for a Servant sent by Agreement beyond Sea: and Returns must be vary'd according to the Case. Perhaps no Precedent can be found of a Return on that Writ, that the Person sought for is dead; yet all Persons will agree it is a good Return, it is so in Replevin of Cattel, and even that Example falsifies the Doctrine of the Court, that there are but two Returns on that Writ allowable by Law. It is not an Argument for disallowing the Return, that the Person sent beyond Sea was a Child not capable of making such a Contract (tho' I believe if the Matter were look'd into, he was of Age so do) for nothing of that doth, or can appear in the Writ or Return: It stands therefore simply upon this, whether the Sheriff may on an *Homine Replegiando* return, that the Person suppos'd to be in Custody, being of full Age, was by mutual Agreement sent beyond Sea by the Person in whose Custody by the Writ he is suppos'd to be, which I think is far from a Doubt. But notwithstanding all these Hardships on *Juries*, it was seen to be plainly impossible to procure any Bills of Indictment for *High Treason*, much less any Persons to be convicted on the like Evidence except in *London*, where are some of the best as well as the worst of Men in the Nation; and even there it was not to be done as long as the *Juries* were sensible and honest Men, which would be as long as the Election of Sheriffs was in the Citizens; and to the honour of the City, it was seen that they chose only honest Men to be their Sheriffs, and that when they saw the Publick Safety depend on honest Officers, tho' at other times they had rather pay a Fine, than undergo the trouble and charges of that Office, yet at that time no Man legally chosen refus'd to stand, tho' they were reproach'd and punish'd for it; and if Mr. *Box* refus'd, it was because he would not join with *North* who was impos'd on the City, for which reason it was resolv'd to take from the City the Right of chusing Sheriffs, but by what means was not presently resolv'd on.

That the City might forfeit their right of Electing, there was no great doubt; as if the Sheriffs were dead, and new ones were not chosen in a convenient time, so that there was a defect of Justice or the like: but nothing of that kind could be laid to their Charge, and therefore a new unheard of Matter was thought on and set a foot, which was to make the City forfeit their being a Corporation, and being annihilated, the Grants made to them by the Crown, as the Right of Electing Sheriffs was, would revert to the Crown again.

A *Quo Warranto* was therefore brought against the City in *Hilary Term* 1681. to shew by what Warrant they pretended to be a Corporation, and to have the Privileges mention'd in the Writ, to which the City pleaded and set forth their Right; and the King reply'd, and set forth several Matters done by them, contrary to the Duty of a Corporation: upon which there was a *Demurrer*, of which Judgment was

not given till *Trinity Term* 1682. I will say nothing of the Right of the Proceeding, it having been largely and learnedly argu'd for the City; but if the Matter were so clear a Case, as the King's Council and Court would have it to be, how came it to pass that in *Henry* the Eighth's Time, when the King was so earnestly bent to dissolve the Religious Corporations, in which the publick Inclination join'd with him, the doing it by *Quo Warranto* was not thought of? It was very plain, that those pretended Religious did not observe the Rules, nor perform the Ends for which they were incorporated; and certainly their Misdemeanours against the intent of their being incorporated were better Causes of Forfeiture than was the Cities petitioning for a Parliament, &c. Yet that King took other Methods, he had formal Conveyances of their Lands from most of those Corporations, and formal Surrenders of their Corporations sign'd by every Individual of the Corporations, and those afterwards confirm'd by Act of Parliament. And sure the late King had as much Right to bring a *Quo Warranto* against *Maudlin College* for refusing, contrary to their Duty, to admit the President the King nominated, if the King had a Right to nominate the President (as some Judges asserted he had) as King *Charles* the Second had against the City: and it was once in debate, whether the Proceeding against that College should be by *Quo Warranto*, or before the *Ecclesiastical Commissioners*; the last was resolv'd on, not as more legal or effectual, but as more expeditious, in the one the Proceedings being *de die in diem* in the other from Term to Term. This only I will observe, that when the Judgment against the City was given, which was of the greatest Concern to the Nation ever contested in any Court of *Westminster-Hall*, it was done by two Judges only, and no reason of that Judgment rendred, whereof *Withins*, who was one, I think, heard but one Argument in the Case. It is true, they said *Raymond*, when alive, was of the same Opinion, and said *Saunders* who was then past his Senses was of the same Opinion, tho' I was told by one who was present, when the two Justices came to ask his Opinion in the Matter, he had only Sense enough to reproach them for troubling him about the Matter, when they were sensible he had lost his Memory. And to say truth, the delivering the Sense of an absent Judge, tho' it hath been sometimes practis'd, is not allowable; for sometimes they deliver another Opinion than what the absent Judge is of. Judge *Withens* did so in several Cases, when he deliver'd the Opinion of Sir *Edward Herbert*, which Sir *Edward Herbert* afterwards in open Court disown'd: Judge *Holloway* serv'd Judge *Powel* the same Trick, if the last said true. The long depending of the *Quo Warranto* had alarm'd all the Nation, who yet were quiet, hoping that Judgment would be given for the City, as some of the Judges and of the King's Council had given out it would; but the contrary was resolv'd on, and therefore the Nation at the time of the giving the Judgment must be amus'd with somewhat else, and nothing so proper as a Plot: but there was difficulty in that also, for if the pretended Plotters should be acquitted, it would make the Matter worse; and nothing would secure that, but imposing what Sheriffs they

pleas'd on the City, and accordingly *North* and *Rich* being pitch'd on, the one by a shameless Trick, and the other by open Force, were impos'd on the City.

Having gain'd that Point, the Proceedings in the *Quo Warranto* were much quicker than before, and two Arguments were only permitted in it of each side, the one in *Hilary* Term, the other in *Easter* Term; and so the Case was ripe for Judgment in *Trinity* Term following, but must be, and was usher'd in with the discovery of a

pretended Plot, which so amaz'd the Nation, that tho' Judgment in the *Quo Warranto* was given two days after the pretended Discovery, no body took any notice of it for several Months after it was given. The truth was, no body durst mutter against it, or question the legality of it; it was enough to have brought any Person into the Plot to have done it, it would have been call'd flying in the Face of the Government, questioning the Justice of the Nation, and such like *Cant*.

Remarks on the Lord Russel's Tryal.

THE Plot being nois'd abroad, the Persons before hand resolv'd on were seiz'd on, and the Lord *Russel* and others were clapt up close Prisoners.

The Lord *Russel* having been for some few Weeks a close Prisoner in the *Tower*, was the 13th of *July*, 1683. brought to the *Old Baily*, and arraign'd for High-Treason, in designing to raise a Rebellion, &c. and the same Morning was try'd. He desir'd he might not be try'd that Day, for he had some Witnesses which would not be in Town till Night: Which being deny'd, then he desir'd that the Tryal might be put off till the Afternoon; which was likewise deny'd. He ask'd whether he might not make use of any Papers he had? which was allow'd. He desir'd he might have a Copy of the Pannel of the Jury that was to pass on him; he was told he had a Copy deliver'd to his Servant some days before.

The Jury being call'd, he challeng'd the Foreman for being no Freeholder in *London*. To argue which, Council were assign'd him; who presently came into the Court, and having excus'd their not speaking more to the Matter for want of time to consider of it, argu'd, That it was a good Challenge, because at Common Law every Jurymen ought to be a Freeholder; that the Statute of 2 *Hen. 5.* provides none shall be a Jurymen in capital Matters, but a Freeholder of forty Shillings yearly: That there is no difference between a City and County, and a County at large at Common Law, nor by that Statute 7 *Hen. 7.* which takes away the Challenge of no Freehold in the Ward in *London*, and shews it was a good Challenge in *London* before that time: the 4th *Hen. 8.* which likewise takes away the Challenge of no Freehold in *London*, shews it was a good Challenge before that time, and the same was infer'd from the 23^d of *Henry* the 8th: But tho' none of those Statutes extended to Treason, yet if it was a good Challenge in Treason in *London* before those Statutes, it was so still.

The King's Council said, at Common Law it was not necessary that a Jurymen in Treason should be a Freeholder; and tho' Treason is within the 2^d of *Henry* the 5th, yet by the Statute of *Queen Mary*, the Statute of the 2^d of *Henry* the Fifth, as to Treason, was repeal'd; that it was a Point they would not have lost to the City of *London*; that if the Prisoner should peremptorily challenge thirty five, as by Law he might, there would scarce be found thirty five more Freeholders in the City, the Inheritance of the City being mostly in the Nobility and Corporations, and consequently Treasons may be committed in the City, and there would not be enough to try it; and in the Case of the

City of *Worcester*, in a *Quo Warranto* brought against them, that Challenge was taken and over-ru'd by the *King's-Bench*, by Advice of the Judges of the *Common-Pleas*; that the *Venire* mentions no Freehold, but only *Proboi & Legales Homines de Vicineto*.

Then the Chief Justice ask'd Mr. *Pollexfen*, Whether he did find any Judgment in Treason at Common Law, that no Freehold was a Challenge? who answer'd, He did not. Whereupon the Chief Justice reply'd, That then he did not speak *ad idem*; for he took it in Case of Treason and Felony, at Common Law it was no Challenge; and the Statute of *Henry* the Fifth in that Point was introductive of a new Law, and that Statute as to Treason was repeal'd by that of *Queen Mary*; and that a Case cannot be found of such a Challenge in Treason since the Statute of *Queen Mary*, but it was a business of great Importance.

The Chief Baron was of the same Opinion; for the same reason Justice *Windham* and Justice *Jones* were of the same Opinion; the last added, the rather because the Prisoner is allow'd to challenge thirty five peremptorily: and Justice *Charlton* was of the same Opinion. and the rather because no Precedent had been offer'd of such a Challenge before: Justice *Levins* was of the same Opinion, for the same Reason: Justice *Street* was of the same Opinion, for the same Reasons, and thought they had been very nice when the Life of the King lay at stake, and all the Customs and Privileges of the City of *London* seem'd to be level'd at in that Point: Justice *Withens* was of the same Opinion.

Then the Chief Justice told the Prisoner, the Court over-ru'd his Challenge; but that he had no hardship put upon him, for the Reason of Law for Freeholders was, that no slight Persons should be put upon the Jury, but in his Case there were Persons of Quality and Substance put upon the Jury, which was the same in substance with a Jury of Freeholders.

These being the Reasons of over ruling that Challenge, they may be ranked under these Heads. There was no such Challenge at Common Law; if there were, yet not in Treason. And if it were a Challenge in Treason, where the Tryal is in a County at large, yet not where it is in a City and County; and if in a City and County, yet not in *London*.

The assigning many Reasons for one and the same thing, makes the Judgment justly suspected: for if when two Witnesses to one Fact varying in the Circumstances of it, are justly suspected in point of Truth, several Reasons for the same Judgment

Judgment make the Knowledge or Integrity of the Judges justly suspected; every Case in Law, as my Lords *Coke* and *Hales* say, standing upon its own particular Reason: and therefore when many Reasons are given, it looks as if the Judges were hunting about for Reasons to make good what before hand they are resolv'd to vent for Law, rather than that their Judgment is the Result of those Reasons.

But to consider them singly, I do indeed think there is no express Resolution, that at Common Law, in any Case of any capital Matter, it was a good Challenge (except the Case of *Fitzbarris*, already taken notice of) but in civil matters my Lord *Coke* is express, that at Common Law it was a good Challenge; and with him Sir *John Fortescue* seems to concur, who in his Exposition on the Statute of *Henry* the 5th says, if the Debts or Damages be under forty Marks, the Jurymen shall have Land to a competent Value, according to the Discretion of the Justices. My Lord *Coke* saith, in such Case any Freehold sufficeth; now how can that be true, if it were not necessary at Common Law to have some Freehold? for the Statute makes no Provision for Debt or Damages under forty Marks. It must therefore be by Common Law, that some Freehold was necessary, and that any Freehold shall suffice. And surely, if in civil Matters it was necessary for a Juror to have a Freehold, much more in capital Matters, and mostly in Treason. It is very plain, that at Common Law no Man was thought to be a sufficient Man but a Freeholder; and tho now, and for some time past, the Value of Trade is equal to that of Land; yet heretofore it was not so, and by what was heretofore, the Common Law is to be known.

The matter of Trade was heretofore so inconsiderable, and the Traders themselves for that reason so vile, that it was a Disparagement for a Freeholder to marry with a Tradesman, as is to be seen by the Statute of *Wharton*: and therefore mere Tradesmen, and not Freeholders, were not to be trusted with the concern of a Tryal in a civil Matter, and much less in a capital, and least of all in a Tryal of High-Treason.

The Chief Justice *Pemberton* says, that the reason of Freeholders was, that no slight Persons should be put upon a Jury where the Life of a Man, or his Estate is in question; it is plain therefore, the Concern of the thing to be tried, is the measure of the substance of the Jury-man. If that be true, the Tryal in Treason is of the highest concern: How then is it true, as some of the Judges concluded, that tho Freehold might be requisite in some Cases at Common Law, yet in Treason certainly not? it is indeed a Paradox to me.

And the peremptory Challenge of thirty five allowed the Prisoner, is no Reason against the Challenge of no Freehold; for that is only a Privilege allowed the Prisoner *in favorem Vitæ*; and it might as well be argued, that no Challenge at all to the petty Jury shall be allow'd the Prisoner, because he had a Grand Jury past upon him before, which is also *in favorem Vitæ*; that no Man at the King's Suit shall be so much as question'd for his Life, till above the number of twelve substantial Men have on their Oaths said they think the Accusation true; and after that, he is allow'd to challenge peremptorily thirty five, and with Cause without number.

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To affirm therefore that no Freehold is not a cause of Challenge, because he may challenge peremptorily thirty five, is a *non sequitur*: and tho Non-usage, that is to say, that this Challenge was never taken in Treason, was then us'd as an Argument, yet it is the weakest of Arguments, which is to be found in *Littleton*; tho even that Fact was not true, for the Challenge was taken and allow'd before, unless you will distinguish and say, that in that Case it was taken by the King, and therefore good, and in this by the Prisoner, and therefore bad. I'm sure that difference cannot be warranted, either by Authority or Reason; and what tho *Cook* and the other Regicides and other Persons did not take that Challenge, is it an Argument that they could not, or that they thought they could not? perhaps they had forgotten to do it, as much as the Judges in this Case had forgotten their Resolution in *Fitzbarris's* Case; or perhaps they could not take it, their Jury being Freeholders; or perhaps it was to no purpose, they being tried in *Middlesex*, where a Jury of Freeholders would quickly be found. Nor is it an Argument that no Case of this Challenge at Common Law is to be found in the Books; for since the Statute of *Henry* the 5th to the time of Queen *Mary*, it could never be a Case, and from that time to this it could never be a Case in Felony: and the Law being so very plain, that if the Fact were with the Prisoner it was always allowed, if against the Prisoner it was disallowed, not as not good in point of Law, but as not true in point of Fact; therefore the Challenge perhaps was not taken notice of in the Books, which only report Difficulties.

It is true of late, and it is but of late Practice, the whole Transactions of a Tryal are published for the benefit of the Publisher, rather than for the common Good; and that indeed was the Motive of publishing *Fitzbarris's* Tryal signed by *Fra. Pemberton*, and of *Colledge's* Tryal signed by *Fra. North*, and of my Lord *Ruffel's* signed by *William Pritchard* Mayor, and *Col. Sidney's* Tryal signed by *George Jefferies*, and *Mr. Cornish's* Tryal signed by *Thomas Jones*. And that is the reason, why since that Statute we find no Case of such a Challenge in capital Matters, and before that Statute the Year-Books go but a little way.

It is enough there was no Resolution that it was not a good Challenge, for it will be of the King's side to shew why that should not be a good Challenge in Treason, which was in most if not in all other Cases.

It is pretty to observe what steps were made in over-ruling this Challenge, some were of Opinion that it was no Challenge in any Case at Common Law; so said the Attorney and Solicitor General, the Chief Baron, Justice *Windham*, and Baron *Street*. The Chief Justice thought it no Challenge at Common Law in Treason or Felony only, but that the Statute of *Henry* the 5th made it a Challenge in Treason and Felony, but whether the Statute of *Henry* the 5th made it a Challenge in Treason, the Chief Baron and Justice *Windham* doubted. Justice *Jones* thought it no Challenge at Common Law in Treason; Justice *Levins* would not determine whether it was a good Challenge in any Case at Common Law, but he and Baron *Street* were clearly of Opinion it was not a good Challenge in *London*. The Chief Justice thought it a business of great Consequence, not only for the Prisoner,

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but for all other Persons: Baron *Street* thought the Judges had been very nice in the Matter, which in the Phrase of the Law is giving themselves a great deal of trouble in a matter very clear, or of no moment.

But tho they differ'd in their Reasons, yet all agreed in this, and in this only, that tryed he should be, and that presently.

Then as for the Custom of the City of *London*, to try without Freeholders, how did it appear to the Judges that there was any such Custom? Did they ever read of any such Custom in the City of *London*? Nay, were not the Statutes which were cited, where no Freehold was made no Challenge in *London* in particular Cases, as so many express Resolutions, that there was no such Custom in the City? for if there had been such Custom, what need those Statutes? To which the Judges never vouchsafed any Answer, because in truth they could make no Answer.

But it was objected, there was the Resolution in the City of *Worcester's* Case, which I agree was of as good Authority, and of no better than the Judgment in the principal Matter of the *Quo Warranto*. And it was likewise objected, there would be a Failure of Justice in Cities, if the Challenge were good for want of Freeholders.

I ask, would it have been a Failure of Justice at Common Law, or by reason of somewhat which hath happened of late Times? There is none who pretends to know any thing of the History of *England*, that will say, that heretofore the Cities were not inhabited mostly by the Gentry, and especially the City of *London*; partly for Luxury, partly for their Security; and then there was no want of Freeholders in the Cities, but when matters became more quiet, and Trade encreased, and made Houses in the Cities more valuable, then were Houses of equal Convenience, and less Price, situate in the Suburbs, or in the Country; the Gentry by degrees parted with their Houses in the Cities to Tradesmen for Profit, and remov'd themselves to other Places. And I believe it may be remembered, that even the *Strand*, in the memory of *Man*, could have furnish'd the County of *Middlesex* with a sufficient number of Freeholders; and yet now, for the above Reasons, you can hardly find a Jury of Freeholders there.

Besides it must be remembered, that *London* heretofore had many of the King's Palaces in it, and the Countries did not then, as now, take up with Lodgings, but were Inhabitants of Houses: and if the Failure of Justice happen by the above means, I am sure it is against the Oath of the Judges to supply that Defect with their Resolution; but it ought to have been supplied by an Act of the Legislative Power.

If the Necessity of the thing warrants the Judgment, how unlearned were the Judges in *Henry* the 7th and *Henry* the 8th's Times, that they did not supply the defect in Law in the City of *London*, and other Cities by their Resolutions? How vain were the Parliaments in those Times, who supplied those defects in Law, mentioned in the Acts cited by those Statutes, which were Works of time and trouble, if they had thought the Judges by their Resolutions had Power to do it? for if they had Power to do it, they could have done it *extempore*, as in this Case.

For the last Objection, that the Writ mentions only *Probos & Legales Homines*, and speaks nothing of Freeholders; *Legales* may be very well inter-

preted, to imply Men qualify'd by Law; but I take it, that *Homines* implies it, for by *Homines de Comitatu* are meant Freeholders of that County; and all others, in point of Trust, are not consider'd in Law. My Lord *Coke* in his Comment upon the 28th of *Eliz.* 1. cap. 8. which gives the Election of Sheriffs to the People of the County where the Sheriffwick is not in Fee, says, People there means Freeholders of the County; and the same is understood by Writs to the Counties to choose *Coroners*, *Verderors* and the like, tho' the Writ says *per communitatem Comitatus, & de assensu Comitatus*.

And tho' the Writs of *Venire* in civil Matters, of late days, mention what Freehold each Juror shall have, yet that is by the Statute of the 35th of *Hen.* 8. cap. 6. which expressly commands the Writ shall so express it, in all Issues join'd in *Westminster*, to be tried between Party and Party; before which time it is plain, the *Venire*, even in civil Matters, did not express any Freehold, and that Statute doth not extend to issues join'd on Indictments.

Now if upon all which hath been said, it is not plain, that the Challenge ought to have been allow'd, yet sure it was doubtful; and if so, and a matter of great Consequence, as the Chief Justice said it was, why might not the Council for the Prisoner have had a little more time to have consider'd of the Challenge before they had argu'd it, or the Judges have taken a little time to consider the matter before they had given their Judgment? I dare say, none of them could remember any positive Resolutions one way or other, nor upon a sudden was it expected they should; and therefore for their own sakes, if not for the Prisoner's, they might have taken the Morning, if not the Day. The Prisoner desir'd his Tryal to be put off, for to have consider'd of it; in that time perhaps some of them might have remembered, or others might have put them in mind of their Resolutions in *Fitzbarris's* Case; they might have consider'd how to distinguish between that Case and this, and not run away with it, that that Challenge was never made in Treason, as all the Judges affirm'd. But my Lord *Russel* was told by the Court, that they always tried the Prisoner in Treason the Day he was arraign'd, and could not put off the Tryal for a Morning without the Attorney General's Consent; but surely that is not true, *Plunket* and *Fitzbarris* were try'd the Term after they were arraign'd, tho' the Attorney General oppos'd it. It is true, he submitted to the Rule, as it was as much his Duty to do as the Prisoner's; but if there be a difference between an Arraignment at *Westminster* and the *Old-Baily*, as to the speeding the Tryal, the Place will not vary the reason of the thing, if there be not any Law for it, as there is not; but even at the *Old-Baily*, the Tryal in Treason hath been put off to another Sessions, it was done in *Whitebread's* Case, and in many other Cases. If it be said that was by the Attorney General's Consent, I say that makes no difference, for the Judge is to be indifferent between the Attorney General and the Prisoner. If the Court must order nothing but what the Attorney assents to, why is not the Prisoner try'd and judg'd by the Attorney alone? or what needs all the Formality of a Tryal? If it be said that that Tryal was put off, because the King's Witnesses were not ready; I say there is the same Reason to put off a Tryal, be-
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cause the Prisoner's Witnesses are not ready, and that was the pretended, tho' not the true Reason of putting off *Fitzbarris's* Tryal to another Term; and there is no Law to the contrary.

It is totally in the Discretion of the Judges to put off a Tryal, which Discretion ought to be govern'd by Reason.

But indeed this was extraordinary and without any Precedent: it can never be shewn in the Case of the greatest or meanest Persons, being accus'd of the greatest or least Crime, that ever the delay of a Day, much less of a Morning, for his Tryal was denied, where he shew'd but any Colour for what he said, when the Sessions were to continue after the time he desir'd, as in this Case it did. *Fitzbarris* said his Witnesses were in *Holland*, and tho' he nam'd no Persons, yet his Tryal was put off to the next Term; my Lord *Ruffel* said his Witnesses could not be in Town till that Night, yet the Respite till next Day was deny'd: all Persons agreed, that there was some extraordinary Reason for it, and before the Tryal was over the Riddle was out.

My Lord of *Essex* was kill'd, or to be kill'd that Morning; as to this Matter, it is not material whether by his own or another's Hand: they were sensible the Evidence against my Lord *Ruffel* was very defective, and that Accident was to help it out, but that would not avail unless it were a surprizing matter upon the Jury; should the Jury have had a Days or but a Mornings time to consider of it, People might have been talking with the Jury. It was very material to ask, what influence that Accident would have on my *Ruffel's* Tryal, whether it was any Evidence against him: they might have been told what was true, that no Person kill'd was in Law suppos'd to have kill'd himself, till a Coroner's Inquest had sat upon the view of his Body, and found it so; and if it had been so found, yet even that had been no Evidence against another, because the Coroner's Inquest never found the reason why a Man kill'd himself; and if they should find the reason, yet even that was no Evidence against another, because that other was never call'd before the Coroner's Inquest to make his Defence. They might have been told a great many Circumstances of the Improbability of the killing himself; they might have observ'd that the King's Council were so far sensible, that it was no Evidence against my Lord *Ruffel*, that they never attempted to prove the Earl of *Essex* was dead or kill'd himself: it was only silyly insinuated, together with the reason of it, which had its Effect, if the Report be true of some of the Jurymen's saying it went farther with them than all the Evidence of the Witnesses produc'd; and if that be true, there was a reason, tho' not a just one, for speeding that Tryal beyond the ordinary Methods of Tryals at the *Old-Baily*.

But tho' my Lord *Ruffel* had seemingly less favour in that Matter than any other Person, even than *Colledge*, who had the respite of two or three hours between his Arraignment and Tryal, (tho' that was not in favour to *Colledge*, but only to examine his Papers which they took from him, and instruct their Witnesses accordingly) yet in other things he had more Favour or Justice done him: his Papers were not taken from him; it was agreed to be his Right to use them without questioning from whom he had them, what they were, or the

like, as in *Colledge's* Case was done; he had a Copy of the Pannel of the Jury, even before his Arraignment, given him; and the Chief Justice said it was never denied in Case of Life that he knew of, which was denied *Colledge* before he pleaded; because then 'twas pretended there was no Issue join'd, till *Plea* pleaded, after which the *Venire* is awarded; tho' all Men know, that the Sheriff summons the Jury before the Arraignment, and even after Issue join'd. *Colledge* was denied a Copy of the Pannel, only he was told, he should look every Jurymen in the Face before he was sworn; and as far as the Looks of a Man betrays him, he should be satisfy'd whether he was honest or not, which is an ill way of judging; for I think the Person that gave that Rule, would have deceiv'd any Man by his Countenance, who had known his Practices.

But says the Attorney General, in my Lord *Ruffel's* Case it was matter of Favour, and not of Right, therefore no Injustice to *Colledge*. I confess of all Men who ever came to the Bar, he hath laid down the most Rules, which depend totally upon the Authority of his own saying; in *Colledge's* Case he affirm'd, that the King's Witnesses ought not to be kept out of the hearing of each other, when they gave their Evidence (a method us'd in civil Matters, the reason of which is well known, and none can show any Law or Reason why it should not be us'd in capital Matters) with as much Reason and Authority as what now said.

First, I do affirm there is no Authority in Law, which says a Prisoner shall not have a Copy of the Pannel; in the next place I affirm, that after a Jury struck in a civil Matter, each Party ought to have a Copy of the Pannel, in order to provide himself of a Challenge, if there be any Cause: In the last place, I affirm, that by Law more Favour is allow'd a Defendant in a capital Matter to defend himself, than in a Civil. And if these Propositions be true, let any Person if he can make out the Law, or Reason of the above Assertions.

Of a like Stamp was the Saying, when my Lord desir'd a Copy of the Matter of Fact laid against him, of the Attorney that he had notice of it; for Questions were put to him about it, and he was with his Lordship himself, and examin'd him upon those Questions, which was a Favour to him, that he might know what the Matter was he was accus'd of.

I do not affirm that ever it was practis'd, to give the Prisoner a Note of the Fact; to be given in Evidence against him, proving Treason, or that it was ever denied till then, nor do I know of any Law *pro* or *con* in the Case; but if one would judge by Reason or Practice in parallel Cases, I think it ought not to be deny'd.

I know not at present of more than two sorts of general Indictments, and those are of Treason and Barretry; the last is a general Indictment, for stirring up Suits without Reason, and without mentioning any Suit in particular: and therefore if by the Rule of the Court the Defendant was not help'd, which obliges the Prosecutor to give the Defendant, some reasonable time before the Tryal, a Note of what Suits he intends to give in Evidence against him, it was impossible for the Defendant to escape, if it had been his Misfortune to have had five or six Suits.

For I never yet saw a Witness produc'd against the indicted, but he would swear the indicted brought an Action against him without Reason; and yet I have often seen, that the indicted having had notice, that that was one of the Suits he was intended to be charg'd with, hath been able to prove that he had good, or at least probable Cause of Suit, which he could not have done if he had not notice. And in Treason, for designing to kill the King, there have been so many Interpretations of Facts tending that way, that it is almost impossible for an Innocent to defend himself, unless he had notice of the Fact intended to be insisted on at the Tryal.

There are yet some Expressions which mightily puzzle me: the King's Council said in the Argument of the Challenge, that they would not have the Point of being a *Juryman*, tho' not a Freeholder, lost to the City of London; and one of the Judges said, 'twas the Privileges of the City were struck at in that Point. If by those Expressions be meant, that it is for the benefit of the Publick that there should be no failure of Justice, I agree to it; but if it be meant that it is for the benefit of the Citizens to be *Jurymen*, I deny it: and I think nothing shews it plainer, than that it is a Privilege that a Citizen shall not be drawn out of the City to be a *Juryman*; that a Nobelman shall not be on a *Jury*; that it is a Matter of Prerogative in the King, and Favour to a particular Person, to grant a Charter of Exemption from being on a *Jury*. So that if I consider the Law, I know what is meant by those Expressions; if I consider allow'd Practice, it is true, a *Juryman* may earn his Eight-pence for a Tryal; but that is too inconsiderable pay for Persons of Substance, as the *Jurymen* in this Case were said to be, to be fond of the Employ, or to account it a Privilege. Yet even that was but in civil Matters; in criminal Matters, not Capital, the *Jury* were heretofore paid if they acquitted the Defendant, but not if they found him guilty; tho' of late it hath been practis'd to give them more, and treat them higher if they convicted the Defendant, than if they acquitted him: But in capital Matters, as the Case in question was, it was never allow'd, or at least own'd to pay the *Jury*, be the Verdict which way it would.

Having spoken to the Preliminaries, I proceed to the Tryal, wherein Colonel Rumsey was first produc'd: he said, he was sent by my Lord Shaftsbury about the end of October, or beginning of November; who told him, he should meet at one Sheppard's the Duke of Monmouth, Lord Ruffel, Lord Gray, Sir Thomas Armstrong and Mr. Ferguson, to know of them what Resolution they were come to about the Rising of Taunton: Sheppard carry'd him where they were, and answer was made, Mr. Trenchard had fail'd them, and there would be no more done in the Matter at that time; thereupon the Lord Shaftsbury took a Resolution to be gone: Mr. Ferguson spoke most of the Message, and he thought the Lord Gray spoke something to the same purpose; he did not know how often he had been at that House, he was there more than once, or else he heard Mr. Ferguson make a Report of another Meeting to the Lord Shaftsbury, my Lord Ruffel was in the Room, and that was all they said at that time that he remembred, he was not there above a quarter of an hour. There was some

Discourse about seeing in what posture the Guards at the *Mews* and *Savoy* were in by all the Company, to know how to surprize them if the Rising had gone on; Sir Thomas Armstrong and Mr. Ferguson began, all debated it; he thought the Duke of Monmouth, the Lord Gray, and Sir Thomas Armstrong were sent to view them; the Rising was appointed to be the 19th of November; he was spoke to by the Lord Shaftsbury to go to Bristol if the Rising had gone on, but in what Quality was not determin'd: The Lord Ruffel agreed to the Debate. Being ask'd if my Lord Ruffel said any thing there, and what; he answer'd, My Lord Ruffel spoke about the Rising at Taunton: Being ask'd what my Lord Ruffel said, he answer'd, My Lord Ruffel discours'd of the Rising; being ask'd if my Lord gave his Consent to the Rising, he said he did.

The next Witness was Mr. Sheppard, who said, In October last Mr. Ferguson came to him in the Duke of Monmouth's Name, and desir'd the conveniency of his House for himself and some Persons of Quality, which he granted: In the Evening the Duke of Monmouth, Lord Gray, Lord Ruffel, Sir Thomas Armstrong, Colonel Rumsey, and Mr. Ferguson came, not all together, but the one after the other. Sir Thomas Armstrong desir'd, that none of his Servants might come up, and that they might be private; so what they wanted he went down for, a Bottle of Wine, or so: the substance of the Discourse was, to surprize the King's Guards; and in order to it, the Duke of Monmouth, the Lord Gray, and Sir Thomas Armstrong, went one Night, as he remembred, to the *Mews*, or thereabouts, to see the Guards; and the next time they came to his House, he heard Sir Thomas Armstrong say, the Guards were very remiss in their places, and not like Soldiers, and the thing was feasible if they had but strength to do it: he remembred but two Meetings there; they came in the Evening; he neither heard nor saw any Coaches at his Door: When they came in, as he remembred, the Lord Ruffel was both times there; he had no business with the Lord Ruffel, nor the Lord Ruffel with him at that time, but since he had: He did not remember Colonel Rumsey discours'd the Lord Ruffel about any private Business, nor remembred any farther Discourse; he remembred no Writings nor Papers read at that time: upon recollection he remembred one Paper read by Mr. Ferguson in the nature of a Declaration, setting forth the Grievances of the Nation, the Particulars he could not tell; it was a pretty large Paper, it was shew'd for Approbation as he suppos'd, when to be set out was not discours'd; 'twas shew'd to Sir Thomas Armstrong, and as he remembred the Duke of Monmouth was present, and he thought Colonel Rumsey was present: Colonel Rumsey said, he was not present, it was done before he came. Mr. Sheppard went on and said, the design of the Paper was in order to a Rising, as he suppos'd by the Purport of it; he would not say the Lord Ruffel was there when that Paper was read, but he was there when the talk was about seizing the Guards; he could not be positive as to the times of those Meetings, but it was when the Lord Shaftsbury was absent from his House, he absented about Michaelmas Day; he could not be positive that my Lord Ruffel was at both Meetings; he thought he was at both, he was sure he was at one.

The last Witness was the Lord Howard. He said he brought Captain Walcot acquainted with the Lord Shaftsbury; and upon his account Captain Walcot soon gain'd a confidence with the Lord Shaftsbury: Walcot told him, the People were sensible all their Interest was going to be lost by the Violence offer'd to the City in the Election of Sheriffs, and that they were resolv'd to take some course to put a stop to it: that there were several meetings about it, and some Persons began to prepare to act; that some had good Horses, and kept them in private Stables, and he resolv'd to be one in it: He having an Estate in Ireland, he dispatch'd his Son thither, and order'd his Son to turn his Stock into Money; the Son went about August: that the 30th of September, Walcot din'd with him; told him, that the Lord Shaftsbury was secreted, and desir'd to speak with him: Walcot brought him to the Lord Shaftsbury, who complain'd of the Duke of Monmouth and the Lord Ruffel for deserting him; but there was such preparation made in London, that now he was able to do it of himself, and intended to do it suddenly; he had above 10000 brisk Boys ready to follow him when he held up his Finger, they would possess themselves of the Gates, and in twenty four hours they would multiply to five times the number, and would be able to possess Whitehall by beating the Guards. The Lord Howard went to the Duke of Monmouth, told him the Lord Shaftsbury's Complaint, who said, the Lord Ruffel and he told the Lord Shaftsbury from the beginning, that there was nothing to be done by them in the Country at that time. The Matter of the Discourse between him and the Duke of Monmouth, him and the Lord Shaftsbury, and him and Walcot, is too tedious to relate, and as little to the purpose, if the Jury had understood Matter of Law which they did not; in it he takes care to shew what Confidence my Lord Shaftsbury had in him, more than in the Duke of Monmouth or the Lord Ruffel; how very cautious he was, and how precipitate the Lord Shaftsbury was, and that what he told the Duke of Monmouth the Duke told the Lord Ruffel; and he heard the Lord Ruffel had been with the Lord Shaftsbury, and put off the intended Rising. At which the Lord Ruffel interrupted him, and said, he thought he had very hard measure, there was a great deal of Evidence given by hearsay only: Whereupon the Chief Justice said, it was nothing against the Prisoner; he declar'd it to the Jury, but the Attorney General bid the Lord Howard go on in the method of Time, and that it was nothing against the Prisoner, but the Witnesses were coming to it if his Lordship would have patience, he assur'd him so. The Lord Howard went on where he left off, with a story between him and Walcot of an intended Rising, and of some dark Sayings let fall by Walcot and the Lord Gray, importing a Design upon the King's Person; but the Lord Howard was very careful to put all off, but at last it was resolv'd to rise on the 17th of November: But the Lord Howard fearing it had been discover'd, because he saw a Proclamation a little before forbidding Bonfires without the Lord Mayor's leave, that of the 17th of November was also disappointed, and the Lord Shaftsbury went away and died; but considering they had gone so far that it was not safe to retreat, and likewise that so great an Affair as that, consisting of such infinite Particulars, was to be

manag'd with so much fineness, they erected a Cabal of six Persons, the Duke of Monmouth, Lord of Essex, Lord Ruffel, Mr. Hamden Algernon Sidney, and himself, about the middle of January last; and about that time they met at Mr. Hamden's House, where it was consider'd whether the Insurrection should be in London, or in a place distant; what Countries and Towns were fittest and most dispos'd to Action; what Arms necessary to be provided; how to raise twenty five or thirty thousand Pounds, and how they might so order it as to draw Scotland into a Content with them.

About ten days after they met at the Lord Ruffel's House, and resolv'd to send some Persons into Scotland to the Lord Argyle, to invite some Persons hither to give an Account of that Kingdom; the Persons to be invited were Sir Jo. Cockram, Lord Melvil, Sir Campbell; that Matter was refer'd to Col. Sidney, who told him he had sent Aaron Smith; they agreed not to meet again till the return of the Messenger: The Messenger was gone about a month, it was six Weeks or more before he return'd, and then his Lordship was forc'd to go into Essex, where he had a small Concern; there he staid three weeks, and when he return'd, he was inform'd Sir John Cockram was come to Town, and afterwards he was forced to go to the Bath, where he spent five weeks; and from that time to this was five weeks, all which time was a Parenthesis to him; and that he and the five mention'd erected themselves by mutual Agreement into that Society.

Atterbury swore Campbell was in his Custody: then Col. Rumsey was ask'd, whether my Lord Ruffel heard him when he deliver'd his Message to the Company, and in what place of the Room the Company were: who answer'd, that when he came in, they were standing by the Fire-side, but all came from thence to hear him; and when my Lord Ruffel said, Col. Rumsey was there when he came in, Rumsey said, No, the Duke of Monmouth and Lord Ruffel went away together.

Then in behalf of my Lord Ruffel the Earl of Anglesey was examin'd, who said, that visiting the Earl of Bedford, the Lord Howard came in, and told the Earl of Bedford, that his Son could not be in such a Plot, or suspected of it; and that he knew nothing against the Lord Ruffel, or any body else, of such a barbarous Design: And he was going on again with what the Lady Chaworth had told him, but was interrupted by the King's Council, telling him as the Court would not permit them to give Hearsay in Evidence against the Prisoner, so they must not permit his Lordship to give Hearsay in Evidence for the Prisoner.

Mr. Howard said, that the Lord Howard took it upon his Honour, and his Faith, he knew nothing of any Person concern'd in that Business, and not only thought my Lord Ruffel unjustly suffer'd, but he took God and Man to witness; he thought my Lord Ruffel the worthiest Man in the World.

Dr. Burnet said, the Lord Howard was with him, and he did then, as he had done before, with Hands and Eyes lift up to Heaven, declare, he knew nothing of any Plot, nor believ'd any, and treated it with great Scorn and Contempt.

The Lord Cavendish testify'd as to the Life and Conversation of the Lord Ruffel, and thence concluded, it was not likely he should be guilty of any

any such Matter, and heard the Lord Ruffel speak of *Rumsey*, as if he had an ill Opinion of him, and therefore it was not likely he should trust him. Dr. Tillotson spoke of his Conversation. Dr. Burnet and Dr. Cox spoke of his Conversation, and of his Aversness to all Risings. Dr. Cox testify'd, that my Lord Ruffel said the Lord Howard was a Man of luxuriant Parts, but he had the luck not to be trusted by any Party. The Duke of Somerset spoke of the Lord Ruffel's Conversation. The Lord Clifford, Mr. Lefveson Gore, Mr. Spencer, and Dr. Fitzwilliams spoke of the Lord Ruffel's Conversation. The Lord Howard being ask'd by the Jury what he said to the Earl of Anglesey's Evidence, own'd what the Earl said, but he did it to outface the Matter; and if he said untrue, he ought not to be believ'd on his Oath, and insinuated, that he meant what he said to be meant of a Design of murdering the King, which he did not believe the Duke of Monmouth or the Lord Ruffel guilty of.

This being the sum of the Evidence given against, or for my Lord Ruffel, let us consider how far it will justify the Verdict given against him: first consider the Improbability of *Rumsey's* Evidence, if my Lord Carvendish said true, that he should trust *Rumsey* to hear the debate about seizing the Gards, when the Lord Ruffel had an ill Opinion of *Rumsey*. As for *Rumsey's* delivering the Message, there was no great Matter in that, it is impossible to hinder Peoples speaking, and it is not Treason to conceal what's said; besides it was well known, it was *Rumsey's* way to talk extravagantly, in order to accuse those that heard him, if they did not discover it. But besides the Improbability of the Evidence in respect of the Person, the manner of delivering the Evidence, and the Evidence it self was such as carry'd no Colour of Truth withit: he said he deliver'd his Message, and had an Answer to it, and being ask'd what the Company said further, answer'd, that was all that was said at that time that he remember'd, and gives a very good Reason for it, for he stay'd not above a quarter of an hour, and added that he was not certain whether he then heard something of a Declaration there, or whether Mr. Ferguson reported it to my Lord Shaftsbury, that they had debated it; and yet when Sheppard said *Rumsey* was there when the Declaration was read, he deny'd it, and said it was read before he came in. Being ask'd to what the Declaration tended, he answer'd to another Matter, viz. that there was some discourse about seeing what Posture the Guards were in, and said that all the the Company debated it; and being drawn on by Questions, said it was in order to seize the Guards, if the Rising had gone on. Now how doth that Part of the Evidence agree with what he said before, that there was nothing more said than the delivering his Message, and the Answer to it? and how doth it agree with the time he said he stay'd, which was not above a quarter of an hour? whereas that debate, if all the Persons present being six debated it, as he said they did, it would certainly have taken up a larger time. How does the first and last part of his Evidence agree, when he said, my Lord Ruffel agreed to the Answer of his Message? and being ask'd whether and what he spoke to it, said, he spoke about the rising at Taunton, but doth not say what; and yet in the first part of his Evidence he said, when ask'd who sent

the Message back, Mr. Ferguson deliver'd the Answer, the Duke of Monmouth and the Lord Ruffel were present, and he thought the Lord Gray said something to the same purpose. But what Credit could be given to any part of a Man's Evidence, whose Memory was so shallow, that he could not remember whether he was at two Meetings, or whether Mr. Ferguson related one of them to the Lord Shaftsbury? yet both were suppos'd to be within the Compass of a year, whereas a Man of Sense is suppos'd to remember all his own Acts for seven years past, which is the Reason why the Chancery obliges a Man to answer as to his own Acts positively for seven years, without saying as he believeth, or as he remembreth, or the like. What Credit is to be given to a Witness who testifieth what was said in company, and by whom, when his Memory doth not serve to answer positively, whether he was in the Company, or whether another told him what was there said? he might as well have said he was there, or dreamt he was there, or that he heard the Discourse or dreamt of it, which had carry'd equal Credit with it.

It was plain, the Man was not of sane Memory enough to make a Will, much less to be a Witness in the Tryal of a Man's Life; and nothing can be said for him, but that he was a Witness for the King, that is to say, a mad Man may be a Witness to take away a Man's Life, which is as good Law as a great deal of other *Cont*vented as a part of the Prerogative.

It is true one of the King's Council recommends *Rumsey* to the Jury, as a very credible Witness under the notion of an unwilling Witness: but had the same Person been a Council for the Prisoner, he would have call'd *Rumsey* a dancing Witness, for he said backwards and forwards; and an amaz'd Witness, for being ask'd one thing, he answer'd another; being ask'd as to the Declaration, he answer'd to the seizing of the Guards; being ask'd whether my Lord Ruffel assented to the Answer of the Message, he reply'd, yes, because he talk'd of the Rising, &c. which might be as well against as for it.

Sheppard's Evidence was to the Design of seizing the Guards, and as to the Declaration, he remember'd but two Meetings, at both which he said, as he remember'd, my Lord Ruffel was present, but he could not be positive in that, and the times of the Meetings he did not remember: he said, the substance of the Discourse was, how to surprize the King's Guards, and that the Duke of Monmouth, the Lord Gray and Sir Tho. Armstrong went to see the Guards, as he remember'd; and the next time they came to the House, Sir Tho. Armstrong said the Guards were very remiss, &c. Taking this Evidence by it self, without racking *Rumsey's* Evidence to it, it was so far from being Evidence of Treason, that it was no Crime; for he doth not say, it was intended to be put in practice, notwithstanding all said by him; both the Discourses and the Persons viewing the Guards (which last was not Evidence, nor ought to have been given in Evidence) might be a Matter to try each others Judgments, as well as an Evidence of a thing design'd: and if it be capable of two Interpretations, the Law hath said, it shall be taken in *mitiore sensu*, in favour of Life; that distinction was taken by the Chief Justice in *Blague's* Case, the day after this Tryal, where the Evidence against him was a Discourse about taking the Tower, as high a Crime as seizing the

the Guards; and upon that *Blague* was acquitted. It is true *Rumsey* said it was in order to be put in practice, when the Rising should be in the Country, but that he did not say at first; but was afterwards led to it by questions; nor did he speak it as a thing at that or at any other time determin'd, but as his own surmise or guess, because he knew of an intended Rising. Yet how foolishly did he contradict himself? for says *Rumsey* it was to have been put in practice, if the intended Rising had gone on, and yet at the same Meeting he had said before, the Rising was put off: how contradictory therefore is it to say they made Preparations for a thing they had laid aside before? And it is plain *Sheppard* speaks of the same time; for both agree, *Rumsey* was at that Meeting, tho they do not agree how soon he came: besides, how could *Sheppard* speak positively of the Discourse, or of the Design of it, when he owns he did not hear all their Discourse, and gives a very good Reason for it? for he said he went several times down to fetch Wine, Sugar and Nutmeg, and did not know what was said in his Absence: he said he heard nothing about a Rising, nor heard any further discourse; but on recollection, he heard something about a Declaration of Grievances in order to a Rising, as he suppos'd; the Particulars he could not tell. Now what sort of Evidence was that? In all civil matters, a Witness shall not be permitted to give Evidence of the Content of a Deed or Writing without producing the Deed or Writing it self, or a true Copy of it, and upon very good Reason? for he may make an untrue Construction of it. I remember a Witness who swore to the Content of a Deed of Intail, and being ask'd whether he knew a Deed of Intail, and by what he knew the Deed he spoke of to be a Deed of Intail, answer'd he knew a tailed Deed very well, and he knew the Deed to be a tailed Deed, because it had a Tail half as long as his Arm, meaning the Label of the Deed. And if this be the Practice and the Reason of the Practice in civil Matters, shew me any Authority or Reason any thing should be permitted to be given in Evidence in Treason, which is not permitted to be given in Evidence in the Tryal of any civil Matter.

If you say, as Justice *Levins* said in a like Case in *Colledge's* Tryal, that it would be the difficultest thing in the World to prove Treason against a Man, if the Law were not so, and the King would in no sort be safe; on the other hand I say as *Colledge* there said, if the Law should be so, no private Person is safe: and if there be Mischief of either hand, the Law is and must be Judg, which hath taken care (tho to no purpose, because it hath not been observ'd) that there shall be a stricter Proof in Treason than in any civil Matter, or in any other Crime: and how the Judges came to permit that loose Evidence in Treason to be given, which of late years they have done, no just or honest Account can be given.

The last material Witness against my Lord *Russel* was my Lord *Howard* (as for *Atterbury's* Evidence, it ought not to have been permitted to be given, as shall be shewn, nor was it material) to no part of whose Evidence any Credit ought to be given, even by his own Confession: he was surely in the right, when he said that the Religion of an Oath is not ty'd to a Place;

and I'll add, not to a Form, but receives its Obligation from the Appeal therein made to God; and therefore if he said (tho I own he was not bound to say it) to the Earl of *Bedford*, Mr. *Howard* and Dr. *Burner*, what was testify'd against him, he ought not to be believ'd in any part of his Evidence. Did he say true to my Lord *Bedford*, when unsent for and unask'd (for ought appears after my Lord *Russel* was clapt into the Tower) that sure his Son could never be in any such Plot as that, or suspected for it, and that he knew nothing against him, or any body else; of such a barbarous Design; and yet he knew if he swore true that my Lord *Russel* was guilty of such a barbarous Design, that nothing but the Lord *Howard's* Duty to God, the King, and the Country, could prevail with him to give it in Evidence against a Person for whom he had so great an Affection as he had for my Lord *Russel*. How was it consistent with the truth of his Evidence what he said to Mr. *Howard*; that he knew nothing of any Man's being concern'd in that business, and particularly of my Lord *Russel*, whom he highly commended, and said he thought the Lord *Russel* unjustly suffer'd; or with what he said to Dr. *Burnet* with Hands and Eyes lift up to Heaven, which is as much an Appeal to God as may be, that he knew nothing of any Plot, nor believ'd any? It was an idle Evasion to say, when he spoke of my Lord *Russel*, he meant my Lord *Russel* was not guilty of the Design of murdering the King (for which that Man, as he said, was committed; meaning *Walcot*, the Lord *Russel*, or any other Person) for he is still at liberty to explain himself, and I am apt to think they were all committed by Warrants of the same Form. I know not how dextrous he is at paring an Apple; but he must be an excellent *Logician* that can reconcile the truth of his Evidence and Sayings: The truth is, a Man that has those Niceties in his Head ought to have no Credit; for no Man knows whether he understands what he says aright, and I am apt to think his Lordship could shew, that he did not intend what he said at my Lord *Russel's* Tryal in the Sense it was understood by the Court or Jury. To say, that he was to outface the thing for himself and his Party, was as vain (for besides that I think he was of no Party; because, as my Lord *Russel* said, he had the luck to be trusted by none) Where was the Sense of making those Protestations to Persons who could do him no good, and would do him no harm, both which my Lord *Pemberton* could; and therefore 'twas not alike? It is true, the Attorney General commends the Lord *Howard* as a Person of great Credit amongst the Party, and insinuates the Lord *Gray* was left out of the Cabal for his Immorality, and the Lord *Howard* was taken in his place. But to pass from the General of his Evidence to the Particulars of it, for about two leaves in the Print of it; it is a discourse between my Lord *Shaftsbury* and him; wherein he makes my Lord *Shaftsbury* have a wondrous Confidence in him, and discovers all the Design to him, and what number of Men he had at Command; but who they were, or what they were, was never yet discover'd, and yet the Lord *Howard* had not at that time been concern'd in the Matter, nor did then assent: he very prudently was resolv'd to see whether it was likely to take effect or not before he would enter on it. It was indeed a Matter of great Wonder

to those who knew my Lord *Shaftsbury*, and knew what Opinion he had of the Lord *Howard* from the time he discover'd that the Lord *Howard* frequented the Dutchess of *Portsmouth*, which was before *Fitzbarris* his Tryal (tho' after that Tryal the Matter was publickly own'd, which was before suspected by most known to the Lord *Shaftsbury*) that he should so readily trust the Lord *Howard* with the secret, who was unconcern'd in the management before, as he says himself, and yet secreted himself from the Duke of *Monmouth* and my Lord *Russel*, who were equally guilty, if what was sworn was true. I cannot but observe that in all the time of the Lord *Shaftsbury*, the Lord *Howard* was no otherwise concern'd in the pretended Design, but in raising Difficulties, and being in great fear lest there should be a Rising or an Attempt upon the King's Person: and if he said true, he was the Man that put off the intended Risings, and likewise the intended Design on the King's Person, insomuch that I think he was so far from standing in need of a Pardon for Treason, that he deserv'd a considerable Reward, if it were for nothing else than for his fearing the Design was discover'd by the Proclamation against Bonfires, which, as he said, put off the Rising intended to be the 17th of *November*; and yet he and others being afraid, the middle of *January* they erected themselves into a Cabal of six Persons, of which there is but one Person in all his Narrative he pretends to have spoken to about that Matter before, which is the Duke of *Monmouth*, and but one more he pretends even by hearsay to be concern'd in it before, which is my Lord *Russel*. How improbable therefore was it, that those six Persons should, as it were on sight, put themselves upon such a dangerous Design, especially considering the Reason he gives for it, which was their Fears, that what had been transacted was, or might be discover'd? This likewise is observable, that from the 30th of *September*, the time the Sheriffs entred upon their Office, to the 17th of *November* following, he is very exact as to the time of each Matter, when there was no Person could contradict him; for my Lord *Shaftsbury* was dead, *Walcot* was convicted, and the Duke of *Monmouth* was gone, who are all the Persons mention'd to be concern'd in that time: yet when he comes to speak of the Matter in which my Lord *Russel* was concern'd, then he says it was about the middle of *January*, about ten days after, about six weeks after, about three weeks and five weeks; for had he been

precise in the times, he might have been disprov'd in the Meetings he gave Evidence of: and it is much his Memory was so very good as to the former times, to be so very precise in them as he was, and so very defective in the latter times; and yet those times do not make up the space between the middle of *January*, and the time of the Tryal by many weeks, unless you will give large Allowances to the word *about*; an Exception which was taken to *Mowbray's* Evidence, tho' he rectify'd it by his Account in his *Almanack*; but it would not be admitted, tho' *Colledge* very sensibly desir'd of the Court for Justice sake to look on the *Almanack*, to see whether it was newly writ, as if done for that purpose.

Besides the Improbability, if such a thing was in hand, as the Lord *Howard* pretended, for him to run into the Country, and then to the *Bath*, when the Matter was just come to a Crisis as it were, shews him, if he swore true, rather a Madman than a Traitor.

But the Usage of the King's Council and the Court toward the Prisoner was very unjust and unfair; they permitted the Lord *Howard* to go on with a long Story of him and my Lord *Shaftsbury*, at which when my Lord *Russel* took Exceptions, the Chief Justice it is true said it was no Evidence; yet the Attorney General bidding him go on in the Method of time, he went on where he left off, intermixing Stories of Designs and of Attempts by other Persons upon the King's Person to exasperate the Jury, as my Lord *Russel* said rightly against him; a thing which no Council durst have done, and no Court would have suffer'd in any other Case, nor even in that would the Court or Council suffer it for the Prisoner. How was my Lord *Anglesey* checkt when he began to tell what my Lady *Chaworth* said, and Mr. *Edward Howard* when he did not speak of his own Knowledge? How unjust was it for the King's Council to repeat all the Evidence the Lord *Howard* gave, when they sum'd it up, even that which the Court told them before was not Evidence! How unjust was the insinuating of the Death of my Lord of *Effex*, as Evidence against my Lord *Russel*! And why did not the Court in summing up the Evidence take notice of the Liberty the Witnesses and Council had taken, and have told them what was not Evidence? No other Reason can be given than what *Colledge* said at his Tryal upon his Observation of *Fitzbarris's* business and his own, That the Matter was not to stop at him.

Remarks on Colonel Sidney's Tryal.

THE Lord *Russel* being executed, and the same day, what was called his Speech being published, than which nothing in Print was so eagerly accepted or sought after, which shewed the Inclination of the People, there was some respite for quieting the Minds of the People; but it was not to stop there, as *Colledge*

said, and therefore Colonel *Sidney* (who was talk'd to Death under the Notion of a Commonwealthsman) was the 17th of *November*, 1683. brought to *Westminster* to be arraign'd on an Indictment of High-Treason. The Indictment at the time he came to the Hall, was so far from being found by the Grand Jury, that it was

was not so much as presented to them; but the King's Council, who had packt the Jury, knew well enough that it would be accepted, that is, found upon sight by the Jury, without any Consideration, which was accordingly done, and Colonel *Sidney* thereupon arraign'd. The Indictment was for designing to depose the King, and to perswade the King's Subjects to rebel; and that he did write a certain Libel wherein it was contain'd, that he (meaning King *Charles* the Second) is subject to the Law of God as he is a Man, to the People who made him such, as a King, &c. To which Indictment he would have put in some Exceptions, express'd in a Parchment in his Hand, but was told by the Court, he must either plead or demur, and upon no other Terms Exceptions could or ought to be admitted; after which he pleaded Not guilty.

The 21st of *November* he was try'd, at which time he insisted to have a Copy of his Indictment, as he had done when he was arraign'd; but was both times denied. The first Witness against the Prisoner was *Mr. West*, against whom Colonel *Sidney* objected, because he was not pardon'd; but it was answer'd by the Court, that he was a good Witness in my Lord *Russel's* Tryal, and therefore should be in that. Then Colonel *Sidney* desired *Mr. West* might speak nothing but what he knew of Colonel *Sidney*, but was answer'd by the Court, he might give Evidence of a Plot in general, tho' Colonel *Sidney* was not concern'd in it, and it was call'd Sir *William Jones's* Law. Then *Mr. West* went on, and gave Evidence of what Colonel *Rumsey*, *Mr. Nelthorpe*, and *Mr. Ferguson* told him of Colonel *Sidney*, but of his own Knowledge he could not say any thing of the Prisoner. *Rumsey* give a like Evidence he had done in my Lord *Russel's* Tryal, with an Addition of what *Mr. West* and *Mr. Goodenough* told him. *Keeling* gave Evidence of what *Goodenough* told him, all which the Court agreed was no Evidence against the Prisoner. Then the Lord *Howard* gave the like Evidence from the middle of *January* to that time, as he had done in the Lord *Russel's* Tryal, saving that he said the Earl of *Salisbury* was brought into the Cabal, who was not mention'd before, and save that he said the meeting at my Lord *Russel's* was about a Fortnight or three Weeks after the meeting at *Mr. Hamden's*; whereas in my Lord *Russel's* Tryal, he says it was about ten days after the meeting at *Mr. Hamden's* House: and here he makes two notable Speeches for *Mr. Hamden* at the opening of the Consult, both which he had forgotten at my Lord *Russel's* Tryal, nor could remember at *Mr. Hamden's* Tryal, tho' in the last he was led by a great many Questions to put him in mind of them. After his Evidence given, Colonel *Sidney* was ask'd whether he would ask the Witness any Questions, who answer'd, he had no Questions to ask him; whereupon the Attorney General said silence—You know the Proverb.

The Record of the Lord *Russel's* Conviction and Attainder was given in Evidence. Sir *Andrew Foster* swore Sir *John Cockram* and the two *Campbells* came to London. Sir *Philip Floyd* proved the seizing of some Papers in the Prisoner's House, and he did believe the Papers shewn in Court to be some of them. *Sheppard*, *Cary*, and *Cook*

swore the Writing produced was like the Prisoner's Hand-writing; the Attorney General desired some part of the Writing should be read; the Prisoner desired all of it might be read, but was answer'd by the Court, that the Attorney must have what Part of it he would to be read, and afterwards the Prisoner should have what Part of it he would to be read; but he persisted to desire all of it should be read; then the Writing was read, (which was plainly an answer to a Book, but what Book was not mention'd) in which the Right of the People was asserted. The Earl of *Anglesey* gave the same Evidence for the Prisoner, of the Lord *Howard's* speaking of my Lord *Russel* and the Plot, as he had done in my Lord *Russel's* Tryal. The Earl of *Clare* said that the Lord *Howard*, after Colonel *Sidney's* Imprisonment, said, if he was questioned again, he would never plead; the quickest Dispatch was the best, he was sure they would have his Life; and speaking of the Primate of *Armagh's* Prophecy, he said, the Persecution was begun, and he believed it would be very sharp, but hoped it would be short; and said, he thought Colonel *Sidney* as innocent as any Man breathing, gave him great Encomiums, and bemoaned his Misfortune; and as for Colonel *Sidney's* Papers, he said he was sure they could make nothing of them. *Mr. Philip Howard* said, the Lord *Howard* said it was a Sham-Plot; *Dr. Burnet* gave the same Evidence as he did in my Lord *Russel's* Tryal: *Mr. Ducas* gave Evidence, that the Lord *Howard* said he knew nothing of Colonel *Sidney's* being in any Plot. The Lord *Paget* gave Evidence to the same purpose. *Mr. Edward Howard* gave Evidence to the same purpose. *Tracy* and *Penwick* gave Evidence to the same purpose. *Mr. Blake* testified, that the Lord *Howard* said he had not his Pardon, and could not ascribe it to any other reason, than that he must not have it till the Drudgery of swearing was over. Now to review what hath been said, it is strange to see what a Progress was made in the Resolutions of Points of Law, to take away a Man's Life; to say it in Colonel *Sidney's* Words, as if the Court and Council thought it their Duty to take away a Man's Life any how. *Mr. West* and several others are admitted to give Evidence by hearsay against the Prisoner, and their Evidence summed up and urged as Evidence to the Jury; and the reason given for it was, that he was admitted a good Witness of a like matter, in the Lord *Russel's* Tryal, which besides that it was not true, for it was rejected in that Tryal, as it appears it was in the Print; yet if he had been admitted, of no Authority, as Colonel *Sidney* said; because perhaps he was not excepted to. Of a like stamp is the Evidence of the Conviction of the Lord *Russel*, tho' I agree the Lord *Russel's* Conviction was as good Evidence against Colonel *Sidney*, as the Earl of *Essex's* Murder was against my Lord *Russel*, and no better. The same may be said of *Rumsey*, *Keeling*, *Foster* and *Atterbury's* Evidence. Against the Lord *Howard's* Evidence there were the same Objections, as in the Lord *Russel's* Tryal, with the addition of several other Persons testifying, he said he knew not, nor believed any thing of the matter; and that he could not have his Pardon, till he swore others out of their Lives, which in truth was the Sense of his Expressions.

The King's Council indeed had thought of something since the Tryal of my Lord *Ruffel* to palliate the matter of the Lord *Howard's* sayings (for they lean'd hard upon his Reputation, and lookt as if he would perjure himself at the expence of some Persons Lives, as his Words are in the Lord *Ruffel's* Tryal) Would you, say they, have had him confest the matter to those Persons to whom he had denied it?

I think there is a difference between confessing and denying: Who ask'd him the Question? What did it avail him to deny it to the Persons testifying against him? and therefore when he voluntarily said a thing untrue, unasked, not provoked or compelled to do it, and which could do him no good, it was good Evidence of his Untruth, and that no Credit ought to be given to what he swore.

As for the last part of the Evidence, which was about the Writing, both the Indictment and the Evidence was defective.

As for the Evidence, if the Subject Matter of the Writing had been Evidence of Treason, the Indictment ought to have express'd that he published it, which the Indictment in this Case did not; and upon good reason, which was, that the Jury might be put in mind, that the Publishing of it was necessary to make it known; whereas they very well knew that the Evidence would not, nor did come up to it. This was the first Indictment of High-Treason, upon which any Man lost his Life, for writing any thing without publishing it; for in *Fitzharris's* Indictment, he was charged with publishing his Libel; and so in all other Indictments for Writing, and upon good reason: for this being made an overt Act of Treason, it must be an Evidence of a Design to kill or depose the King, or the like; and as the Consequence of what the Writing contain'd, which was that the Power was in the People, &c. being in its nature no other, nor urged by the King's Council to any other intent than to corrupt the Subjects minds, could not be Evidence of such matter, unless proved he had writ and published it, whereof the last was not pretended to be proved.

That it was necessary to be express'd in the Indictment, and proved at the Tryal, appears by the Resolution of all the Judges of England in *Hugh Pines* Case, reported in *Cro. Car. Fol. 89.* at a time when Prerogative run pretty high; wherein besides the resolution that no Words charging the King with any personal Vice, was Treason, there is the Case of one *Peacham*, in 33^d of *Henry the 8th*, cited, who was indicted for Treason, for Treasonable Passages in a Sermon never preached, nor intended to be preach'd, but found in writing in his Study; he was found guilty, but never executed; for many Judges at that time were of Opinion it was not Treason, as the Book says: which I think, according to the Evidence here given, was the express Case of Col. *Sidney*, admitting he writ the Book produced, and that the Passages in it were Treasonable.

And as this Indictment was an Original in the particular before mentioned, so it was a second of an *Innuendo* Indictment of Treason, *Fitzharris* was the first. The Prosecution against *Car*, as I remember, was an Information, and Judgment arrested after a Verdict, because it was by *Innuendo*, of which no Precedent could be produc'd; and altho in Actions for Words it was

permitted, yet in Criminal Matters being Penal, it was resolv'd it ought not to be permitted; and certainly much less in Treason: and as this Indictment was an Original in one part, and a Second in another, the Evidence on it was an Original in another part, which was proving the Book produc'd to be Col. *Sidney's* Writing, because the Hand was like what some of the Witnesses had seen him write; and Evidence never permitted in a criminal Matter before. The Case of the Lady *Carre* was well cited by Col. *Sidney*, against whom there was an Indictment or Information of Perjury, in which it was resolv'd that Comparison of hands was no Evidence in any criminal Prosecution: and it must be own'd that at that time, besides *Keeling* and *Twisden*, there then sat in that Court Sir *Wadham Windham*, whom all will own to have been the second best Judge which sat in *Westminster-Hall* since the King's Restoration: and if it be not Evidence in a Prosecution of Misdemeanor, much less in Treason, as Col. *Sidney* said; which Inference, besides the reason of the thing, is back'd by the Authority of my Lord *Coke*.

But admitting Col. *Sidney* wrote that Book, and published it; yet if it were not done with a design to stir the Subjects up into a Rebellion, but was writ and published only *disputandi gratia*, as the import of the Book shews plainly it was, it was no more Treason than the discourse between *Blague* and *Mate Lee* about taking the Tower was. And suppose it was wrote with that design, yet it not appearing when it was writ, how could a Jury upon their Oaths say it was done with a design to raise Rebellion against King *Charles the Second*, when for ought appeared it was writ before he was King or thought of? It might for ought appeared be writ in King *Charles the First* his time, or *Cromwell's* time, and design'd against either of them, or any Foreign Prince, and therefore could not be Treason against King *Charles the Second*.

The Evidence was an Original in this Particular; also it was the first time that ever a particular Expression in a Writing was given in Evidence against a Man in Treason without reading the whole Writing, and for a very good reason given by the Jury in *Fitzharris* his Case, which was, that there might be something in the Writing not express'd in the Indictment, which may explain the Clauses in the Indictment, so that they may bear another construction: and in that Tryal it was agreed, the whole Writing ought to be read, and was read accordingly; and it was the duty of the Court to have ordered it, whether the Prisoner or Jury had desired it or not, as they are upon their Oaths to do right: but in Col. *Sidney's* Case, when pressed by him, it was denied; only some particular Passages he might have read if he would, which he did not accept, upon a very good reason which he gave, which was, that he knew not the Passages of the Book, or at least he did not remember them, and therefore could not call for them. 'Tis true that Practice in Civil Matters is allowed to save time, where the mischief is not very great: because of a Passage in a Deed or Writing material for either Party omitted in reading, the Matter may be brought about again; but in Criminal, much less in Capital Prosecutions, they cannot be, unless a way can be found to bring a Man to Life again.

Almost all the Circumstances of this Tryal are Originals; the summing up of the Evidence against him was barbarous, being Invectives and no Consequences. It was said he was not only guilty of the Practices he was accused of, but that he could not have been otherwise, because his Principles led him to it; and it might with as good reason have been urged, that he not only was become, but was born a Traitor. The last Matter remarkable in the Tryal was that of an Overt Act, of which the Court said it was resolved by all the Judges of England, that if I buy a Knife of J. S. to kill the King, and one Witness prove I bought a Knife, and another prove I bought it for that purpose, it is two Witnesses of an Overt Act within the Statute of Edward 6th.

It were fit to know who the Judges were who gave that Resolution, if it were but for the Authority of the Case; for I doubt the reason of it will convince no Man: they might as well have resolved that eating or drinking, or the most ordinary Acts of a Man's Life, is an Overt Act of High Treason.

The Law hath taken that care for the Evidence of High Treason, which it hath not done in any other Case, that it must be proved by an Overt Act, proved by two Witnesses. One would think at first sight of the Statute that there should be two Witnesses to the same Fact; but that hath been adjudged otherwise, yet still it was resolved there must be two Witnesses: but if this Resolution be Law, it is plain there needs but one. 'Tis true, if a Man does an Act for which he can give no reason, as placing a Mine of Powder in a Place the King usually passeth over, or planting a piece of Cannon to shoot at a place the King usually passeth by, if he cannot give a credible reason why he did it, and another swears the purpose of the thing, it is two good Witnesses within the Act.

It hath been said, if a Man be bound to his good behavior, and wears a Sword, it is a breach

of the good behaviour; and perhaps heretofore when Swords were not usually worn but by Soldiers, it might be so, because it struck a Terror in other People as much as a Blunderbuss, or the like unusual Weapon, or the going armed in a Coat of Mail for any Person but a Soldier doth at this day. Yet no Man will say that now Swords are usually worn by all sorts of People, it is a breach of the good behaviour; and so that which heretofore was a Crime, by Custom now is become none. It is therefore the unusualness and the unaccountableness of the Circumstance make it an Evidence, which cannot be assigned as a reason in the Overt Act mentioned.

The last thing I take notice of is, that Col. Sidney refused to ask the Lord Howard any Questions, from whence was inferred that he assented to the truth of the Matter sworn: but it is well known, 'tis no Prudence to ask a thorough-pac'd Witness a question; in Mr. Hamden's Tryal, his Council refused so to do for that Reason.

The next who fell a Sacrifice, according to Colledge's Prophecy, was James Holloway; he was outlawed and taken beyond Sea; and being induced with promises of Life to accuse himself of things (whether Guilty or not) enough to make good an Indictment of High Treason against him, it was indeed generously offered him that his Outlawry should be set aside, and he have the liberty to be tried, and defend himself as well as he could: but knowing that what he had said since he was taken would be brought in Evidence against him, he refused his Tryal; and because he would not purchase his Pardon at the expence of innocent Mens Blood, by accusing others, of what he did not know they were guilty (if his dying Speech is to be believed) he was executed.

I should not have mention'd this, but for the sake of the next Person's Case, which was Sir Thomas Armstrong's, who was outlawed for High Treason; when he was beyond Sea, he was taken and brought to the Kings-Bench-Bar.

Remarks upon the Award of Execution against Sir Thomas Armstrong.

A T Common Law, if a Person was beyond Sea when an Outlawry was pronounc'd against him, it was an Error in Fact, for which the Outlawry was to be revers'd; and it is an Error in all Outlawrys but for High Treason to this day. By the 6th of Edward VI. that Error is taken away in High-Treason, but there is a Proviso in that Statute, that if the Person outlaw'd shall within a Year after the Outlawry pronounc'd, yield himself to the Chief Justice of the Kings-Bench, and offer to traverse his Indictment, and on his Tryal shall be acquitted, he shall be discharg'd of the Outlawry. Upon the Construction of this Statute, no Judgment was ever given that I knew of; and the reason is, no Man outlaw'd was ever deny'd a Tryal till this time; if he was taken within a competent Time. The

reason of making that Statute was this; Men would commit Treason, and presently fly beyond Sea, and stay there till the Witnesses who should prove the Treason were dead; then return, and reverse the Outlawry for the Error of their being beyond Sea; and the Witnesses being dead, they were safe: and therefore this Statute takes away that Error in part, tho not in the whole, and doth in effect say, that the Person outlaw'd shall not have advantage of that Error, unless he comes and takes his Tryal within a competent time, which that Statute limits to a Year after the Outlawry pronounc'd.

This being plainly the Sense of the Statute, it was Injustice to deny the Favour or Right of a Tryal to Sir Thomas Armstrong, which was never deny'd any Person before nor since, where it was

was agreed that all the Witnesses against the Person accus'd were alive, as in Sir *Thomas Armstrong's* Case they were, barely upon the quibble of the word *render*, which in no Case that ever I read was differenc'd from *taken*, but in one Case, which is *Smith and Ashe's* Case in *Cro. Car.* 42. in an Outlawry for Debt against Husband and Wife, which will not extend to, or warrant the Judgment in this Case: and if there were but a Doubt in the Case, as it cannot be deny'd there was, the Outlawry ought to have been wav'd, or at least Council for the Prisoner heard as to the Point.

It was a vain and unjust Reason (and only tending to incense the thing) assign'd by the

Attorney, That the Prisoner was one who actually engag'd to go, upon the King's hasty coming to Town, to destroy him by the way; whereas the Prisoner offer'd to prove his Innocence in that and other Matters of which he was accus'd: and even that Objection against him was an Invention of the Attorney's for any thing appears; but then it was resolv'd to stop at nothing, and Success had made them fearless. *Fitzbarris* and *Colledge* 'twas own'd had hard measure, and that their Cases might be forgotten, their Quarters were buried; but Sir *Thomas Armstrong's* were expos'd, tho the Proceedings against him were equally as unjustifiable as in the other two Cases.

Remarks on the Tryal of Count Conningmark.

I Think fit to remember in the same Reign, tho before this time, one Case, to shew how the Courts of Justice were remiss or violent, according to the subject Matter.

All will agree, that the Murder of Mr. *Thynne* was one of the most barbarous and impudent Murders that ever was committed; and of that Murder Count *Conningmark*, tho he escap'd Punishment, was the most Guilty.

I do not complain that in that Tryal the Chief Justice directed the Prisoner the way to make the King's Council shew the Cause of Challenge against the Persons call'd on the Jury, and challeng'd for the King, without any Reason. It was his Duty so to do; and he ought to have directed *Fitzbarris* the same Method, which he did not: but he was blameable that he did not ask the *Lieutenant* and *Polander* what they had to say for themselves, which was always done before and since that time, and ought to be, which was an Injustice; and therefore two of the Prisoners at the time of their Sentences said, they were never try'd, tho I believe no great Injury to them, because they had little or nothing to have said for themselves.

But if they had been askt, they would have said as they did before their Tryals to the Justice of Peace who committed them, and as they did after their Condemnations, that Count *Conningmark* put them upon doing what they did, which might have influenc'd the Jury to have found the Count guilty, which was contrary to the Design of the Court; and it was for the same Reason the Chief Justice would not permit the Justice of Peace to read the Examination of *Sterne* and *Borosky*.

I do agree, that what they said before the Justice of Peace was not Evidence against the Count; I agree that the Count being indicted and try'd as Accessory, at the same time the Principals were indicted and try'd, the Principals could not be good Witnesses against the Count, because properly a Principal ought to be convicted before the Accessory be try'd: and therefore tho for Expedition both are try'd together, yet the Verdict always is and ought to be given against the Principal, before that of the Accessory.

But I deny what was in that Tryal laid down for Law, that the Accessory being in the same Indictment with the Principal, must be try'd at the same time. It is true, the Count desir'd his Tryal might be put off for two or three days, which the Court knowing what was best for the Count deny'd, and not for the above pretended Reasons; for an Indictment against many may be joint, and yet the Tryals may be several: the truth is, in such Cases the Indictment is joint and several.

Suppose the Accessory, at the Tryals of the Principals, had not been in Custody; will any Person say, that if afterwards he was taken, he can't be try'd upon that Indictment in which he was join'd with the Principals?

But besides a hundred Precedents not printed, there is the Case of *George Salisbury & al.* in *Flowden Fol* 100. where it was resolv'd, that tho an Indictment against many is joint, yet the *Venire* may be several against each Person, and consequently the Tryals may be several; and if so, then the times of the Tryals may be several: but that which is to be complain'd of is, that the Count in the Opinion of all Mankind at that time and since was the most guilty Man, yet the care taken to punish the less guilty, as *Sterne* and *Borosky*, was in order to let the most guilty escape; for I think both *Sterne* and *Borosky* might, and would have been good Witnesses against the Count if the Court would have permitted it: the Count might have been indicted as Accessory to *Wratts* only; for the Accessory to all the Principals is Accessory to every of them severally: and when the Court in their private Consciences were satisfy'd the Count was most guilty, they ought to have been cunning, *astuti*, as my *Ld Hobart* calls it, to have brought him to Punishment. But 'twas said, *Sterne* and *Borosky* being indicted of the same Crime with the Count, they could not be good Witnesses against him, which I think is no more Law than Truth: Truth it was not, for the Count was indicted as Accessory, the rest as Principals. But raking it that all were indicted and try'd as Principals for the same Fact at the same time, why is not the Evidence of the one good against the other?

First,

First, I think there is no exprefs Resolution for that Point of Law, but a late Rule given at *Kingston Affizes* upon the Tryal of a Maid and one *Saterwaite* for burning of an House; and therefore there is a liberty to examine by Reason how the Law is. I agree, if a Man is indicted and try'd for killing another, he shall not be admitted to say, *B. did it by himself*; but I think he may be a good Witness to prove that he and *B. did it*, that is to say; he shall not give any Evidence against another, which tends to acquit himself as well as accuse another; and I think he may give Evidence which accuses another of the same Crime whereof he is indicted, if it doth not tend to acquit himself.

For it is agreed on all hands, that being guilty of the same Crime, doth not disable a Witness; for then *Rumsey* and several Persons in the *Lord Russel's Plot*, as it was call'd, had not been good Witnesses. In the next place, the Circumstances of an Indictment against the Witnesses for the same thing he testifies against another, do not disable him; *Widdrington* was indicted for the same things, of which he gave Evidence against several others as his Complices in Robberies. Nay, the Law hath given somewhat more credit to the Evidence of a Person indicted, as a Witness of the same things against others, than it does to a Person not indicted; as in the Case of an Approver, which, as *Stamford* says, was a Person in Prison (not at large) for the Fact for which he was indicted, arraign'd upon an Indictment, or an Appeal of Felony, who before a Coroner assign'd by the Court, confesses himself

guilty of the Felony of which he is indicted, and not of any other, and confesses other Persons naming them as Coadjutors with him in committing the Crime of which he is indicted, and not of any other Crime; so much Credit shall be given to that Confession, that Process shall be made out against the Person peach'd, who, if taken, shall be arraign'd on that Approvement, as if an Indictment by a Grand Jury had been found against him: and if the Law gives so much Credit to an Approver, I think no Person can shew me a Reason why a Person indicted is not a good Witness against another for the same Crime.

It is true, *Stamford* says, if a King gives an Approver a Pardon, he is a good Witness; which implies, that otherwise he is not: But it must be consider'd, that the reason of that is, that an Approver being indicted, as he always is, and confessing the Indictment; is convicted, and a Person convicted of Felony cannot be a Witness till pardon'd. But it will be no Argument why *Sterne* or *Borowsky* had not been good Witnesses against the Count before they were convicted; and it was a like Piece of Justice, that whereas the Count was the most guilty, he was acquitted.

Wrats being the next greatest Offender, was honourably interr'd, and *Sterne* and the *Polander*; who were the least Offenders in that Matter, were hang'd in Chains.

It was somewhat like the *New England* Law, remember'd by *Hudibras*, of hanging an useless innocent *Weaver* for an useful guilty *Cobler*.

Remarks upon Mr. Cornish's Tryal.

THERE yet remain two Persons Prosecutions to speak of; the one is *Mr. Cornish*, who was taken the — of *October* 1685. and was arraign'd on an Indictment of High-Treason the Monday after, for conspiring to kill the late King *Charles* the Second; and knowing *James Duke of Monmouth*, *William Russel*, Esq; and *Sir Thomas Armstrong* to be Rebels and Traitors, promis'd to be assisting to them in their Treasons: To which he pleaded Not Guilty. He desir'd to put off his Tryal, because he had no notice till the Saturday before at twelve a Clock, and he could get no Friend to come to him till eight a Clock at Night, and then he was permitted to speak with no body but in the presence of the Goaler; he had been allow'd no Pen, Ink, or Paper. He was told by the Court he ought not to have it, without leave given on a Petition prefer'd by him, and that he was taken Tuesday before, which to that time was almost a Week. He said his Children had petition'd the King the Night before to put off his Tryal, and it was refer'd to the Judges; he did not know whether he was committed for High-Treason against the present, or the former King, and he had a material Witness an hundred and forty Miles off; but was told by the Court, they had no Power to put off his Tryal. It is true, they said the *Lord Russel's* Tryal was put off till the Afternoon (which was true)

but that was a Favour which could not be challeng'd by another Person as a Right. He complain'd he had not a Copy of the Pannel, but was answer'd it was not his Right to have it. Then the Attorney said, he had not deserv'd so well of the Government as to have his Tryal delay'd, and therefore he was presently try'd.

Rumsey swore, that about the latter end of *October*, or beginning of *November*, the Earl of *Shaftsbury* desir'd him to go to *Mr. Sheppard's* House, where was a Meeting of the Duke of *Monmouth*, *Lord Russel*, *Lord Gray*, *Sir Thomas Armstrong*, *Mr. Ferguson*, and *Mr. Sheppard*; he came late, and they were just on going away; he deliver'd his Message, and they told him that *Mr. Trenchard* had disappointed them: he had not been there above a quarter of an hour, but *Mr. Sheppard* was call'd down, and brought up *Mr. Cornish*, and told them *Mr. Cornish* was come, who came into the Room, and excus'd his not coming sooner, and that he could not stay, for he was to meet about the Charter; whereupon *Mr. Ferguson* open'd his Bosom, and under his Stomacher pull'd out a Paper: they told *Mr. Cornish* they had had it read, and desir'd to read it to him: *Mr. Ferguson* read it, *Mr. Sheppard* held the Candle while it was reading, and afterwards they ask'd *Mr. Cornish* how he lik'd it; who said, he lik'd it very well: he remember'd two Points in it very well, the one was for Liberty of Conscience,

science, the other was, that all who would assist in that Insurrection, who had Church or Kings-Lands in the late War, should have them restor'd to them. He did not hear all the Paper, and observ'd only these two Points, it was a Declaration on a Rising, and when the Rising was to have been, it was to have been dispersed abroad; there was a Rising intended at that time, and Mr. Cornish said, he lik'd the Declaration, and what poor Interest he had he would join with it. He had great dealings with Mr. Cornish, and Mr. Cornish was a very honest Man, it was out of Compassion he had not accus'd Mr. Cornish before.

Mr. Goodenough said there was a Design to rise in London, and for that Purpose to divide the City into twenty parts, and to raise five hundred Men out of each part, to take the Tower, and to drive the Guards out of Town. Before that was agreed on, he being by chance at Mr. Cornish's House, said, the Law will not defend us; some other way was to be thought on. Mr. Cornish said, he wondred the City was so unready, and the Country so ready: Mr. Goodenough reply'd, there is something thought of to be done here, but in the first place the Tower must be seiz'd, where the Magazine is; Mr. Cornish paus'd a little, and said, I will do what good I can, or what I can, or to that purpose, he said.

He afterwards met Mr. Cornish on the Exchange, who ask'd him how Affairs went, and this was in Easter Term 1683. He had some Matters with Mr. Cornish about managing the Riot, which was brought against him, Mr. Cornish, and others: He came to Mr. Cornish's House about the business of the Riot, and no Person was by at the discourse. Mr. Gosfright testify'd for Mr. Cornish, that he oppos'd Mr. Goodenough's being Under-Sheriff, and said he would not trust an Hair of his Head with him, he was an ill Man, obnoxious to the Government, and had done ill things, and he would not trust his Estate and Reputation in the Hands of such an Under-Sheriff; and he believ'd Mr. Goodenough and Mr. Cornish were never reconcil'd. Mr. Love, Mr. Fekil, and Sir. William Turner testify'd to the same purpose; Mr. Lane spoke out of the printed Tryal of my Lord Russel, and said Rumsey in that Tryal said he did not hear the Declaration read, for it was read before he came. Dr. Callamy said, Mr. Cornish did often come to Church, and receive the Sacrament; Mr. Sheppard said he was *subpena'd* by the King, and by Mr. Cornish the Night before; and that Mr. Cornish his Son was with him the Afternoon of the day before, who prest him to be at the Tryal the next day; that there were Accounts depending between him and Mr. Cornish, whereon there was about one or two hundred Pounds due to Mr. Cornish, and Mr. Cornish's *Subpena* was serv'd first upon him. At one of those Meetings at his House, Mr. Cornish came to speak a few Words with the Duke of Monmouth or some other, he could not be positive in that, it was many years ago; he did not stay above half a quarter of an Hour in the House; Sheppard came up Stairs, and went out with Mr. Cornish, and there was not one Word read, nor no Paper seen while Mr. Cornish was there: he remembered there was a Declaration read, Ferguson pull'd it out of his Shoo: he could not tell whether Mr. Cornish was at his House the Night the Declaration was read, but he was positive no Paper was read while Mr. Cornish was there, for Mr. Cornish was not look'd on to be one of

the Company: he did not know who Mr. Cornish came to speak with, when he came to his House; Mr. Cornish was but once at his House when the Duke of Monmouth was there: he did not remember that Mr. Cornish was in the Company when Mr. Rumsey was there; he said, he had attended the Court from eleven a Clock till half an Hour past three.

This being the Sum of the Evidence given in the Tryal for and against the Prisoner, let us see whether those Inferences could be made from it as were made by the Court and Council: and whether on the whole an honest Jury, tho but of little understanding, could have found him guilty of the Treason in the Indictment.

It is agreed on all hands, that a petty Jury may and must consider the Credibility of a Witness (tho in the Lord Shaftsbury's Case it was said a *Grand Jury* ought not to do) and if so, surely Rumsey was not a credible, tho he was not a disabled Witness, no more than a Man who owns himself to be a Man of Falshood, a profligate Wretch, and perjurd by his own Confession; tho not convicted of it; he had notoriously confessed himself guilty of High-Treason, and of being in the Design of an intended barbarous Murder; he had sworn in the Lord Russel's Tryal, he had nam'd all the Persons at the Meeting he spoke of, of which Mr. Cornish was none; and being taxt in this Tryal with it, he excuses his Perjury with Compassion to the Prisoner, which was mean, foolish and contradictory: he perjurd himself to save the Prisoner, and then swore Truth to hang him. He had not presence of mind enough to excuse himself in the manner a Witness in the Lord Russel's Tryal did, that his God, his King and his Country put him unwillingly to act that part: besides that in the Lord Russel's Tryal, Rumsey swore he was not at the reading the Declaration, and contradicted Sheppard, who swore he thought he was there.

But that passage was prov'd only by a Witness who had read it in the Tryal, which I confess in strictness of Law is not Evidence; nor if the Witness had said, he heard Rumsey swear so at the Lord Russel's Tryal, it had not been Evidence, unless a Record of that Tryal had been produc'd in Court, which was not done. But all those things being but mere Circumstances, shew the Injustice of speeding his Tryal, and denying him Council: Would not any Council have told him that in strictness of Law a Passage in a printed Tryal was not Evidence, and was it not easy for him to have got a Witness to have said that he had heard Rumsey swear so at that Tryal? were not all the Judges who sat upon him, and all the King's Council who were against him, present at the Lord Russel's Tryal, and perfectly remembred what Rumsey then swore as to the pretended Declaration, and might he not have *subpena'd* them to have testify'd that Matter? Nay, was it not their Duty to have done it even without a *Subpena*?

To say it was against the King, and therefore they could not do it; or they were in the Commission to try him, and therefore they could not do it, is neither Law nor Reason. Every Man knows that a Judg in a civil Matter try'd before him, and a Council even against his Client, has been enforc't to give Evidence (provided it be not of a Secret communicated to him by his Client) for in that particular a Judg ceases to be a Judg, and is a Witness; of whose Evidence the Jury are the Judges, tho he after re-assume his

his Authority, and is afterwards a Judge of the Juries Verdict.

A Judge may sue, and must be sued in his Court, but in that Case he ceases to be a Judge and is a Suitor, tho' he re-assumes his Authority in all other Matters: and if it be so in civil Matters, let any Man shew me a Reason why the Law is not so in criminal Matters; there is no express Law against it, and it will be absurd in reason to say the Law is not so; for at that rate the King may put any Witness, he knows the Prisoner intends to produce for himself, into the Commission for trying him, and so deprive the Prisoner of the benefit of his Evidence; as in this Case *Sheppard*, whose Evidence ought to have been of great use (as shall be shewn) tho' it was not of any avail to the Prisoner, might have been put into the Commission to have try'd Mr. *Cornish*, for he was as much qualify'd for it, as Sir *James Smith* then Lord Mayor, or any Judge upon the Bench: and if they might have been Witnesses for the Prisoner, if *subpœna'd*, they might have been Witnesses for him even without asking; and it was a Duty incumbent on them, tho' not as Judges, yet as Christian Men, so to be.

Humanity commands the Discovery of Truths, which prevent the shedding innocent Blood; and Christianity commands a Man to do as he would be done by. I think the Question need not be ask'd what they would have had done, if it had been their Case.

The reason that all matters of Law are, or ought to be transacted publickly, is, That any Person, unconcern'd as well as concern'd, may, as *amicus Curie*, inform the Court better, if he thinks they are in an Error, that Justice may be done: and the reason that all Tryals are publick, is, That any Person may inform in point of Fact, tho' not *subpœna'd*, that truth may be discover'd in civil as well as criminal Matters.

There is an Invitation to all Persons, who can inform the Court concerning the matter to be try'd, to come into the Court, and they shall be heard. It is true, if the Judges or any Person had testify'd what *Rumsey* said at my Lord *Russel's* Tryal, it had not been Evidence without the Record of the Tryal; and it is as true, that neither the Record, nor a true Copy of it could have been procur'd between Mr. *Cornish's* Commitment, if it were on *Friday* (as I have heard it was) tho' the Court said it was on *Tuesday*, much less between the notice of his Tryal which was *Saturday-noon*, and the time of his Tryal which was *Monday-morning*.

But then what Justice was there in speeding his Tryal, so as to deprive him of the Circumstances of his Defence? for that was but a Circumstance, and not an essential Matter. And what account can be given why the Court, when they were well satisfy'd that it was in the Prisoner's power to procure such a Witness, and such a Record, did not stay till he did it? or if it would be too long in doing, why should they not have put off the Tryal for that time, and given the Prisoner a convenient time to do it?

The first in civil Matters hath been frequently done, when a Deed or Witness hath been wanting, if it could be done in a convenient time, and a Tryal has been put off before it

came on, tho' after it came on they have not done it, because there is no great Mischief in that, for either Party hath Power to bring it about again; but not so in capital Matters, and therefore Juries in capital Matters have been frequently discharg'd after sworn, where the Evidence hath been defective.

It is true, my Lord *Coke* saith that a Jury once charg'd with a Prisoner cannot be discharg'd but must give their Verdict; but it is as true that he says so in favour of the Prisoner, that when the Evidence against him appears defective, he shall not be continued a Prisoner till more Evidence can be found, or procur'd against him, tho' the Practice of late days hath been quite contrary, *viz.* to discharge the Jury where the Evidence against the Prisoner hath been defective, but enforce them to give a Verdict where the Prisoner's Defence hath been defective, tho' to their Knowledge if he had longer time to do it, he had been able to produce the Witnesses who could clear him, but by what Law or Reason I am to seek. Yet I confess, if *Rumsey's* owning his Perjury in the Lord *Russel's* Tryal, in the very point sworn against the Prisoner, and so frivolously excusing it, would not discredit him, I know not that any Record, Witness, or Evidence would have avail'd Mr. *Cornish*.

And add to *Rumsey's* contradicting himself, that *Sheppard*, who never contradicted himself, and had been a Witness in both Tryals, agrees, that what *Rumsey* had sworn in my Lord *Russel's* Tryal as to Mr. *Cornish's* not being there, was true.

But admitting *Rumsey* had never perjur'd himself, but was of equal Credit with *Sheppard*, yet when they contradicted each other in a point, which carried no probability or improbability with it; in a capital Matter the Jury ought to believe in *favorem vite*; for it makes the matter at least doubtful: and therefore the Jury ought to have acquitted the Prisoner, for a reason in Law, and which was given in Colonel *Sidney's* Tryal (tho' shewishly) by the Court, *viz.* that it is better that twenty Noents should escape than one innocent suffer.

But to pass from the credibility of the Witness to the matter of his Evidence, this was the second time that this sort of Evidence in any Case criminal or civil was permitted to be given in Evidence; and there are the same Exceptions to it, as are above assign'd to the Evidence of *Sheppard*. As to the Declaration in my Lord *Russel's* Tryal, if a true Copy of part of a Deed or Writing was never yet permitted to be given in Evidence, much less hath or ought the purport of part of a Writing be given in Evidence, especially when such a reason is given why the Witness remembred but part of it, as is given by *Sheppard* in my Lord *Russel's* Tryal, and by *Rumsey* in this Tryal, *viz.* that he did not hear all the Paper read.

And surely *Goodenough* could no way fortify *Rumsey's* Evidence, being clearly of another matter, and that so very uncertain that no heed ought to have been given to it. When *Goodenough* told Mr. *Cornish* something ought to be done in the City, but in the first place the Tower ought to be seized, to which he answer'd he would do what he could, or what good he could, these words may as well relate to *Goodenough's* present Discourse, where he complains

that the Law would not defend them tho' innocent, as well as to the seizing the *Tower*; and if they should refer to the last, yet they may well enough be interpreted, that he would do what he could, or what good he could, to prevent the seizing the *Tower*: and if they are capable of two Senses, they ought to be interpreted in the best for the Prisoner.

Besides, the Words are spoken not as a thing designed, but as a matter without which all other matters were in vain, and might be meer matter of Discourse, as was that between *Blague* and *Mate Lee* about taking the *Tower*: and if there was such a Design on foot, it doth not appear that Mr. Cornish was ever acquainted with it. The same may be said as to what he asked *Goodenough*, when he ask'd how Matters went: may not those words well enough be applied to the business of the Riot, *Goodenough* managed for Mr. Cornish and others? And if what *Goodenough* said was Evidence of a Design of seizing the *Tower*, that, as well as the Treason against the Guards, was Treason by the Act of the late King, and not by the 25th of *Edward the Third*, if it be true Doctrine which was laid down in the Charge to the *Earl of Shaftsbury's* Grand Jury: and if so, he ought to have been prosecuted for it within six Months, and indicted within three Months, if the Doctrine in *Colledge's* Tryal be true; and yet this Design, if true, was in *Easter Term 1683*, and the Prosecution not till *October 1685*.

There was yet one piece of Evidence urged against him, viz. of his own Witness *Sheppard*, who positively testify'd for him as to the main, yet in a Circumstance seem'd to testify against him, which was Mr. Cornish's being at his House when the Duke of *Monmouth* and the rest were there, when the Declaration was read; and upon that piece of Evidence, as if it had contradicted what Mr. Cornish said before, there was a mighty Triumph: whereas, the most that could have been made of it was, that Mr. Cornish in part of his Defence was guilty of an untruth, and even that was not so in Fact; for being charged to have been at *Sheppard's* the Night the Declaration was read, he answered he was never at a Consult in his Life, he never was at *Sheppard's* in any Consult, he never was there with my Lord *Russel*, as he remembred; he had been at *Sheppard's* several times, but never liked *Ferguson* for his Morals, and therefore never liked to be in his Company, and he did not know but that he might enquire for the Duke of *Monmouth* in other Places, and this is all Mr. Cornish says to that matter.

Sheppard says, Mr. Cornish came into his House at one of the Meetings to speak with the Duke of *Monmouth* or some other, he could not be positive in that, it was so many Years ago, and did not stay half a quarter of an hour; he could not say it was the Night the Declaration was read; he did not know whether Mr. Cornish came to speak with the Duke of *Monmouth* or not; he could not remember whether Mr. Cornish was there in Company when *Rumsey* was there; there were not above three Persons there when Mr. Cornish came, which was the Duke of *Monmouth*, Mr. *Ferguson*, and he could not tell whether the other was the Lord *Russel*, or the Lord *Gray*.

Now it would be hard to find out the Contradiction between Mr. Cornish's Sayings and *Shep-*

pard's Evidence; both agree that Mr. Cornish hath been often at *Sheppard's* House, and neither denies or affirms that he was or was not there the Night the Declaration was read, for a good reason, which was, that Mr. Cornish knew nothing of it, and *Sheppard* knew not which of the Nights he was there: Mr. Cornish said he was not there with my Lord *Russel* as he remembred, and *Sheppard* doth not affirm he was there with the Lord *Russel*; *Sheppard* says that he was there when the Duke of *Monmouth* was there, and Mr. Cornish doth not say that he was not there with the Duke of *Monmouth*; *Sheppard* said, he spoke to the Duke of *Monmouth*, or some other Person, but he thought it was the Duke of *Monmouth*, which is no direct Affirmation that he spoke to the Duke; and Mr. Cornish doth not say, he did not speak to the Duke of *Monmouth*. So that if the account of the Tryal, set out by the Authority of, and signed by *Thomas Jones*, be true, I cannot see any manner of Contradiction between Mr. Cornish and *Sheppard*: and therefore, as the Court and King's Council did infer, that *Sheppard's* Evidence, who positively denies the Truth of *Rumsey's* Evidence, was so far from invalidating, that it corroborated *Rumsey's* Evidence, and cleared the thing which was before somewhat dark, beyond all manner of Contradiction, is a piece of effrontery; so admitting *Sheppard* had said Mr. Cornish was at his House the night the Declaration was read, and had contradicted Mr. Cornish, is it a necessary Consequence, that he heard the Declaration read, and promised his assistance to it? which must be the Inference, if it must support *Rumsey's* Evidence.

If it be not a necessary Consequence, but a probable one, that ought not to weigh with a Jury, to convict a Person of a capital Crime, especially not of Treason. The Statute of *Edward the Third* says, probably Convict, that is, says my Lord *Coke*, convicted upon direct and manifest Proof, not upon probable conjectural Presumptions, or Inferences, or Strains of Wit: And to say truth, when Verdicts have been given on such Evidence, they have been often faulty.

To give some Instances of many, it is remembred in our time where Persons were convicted of the Murder of a Person absent, but not dead, barely by Inferences upon the Evidence of foolish Words and Actions; but the Judge before whom it was tried, was so unsatisfy'd in the Matter, because the Body of the Person supposed to be murdered was not to be found, that he reprieved the Persons condemned; yet in a Circuit afterwards, a certain unwary Judge, without inquiring into the Reasons of the Reprieve, ordered Execution, and the Persons to be hanged in Chains, which was done accordingly, and afterwards, to his Reproach, the Persons supposed to be murdered appeared alive.

My Lord *Coke* relates a Story in his Time, of an Uncle who beat his Niece that had an Estate, which on her Death would descend to him; the Girl was heard to cry, good Uncle do not kill me; after which she run away, and conceal'd herself some few Miles from *London*: the Girl being missing, and the Neighbours remembring the Cry of the Girl, and tacking it to the Probability that the Uncle might be induced, for his Advantage, to murder his Niece, apprehends him

him, and he was indicted for it at the Sessions; and the Judges being unsatisfy'd in the Evidence, by reason the Body of the supposed murdered Girl did not appear, the Uncle saying that she was run away; they gave him time to the next Sessions to find her out, which he being not able to do, thought to defend himself by producing another Girl very like his own Niece, which he did accordingly; and being detected, it increased the Suspicion, and by Inferences from all those Circumstances, he was convicted, and afterwards executed.

Some Years after which the Girl appeared, and claimed her Estate: and therefore it is a most dangerous and unwarrantable thing for a Jury, in capital Matters, especially in Treason, to convict a Person upon the Evidence of Probabilities.

As the Evidence in this Case against the Prisoner was weaker than in any of the precedent Cases, so the usage of the Prisoner was more rigorous than in any of them: in all the other Cases, the Prisoners had more Weeks allowed them to prepare for their Tryals, than this Person had Days; all the other Persons, after notice of their Tryal, were permitted to have Friends, nay Council, freely to come to them, and confer with them in private, without the Presence of a Goaler, which was denied this Person; all the others, except Colonel Sidney, had soft Words given them on their Tryals; but this Person was rudely handled.

How often was he snub'd and bid hold his Tongue? How often did he beg the Patience of the Court, to hear him and his Witnesses? and when he was heard, how was all he said ridicul'd? and if he said he was innocent, he was bid remember my Lord Russell said so to his Death, when he said he was as innocent as any Person in the Court, he was told for all his Confidence few believed him. If he said the Matter sworn against him was improbable

(which hath been taken for a pretty good Topick for the disbelief of a Matter testify'd) how is it ridicul'd by *Improbability, Improbability, Improbability*? If he go to prove he is an honest Man, he is told that is all Appearance. If he says he employed *Goodenough* about the Riot, he is told that is a Branch of the Plot. If he call Mr. *Gospright* as a Witness for him, the Witness is reproached with having helpt the Prisoner in packing Juries; if he call one to prove he received the Sacrament, he is told, that was in order to qualifie himself to be a Sheriff, and as such his usage before, and at the Tryal, such was it afterwards, to order him to be ty'd when he was sentenc'd, was an Indignity not us'd to Persons of his Quality, a thing indeed permitted, not commanded to be us'd, on boistrous Criminals, who may be suspected to do a sudden Mischiefe, if their Arms were at liberty.

Of like kind was the Reproaching him with the Chearfulness of his Countenance at his Condemnation, and that it might be all of a Strain, his Quarters were expos'd, a Severity us'd to none abovementioned, but Sir *Thomas Armstrong*; and in all these Tryals, *Colledge* made the best Defence, and perhaps, Circumstances considered, the best Defence ever made upon an Indictment of a Capital Matter, and Mr. *Cornish's* was the weakest, though it signified nothing; for I believe that none who reads his Tryal, but will plainly see he was so beset, that the Defence he, or any for him could make, would have availed him nothing, and no account can be given for the Proceedings against Mr. *Cornish*, in the above manner, but that some of the Judges, whereof three of them on the Bench, had newly come out of the *West*, where they had been so flush and hardned, that nothing seem to them rigorous or cruel, and the rest seem'd to vie with them in the Practice.

Remarks on the Tryal of Charles Bateman.

THE last Person which concluded the Tragedy, was one *Charles Bateman* a Chyrurgeon, his Demerits were, that he had been, or at least was reputed to have been, Chyrurgeon to the Earl of *Shaftsbury*, and one whom his Lordship had a Kindness for, and therefore according to the Cant of the Time, he was called a factious Fellow; and he had reviv'd the Memory of his Demerits, by attending when *Oates* came from his Whipping, and letting him Blood; whether either of those Circumstances were true or not, I know not, but they were believed: And therefore the 9th of December 1685. he was indicted and try'd for High Treason. On his Tryal he seem'd to be distracted, and therefore out of abundance of Charity, the Court appointed his Son to make his Defence for him.

The Witnesses against him were *Keeling*, who only spoke of a Design in general, without men-

tioning *Bateman* to be concern'd in it. *Thomas Lee* and *Richard Goodenough* swore, at several times and places, his Discourse to them severally, of seizing the *Tower*, *City* and *Savoy*. *Baker* for the Prisoner said, *Lee* in the Year 1683. would have had him insinuated himself into the Prisoners Company, and discourse about State Affairs, and by that he would find a way to make *Baker* a great Man: upon the Evidence the Prisoner was found guilty. Against *Goodenough's* Evidence, there is only this to be said, that he was pardon'd but so far only, as to qualifie him to be a Witness, though not a very credible one, not only the Guilt sticking to him, but even the Punishment of what he had then lately done, hanging over his Head; and what was said for some time, of all the Witnesses for the King, at that time, and for some time before, was true, they hunted like Cormorants with Halters about their Necks, though even that

matter by one of the Kings Council was boasted to the Jury, as a circumstance of more credibility; for he assured them there was not a Witness which he produced had a Pardon, as the Witnesses in the Popish Plot had. 'Tis true; in the Popish Plot, upon very good reason the Witnesses having confessed what they pretended to know, of matters in which they had an hand, it was not thought proper to use them as Witnesses, though they had used them as Informers, till they were pardon'd, lest it might happen to be, or at least it would have been suspected, that the terror of the Punishment of the Crimes confess'd might influence them to swear falsely to the jeopardy of other Mens Lives, to save their own, which as the Lord *Howard* truly said, was the drudgery of Swearing. But to *Lee's* Evidence, besides the Evidence of *Baker* against him, that he would have procured *Baker* to have been a Witness against the Prisoner, and enticed him with the promise of making him a great Man, and besides that it appears in *Rouse* his Tryal, that *Rouse* and he were upon the Trepan with each other, to bring each other into the pretence of a Plot, in order to make some advantageous discovery of it, of which *Lee* got the start of *Rouse*; the objection which was made to his Evidence, why *Lee* had not accused the Prisoner sooner, there being near three Years between the pretended design, and the discovery of it, was never satisfactorily answered. It was a foolish story to say *Goodenough* could not be had before, and a single Testimony in High-Treason was not sufficient; every one knows, that though a single Witness is not enough to convict a Man of High-Treason, yet a single Persons Testimony is enough to commit a Person accused, and upon Conviction on the Testimony of a single Witness, to make him a Prisoner for his life, witness Mr. *Hamden* and others, besides the subjecting him to other Corporal punishments, inflicted at discretion, witness Mr. *Johnson* and *Oates*; and in 1683, when the words were pretended to be spoken, *Bateman* had not been spared if accused; and though it be a good reason for the Court to have given, why they did not proceed against the Prisoner till that time, because there were not two Witnesses against him, yet it was no reason for *Lee*, why he did not accuse the Prisoner before that time, especially he having been several times before that time examined, not only of what he knew, but of what Persons he knew concerned: but to say truth, *Lee* in the Tryal did not pretend to answer the Objection, but the Court in the manner before endeavour'd to answer it for him.

The last Matter observable in this Tryal, was the permitting *Bateman's* Son to make his Father's Defence, which was an extraordinary unparallel'd favour, it was the first and last time that, or any thing like it, had been done; the Lord *Russell's* Lady indeed was permitted to take Notes at the Tryal for her Lord, but he only was permitted to make use of them. *Fitzbarris* his Wife when she but whisper'd her Husband, or but told him what Jurors he should challenge, and what not, was severely corrected, and threatn'd to be thrust out of Court, for doing it in prejudice of the King. In *Colledge's* Tryal, he was told that Persons that advis'd a Prisoner in Treason, even before a Tryal, were guilty of a high Misdemeanour; nay, a Solicitor had been indicted of High-Treason for it; and there-

fore nothing can excuse the allowing the Prisoner Council in matter of Fact, as was done in this Case (it is not material, whether the Son was a Barrister at Law or not) but the weakness of the Prisoner, who to all appearance was mop'd mad.

But the Court by excusing their Favour upon that account incurred a worse Censure; for nothing is more certain in Law, than that a Person who falls mad after a Crime suppos'd to be committed, shall not be try'd for it; and if he fall mad after Judgment, he shall not be executed: tho I do not think the reason given for the Law in that Point will maintain it, which is, that the End of Punishment is the striking a Terror into others, but the execution of a Madman had not that effect; which is not true, for the Terror to the living is equal, whether the Person be mad or in his Senses; and that is the reason of breaking the Person executed for Treason, and exposing his Quarters, which is done rather to deter the living, than for punishing the dead. But the true reason of the Law I think to be this, a Person of *non sana Memoria*, and a Lunatick during his Lunacy, is by an Act of God (for so it is call'd, tho the means may be humane, be it violent, as hard Imprisonment, terror of Death, or natural, as Sickness) disabled to make his just Defence, there may be Circumstances lying in his private Knowledge, which would prove his Innocency, of which he can have no advantage, because not known to the Persons who shall take upon them his Defence; and that is the reason many civil Actions die with the Persons against whom they lay in their Life-times, and that is the reason why in criminal Matters, Persons by ordinary course of Law cannot be convicted after their deaths.

For in all civil Actions there is as much reason for the Person injur'd, to have satisfaction out of the Estate of the Person who injur'd him, in the hands of his Heir or Executor after his death, as there was to have it out of the Estate of the Injurer in his own hands in his Life-time: and there is as much reason that the Heir or Executor of a Person who hath committed a Crime, which by Law would have forfeited his Estate, if in his Life-time he had been attainted of the same, should forfeit the Estates they claim from him, as if he had been attainted in his Life-time, which had prevented the said Estates vesting in them. And it hath been sometimes practis'd, where the Crimes of the Persons deceas'd have been notorious, and without any doubt; as was the Case of several Persons mention'd in the Act of Pains and Penalties, which Act had example from many other Acts of Parliament in other Reigns, where the Persons were dead before Punishment overtook them.

And tho of late Years it hath been pretended, that the King's Safety depends upon the speedy Tryal and Execution of a Person guilty of High-Treason; yet this was never thought so heretofore, nor in truth in it self is so: for it is plain, in Reason as well as Experience, that what is said of Witches is true of all Malefactors when once they are in Custody, their Power of doing Mischief ceases.

The King is therefore no otherwise benefited by the destruction of his Subjects, than that the Example deters others from committing the like Crimes; and there being so many to be made Examples of, besides those on whom the misfortunes

fortunes of Madneſs fall, it is inconſiſtent with humanity to make Examples of them; it is inconſiſtent with Religion, as being againſt Chriſtian Charity to ſend a great Offender quick, as it is ſtil'd, into another World, when he is not of a capacity to fit himſelf for it. But whatever the reaſon of the Law is, it is plain the Law is ſo; and for remedying it in High-Treaſon, was the 33d of Henry the Eighth made, whereby it is enacted, That if a Man ſhall mad after he hath committed High-Treaſon, he ſhall notwithstanding be try'd in his abſence; and if a man ſhall mad after he is attainted of High-Treaſon, he ſhall notwithstanding be executed. Which Statute extending only to High-Treaſon, the Law continu'd, and yet is as it was at Common Law in all other capital Matters; and even that Statute was call'd a cruel and inhumane Law, and therefore liv'd not long, for it was afterwards repeal'd: ſo that the Law as to this Matter when this Man was try'd and executed, was as it was at Common Law; and therefore if he was of *non ſana Memoria*, he ought not to have been try'd, much leſs executed.

I know it will be objected, that if this Matter of *non ſana Memoria* ſhould be permitted, to put off a Tryal or ſtay Execution, all Malefactors will pretend to be ſo: But I ſay there is a great difference between Pretences and Realities, and *ſana* and *non ſana Memoria* hath been often try'd in capital Matters, and the Priſoners have reap'd ſo little benefit by their Pretences, it being always discover'd, that we rarely hear of it. In this Caſe the Priſoner might have been try'd as well abſent as preſent, according to that repeal'd Statute, for any advantage he did or could reap by being preſent: and it ſeems very probable the Court thought him diſtemper'd; for if he was of ſane Memory, his Son ought not to have been permitted to make his Father's Deference; if he was diſtemper'd, he ought not to have been try'd, much leſs executed. And this Perſon being the laſt Man, as far as I can remember, or can find by the printed Tryals; who ſuffer'd for the Plot of High-Treaſon firſt ſet on foot by *Fitzbarris*, and carry'd on againſt *Colledge*, and the other Perſons herein mention'd; and the Deſign ſtopping here, I think fit to end my Remarks on the Proceedings of all Capital Matters with him. But I think it is fit for me to make

ſome Apology for the thing, and for my ſelf; for taking on me to cenſure the Opinions and Actions of Perſons whoſe Characters carry'd Authority with them. I confeſs I never thought that either the great Seal or a Garment added to a Man's Senſe, Learning or Honesty; but he remain'd juſt ſuch as to thoſe Qualities after his preferment as he was before: and as to many of the Perſons reflected on in theſe Remarks, the Cenſure of Col. *Sidney* was true; and for the beſt of them, it is plain they not only vary'd from one another in their Opinions, but even from themſelves in the Judgment of the ſame Caſe, but always tending to the deſtruction of the Perſon try'd for his Life, witneſs the Opinion of the Court in the Challenge of Jurors not having a Freehold and the deſigning to levy War not Treaſon within the Statute of *Ed.* and forty other Matters. And that not only gives a liberty to enquire, but naturally puts one upon the enquiry which of the two Opinions is right; tho it is impoſſible for one not to think meanly of the Perſon, who in ſo great a Concern as a Man's Life, ſhould be ſo raſh as to give his Opinion without Conſideration; or ſo unſteady as to give different Opinions in the ſame Caſe: for if the Truth of a Man who tells Hiſtory backward and forward, is juſtly ſuſpected in point of Truth; the knowledge and ſincerity of a Man, who gives different Opinions in the ſame Caſe, is juſtly ſuſpected in point of Law; which together with the fullom, but injurious ſtuff vented for Crown-Law; was the firſt Matter which put me on conſidering and writing what I have done.

And for my ſelf; if *Tully* thought it a Reproach to his Son if he did not abound with Philoſophy, having heard *Cratippus* ſet the ſpace of a whole Year, and that at *Athens*; ſurely one who hath had his Education at one of the three great Schools for ſome Years, and afterwards at the University, and laſtly twenty five Years conſtant Reſidence in an Inn of Court, and twenty Years attendance at *Weſtminſter-Hall*; and not diverted by the uſual Employments of a Solicitor or Attorney, may be allow'd without the imputation of Confidence to give his Cenſure; upon Conſideration, on the extempore Judgments or Opinions of Perſons, tho' of greater Standing and Character than himſelf.

The Tryal of John Hambden, Gent. on the 30th of December, 1 Jac. II. 1685.



HIS Day being appointed for the Tryal of Mr. *Hambden*, after the Judges came to the Court, and the Court was called, the Officer was commanded to proceed to call over the Jury whilſt Mr. *Hambden* was

bringing down.

Crier. O Ye, you good Men of the County of *Middleſex*, ſummon'd to appear here this Day,

to try the Iſſue which ſhall be between our Sovereign Lord the King, and the Priſoner that ſhall be call'd to the Bar, answer to your Names as they ſhall be call'd, every one at the firſt call, upon Pain, and Peril that ſhall fall thereon.

Clerk. Sir *Hugh Middleton* of *Twittenham*, Barronet.

Sir *Richard Dunion* of *Thiſtleworth*, Knt.

Sir

Sir John Berry of Stepney, Knt.
 Sir Robert Clark of Holbourn, Knt.
 Sir Thomas Roe of the Strand, Knt.
 Sir John Friend of Hackney, Knt.
 Sir Henry Johnson of Blackwall, Knt.
 Richard Morley of Chelsey, Esq;
 John Shales of the Parish of St. Martins in the Fields, Esq;
 Robert Fosset of Marybone, Esq;
 Josias Clark of Chiswick, Esq;
 John Foster of Kensington, Esq;
 Jeffery Nightingale of Cripplegate, Esq;
 William Cleave of the same, Esq;
 Charles Hinton of Covent-Garden, Esq;
 John Stokes of Hatton Garden, Esq;
 Henry Hawly of Brainford, Esq;
 Thomas Cash of Bow, Esq;
 Andrew Lawrence of the Parish of St. Martins in the Fields.
 Nehemiah Arnold of Westminster, Esq;
 Simon Smith of the same, Esq;
 William Pressgrave of the same, Esq;
 Nicholas Barter, of the Parish of St. Martins in the Fields, Esq;
 Humphrey Bradshaw of the Savoy, Esq;
 Gilbert Herring of the Parish of St. Martins in the Fields, Esq;
 Walter Bridall of the same, Esq;
 Thomas Elton of Stepney, Esq;
 Matthew Bateman of White Chappel, Esq;
 Thomas Curtis of the Parish of St. Clement Danes, Esq;
 Peter Lugg of the Parish of St. Giles in the Fields, Esq;
 John Meridale of St. Giles in the Fields, Gent.
 James Supple of the Parish of St. Martins in the Fields, Gent.
 Thomas Whitfield of the same, Gent.
 Richard Cook of the same, Gent.
 George Clisby of the same, Gent.
 John Hains of the same.
 John Leeson of the same.
 Richard Bromfield of Holbourn, Gent.
 Michael Dod of Clerkenwel, Gent.
 James Fern of the Parish of St. Martins in the Fields, Gent.
 Robert Brook of the same, Gent.
 John Vigures of Westminster, Gent.
 Edmund Aubrey of the Parish of St. Martins in the Fields, Gent.
 John Cannon of the Parish of St. Giles in the Fields, Gent.
 John Baily of the same.
 Thomas Barnes of the same.
 Francis Edmunds of the same.
 Robert Longland of the same.
 Edward Hampstead of the same.
 Thomas Hinton of the same, Gent.
 Joseph Blisset of White-Chappel, Gent.
 Zechariah Grant of the same.
 Richard Fitz-Gerrard of the Parish of St. Martin in the Fields.
 Benjamin Holtby of St. Giles in the Fields.
 Richard Dorrel of the Savoy, Gent.
 Anthony Hall of the same.
 Stephen Phillips of the Parish of St. Martin in the Fields.
 William Stevens of the same.
 John Davis of the same.
 Richard Hutchinson of the same.
 Anthony Nurse of Fulham, Gent.
 Robert Moon of the Parish of St. Clement Danes, Gent.

Samuel Peacock of Westminster, Gent.
 Richard Boife of the same.
 Samuel Birch of the same.
 Peter Reeve of the same.
 Thomas Hutchins of the same, Gent.
 John Hewlet of Westminster, Gent.
 John Towers of Convent-Garden, Gent.
 Richard Aubrey of White-Chappel, Gent.
 John Wells of Marybone, Gent.
 William German of St. Clement Danes, Gent.
 Thomas Harris of Holbourn, Gent.
 Bar. Parr of East Smithfield, Gent.
 John Cassels of the Parish of St. Martin in the Fields, Gent.
 Samuel Bishop of St. Clement Danes, Gent.
 William Wheatly of the Parish of St. Giles in the Fields, Gent.
 Christopher Chambers of the same.
 Samuel Brown of the same.
 Benjamin Dun of the Savoy.
 Samuel Jewel of the same.
 Hugh Hammershey of the same.
 Abraham Harrison of the Strand, Gent.
 Thomas Nichols of Pancras, Gent.
 William Dean, of the Parish of St. Martin in the Fields, Gent.
 Thomas Parnel of the same.
 Matthias Cooper of the same, Gent.
 William Merchant of the same, Gent.
 Richard Campion of the same, Gent.
 Simon Smith of Woodstreet, Westminster, Gent.
 Thomas Green of Westminster, Gent.

Clerk. Set John Hambden to the Bar.
 (Which was done.)
 John Hambden hold up thy Hand.
 (Which he did.)

Middlesex. **T**HE Jurors for our Sovereign Lord the King, upon their Oaths present, that John Hambden, late of the Parish of St. Giles in the Fields, in the County of Middlesex, Gent. as a false Traytor, against the most Illustrious and Excellent Prince, our Lord Charles the Second; late King of England, Scotland, France and Ireland, Defender of the Faith, thy Natural Lord; the fear of God in thy Heart not having, nor the Duty of thy Allegiance any ways weighing; but being moved and seduced by the Instigation of the Devil, the cordial Love, and true due and natural Obedience, which a true and faithful Subject of our said late Lord the King, towards him our said late Lord the King of Right, ought to bear, wholly withdrawing; and imagining, practising, and with thy whole Strength intending the Peace and common Tranquillity of this Kingdom of England to disquiet, molest and disturb, and War and Rebellion against our said late Lord the King, within this his Kingdom of England to stir up, move, and procure, and the Government of our said late Lord the King, of this his Kingdom of England to subvert, change and alter; and our said late Lord the King, of the Title, Honour, and Royal Name, of the Imperial Crown of this his Kingdom of England to depose and deprive: And him our said late Lord the King, to Death, and final Destruction to bring and put, the 20th Day of July, in the Year of the Reign of our said late Lord the King, Charles the Second of England, &c. the 35th, and divers other Days and

and times, as well before as after, at the Parish of *St. Giles* in the *Fields*, in the County of *Middlesex*, falsely, maliciously, devilishly, and traitorously, with divers other false Rebels and Traytors unknown, didst conspire, compass, imagine, and intend our said late Lord the King, then thy supream and natural Lord, not only of his Royal State, Title, Power, and Government of this his Kingdom of *England*; to deprive and cast down, but also our said late Lord the King, to kill, and to Death, to bring and put, and the ancient Government of this Kingdom of *England* to change, alter, and wholly to subvert; and a miserable Slaughter amongst the Subjects of our said late Lord the King, through his whole Kingdom of *England*, to cause and procure, and Insurrection and Rebellion, against our said late Lord the King, within his Kingdom of *England* to procure, and these thy wicked, abominable and devilish, Treasons and traytorous Conspiracies, Compassings, Imaginations and Purposes aforesaid, to fulfill, perfect and bring to pass, Thou the said *John Hambden* as a false Traytor, then and there, (to wit) the said 20th Day of *July*, in the Year of the Reign of our said late Lord the King, 35th aforesaid, and divers other Days and times, as well before as after; at the Parish of *St. Giles* in the *Fields* aforesaid, in the said County of *Middlesex*, falsly, unlawfully, wickedly, devilishly and traitorously, with *James* late Duke of *Monmouth*, and divers other false Traytors unknown: Did assemble your self, meet together and consult, and consent to move and procure divers great sums of Money, and a great number of Men armed, to War and Rebellion, against our said late Lord the King, within this Kingdom of *England*, traytorously to levy and make against the Duty of thy Allegiance, and against the Peace of our said late Lord the King, and against our Lord the King that now is, their Crown and Dignity, and against the Form of the Statutes in that Case made and provided, &c.

Mr. Hambden. My Lord, I perceive that I am here indicted for a Fact, for which I was indicted above two Years ago, and I was convicted of it, and did suffer Imprisonment in Execution upon the Judgment that was given against me, and am still under Execution for the Fine that was set upon me by way of Punishment for that Fact. I think, my Lord, I have as much to say in point of Law for my self, as any Prisoner that ever came before your Lordship upon such an account, twice tried, twice convicted, and twice punished, for the same Fact must be very extraordinary, but, my Lord, I do pass by all Pleas whatsoever, and cast my self wholly upon the King's Mercy; that is my Resolution, my Lord.

L. C. J. Then you must plead Guilty or not Guilty. But you say you have been tried twice for the same Fact, were you ever tried for High-Treason before? The very Punishment that you alledge to be inflicted upon you for it, is a plain Proof that you were not tried for High-Treason, for that is not usually punished by Fine and Imprisonment.

Mr. Hambden. My Lord I only insinuate that the Fact is the same.

L. C. J. You must plead Guilty or not Guilty. *Clerk.* Are you Guilty or not Guilty of the High-Treason; whereof you stand indicted, *John Hambden*?

L. C. J. You must plead directly; say you are Guilty, or you are not Guilty.

Mr. Hambden. My Lord, I do plead Guilty to the Indictment.

Will your Lordship be pleased to hear me: My Lord, I do confess my offence against the King is very great, I am very sorrowful for it. My Lord, I know the King is the Fountain of Mercy as well as Justice, an inexhaustible Fountain of Mercy, and if I may be so happy to obtain your Lordships intercession to his Majesty on my behalf; I doubt not but that Grace and Goodness which hath been extended to others, may be bestowed upon me.

L. C. J. *Mr. Hambden*; as the King is the Fountain of Mercy, so it comes freely from him. I confess as the circumstances of your Case are; you have pleaded the best plea to find Mercy; but how far the pleading guilty when there is full Evidence to prove you so, may move the King to have Mercy upon you I don't know; you must apply your self to the King.

Mr. Hambden. I humbly beg your Lordship's intercession, I know none can do it better than your Lordship.

L. C. J. You must record the Plea:

Mr. Hambden. My Lord, I humbly beg your Lordship that you would be pleased to represent to his Majesty what my past sufferings have been, and how sorrowful I am for having offended his Majesty, and that your Lordship would be pleased to beg his Majesties gracious Pardon in my behalf, I humbly beseech your Lordship to do it, and it shall be the endeavour of all my Life to behave my self as Dutiful and Loyal Subject as any the King hath.

L. C. J. The King shall have an account of what you say.

Mr. Hambden. My Lord, there is one thing I would humbly beg the Liberty for; there are words in the Indictment concerning the death of the King, my Lord, what construction the Law may put upon such an Action I am ignorant of, but for any direct intention of taking away the Life of the King, no Man does abominate and abhor more than I have done.

L. C. J. *Mr. Hambden*, it is but a necessary construction that the Law puts upon it, it is a construction confirm'd by woful Experience. We see that Rebellion, let the beginning be what it will, never stops, unless by God's great Mercy and the Justice of the King's Cause, but it will end in the Death of the King, it hath a natural tendency that way, but however you are understood that you had not any thoughts of killing the King, but only to raise Rebellion within the Kingdom, which must necessarily end in the Death of the King.

Mr. Hambden. My Lord, no Man doth abhor that more than I do.

L. C. J. You may ask *Mr. Hambden* if he hath any thing to say why Sentence of Death should not pass upon him.

Clerk. *John Hambden*, hold up thy Hand. Thou standest Convicted of High-Treason by your own Confession, what can you say for your self why Sentence should not pass upon you?

Mr. Hambden. My Lord, I humbly cast my self upon the Kings Mercy. My Lord, I would humbly

humbly move your Lordship in one thing, that I may have the liberty of my Friends and Relations to come to me in Prison as they did before.

L. C. J. You must apply your self to the King.

Mr. Hambden. Will your Lordship be pleased to order it, my Lord; I had two or three of my own Relations the King was pleased to grant to come to me.

L. C. J. It is easie for you Mr. Hambden, to make your Application to the King, it will be better for you: I direct it as the better way to apply your self to the King.

Mr. Hambden. I only beg it my Lord.

L. C. J. In the presence of a Keeper I don't know why his Relations should not come to him, but I think it had been better to apply your self to the King.

Mr. Hambden. My Lord, I have two or three near Relations allowed to be without the presence of a Keeper.

L. C. J. Mr. Hambden, that we cannot do, that was an extraordinary favour, and as that came from the King, so you must apply your self to the King again, but in the presence of a Keeper we grant it, we cannot grant it without a Keeper, if you will apply your self to the King for that you may.

Cryer. Gentlemen of *Middlesex*, that have been Summon'd upon the Kings Service this Day, the Court discharges you.

Then after the Judges did withdraw, the Clerk was commanded to proceed.

Clerk. *John Hambden*, hold up thy Hand. You stand Convicted of High Treason by your own Confession, what can you say for your self, why the Court should not pronounce Sentence upon you?

Mr. Hambden. I only plead the Kings Mercy. I rely upon no other thing.

Cryer. Oyez, all manner of Persons are commanded to keep silence whilst Judgment is giving upon pain of imprisonment.

Mr. Recorder. Mr. Hambden, you have been Indicted for High Treason, and the Indictment hath been read to you, and whereupon accor-

ding as the Law doth require, it hath been demanded of you, that you should plead to it; and thereupon you have pleaded Guilty to this Indictment, which is recorded accordingly; and therefore I need not say any thing for to let you know the heinousness of this Crime, for I perceive you are sensible enough of it your self, and I do verily believe you have taken a very wise and discreet Course to confess the truth, for you were brought hither to be Tried for this Crime in case you had pleaded not Guilty to this Indictment, which now you have prevented by this your candid Confession. However it is the Duty of my Place to pronounce the Judgment that the Law hath provided for such Crimes as these are, and that is this,

You must be had to the place from whence you came; and from thence you must be drawn to the place of Execution, and there you are to be hang'd by the Neck; and whilst you are alive you must be cut down, and your Entrails be taken out, and Burnt before you, and your Head must be cut off, and your Body quartered; and your Head and your Quarters to be disposed of at the Kings pleasure, and the Lord have mercy upon your Soul.

Mr. Hambden. My Lord, I hope I shall have your Lordships intercession with his Majesty.

Mr. Recorder. I don't doubt, Mr. Hambden, but you have used the best means to obtain so great a Favour, and as it is the Duty of my place to give an account of this to His Majesty, so I shall truly and faithfully represent it with the advantages your Demeanour this day hath serv'd.

Mr. Hambden. My Lord, I humbly beg the Favour that my Wife may come to me without the presence of a Keeper.

Mr. Recorder. Mr. Hambden, 'tis too late for us to give any directions in this matter, because you ask'd this while the Judges were here, but I don't doubt upon your Application to His Majesty, but you will have all things that you can reasonably desire, if you please to apply your self to him for this and what else you shall be advised may be fitting and convenient for you to beg.

The Tryal of Henry Lord Delamere.

1 Jac. 2. 1685.

Cl. of Cr.  Ergeant at Arms, Make Proclamation.

Serj. at Arms. Oyez, Oyez, Oyez. My Lord High Steward of England his Grace doth straightly

charge and command all manner of persons to keep silence, and to give ear to the King's Majesty's Commission to his Grace my Lord High Steward of England, upon pain of Imprisonment.

Then the Commission was read, his Grace and all the Peers standing up bare headed.

Then the Staff being carried between Garter King at Arms, and the Gentleman Usher of the Black Rod, was with three Reverences

delivered upon the knee to his Grace, and by him redelivered to the Gentleman Usher of the Black Rod, to hold during the Service.

Cl. of Cr. Serjeant at Arms, Make Proclamation.

Serj. at Arm. Oyez, His Grace my Lord High Steward of England doth straightly charge and command all manner of persons here present, except Peers, Privy Councillors, and the reverend Judges now assistant, to be uncovered.

Cl. of Cr. Make Proclamation.

Serj. at Arms. Oyez. My Lord High Steward of England his Grace straightly chargeth and commandeth all Justices, Commissioners, and all and every other person and persons to whom any

any Writ or Precept has been directed for the certifying of any Indictment or Record before his Grace my Lord High Steward of England, That they do certifie and being in the same forthwith, according to the Tenor of the same Writ and Precept, to them or any of them directed, upon Pain and Peril shall fall thereon.

Then Sir Edward Lutwich, one of his Majesty's Sergeants at Law, and Chief Justice of Chester delivered in his Writ and Return at the Clerks Table.

The Writ of Certiorari and the Return thereof were read in hæc verba.

L. H. Steward. Call the Lieutenant of the Tower to return his Precept, and bring his Prisoner to the Bar.

Cl. of Cr. Make proclamation.

Serg. at Arms. Lieutenant of the Tower of London, return thy Writ and Precept to thee directed, together with the Body of Henry Baron of Delamere, thy Prisoner, forthwith, upon Pain and Peril shall fall thereon.

The Prisoner was brought to the Bar by the Lieutenant of the Tower: The Writ and Return thereof, together with his Grace's Precept, and the Return thereof were read in hæc verba.

Cl. of Cr. Make proclamation.

Serg. at Arms. Sir Roger Harsnet Knight, Sergeant at Arms to our Sovereign Lord the King, return the Precept to thee directed, together with the Names of all the Lords and Noblemen of this Realm of England, Peers of Henry Baron of Delamere, by thee summoned, forthwith, upon Pain and Peril shall fall thereon.

The Sergeant at Arms delivered in his Precept and Return at the Clerks Table.

L. H. Steward. Read the Precept and the Return.

They were read in hæc verba:

Cl. of Cr. Make an O Yez.

Serg. at Arms. O Yez. All Dukes, Earls; Viscounts, and Barons of this Realm of England, Peers of Henry Baron of Delamere, who, by Commandment of my Lord High Steward of England His Grace, were summoned to appear here this Day, and are now present in Court, answer to your Names, upon Pain and Peril will fall thereon.

The Peers summoned were called over, and those that appeared, standing up uncovered, answered to their Names, each making a Reverence to the Lord High Steward.

Cl. of Cr. Laurence Earl of Rochester Lord High Treasurer of England.

L. H. Treasr. Here.

Cl. of Cr. Robert Earl of Sunderland Lord President of His Majesty's Privy Council.

Lord Presid. Here.

Cl. of Cr. Henry Duke of Norfolk Earl Marshal of England.

D. of Norf. Here.

Cl. of Cr. James Duke of Ormonde Lord Steward of His Majesty's Household.

He did not appear.

Cl. of Cr. Charles Duke of Somerset.

D. of Som. Here.

Cl. of Cr. Christopher Duke of Albermarle.

He did not appear.

Cl. of Cr. Henry Duke of Grafton.

D. of Graft. Here.

Cl. of the Cr. Henry Duke of Beaufort Lord President of Wales.

D. of Beauf. Here.

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Cl. of Cr. John Earl of Mulgrave Lord Chamberlain of His Majesty's Household.

E. of Mulg. Here.

Cl. of Cr. Aubrey Earl of Oxford.

E. of Oxf. Here.

Cl. of Cr. Charles Earl of Shrewsbury.

E. of Shrewsb. Here.

Cl. of Cr. Theophilus Earl of Huntingdon.

E. of Hunt. Here.

Cl. of Cr. Thomas Earl of Pembroke.

E. of Pemb. Here.

Cl. of Cr. John Earl of Bridgewater.

E. of Bridgw. Here.

Cl. of Cr. Henry Earl of Peterborough.

E. of Peterb. Here.

Cl. of Cr. Robert Earl of Scarfsdale.

E. of Scarfsd. Here.

Cl. of Cr. William Earl of Craven.

E. of Craven. Here.

Cl. of Cr. Richard Earl of Burlington.

He did not appear.

Cl. of Cr. Louis Earl of Feversham.

E. of Feversh. Here.

Cl. of Cr. George Earl of Berkeley.

E. of Berk. Here.

Cl. of Cr. Daniel Earl of Nottingham.

E. of Notting. Here.

Cl. of Cr. Thomas Earl of Plimouth.

E. of Plim. Here.

Cl. of Cr. Thomas Viscount Falconberge.

L. Falconberge. Here.

Cl. of Cr. Francis Viscount Newport Treasurer of His Majesty's Household.

L. Newport. Here.

Cl. of Cr. Robert Lord Ferrers.

L. Ferrers. Here.

Cl. of Cr. Vere Essex Lord Cromwell.

L. Cromwell. Here.

Cl. of Cr. William Lord Maynard Comptroller of His Majesty's Household.

L. Maynard. Here.

Cl. of Cr. George Lord Dartmouth Master General of His Majesty's Ordnance.

L. Dartmouth. Here.

Cl. of Cr. Sidney Lord Godolphin.

L. Godolphin. Here.

Cl. of Cr. John Lord Churchill.

L. Churchill. Here.

Then his Grace the Lord High Steward addressed himself to the Lord Delamere the Prisoner at the Bar in this manner.

L. H. Steward. My Lord Delamere, the King being acquainted that you stand accused of High Treason, not by common Report or Hearsay, but by a Bill of Indictment found against you by Gentlemen of great Quality; and known Integrity within the County Palatine of Chester, the place of your Residence, has thought it necessary in Tenderness to you, as well as Justice to himself, to order you a speedy Tryal.

My Lord, if you know your self innocent, in the name of God, do not despond, for you may be assured of a fair and patient hearing, and in your proper time a free Liberty to make your full Defence: and I am sure you cannot but be well convinced, that my Noble Lords that are here your Peers to try you, will be as desirous and ready to acquit you, if you appear to be innocent; as they will to convict you if you be guilty.

But, my Lord, if you are conscious to your self that you are guilty of this heinous Crime; give

give Glory to God, make amends to his Vicegerent the King by a plain and full discovery of your Guilt, and do not, by an obstinate persisting in the Denial of it, provoke the just indignation of your Prince, who has made it appear to the World, that his Inclinations are rather to shew Mercy than inflict Punishments. My Lord, attend with patience, and hear the Bill of Indictment that hath been found against you read. Read the Bill of Indictment to my Lord.

Cl. of Cr. Henry Baron of Delamere, Hold up thy hand.

L. Delamere. My Lord, I humbly beg your Grace would please to answer me one Question, whether a Peer of England be obliged by the Laws of this Land to hold up his hand at the Bar, as a Commoner must do; and I ask your Grace this question the rather, because in my Lord *Stafford's* Case it was allowed to be the privilege of the Peers not to hold up their hands.

L. H. Steward. My Lords, this being a matter of the privilege of the Peerage, it is not fit for me to determine it one way or the other; but I think I may acquaint your Lordships, that in point of Law, if you are satisfied this is the Person indicted, the holding, or not holding up of the hand is but a Formality, which does not signifie much either way.

L. Delamere. I humbly pray your Grace's direction in one thing farther, whether I must address my self to your Grace when I would speak, or to your Grace with the rest of these Noble Lords my Peers.

L. H. Steward. You must direct what you have to say to me, my Lord.

L. Delamere. I beg your Grace would please to satisfy me, whether your Grace be one of my Judges in concurrence with the rest of the Lords?

L. H. Steward. No, my Lord. I am Judge of the Court, but I am none of your Tryers. Go on.

Cl. of Cr. **H**enry Baron of Delamere, thou standest Indicted in the County Palatine of Chester by the Name of Henry Baron of Delamere of Mere in the said County of Chester, For that thou as a false Traytor against the most Illustrious and most Excellent Prince James the Second, by the Grace of God of England, Scotland, France and Ireland, King, thy natural Lord, not having the fear of God in thy Heart, nor weighing the duty of thy Allegiance, but being moved and seduced by the Instigation of the Devil, the cordial Love, and true, due, and natural Obedience which a true and faithful Subject of our said Lord the King, towards him our said Lord the King, should and of right ought to bear, wholly withdrawing; and contriving, practising, and with all thy might intending, the Peace and common Tranquillity of this Kingdom of England to disquiet, molest, and disturb; and War and Rebellion against our said Lord the King, within this Kingdom of England, to stir up, move, and procure, and the Government of our said Lord the King of this Kingdom of England to subvert, change and alter, and our said Lord the King from the Title, Honour, and Kingly Name of the Imperial Crown of his Kingdom of England to depose and deprive, and our said Lord the King to Death and final Destruction to bring and put; the fourteenth day of April in the first Year of the Reign of

our said Lord James the Second now King of England, &c. and divers other Days and times as well before as after, at Mere in the County of Chester aforesaid, falsely, maliciously, devilishly, and traiterously, with divers other false Traytors and Rebels, to the Jurors unknown, didst conspire, compass, imagine, and intend our said Lord the King, thy supreme, true and natural Lord, not only from the Kingly State, Title, Power and Government of his Kingdom of England to deprive and cast down, but also the same our Lord the King to Kill, and to Death to bring and put, and the ancient Government of this Kingdom of England to change, alter, and wholly to subvert, and a miserable Slaughter among the Subjects of our said Lord the King throughout his whole Kingdom of England, to cause and procure, and Insurrection and Rebellion against our said Lord the King within this Kingdom of England, to procure and assist, and the same thy most wicked, most impious, and devilish Treasons and traiterous Compassings Imaginations and Purposes aforesaid to fulfil and bring to effect, thou the said Henry Baron of Delamere, as a false Traytor then and there, to wit, the said fourteenth day of April in the first Year above-said, and divers other days and times as well before as after, at Mere aforesaid, in the County aforesaid, falsely, unlawfully, wickedly, and traiterously with Charles Gerrard, Esq; and other false Traytors to the Jurors unknown, didst assemble thy self, gather together, consult, and agree to raise and procure divers great Sums of Money, and a great number of armed Men, War and Rebellion within this Kingdom of England to levy and make, and the City of Chester in the County of the same City, as also the Castle of our said Lord the King of Chester at Chester in the County of Chester aforesaid, and all the Magazines in the same Castle then being, to enter, take, seize, and surprise, and into thy possession and power to obtain; and that thou the said Henry Baron of Delamere afterwards, to wit, the 27th day of May, in the first Year above-said, falsely, unlawfully, wickedly, and traiterously didst take a Journey from the City of London unto Mere aforesaid, in the County of Chester aforesaid, thy traiterous purposes aforesaid to fulfil and perfect: And that thou the said Henry Baron of Delamere, afterwards, to wit, the fourth day of June, in the first Year above-said, at Mere aforesaid, in the County of Chester aforesaid, in further prosecution of thy unlawful, most wicked and traiterous purposes aforesaid, divers Liege People and Subjects of our said Lord the King, to the Jurors unknown, with thee the said Henry Baron of Delamere, and the aforesaid other false Traytors, to the Jurors unknown, falsely, unlawfully, and traiterously, in the War and Rebellion aforesaid, and in thy traiterous purposes aforesaid, to join and adhere didst excite, animate, and perswade, against the duty of thy Allegiance, against the Peace of our said Lord the King that now is, his Crown and Dignity, and against the form of the Statute in that case made and provided. How say'st thou Henry Baron of Delamere, art thou Guilty of this High Treason whereof thou standest Indicted, and hast been now Arraign'd, or not Guilty?

L. Delamere

L. Delamere. My Lord, I humbly beg the Indictment may be read again.

L. H. Steward. Let it be read again. (Which was done).

L. Delamere. May it please your Grace, I humbly beg the favour to be heard a few words before I plead to this Indictment.

L. H. Steward. My Lord *Delamere*, I am very unwilling to give your Lordship any interruption, but according to the Methods of Law, which must be observed in your Case, as well as all others, You must plead to the Indictment before you be heard to any thing else.

L. Delamere. May it please your Grace, I have something to offer to your Grace's and their Lordships consideration which is a matter of Law.

L. H. Steward. I know not what matter of Law you have to offer: If you have a mind to demur to the Indictment, you may.

L. Delamere. Will your Grace please to hear what I have to say? and then I shall submit it to your Grace's Judgment.

L. H. Steward. I would hear what you have to say, my Lord, with all my heart, if I could: But I must then pass by all the Forms and usual Methods of proceeding, and that without any advantage to you too, and that I suppose your Lordship will not desire of me. Ask my Lord, Whether he be guilty, or not guilty?

Cl. of Cr. How sayst thou, *Henry Baron of Delamere*, Art thou guilty of this High-Treason whereof thou hast been indicted, or not guilty?

L. Delamere. I beseech your Grace to hear me what I have to say; I shall not detain your Grace very long, but I beg your Grace to hear me.

L. H. Steward. My Lord *Delamere*, I must keep you to the known Rules and Methods of Law: This is not your time to speak but to plead; in your proper time you shall be fully heard whatsoever you have to say.

L. Delamere. If your Grace please, I have something to say which concerns all the Peers of England in point of Right.

L. H. Steward. My Lord, you must either plead, or demur to this Indictment, that is the usual Practice before any thing else can be done.

L. Delamere. My Lord, I have a Plea to offer to your Grace and my Lords; and it is with reference to the Priviledg and Right of the Peers of England.

L. H. Steward. If you have any Plea to offer, it must be received, my Lord.

L. Delamere. My Lord, amidst the hardships I have lain under by my frequent Imprisonments and close Confinement —

L. H. Steward. My Lord *Delamere*, You must keep up to the Legal Method of Proceedings: In Cases of this nature I would, as far is possible for me to do, indulge a Person of your Quality, and in your condition; but withal I must do right to the Court, and not permit any Breach to be made upon the Legal Course of Proceedings. You must plead, or demur to the Indictment before you are heard to say any thing.

L. Delamere. Will your Grace be pleased to hear me tell you my Reasons why I offer you a Plea of this nature to the Indictment.

L. H. Steward. My Lord, if you have any Plea, put it in.

L. Delamere. Will your Grace be pleas'd to accept it as I have done it? It may be it is not

so formal, because I have had no Council allowed me to peruse and sign it. But as it is, I here offer it to your Grace's consideration.

L. H. Steward. Ay, put it in.

Then it was delivered to the Clerk.

L. H. Steward. Read it.

Cl. of Cr. The humble Plea of *Henry Lord Delamere*, to the Indictment of High Treason against him, now to be tryed by the Lord High Steward and Peers here assembled.

THE said Lord *Delamere* saving to himself all benefit of Advantage of any further or other matter of exception to the Generality, Incertainty or Insufficiency of the said indictment, and all matters and things which do or may concern the same, for Plea hereunto saith, That he was by His Majesty's Writ Summoned to this present Parliament which began the Nineteenth Day of *May* last, and attended his Duty there as a Peer of this Realm.

That for High Treason supposed to be committed by him, during the Sitting of the same Parliament; he was the Twenty sixth Day of *July* last, committed, by Warrant of the Earl of *Sunderland* one of his Majesty's Principal Secretaries of State, to the Tower of *London*.

That the Peers in Parliament assembled, taking Notice by his Petition of the Ninth of *November* last, of his being absent from his Attendance in Parliament, sent a Message to His Majesty to know the reason why he the said *Henry Lord Delamere*, a Peer of that House, was absent from his Attendance there.

Upon the Tenth Day of *November* last, the Lord Treasurer reported His Majesty's Answer to the said Message, viz. That the said Lord *Delamere* was absent from his Attendance in Parliament, because he stood committed for High Treason, for levying War against the King this last Summer, testified upon Oath, and that his Majesty had given directions that he should be proceeded against with all speed according to Law.

The House of Peers not being satisfied with this Answer, the Debate thereof was adjourn'd till the Monday morning following.

On which Day the Lords resuming the Debate concerning the Lord *Delamere* and the King's Message; after some Debate, the Lord Chancellor, by His Majesty's Command, gave the House an account what Proceedings had been against the Lord *Delamere* since his Majesty's Answer to their Address concerning his absence from the House, which was to this Effect:

That the King had given Order for a speedy Prosecution of him: That the Treason whereof he was accused was committed in *Cheshire*; and that being a County Palatine, the Prosecution ought to be there, and not in the King's Bench; as it might be if the Treason had been committed in another County: and that therefore his Majesty had given Order for a Commission of Oyer and Terminer into *Cheshire*, in order to the finding of an Indictment against him for the said Treason: And that accordingly a Commission of Oyer and Terminer was already sealed; and if the Indictment be not found before the end of the Term, the said Lord *Delamere's* Prayer being entred in the Kings Bench, he should be Bailed.

All which Proceedings do more fully appear in the Journals of the said House of Peers; to

which the said *Henry Lord Delamere* doth refer himself.

Afterwards, that is to say, upon the Day of the said Parliament was Prorogued by His Majesty unto the Tenth Day of *February* next, as by the said Journals it doth appear.

Upon all which Matters the said *Henry Lord Delamere* doth humbly tender this his Plea to the Jurisdiction of your Lordships in this Cause, and doth humbly conceive your Lordships ought not to proceed in the Tryal of him upon the Indictment of High Treason now before you: And that for these following Reasons.

First, Inasmuch as it appears by the said Petition of the said *Henry Lord Delamere*, and the several Orders of the Lords, and the King's Answers to the Message of the Lords thereupon, That the said House are already possessed of his said Cause, which is the same supposed Treason for which he was at first committed, and which is the same Treason for which he now stands indicted before your Lordships. And for this Reason your Lordships, as he humbly conceives, by the Law and Custom of Parliament, which is part of the Law and Custom of the Land, ought not to proceed against him upon the said Indictment; but his said Cause ought wholly to be determined and adjudged in the said House of Peers, and not elsewhere, as in like Cases has been formerly done.

Secondly, Whereas it is the Right and Privilege of the Peerage of this Realm, That no Peer thereof ought to be Tried or proceeded against for High Treason during the continuance of the Parliament, except in the said House of Peers, and before the whole Body of the Peers there. And whereas the aforesaid Parliament is now continuing by Prorogation until the tenth day of *February* next aforesaid, the said *Henry Lord Delamere* humbly conceives that by the Law and Custom of Parliament hitherto used, which is part of the Law and Custom of the Realm, he ought not, nor can be Tried before your Lordships for the said Treasons, because the said Parliament is still continuing, and not dissolved.

And lastly, The said *Henry Lord Delamere* doth further say, That he is the same *Henry Lord Delamere* mentioned in the Commitment, Petitions, Messages, Answers and Indictment now read unto him, and the said Treason for which he was Committed is the same Treason mentioned in the Commitment, Petition, Messages, Answers, and Indictment, as aforesaid.

To which said Indictment he humbly conceives he is not bound by Law to make any further or other Answer.

L. Delamere. May it please your Grace, and you my Noble Lords, I do not offer this Plea out of any diffidence or distrust in my Cause, nor out of any dislike I have to any of your Lordships that are here Summoned to be my Tryers; I cannot hope to stand before any more just and noble, nor can I wish to stand before any others; but your Grace and my Lords will pardon me if I insist upon it, because I apprehend it a Right and Privilege due to all the Peerage of *England*; which, as it is against the Duty of every Peer to betray or forego, so it is not in the power of any One, or more, to waive it, or give it up without the consent of the whole Body of the Peers, every one of them being equally interested.

This, my Lord, I humbly demand as my Right and Privilege as a Peer of *England*, and submit to the direction of your Grace and my Noble Lords.

L. H. Steward. What say you to it, Mr. Attorney?

L. H. Steward. May it please your Grace; This Plea that is here offered by this Noble Lord, is a Plea to the Jurisdiction, but, with submission, it needs very little Answer, for it has very little in it: The Force of the Plea is, That he ought to be Tried by the whole Body of the House of Peers in Parliament, because the Parliament is still continuing, being under a Prorogation and not dissolved; and because there was some agitation of the matter concerning this Prosecution, upon his Petition, in the House of Lords; and therefore it concludes, That he ought not to be Tried by your Grace and these Noble Lords upon this Commission, but by all the Lords in Parliament. With submission, my Lord, This is contrary to all the ancient Precedents, and against the known Rules of Law; for the Law is, If the King pleases to try a Peer in Parliament, then the Record may be brought into the House, and there they proceed as in other Cases, and all the Peers are Judges. Thus it is in the time of a Session of Parliament; but if the Parliament be Prorogued, there are many instances (and indeed none to the contrary) that after a Prorogation, the Proceedings are before the High Steward by Commission. And as to the other part of the Case, I have this to say to it, That there is nothing at all depending in the House of Lords that can out this Court of the Jurisdiction; for there was not so much as any Indictment returned there, no, nor so much as found during the Session of Parliament. All the agitation was only upon my Lords Petition, and the King's Answer; that he intended as speedy a Prosecution as could be: Besides, my Lord, your Grace sees it is a Plea in Paper and in English, without any Council's Hand, and therefore I hope your Grace does not expect that I should formally Demur to a Plea in this Form, and that contains no more of Substance in it. But I must desire your Grace to over-rule it, and that the Prisoner may plead in chief.

L. Delamere. My Lord, I humbly pray that I may have Council assigned me, to put my Plea into Form, and to argue the matter of it.

L. H. Steward. My Lord *Delamere*, I am sure I ought and ever shall be as tender of the Privileges of the Peers of *England*, as any other Person whatsoever: For I am concerned, as well in interest as inclination so to be, having the Honour to be one my self: But I know your Lordship will not think the Privilege of the Peers is concerned in this matter; nor will your Lordship, I dare say, insist upon matters that are purely dilatory; if your Lordship be satisfied that they are so: And therefore give me leave, my Lord, to mind you of a few things, whereby your Lordship will easily see, That the chief things on which you insist are grounded upon mistakes: First, You say, The House of Peers was possessed of the Cause; which could not be, and I will tell you why: Because there was no Indictment ever removed thither, or lodged there. Which plainly proves that the Lords were never possessed of the Cause. Nor indeed was the Bill found, upon which you are now arraigned, till after the Prorogation of the Parliament.

So

So that they could never come to be possessed of this matter. These are mistakes in Point of Fact, and your Lordship cannot but well know them to be so.

And there is as great a mistake in the Law, That during the continuance of a Parliament (though it were Prorogued, yet if not Dissolved) a Peer cannot be tryed but by the House of Lords. This certainly is a very strange Doctrine, and is not only against the reason and methods of Law, but contrary even to your Lordships own Experience. For your Lordship cannot but very well remember, that during the continuance of the Parliament, after a Prorogation, the Lord *Cornwallis* was tryed before the High Steward, and such a number of Peers as were then Summoned, upon such a Commission as I now sit here by. But indeed during the Sitting of the Parliament, then all the Peers are both Tryers and Judges, as was in the Cases of my Lord *Stafford*, and my Lord of *Pembroke*; they being a Court of Judicature, then actually sitting; and therefore this Plea is grounded as upon mistake in Fact, so, upon a mistake in point of Law. So that though, as I said at first, it is both my duty and interest to preserve the privileges of the Peers, yet I must take care that no injury be done the Law, and truly I take this Plea to be altogether dilatory, and I suppose your Lordship is satisfied of it, and will not insist upon it.

L. Delamere. If your Grace please, It was alledged and agreed in the Case of my Lord of *Bristol*, that the Cause of a Peer in time of Parliament properly belong'd only to the House of Lords; And that which possessed the House of Lords of his Case, was, as I apprehend, no more than is in my Case, a Petition upon the account of being absent; and there the Lords claim the cognizance of the whole Cause, and nothing was done but in the House of Lords. And as to the Instances your Grace has mentioned of my Lord *Cornwallis*, (and there was another of them, my Lord *Morley*) this Question was never under Debate in those Cases; therefore I suppose they cannot be admitted as Precedents.

L. H. Steward. But, my Lord, it would have been an Error in the whole Proceedings, if this Court had not Jurisdiction: And sure the Judges, who are always called to assist in such Cases: and who, in matters of Life, even in the Cases of common Persons, are so tender and careful, that there be no irregularity in the Proceedings, would not have let things pass in that manner, had they been erroneous.

L. Delamere. My Lord, I think no other Precedents are produced but those two, and there the Question was never debated.

L. H. Steward. I only put you in mind of those that were lately within Memory; but no question of it there are a great many more Instances to be given.

Mr. Attor. Gen. I pray your Grace's Judgment to over-rule the Plea, and that my Lord may plead in chief.

L. Delamere. I hope your Grace will be pleased to assign me Council to put my Plea in Form; and that I may have time for it, that they may be heard to make a solemn Argument in Law.

L. H. Steward. My Lord, if you insist upon it, and think it worth the while to have Council heard, we will hear them.

L. Delamere. I submit it to your Grace, I only offer it that I may not be wanting to the support of the Peers Privileges; I assure your Grace, I speak not to put off the Cause, for I am willing to come to my Tryal, and I have reason so to be; for I question not but to make my innocence appear.

L. H. Steward. My Lord, I tell you what my opinion of the Plea is, but if you insist upon it to have your Council heard, I will hear them.

L. Delamere. I have no Council here, if your Grace please to give me time to send for them; and that they may prepare to argue it.

Mr. Attor. Gen. No, my Lord. If your Grace will hear Council, I for the King must pray that it may be done presently; for a Plea to the Jurisdiction is never favoured, nor is the party to be allowed time to maintain it, but he must be ready at the time it is offered.

L. Delamere. Pray, my Lord, how was it done in the Case of *Fitzbarris*? His Plea was a Plea to the Jurisdiction, and he had four days allowed him to put his Plea in form, and to instruct his Council.

L. H. Steward. I am not able at present to remember what was done in such or such a particular Case: But according to the general method and course of Law, the Plea to the Jurisdiction is not favoured, nor time allowed to it; but the party must be ready to maintain it presently.

Mr. Attor. Gen. But, with Submission, my Lord, that Case of *Fitzbarris* is nothing to this noble Lord's Case neither: There was a formal Plea put in Writing, and drawn up in Latin, and a formal Demurrer joined; and thereupon I did take time to speak to it. But, with your Grace's favour, by the Law, the Prisoner must be always ready to make good his Plea, if he will oust the Court of their Jurisdiction.

L. H. Steward. Mr. Attorney, if my Lord *Delamere* does insist upon having his Council heard, it is not fit for me to refuse hearing what they can say.

Mr. Attor. Gen. But that must be presently then, my Lord.

L. Delamere. It is my Duty, my Lord, to submit to what your Grace and my noble Lords shall determine: I would insist upon nothing that should offend your Grace or them.

Mr. Attor. Gen. If your Grace please, you are the only Judge in this Case in Matters of Law: For these noble Lords, the Peers, are only Tryers of the Fact. Therefore, I appeal to your Grace's Judgment, and pray for the King, that this Plea may be over-ruled; it being vitious and naught, both in Form and Substance.

L. H. Steward. My Lord *Delamere*, I must acquaint you, That according to the Constitution of this Court, Matters of Law are determined by me, as the sole Judge, while I have the Honour to act under this Commission: But if your Lordship insist upon it, to have your Council heard, God forbid that I should deny it You. I will hear what your Council will say; and afterwards I will, according to the best of my Understanding, deliver my Judgment.

L. Delamere. My Lord, I have never had any Council assigned me.

L. H. Steward. My Lord, if you have any Council ready, we will hear them.

L. Delamere. If your Grace please to assign me Council, and give me Time to send for them, and

and them Time to prepare, I will obey your Grace's Directions ; but I could have none here ready, because none were assigned me.

L. H. Steward. My Lord, You cannot, by the Course of Law, have Council allowed You in the Case of a Capital Crime, till such time as the Court, where You are called to Answer, is apprized, that there is some matter of Law in your Case, that may need Council to be heard, to inform their Judgment, and which they may think convenient to hear Council to: For if in case any Prisoner at the Bar shall before-hand be allowed to have Council to start frivolous Objections, such as this (and we all know, that there are some, who will be easily prevailed with to endeavour to pick Holes where there are none) and to offer Matters foreign from the things whereof the Party stands accused ; and upon the Prisoner's bare Request, Council must be heard to every trivial Point, the Courts of Law would never be at an end in any Tryal ; but some dilatory Matter or other would be found to retard the Proceedings: But it does not consist with the Grandeur of the Court, nor your Lordship's Interest, to let such a frivolous Plea interrupt your Lordship's Tryal. However, if your Lordship has Council ready, I will not refuse to hear them.

L. Delamere. My Lord, I hope the Privilege of the Peers of England, is not frivolous. I assure your Grace, I do not offer this Matter, as if I thought it more conducing to my Interest, than my Tryal now. No, my Lord, it is not for my self, but for the whole Body of Peers; of which I have the Honour to be a Member: And if my Lords here are satisfied it is not the Right and Privilege of the Peers, I acquiesce.

L. H. Steward. Pray, good my Lord, do not think that I should say any such thing, that the Privilege of the Peers is frivolous; for you do not hear me say, That this is one of their Privileges. As I would not willingly mistake You; so I desire your Lordship would not misapprehend or misrepresent Me. I spoke not at all of the Peers Privilege, but of your Plea: I tell your Lordship, I think your Plea is not a good Plea, to Oust this Court of the Jurisdiction of your Cause. But if your Lordship have a mind to have your Council heard to it, in Gods Name, let them come; they shall be heard: And when that is done, to satisfy you the more, I will advise with my Lords the Judges, that are there to assist, what they take to be the Law in the Case; and, upon the whole, I will deliver my Judgment as well as I can.

L. Delamere. I hope, your Grace will be pleas'd to advise with my Lords the Peers here present; it being upon a Point of Privilege.

L. H. Steward. Good my Lord, I hope You that are a Prisoner at the Bar, are not to give Me direction, who I should advise with, or how I should demean my self here.

L. Delamere. I beg your Grace's Pardon; I did not intend to give your Grace any Direction.

L. H. Steward. My Lord, I shall take care to perform that Duty that is incumbent upon me, and that with all Tenderness to your Lordship: And, I assure your Lordship, I will have as much care that I do not injure You, as I will that I do not wrong my own Conscience; and I will endeavour to discharge my Duty to both, with the utmost Fidelity.

L. Delamere. I humbly thank your Grace; I question it not: But if your Grace please—

L. H. Steward. My Lord, you must pardon Me; I can enter into no further Interlocutions with your Lordship. If your Lordship have any mind to have Council heard, and your Council be ready, we will hear them.

L. Delamere. If your Grace require of Me to produce Council presently, and they to argue it immediately, I must acquaint your Grace, I cannot do it: For I have none here.

L. H. Steward. My Lord, I cannot tell how to help it; the Plea must then be over-ruled and rejected.

Clerk of the Crown. Henry, Baron of Delamere, Art thou Guilty of the High-Treason whereof thou standest Indicted, and hast been now Arraign'd, or Not Guilty?

L. Delamere. Not Guilty.

Clerk of the Crown. Culprit, How wilt thou be Tried?

L. Delamere. By God, and my Peers.

Clerk of the Crown. God send thee a good Deliverance. *Sergeant at Arms,* Make Proclamation.

Sergeant at Arms. Oyez. If any one will give Evidence on behalf of our Sovereign Lord the King, against Henry, Baron of Delamere, the Prisoner at the Bar, concerning the High Treason whereof he stands Indicted, let them come forth, and they shall be Heard; for now he stands at the Bar, upon his Deliverance.

Then His Grace gave the Charge to the Peers Tryers in this manner:

L. H. Steward. My Lords, I know You cannot but well remember, what unjust and insolent Attempts were made upon the rightful and unalterable Succession to the Imperial Crown of these Realms, under the pretence of That, which has been so often found to be the Occasion of Rebellion, I mean, the specious Pretence of Religion; by the fierce, froward, and Phanatical Zeal of some Members of the House of Commons, in the last Parliaments under the late King, CHARLES the Second, of ever Blessed Memory.

Which, by the wonderful Providence of Almighty God, not prevailing, the Chief Contrivers of that horrid Villany, consulted together how to gain that Advantage upon the Monarchy by open Force, which they could not obtain by a pretended Course of Law.

And in order thereto, it is too well known, how they had several Treasonable Meetings, made bold and riotous Progresses into several Parts of the King's Dominions; thereby endeavouring to debauch the Minds of the well-meaning, though unwary and ignorant, Part of the King's Subjects.

But these their evil Purposes, it pleased God also to frustrate, by bringing to Light that cursed Conspiracy against the Life of His Sacred Majesty, King CHARLES the Second; as also, against That of our dread Sovereign, that now is, whom God long preserve.

These Hellish and damnable Plots one would have thought, could not have survived the just Condemnation and Execution of some of the chief Contrivers of them; especially considering, that after it had pleased Almighty God, to take to Himself our late Merciful and dread

Sovereign; no sooner was his Sacred Majesty, that now is, Seated in the Royal Throne of his Ancestors, but he made it his utmost Endeavour, not only to convince the World, that he had quite forgot those impudent and abominable Indignities that had been put upon him, only for being the best of Subjects, and the best of Brothers: but did also give forth the most Benign Assurances imaginable to all his loving People, that he would approve himself to be the best of Kings.

And further to evince the reality of these his Gracious and Heroick Resolutions, he immediately called a *Parliament*; and therein repeated, and solemnly Confirmed his former Royal Declarations of having a particular Care of maintaining our Establish'd Laws and Religion: With which that Wise, Great, and Loyal Assembly, were so fully and perfectly satisfied, that they thought they could not make sufficient Returns of Gratitude for such Gracious and Princely Condescensions.

And yet, my *Lords*, while the *King* and the *Parliament* were thus, as I may say, endeavouring to out do each other in Expressions of Kindness, that wicked and unnatural Rebellion broke out; and thereupon the Arch-Traytor, *Monmouth*, was, by a Bill brought into the *Lower House*, and pass'd by the general Consent of *Both Houses*, (and I could wish, my *Lords*, for the sake of that *Noble Lord* at the Bar, that I could say, it had Pass'd the Consent of every particular Member of each *House*) justly Attainted of *High-Treason*.

My *Lords*, What share my *Lord* at the Bar had in those other Matters, I must acquaint You, is not within the Compass of this Indictment, for which you are to try him, as his *Peers*; For That is for a Treason alledged to have been Committed by him, in his Majesty's Reign that now is.

Give me Leave, my *Lords*, to detain You but with a Word or two more on this Occasion; and that is, To let You know, That as my *Lord* at the Bar may, with great Safety and Security to himself, rely upon your *Lordships* Candor and Integrity, that You will be tenderly careful, and ready to acquit him of the Treason whereof he is accused, if upon the Evidence that shall be given You, You shall find him Innocent: So I must tell You, the *King* has an entire Confidence in your Resolution, Fidelity, and good Affections to Him, that you will not, by reason of the Prisoner's Quality, and nearness to You, as being a *Peer* of this Realm, acquit him if he shall appear to be Guilty.

My *Lords*, I have one thing further to mind your *Lordships* of, That, according to the usual Forms of Proceedings in these Cases, if your *Lordships* have any Questions to propound, wherein you would be satisfied as to any Matter either of Fact or Law, your *Lordships* will be pleased to put those Questions to Me, and I shall take care to give your *Lordship* the best Satisfaction I can.

L. Delamere. My *Lord High Steward*, I beg the Favour of your Grace, I may have One to write for me.

L. H. Steward. Ay, by all means. Let my *Lord* have whom he pleases to write for him.

Then *Sir Thomas Jenner*, One of His Majesty's Serjeants at Law, and Recorder of the City of London, opened the Indictment thus:

Mr. Recorder. May it please your Grace, my *Lord High Steward* of England, and You my *Noble Lords*, the *Peers* of the Prisoner at the Bar: *Henry Baron of Delamere*, the Prisoner at the Bar, stands indicted for that 'He, as a False Traytor against the most Illustrious and most Excellent Prince, our Sovereign Lord the *King* that now is; not having the Fear of God in his Heart, nor weighing the Duty of his Allegiance, the *Fourteenth Day* of *April* last, at *Meer*, in the County of *Chester*; did maliciously Conspire, with other False Traytors, to the Jurors unknown, the Death and Deposing of the *King*: And for the better, and more effectual fulfilling of those his Treasons, the said *Fourteenth Day* of *April*, at *Meer* aforesaid, did Maliciously and Trayterously Assemble, Consult, and Agree with *Charles Gerrard*, Esq; and other False Traytors, to Raise great Summs of Money, and procure Numbers of Armed Men, to make a Rebellion against the *King*, and the City and Castle of *Chester* to seize, with the Magazines there: And that afterwards, the *Twenty Seventh Day* of *May* last, he took a Journey from *London* to *Meer* aforesaid, to accomplish his Treasonable Intentions. And further, That upon the *Fourth Day* of *June*, in further Prosecution of his Trayterous Purposes at *Meer* aforesaid, he did encite divers Subjects of our Lord the *King*, to joyn with him, and other false Traytors, in his Treason: And this is laid to be against the Duty of his Allegiance, against the Peace of our Sovereign Lord the *King*, his Crown and Dignity, and against the Form of the Statute in that Case made and provided. To this Indictment, may it please your Grace, and the rest of these *Noble Lords*, my *Lord Delamere*, the Prisoner at the Bar, has pleaded *Not Guilty*; and for his Tryal has put himself upon his *Peers*. We shall therefore call our Witnesses for the *King*; and if We prove him Guilty, We do not question, but your *Lordships* will find him so.

Mr. Att. Gen. May it please your Grace, my *Lord High Steward* of England, and You my *Noble Lords* the *Peers*: My *Lord Delamere*, the Prisoner at the Bar, stands Indicted for Conspiring the Death of His Majesty, and in order thereunto to Raise a Rebellion in the Kingdom.

My *Lords*, In proving this Charge upon him, we crave Leave to give your Grace, and your *Lordships*, some short Account by Witnesses, that we have here, of a former Design that was previous to this Matter, for which this *Noble Lord* stands here accused: And We shall not trouble your Grace, and your *Lordships*, with any long Evidence, because it has received many solemn and repeated Tryals; and, as to the Proof of it, has been Confirmed by as many Verdicts: But We do it rather, to give some Account as an Introduction to a Material Evidence, by shewing, That *Cheeshire*, which was the Province of this *Noble Lord*, was One of the Stages, where that Rebellion was principally to be acted; and that, preparatory to it, great Riotous Assemblies, and Tumultuous Gatherings of the People, were set on foot by the Conspirators.

We shall then shew, my *Lords*, That after the late *Duke of Monmouth*, (the Head of the Conspiracy) went beyond Sea, (especially after the Death of the late *King*) frequent Messages, and Intercourse of Correspondency, were sent and held between him, and the rest of his *Accomplices* abroad, and their Fellow-*Conspirators* here at home.

And particularly, We shall prove, That a little before the *Rebels* came over last Summer into the *West*, the *Duke of Monmouth* did dispatch one *Jones* (who was one of the most considerable Agents in this Contrivance) to come from *Holland* into *England*, to let his Friends know, that though he had intended to go into *Scotland*, and begin his Work there; yet now his Resolutions were for *England*; where he hoped, his Friends would be prepared for him. And with this Message, and Resolution of his, *Jones* was to acquaint some *Lords*, (who they were, the Witnesses will tell your *Lordships*; but) among others, this Noble Lord, the Prisoner, was one: And to acquaint them besides, That he would immediately set sail for *England*, whither he would come so soon as he could get. That he had a Design to have Landed in *Cheshire*, where he expected to be most readily receiv'd; but finding That inconvenient, they should have notice Four or Five Days before-hand, of the Place of his Landing; which he intended, should be in the *West*. And among the Directions that *Jones* had to give to those *Lords*, one was, That they should immediately repair into *Cheshire*, there to wait for the News.

These Instructions *Jones* had given him in Writing; but Sealed up with an Injunction, not to open them till he came to Sea; and then he was to peruse that Writing, and deliver his Message according to his Instructions: And in that Writing was the Name of this Noble Lord, as one that was principally relied on, to carry on the Rebellion in *Cheshire*. And We shall give You an Account, That the late *Duke of Monmouth* did look upon *Cheshire*, as one of his main Supports; and upon my Lord *Delamere*, as a Principal Assistant There.

My *Lords*, This Message was *Jones* to communicate to Captain *Mathews*, and Captain *Mathews* was to transmit it to this Noble Lord, and the other Persons that were concern'd with him. *Jones* arrived with this Message here in *England*, upon the *Twenty Seventh* of *May*; [And I must beg your *Lordships*, to observe the Time particularly:] But Captain *Mathews*, to whom he was directed, was not to be found; nor Major *Wildman*, to whom, in the Absence of Captain *Mathews*, he was to apply himself, as You will hear more fully from the Witness's own Mouth: Thereupon he sends for one *Disney*, (a Name which your *Lordships* cannot but know, he being since Executed for *Treason*) and one *Brand*, whom your *Lordships* will likewise hear of; and they meet with this same *Jones*, who communicates his Message to them, and they undertake to deliver it to the Persons concern'd; Captain *Mathews* being out of Town, and Major *Wildman* not to be found.

That very Night, my *Lords*, this same *Brand* and *Disney* they meet this Noble Lord, my Lord *Delamere* at the Coffee-House, and give him an Account of the Messages: And as soon as ever he had received the Message, upon that *Twenty Seventh* of *May*, at Ten of the Clock at Night,

does my Lord *Delamere* dispatch out of Town, with only one Servant to attend him, and two other Friends that he had pickt up, or appointed to meet him, and go with him.

With all these Badges of Plot and Design, does my Lord *Delamere* set out that Night. It was the same Night that *Jones* came to Town: It was late at Night. He changed his Name, and went by the Name of *Brown*. He chose to go all the By-Roads, and would not keep the High-Common-Road; and went with great speed, as We cannot but presume according to the Message delivered by *Jones*, on purpose to repair into *Cheshire*.

And if your *Lordships* please to observe, You will find several remarkable Instances of Plot and Contrivance in the matter: First, That a Nobleman, and one of so considerable a Character in his Country, as my Lord *Delamere*, should make such hast out of Town with so small an Equipage, as but one Servant; Then, that he should go so late at Night: Again, that he should change his Name; and That should prove to be a Name not casually taken up, as the first Name he could think of next his own; but a Name of distinction, that he was known by among all his own Party: For all the Communications between the Confederates and him, were managed, as to him, under the Name of *Brown*: By that Name, several of the late *Duke of Monmouth's* Trayterous Declarations were sent for; which were to be sent to him, or by him, into *Cheshire*: And that alone, with Submission, my *Lords*, would be a shrewd Circumstance of Suspicion, that a Noble Lord, such an one as my Lord *Delamere*, should assume the Name of a Commoner, and post out of Town so ill accompanied in a Disguise at that time of Night; especially the *Parliament* being then Sitting, as really it was.

But besides all this Circumstantial Evidence, We shall prove, by Positive Testimony, what the hasty Business was, that made my Lord undertake this Journey in this manner: For, having notice of the *Duke of Monmouth's* Intention to Land speedily in *England*, when he comes into *Cheshire*, he actually sets about the Work to put that County in a forwardness to assist in the Rebellion, endeavours to stir up the People to joyn with him; and acquaints One that he employed in that Affair, with the whole Design, that he was engaged to raise so many Thousand Men, and so much Money, to be ready by such a Day.

Nor does my Lord rest here: But, after the *Duke of Monmouth* was Landed in the *West*, to corrupt the Minds of the People, We shall prove what Discourses he had, (and these will testify his Inclinations to the Cause) concerning the great Victories he had obtained over the *King's* Forces, and how he applauded his Conquests.

My *Lords*, We shall plainly shew You all this that I have opened in plain Proof; And then, We shall submit it to your *Lordships* Judgments, Whether this Noble Peer be Not Guilty, as he has Pleaded to his Indictment.

L. H. Steward. Call your Witnesses, Mr. Attorney; Who do you begin with?

Mr. Att. Gen. My Lord *Howard of Epswick*: We desire he may be first sworn.

(Which was done.)

L. H. Steward. Well, what do you ask my Lord *Howard*?

Mr.

Mr. Att. Gen. My Lord, I call You to give an Account what You know of a Design of an Insurrection that was to have been; and in what Parts; and what share *Cheshire* was to have had in it, in the late King's Time.

Lord H. Steward. You hear the Question; What say you to it, my Lord?

Lord Howard. My Lord I am to direct my self to speak to what was done in the late King's Time: For as to that Noble Lord at the Bar, I have nothing to say against him.

Lord H. Steward. My Lord Howard, if I apprehend Mr. Attorney aright, You are not called as a particular Witness against my Lord Delamere; but only to give an Account, what was agreed upon in any Consultations, where You were present, in the late KING's Time, about a Conspiracy for an Insurrection?

Lord Howard. If so, my Lord, then I am called, not to be an Evidence against my Lord Delamere, but, against my Self; that is to repeat what I have often delivered at several Tryals, in the Courts of Justice; and which I must always repeat with Shame and Confusion for my Guilt, as I cannot but always reflect upon it with Sorrow and Horror. But if it be for the Service of his Majesty, and this Honourable Court, for me so to do, I shall endeavour to comply with it, and repeat it as well as I can, by the Assistance of a broken Memory; it being an Account of things done several Years past, and from a Memory interrupted by such Accidents as are very well known, and as have disabled me to make a more distinct and particular Relation before so great an Auditory.

My Lords, I suppose, it will be expected, I should begin my Account with the Occasion and Ground, and the Time when those Things happened.

L. H. Steward. Take your own Method, my Lord.

L. Howard. Truly, my Lord, I am not able to fix the particular Time, unless you will give me leave to reckon the Years by the Sheriffs of London, as the Romans used to do theirs by their Consuls; for I have no other means of computing the exact Time.

L. H. Steward. Pray, my Lord, tell the Times as near as you can, and use what helps for your Memory you think best.

Lord Howard. My Lords, It was in that Year, when Mr. Shute and Mr. Pilkington were Sheriffs for the City of London: And at that time, it is well known how great Heats did arise upon the Contests that were in the City, about Election of Officers for the Year ensuing,——

Mr. Att. Gen. May it please your Grace, My Lord Delamere seems to be faint with standing: If your Grace please, a Chair may be provided, for my Lord to sit in.

L. H. Steward. Ay, by all means: Let a Chair be provided for my Lord to sit down. Go on, my Lord.

Lord Howard. My Lord, I was saying, that the Contest about the disputed Election of Sheriffs, had occasioned such heats in the City of London, and other Places, that it was even beyond the common expressions of discontent: I knew nothing of any particular Design there was in hand till about six Weeks after, when Captain Walcot came to me, a Person I had known some time before, and upon discourse, acquainted me, that he had found out that

there were some Persons engaged in a considerable Action that was near its Execution, and that in order to it, he had had notice given him to make preparation, and thereupon he had thought fit, for that reason, to withdraw from the place where he did at that time lodge, (which was in *Red-Lyon Court* in *Fleet-street*, as I remember) and betake himself to a private Lodging, that he might be the readier for Action; and to put himself into a better Equipage for joyning in the Enterprize, he had bought himself a Horse; and sent his Son into *Ireland* to turn all he could into ready Money, and return it, that he might be the better able to go through with the Underraking. My Lords, this was a great surprize to me; for though I knew, as all the rest of the World did, that there were great discontents, yet, till then, I never had any intimation of any particular design: I told him I was going into the Country, but should be glad to know how things went, and desired him to write to me, and gave him a little *Cabala* or *Cypher* to disguise the matter he was to write about: and when I was in the Country, I did receive several Letters which intimated something of a design that was going on, and at last he writ, with some warmth to me, of a necessity we were under to enter into Action; and of the readiness of my Correspondents; (for the Style of the Letters was that of Merchants, for so was the Cant that I had given him): But truly I was not over-hasty in my return to London, because I rather chose to see what would be the issue of what was then projected, before I did intermeddle in such an Affair, and so made use of all the delays I could to retard my return, and came not to Town till that Week which determined the long continued Controversy in London; Nay, and then also avoided meeting with any body in any setway, till I could better see how things were managed, and what event they would probably come to; thereupon I would not go to my own House, but took up my Lodging at *Mile-end*, and lay there three or four Days, till the Day came for confirming the new elected Sheriffs, and the election of a new Lord Mayor, which, as I take it, is on the day before *Michaelmas-day*, and *Michaelmas-day*: When that day was over, I could not find there was any intention of entering into any sort of Action; I found indeed there were great murmurings in the Mouths of all sorts of People, and very angry warm speeches, and nothing else: So I thought the business was over for that time, and thereupon away I went to my own House. This, my Lords, was upon the *Saturday* as I remember: Upon the *Monday* Morning, Captain Walcot came to me, and desired that he might have some private discourse with me in my Garden; and there he told me, My Lord Shaftsbury had withdrawn himself, and that he did believe things were in a great Preparation for Action: I desired him to tell me what it was; he answered me, That he desired to be excused in that, for I must go to my Lord Shaftsbury, who would give me an account of the whole; and withall he told me, my Lord Shaftsbury had been much deserted and ill used by those Lords upon whose concurrence he had rely'd, and that was the reason why he had withdrawn himself, and kept himself so private: I told him, I did not know my Lord Shaftsbury had any desire to speak with me; yes he

said he had, for he had sent him to me on purpose, and he was to bring back my answer, whether I would joyn or no. I told him, if my Lord desired to speak with me, I would wait upon him, and thereupon I went with him, and he carried me to a place where my Lord *Shaftsbury* was retired in the City, somewhere about *Foster-Lane* or *Wood-Street*, at the house of one *Watson*: When I came there, after Salutation, my Lord *Shaftsbury* began to make great reflections upon the misery and badness of the times, particularly upon the issue of that great Affair, the election of the Sheriffs, which had ended so unfortunately to the terror of all good men: For whereas before, the great and sure resort of innocency was to the Integrity of our Juries, when returned by fair and equal Sheriffs, they looked upon the eagerness of getting those Persons sworn that were then in Office to be a design to intrap the innocent, the elected Sheriffs being esteemed persons that would accommodate themselves to the humour of the Court; and now every man must be run down for crimes that he was no way guilty of, if the finger of the Court did but point him out to destruction. The apprehension of this, he said, had made him withdraw himself, not knowing how soon he might be seiz'd, should he have remain'd in publick; and he thought the danger was as imminent upon, and likely to reach to others, as well as to him; and particularly to my self, and therefore, he said, the fence of this danger ought to put every Englishman that had a value for his Country, and any thing that was dear to him in it, upon using his utmost endeavours to give some prevention to those calamities which were impendent over us, and which threatned the destruction of all men that stood up for the rights of the people; and this, he said, was his resolution.

My Lord, In order to this, he declared to me, what Preparations had been made for the Raising of Force for this purpose; he said, there were eight or ten Thousand Men (I cannot fix the particular number) that he was well assured to have ready in the City; That there had been divers Horse (I think about Four-score or an Hundred he named) that about a Fortnight before; had been, by parcels, drawn into the Town, without being observed; and these were in daily expectation to go into Action; but through the unhandsome Disappointment of the Duke of *Monmouth*, and the other Lords that adhered to him, who were to have joyned in the Action, and have set the Wheels at work in other Parts, he was left alone to do the whole in his Province of *London*, they being not ready to concur according to their Engagement: But as he should have the greater Danger, so he should have the greater Glory; and he resolved to go through with the Attempt, or Perish in the Execution. To all this Discourse, I gave such an Answer as the nature of the thing required: I told my Lord *Shaftsbury*, I could not deny all those things to be true, as he had represented them in his Discourse; and that I would not distrust his Judgment so much, as to suppose, he would enter upon such an Affair, without due deliberation of all the Circumstances requisite to it; and so I would not question, but there was such Preparations, and that he had assurance of such a Force, as he had spoke of, whenever they should begin any Action: But I told him something stuck with me, and troubled me very much,

That, in a time of such difficulty, when the convenient Help of the Nation was all little enough to joyn in the Work, he should stand by himself, and engage in such an Enterprize, in Separation from those other Lords, of whose Help there would be so much need: He said, he could not help it, they had appointed this time and that, but now, when it came to the push, they were not ready to do their parts; but the People were now in such expectation of something to be done, especially in *London*, that it was impossible to restrain them, and as impossible to get those Lords ready to joyn with them: I told him, I was altogether unacquainted with the proceedings in this Affair, and that all of it was wholly new to me: But pray, My Lord, said I, give me leave to act that part in this business, that, I think, will most conduce to the Successful Issue of it, which is, to be a Mediator between You; and let me desire you to let things rest as they are, till I have endeavoured to create a better Understanding between your Lordship, and those Lords, of whose Tergiversation you seem to complain. Upon this, my Lord was in a great heat, and express'd himself with great warmth; but at last, with much ado, he gave me Permission to go to the Duke of *Monmouth*, and assure him, and the rest of the Lords that were concern'd, and tell them from him, That, if they would be ready to take the Posts that were assign'd them, according to their own former Agreement, and immediately enter upon Action, he would joyn with them; but if not, he was resolved to go on alone. This was, as I remember, upon *Tuesday*, the Second of *October*; upon the *Wednesday* Morning, I went to find out the Duke of *Monmouth*, but coming to his Lodgings, he was gone to *Moor-Park*, where, when I came, I found several Persons with him, but after a little time, I separated him from the Company, and whispering to him, I gave him to understand, how great a Disorder I found my Lord *Shaftsbury* in, and how great a Complaint he made of his being deserted by him, and the other Lords engaged with him, and what Resolution he had taken to set upon the Work alone: "My Lord, says he, I think the Man is Mad, his Fear makes him lose his Understanding; I do not know why he hides himself from his Friends, that no body can tell where he is; but as to that which he speaks of, of our forsaking him, and breach of Faith, he is mistaken; For, 'tis true indeed, we are about doing the Thing, that he is so eager for, but we are not for doing it so hastily, as his Fears precipitate him to do; and he must excuse us, if we comply not with his Humour, to hazard the whole Undertaking by a rash beginning. Upon that, I said to him, My Lord, I shall not discourse the Particularities of the business with your Grace; but this is all that I at present address to your Grace for, to be a means, if I can, with your Grace, as I have been with him, to procure a Meeting between you, that you may settle it with one another. With all my heart, says the Duke, pray let it be so; for, though my Lord *Shaftsbury* is angry without a cause, yet I would not have him lose himself in a temerarious Undertaking: My Lord, said I, I will tell him what you say, and will see if I can work him to a Compliance with the Proposal. The next day, being *Thursday*, my Lord, I went to my Lord *Shaftsbury* again, and reported to him the Discourse

course I had with the Duke of *Monmouth*, and what Answer he had given to his Complaint of their deserting him: He Reply'd, 'It was false, they had positively engaged to be ready by such a time, and had appointed the very Day; but now they were off, and would not tell when they would be ready; and withal, he told me, he greatly suspected the Duke of *Monmouth* to have a secret Correspondence with the King. I then desired him, That he would please to consent to the Treaty that was proposed, and give the Duke of *Monmouth*, and the Lords a Meeting; he, in great heat, Replyed, No, he would come no more at them: It is strange, my Lord, said I, that you should have such an Opinion of these Men, that they would go about to betray you; they are not Men of that size: but he persisted in it, that they had dealt perfidiously with him: For, after a positive Agreement, when the Thing was brought just to the Birth, they withdrew their helping-hand; but he was sure, in *London*, he could Raise a sufficient Force to do the Work, and if he were but once set on Horse-back, he would head them himself: But yet he was willing to put it off for a Fortnight, or three weeks longer, if they would be sure to keep pace with him. With this Proposal I went the next day, which was *Friday*, to the Duke of *Monmouth*, and had the same Answer from him, that I had before; but withal, he bid me tell my Lord *Shaftsbury*, That he did make it his earnest Request to him, to give him, and his other Friends a Meeting before he engaged in this business: For he found by his precipitation, he was about to destroy himself, and all that adhered to him. Thereupon, I came to my Lord *Shaftsbury* again, upon the *Saturday*; and when I came there, after a long and importunate urging all the Arguments I could think of; I so far prevailed with him, that he agreed to give them a Meeting, upon condition, that it should be the next day; and because it should be so private, that no notice might be taken of it, he chose to have the Meeting at his own House, where no body would suspect him to be, and whither he would be conveyed, under the Disguise of a Parson. I went back with this Message to the Duke of *Monmouth*, who did undertake, that the other Lords should be there.

Lord H. Steward. My Lord *Howard*, not to interrupt you, Did he name those other Lords? If he did, pray acquaint my Lords, who they were?

Lord Howard. My Lord *Shaftsbury* named my Lord *Ruffel*, and my Lord *Gray*, and a great many more that should bear their parts. I went to the Duke of *Monmouth*, and told him of it, I say, and he engaged, that they should certainly be there: But, upon the *Sunday* Morning, when I came to the *Temple*, there I found a Message left for me, That my Lord *Shaftsbury* had receiv'd an Alarm, That there was some great *Tories* living near his House in *Aldersgate-Street*, who were continually Spying about; and so great a Company might make their more than ordinary Observation. That this gave him such a Jealousy, as would not permit him to meet according to his Appointment: Afterwards, I came to a better understanding of the Reason of this; and found there was some fineness in it, which I could not comprehend before; But after this time, I never saw my Lord *Shaftsbury*, for he removed then to other Lodgings. So that, what I now speak of

him, is only what I had, by hear-say, from others: For, I had no knowledge of what pass'd, as to him, but what I had from Capt. *Walcot*; who told me, That after that, there were several days of Meeting appointed, but still, from time to time, put off; but upon what reason, I cannot particularly remember.

This is all I know of my Lord *Shaftsbury*; and the latter Part is wholly by Hear-say from *Walcot*: But by reason of this Agitation, we continued under Expectation till such time as my Lord *Shaftsbury* went into *Holland*; where he shortly after died. And truly, I thought, at that time, much of the Design was quashed, and laid aside: But, soon after, *Ferguson* came over; who, when he came here, began to revive and quicken the Business, and push it on to Execution. I spoke with him at the *One Bell* in the *Strand*; and there he gave me an Account of all the Steps that had been taken: He told me what Preparations had been made in the City, in general; what to seize the Gates of the City; what to possess themselves of the *Tower*; what to attack the Guards; and several other Things, which I can't now so well remember; the Impressions of them being worn out of my Memory, by length of Time, and other Accidents.

This, in general, is all that I can say, as to what was previous to the particular Engagement wherein I was concern'd: For, at last, after many Discourses, the Troubles and Difficulties of the Times increasing, and the Dangers that threatned us, as we thought, growing higher and higher, this gave an Occasion for our uniting Councils, and entering into a kind of *Juncto*; which, I suppose, is Foreign to this Affair before your Lordships; and therefore, I suppose, would be likewise impertinent for me, to trouble your Lordships with.

L. H. Steward. Mr. Attorney, Do you desire my Lord *Howard* should give an Account of the other Meetings, and Consultations, at which he was present?

Mr. Att. Gen. My Lord, I think there will be no need of it; and I am unwilling to take up your Grace's Time, to no purpose.

Lord Howard. As for that Noble Lord at the Bar, I know nothing concerning him.

Lord H. Steward. Then, Gentlemen, Will You have him asked any more Questions?

Mr. Att. Gen. No, my Lord.

Lord H. Steward. My Lord *Delamere*, Will You ask him any Questions?

Lord Delamere. No, my Lord.

Mr. Att. Gen. Before my Lord *Howard* goes, I would ask him one Question in general, Whether he knew of any Design of a Rising in *Cheshire*?

Lord Howard. No, my Lord, I knew of none at all.

Mr. Att. Gen. Then we desire my Lord *Gray* may be sworn.

(Which was done.)

Mr. Att. Gen. Pray, Will You give his Grace and my Lords an Account, what You know of any Designs of an Insurrection or Rebellion, when You were beyond Sea, or before? and who were engaged in it?

Lord Gray. My Lord, I am *Subpn'd* hither on behalf of the King; and I am also *Subpn'd* on behalf of my Lord, the Prisoner at the Bar. I do not know any thing, that I can speak of my own Knowledge, against the Prisoner; nor have

I any thing to say, that I know of, that will be for his Advantage. But I am here ready to answer such Questions, as shall be ask'd me, either of one side, or the other.

Mr. *Attor. Gen.* My Lord, the Question I ask you, is, what do you know of any Design of a Rising in *Cheshire*, and when?

Lord *Gray.* About the Time of Election of *Sheriffs* for the City of *London*; I mean, that memorable Time of the contested Election, which furnished the World with so much Discourse, and was the occasion of such Heats and Animosities: About that time, the Duke of *Monmouth*, and my Lord of *Shaftsbury* began to discourse about making use of that, as an Opportunity to accomplish their Design; for they thought the Ferment was so high, that Men would easily be disposed to an Insurrection: and after many Discourses to that purpose, they came to this Resolution, That they would apply themselves to make what Interest they could, to procure a Rising in three several Parts of the Kingdom at once: one in *Cheshire*, whither the Duke of *Monmouth* was to betake himself; and there be advised by my Lord *Macclesfield*, my Lord *Brandon*, my Lord *Delamere* that then was, and the Prisoner at the Bar, what Gentlemen were proper to apply to, for joyning in the Design: The second was in *London*, which was assigned to be the Province of my Lord of *Shaftsbury*: And the third was, in the *West*; which was committed to the Care of my Lord *Russel*. The Duke of *Monmouth* did accordingly go his Progress into *Cheshire*, as is very well known; and, upon his Return, was taken into Custody by the *Serjeant at Arms*: Upon which, Sir *Thomas Armstrong* was sent Post to Town, to get an *Habeas Corpus*; and withal, to deliver a Message to me, to be Communicated with my Lord *Russel*, and my Lord *Shaftsbury*: Which Message, as near as I remember, was to this Effect; That he had been kindly receiv'd by the Gentlemen of the County; and had discours'd the Matter with them, and found them all inclined very much to his Satisfaction: That upon his being Arrested, he had been advis'd to make his escape into *Cheshire*, and rise immediately; but that he would not do a Matter of that great Importance, without the Approbation of his Friends. This is all that I know of any thing, that was designed in *Cheshire*.

Mr. *Att. Gen.* Pray, my Lord, what do you know of any Messages that Captain *Matthews* or *Jones* brought over from *Holland*, and to whom, and from whom?

L. *Gray.* Sir, I will give the best account I can, upon the sudden, for I am not prepared to give a particular distinct account, in regard I did not know it would be expected from me, nor indeed that it would affect the Prisoner at the Bar.

L. *H. Stew.* Pray, my Lord, give my Lords the Peers as succinct and particular an account as you can.

L. *Gray.* My Lord, soon after the late King's Death, the Duke of *Monmouth* was at *Amsterdam* with my Lord of *Argyle*, where there was an account given of the Design that was in hand, of an Insurrection in *Scotland*, and the Preparations that had been made in order to it; and at that time there came over to *Holland* Mr. *Crag*, that came as I was inform'd from Major *Wildman*, and his Errand was to promote and recommend a Reconciliation between the Duke of *Monmouth*,

and my Lord *Argyle*, who till that time had acted in separate Interests; and *Crag* then gave an account that Means and Money were prepared; he had no particular Message to the Duke, because he did not know of meeting him there at that time: The Duke of *Monmouth* upon this Encouragement, did send Captain *Matthews* into *England*, with a Message to Major *Wildman*, wherein he did desire him that he would procure a Meeting with my Lord *Macclesfield*, my Lord *Brandon*, my Lord *Delamere*, and I think Mr. *Charleston*, and acquaint them that he had received a full account of my Lord *Argyle's* Affairs, and the Preparations that had been made for it, and accordingly he had ordered his own Affairs to join with him; he likewise sent *Crag* with a Message to the same purpose to other Friends in *London*, and he dispatch'd away one *Battescorn* into the *West*, to prepare things there. When *Crag* return'd back again to the Duke, he gave him an account that Major *Wildman* had procur'd a Meeting with those Lords and Gentlemen, that I mentioned before, who were all of Opinion, that the Duke of *Monmouth* should go for *Scotland*, for they thought that his coming there, would be the best Service he could do the interest at present, and they should know the strength of the Enemy here, by their sending Forces to suppress the Rebellion there. There was likewise a particular Message from Major *Wildman* to the Duke of *Monmouth*, That he desired he would bring over with him a Broad Seal to Seal Commissions with, and to take upon him the Title of King; the other particular branches of the Message I do not so well remember, but only this, he was particularly ask'd, whether the Prisoner at the Bar was there, and he said he was,——

Mr. *Att. Gen.* Pray, my Lord *Gray*, will you give an account what you know of *Jones's* coming over, and what Errand he was sent of?

L. *Gray.* *Jones* came some time after *Crag* return'd, and he gave an account of other things conformable to what *Crag* had said, and was sent back again to *England* by the Duke of *Monmouth* to give an account of his being ready to sail; he gave him also a Letter, the Contents whereof I did not see. I had some short account of it, but whether it were written to any particular Person, I cannot tell; the sum of his Message was, That he would land by that time he could get thither.

Mr. *Att. Gen.* My Lord *Gray*, you had frequent Discourse with the Duke of *Monmouth*, and so I suppose you can give an account who he kept Correspondence with, and upon whose Assistance he relyed.

L. *Gray.* I suppose few People will believe we were so weary of our Lives, as to come and throw them away with Threescore, or a very few more Men, (for it was but a very small number we began with) except we had had expectation of good assistance. This I am sure of, by all Discourses with the Duke of *Monmouth*, he did depend very much upon *Cheshire*, and was resolv'd to have landed and begun there; but afterwards he considered of it, and thought better to send some sort of excuse for not landing in *Cheshire*; that the Persons that were to be apply'd to there, being Men of great Quality and Interest in their Country, and able to manage it without his Assistance; but in the *West*, the Friends he relyed on, were not of that considerable Quality, and therefore he chose to land there.

Mr. *Att. Gen.* What Lords did he name, that he depended upon?

L. *Gray.*

L. Gray. I did name them; my Lord *Macclesfield*, my Lord *Brandon*, and my Lord *Delamere*; but I observed when the Duke of *Monmouth* spoke of his Friends in *Cheshire*, he did name my Lord *Macclesfield*, and my Lord *Brandon* as Persons.

Earl of Nottingham. My Lord Steward, I humbly pray this Witness may be asked, to whom that Letter was written, that he saith the late Duke of *Monmouth* sent by *Jones*?

L. H. Steward. You hear my Lord's Question, who did *Monmouth* send that Letter by *Jones* to?

L. Gray. My Lord, I never saw the Letter, nor do I know any Directions there were upon it; I always looked upon it as a paper of Instructions given to him about the time when, and the name of the place where the Duke was to land.

Mr. Att. Gen. We will give an account of that by *Jones* by and by, my Lord. Now swear *Nathaniel Wade*.

(Which was done.)

Lord H. Stew. Well, what do you ask this Witness?

Mr. Attor. Gen. Wade, That which I call you for, is, this, to give an account what you know of any design of landing in *Cheshire*, or elsewhere, and of *Jones's* coming over, and what Errand he was sent upon?

Mr. Wade. My Lord, I shall give an account as far as I know; after the death of the late King, Captain *Matthews* came to *Amsterdam* and gave an account there, that the Duke of *Monmouth* intended to be there shortly to meet and consult with my Lord *Argyle*, who, we understood, then was preparing for an Expedition into *Scotland*; thereupon I was sent into *Ireland* to desire my Lord *Argyle* to come to *Amsterdam*, which he did; and there the Duke of *Monmouth* did consult with him, and they did agree together, that at the same time that my Lord *Argyle* made an Insurrection in *Scotland*, the Duke of *Monmouth* should invade *England*, and to that end, that he should send to those Friends he had in *England*, to be ready to assist him when he came there; and in order to it, he did send Captain *Matthews*, who amongst other things, was to go to the Duke's Friends in *Cheshire*, and amongst them, my Lord *Delamere* was named to be one, and the business was to desire them to be ready to assist him when he should land; accordingly Captain *Matthews* went; but a little after his going away, I think one *Crag* came over, and he came from Major *Wildman*, and his business was to endeavour a good understanding between the Duke of *Monmouth*, and my Lord *Argyle*, who were then at some Difference; and to endeavour to make them act jointly by united Councils; a little after he was sent back again into *England* to Major *Wildman*, to desire him to assist them with some Money; he went back again, and returned, but brought no Money; thereupon he was sent again by the Duke of *Monmouth*, because the first time he was not sent by him; the Sum demanded was Six Thousand Pounds, or Four Thousand Pounds, and at last he sent for a Thousand Pounds; *Crag* returned with this Answer, That they could not assist them with Money, for they did not know to what end they should have Money, but to buy Arms, and for that the People were well provided enough already, and there was no need of Money for that purpose. The Duke of *Mon-*

mouth a while after sent Mr. *Crag*, and pawn'd all the Jewels he had, to raise Money, and fitted out Three Ships for this Service, laden with Ammunition, and because he had promised my Lord *Argyle* to make a Diversion in *England*, while he invaded *Scotland*, he resolved to go with that Provision he had, and desired by Mr. *Crag*, that since those Lords and Gentlemen that were to assist them, had sent no Money, as was desired of them, and expected from them, they should now trouble themselves with no further needless Consultations; but should repair each Man into his own Country, where their Interest was greatest, to be ready when he should come; and in order to this, the Duke of *Monmouth* did set sail from *Holland*, and came to *Lyme*, and landed there; and did afterwards order his March, so that he might most conveniently meet with his *Cheshire* Friends; that is, towards *Gloucester*, and so to get *Gloucester* Bridge; that thereby gaining the command of the River of *Severn*, those of *Cheshire*, if they did, as was expected, make an Insurrection at the same time, they might easily join together. In pursuance of this Design we came to *Keinsham* Bridge, and there a party of the King's Horse set upon us, and we took some Prisoners, and thereupon thought it advisable not to let the King's Army join together, but to go back and engage those that were already come together, and that was the reason we did not go over the Bridge.

Mr. Att. Gen. Do you know any thing of *Jones's* coming into *Holland*, and for what?

Mr. Wade. My Lord, I had forgot that; a little before *Crag's* going last away, *Jones* came over, and his Business was to know why we staid so long, for the Duke of *Monmouth's* Friends in *England* had expected him long before, and he was dispatch'd away quickly to acquaint them the Duke was coming.

Mr. Att. Gen. Who was it he sent to, to acquaint with his coming?

Wade. To Major *Wildman*, he was directed to Major *Wildman*.

Mr. Att. Gen. Who else were to be acquainted with it?

Wade. Among the rest, my Lord *Delamere*, my Lord *Macclesfield* and my Lord *Brandon* were to be acquainted that he was coming, and expected that they should raise what Forces they could to assist him.

L. H. Steward. Will my Lord *Delamere* ask me any Questions?

L. Delamere. No my Lord, I never saw his Face before, that I know of.

L. H. Steward. Who do you go to next, Mr. Attorney?

Mr. Att. Gen. Next we call *Richard Goodenough*; Swear him, (which was done). That which I would know of you, Mr. *Goodenough*, is, Whether *Jones* was sent of any Message, and about what?

Goodenough. My Lord, I was beyond Sea with the Duke of *Monmouth*, and Mr. *Jones* was sent (among other Persons) to my Lord *Delamere* to give him notice that he should be ready against the time that the Duke should land, and take care to secure himself, that he might not be seized here in Town, for we were apprehensive such a thing would be attempted.

Mr. Att. Gen. What directions were given him, what Lords to go to?

Goodenough. My Lord, we were informed in *Holland*, that my Lord *Delamere* was one of those Lords

Lords that had promised to draw his Sword in his behalf.

Mr. Att. Gen. Had you any discourse with the Duke of *Monmouth* about it at any time?

Goodenough. Yes, I have discoursed with the Duke of *Monmouth* several times.

L. H. Steward. Ay, what did he say to you about it?

Goodenough. My Lord, he said (among other things) that he hoped my Lord *Delamere* would not break his promise with him?

L. H. Steward. My Lord *Delamere*, will you ask him any Questions?

L. *Delamere*. No, my Lord. I never saw his Face before, that I know of, I will assure you.

L. H. Steward. That is pretty strange, so famous an Under-Sheriff of *London* and *Middlesex*, as he was.

Mr. Att. Gen. Then swear *Jones*, (which was done): Pray will you give an account what Message you received from the Duke of *Monmouth* upon your going over into *Holland*, and to whom you were to deliver it, and what became of it?

Jones. My Lord, I went to *Holland* about the latter end of *April* last; my going, as I have acquainted his Majesty and the Council, was not only about this Affair, for I had other business that called me thither, which I shall not now take up your time, or trouble you with repeating of; but having some knowledge from Mr. *Disney*, that there were some intentions of doing something, tho it was communicated to me but very darkly, and therefore that little I did know, made me the willinger to go for *Holland* so soon as I did; but before I went, I had a mind to understand something more of the design; and therefore the night before I went, I came to Mr. *Disney*, and acquainted him with my intended Journey; Mr. *Disney* did perswade me against it, thinking that I had gone upon this account, but I told him the occasion, which he partly knew, why I went; but withal I told him, I did intend to see the Duke of *Monmouth*, and if he had any Message that he would have delivered to him, I would deliver it very safely; he told me all the Message I should deliver to the Duke of *Monmouth*, if I saw him, was to desire him to keep to the last Conclusion which he would find in a Letter that had been sent to him, and that if he had not yet received the Letter, it was to come by the Crop-hair'd Merchant, or the Crop-ear'd Merchant, I cannot say which, but I think it was the Crop-hair'd; I asked him what that Message was, lest the Letter should miscarry, for I told him, if I should go to the Duke of *Monmouth*, and refer him to a Letter wherein a Message was to be brought him, which he was to keep to, and that Letter should miscarry, I should in effect bring no message at all to him; my Lord, thereupon he told me, that I should acquaint the Duke of *Monmouth* that his Friends in *England* would not by any means have him come for *England*, but that he should continue where he was, or if he thought good to go for *Scotland*, they approved of it; this is the sum of what he said to me, as near as I can remember. When I came to *Amsterdam*, there was one Mr. _____ that was kill'd at *Philips Norton*, went with me to the Duke of *Monmouth's*, and when I came to him, I acquainted him, as Mr. *Disney* appointed me to do, that there was such a Letter sent by such a person, and that such a Message was included in it; My Lord, he was

in a great passion, I know not how to express it, and seemed to be very much troubled, and did reflect very much upon Major *Wildman*, and said, that was *Wildman's* work; and he said, (as I think that was the word he used) *Wildman* was a Villain, or to that purpose; but withal he said it was too late to send such a message now, and that he was resolved to come for *England*; and he would make *Wildman* hang with him, or fight for it, with him; that *Wildman* did think by tying his own purse, he should tye his hand, but he should find it should not be so, and some other words of the like nature, he used; but this is the substance of what he said. He gave some account what preparations had been made, he said Money was very short, and he had been fain to pawn all he had to raise what Money was raised, upon his own charge. He asked me if I did think to return to *England* shortly; I told him if he had any service to command me for *England*, I had some little business to do at *Rotterdam*, which I would dispatch, and then I would perform his Commands; he told me, he would be glad I did return as soon as I could for *England*, and that this should be the Message I should carry to *Wildman* in answer to the Message he had sent him, That he would come for *England*, and he should either fight with him, or hang with him, and that was all he had to say to him. I was coming away from him, but he stopped me, and told me he would not have me go out of Town till he had spoke with me again; this was upon the *Sunday*; accordingly I did go in the Evening to him, and when I came, he told me, he would have me stay till *Tuesday* Morning, for he was going out of Town, and intended to be back again at that time, but if not, I should receive from my Lord *Gray* what he had to say to me. He did not come upon the *Tuesday*, but my Lord *Gray* did come, and I think to the best of my remembrance Mr. *Gray* was with me; he told me all he had to say was, That the Duke intended to be in *England* within nine days, and that upon the Thursday seven-night after I came away, the Duke would be in *England*; and he bid me to remember to tell *Brand*, that when he heard the Duke was landed, he should acquaint Sir *Robert Payton* with it, but not till he was landed; for tho' they did think that he would join with them when the thing was begun, yet they ought to be careful who it was communicated to, for fear it should be discovered and disappointed; this was all that I had in command from my Lord *Gray*. I came to *Rotterdam*, and dispatch'd my business there, and would have come away, but it happened there were no Ships coming for *England*, nor would there be any in a Fortnights time; thereupon I returned to *Amsterdam*; when I came back, I went to see the Duke to give him an account how it happened that I was not gone for *England*; the Duke told me he was glad I was not gone; for now he had a further Message for me to carry, and he would have me stay two or three Days in Town for it; I stay'd three Days, and came again to him, but he told me he was not ready for me yet; then I stayed two or three Days longer till the 21st of *May*, to the best of my remembrance; it was upon a *Thursday* that he gave me the Message that I was to bring into *England*; I came to him in the Morning, and he told me I should come to him upon the Evening of that Day, and when I came, there

there was a Paper lay before him on the Table, and he took the Paper and seal'd it up, I cannot say he wrote all that was in that Paper, but the Paper that lay before him was not finished when I came in, and that he did not write, while I was there, I am sure; but he took it up and sealed it before me, and when he had sealed the Paper, he told me, I must as soon as I came to London, see for Captain Matthews, Sir Thomas Armstrong's Son in Law, who lodged at Mr. Blake's in Covent-Garden, and desire him to acquaint my Lord Macclesfield, my Lord Brandon, and my Lord Delamere with his design of coming for England, and that he was resolved to set out upon the Saturday Morning after I came away, which was upon the Friday; he told me Captain Matthews was to send one Post to that place that was named in the Note to receive Intelligence of his landing, and that should be brought to his Friends here immediately (he designed should be twenty four Hours before the Court had notice of it in Town,) and those Lords were to be in readiness, that as soon as they knew he was landed, they might repair to their several Posts to assist him. I told him that I would deliver what Message he gave me, and asked him, what I was to do with the Paper he put in to my hands; thereupon, as near as I remember, he used these Expressions to me, I do by you, as Princes do by their Admirals, when they send them out upon any considerable Expedition, which requires Secrecy in the Management of it, they have their Commission delivered to them sealed, which they are not to break open till they are at Sea. So here I deliver you your Instructions sealed up, which you are not to open till you are at Sea; and when you have opened them, and read what is contained in them, I would have you tear the Paper, and throw it into the Sea, or otherwise dispose of it, lest you be surprized and searched at your landing, and my Papers found about you. My Lord, I asked him, because I would be as punctual in my Message as I could, what those Lords were to do when they came out of Town, whether they should come directly to him or no; he told me no, nor that, but they should go into the Country, and secure their Interest for him there. I ask'd him then, if Captain Matthews be out of the way, and I be disappointed of meeting with him, shall I deliver this Message to the Lords my self; he told me no, by no means, for those Lords were Persons of Quality, and that that was not a thing to be done by me; What shall I then do, my Lord, said I, if Captain Matthews be out of the way? You need not question that, saith he, but if you meet not with Matthews, speak to Wildman.

My Lord, with these Instructions (and this as near as I can remember is the Sum of all he said to me) I came away, and came to Sea; when I was out at Sea, I broke open the Letter that I had given me by the Duke, and I will tell you as near as I can, what were the Contents of it; there was written in it to this Effect:

TAUNTON in Somersetshire is the place to which all are to resort; the Persons to be acquainted with the time of landing, are the Lord Macclesfield, the Lord Brandon, and the Lord Delamere; the place to send the Coach to, is to Taunton, to Mr. Savage's House at the Red-Lyon; the place where the Post was appointed to return, was

Captain Matthews's Lodging, at Mr. Blake's, and he was to receive the Message, or if he did not, he was to appoint one that should receive it; or if it were to return to any other place, that was left to him to do as he thought fit.

And this was all, as near as I can remember; when I had seen this, I came to London, and being very weary and tired, when I came home, I went to Bed.

Mr. Att. Gen. Pray tell the Court as near as you can, what day it was you came?

Jones. I came out of Holland the 22d of May, I came home the 27th, and looking upon my Almanack, I find that it was the Wednesday Fort-night before the Duke landed, that I came; when I was come home, I sent for Mr. Disney, and he came to me immediately; I told him I had seen the Duke, and desired that he would help me to the Speech of Captain Matthews; he told me he was out of Town; then I desired to speak with Major Wildman, he told me he was gone out of Town too; then I told him I must deliver my Message to him, and I told this Message as I have told your Lordships before, and therefore left it to him to convey it to the Knowledge of those Lords that were concerned; he did seem to be unwilling, and told me he did not know how to communicate it to those Lords, and asked me why I would not deliver the Message my self; I told him I did ask the Duke of Monmouth that very Question, whether I might, and he had forbid me, and ordered me to deliver it either to Captain Matthews, or to Major Wildman; and since they were absent, I knew not any to communicate it to, but only to him, in order to their having notice of it. He told me he would do what he could.

Mr. Att. Gen. Pray who were present when you had this Discourse with Disney?

Jones. There was none present but himself then, for it was the first time that I spoke with him after I came from Holland; I told him there was a Post to go to receive Intelligence, which should bring notice of his landing 24 Hours before it could be known at Whitehall, and therefore it were fit they should be in a readiness; he did scruple at it, and said he did not know where to get any one that could convey the Message to them, but he would do what he could; and concluded to meet at night in Smithfield, and he did so, and there were two Persons with him, Mr. Crag, and Mr. Lisle, and another, I think his name was Brand, and he took me and Brand aside, and did ask me where was the place that the Post was to go; I told him where, and then he did discourse of the Dukes coming over, but I mentioned not any thing of the Lords, but only to Disney; and after an Hours talk or thereabouts, we parted. I saw Mr. Disney once afterwards, but what he did with the Message I cannot tell, he gave me no account of it; I did indeed before I went out of Town see him at the Half-Moon Tavern in

I went out of Town, and met the Duke of Monmouth at Lyme where he landed, and when I came to him, I told him what I had done with my Message, and how it happened that I could not deliver it to the Persons that he had ordered; the Duke told me he was satisfied that I had done what I could, but seemed to be troubled that Matthews was out of Town. And this is the Sum of what passed in my Knowledge as near as I can remember:

Mr. Att. Gen. Had you no Discourse with *Disney* what he had done with the Message, when you met at *Smithfield*?

Jones. No, because those Men were Strangers to me, and I had never seen them before.

Mr. Att. Gen. But afterwards had you no discourse with *Brand* nor *Lisle* about it?

Jones. No, not at all: *Brand* I never spoke but once with, and *Lisle* would not own that he was the Man that was there.

L. H. Steward. Have you any more Questions to ask him, Mr. Attorney?

Mr. Att. Gen. No, my Lord.

L. H. Steward. My Lord *Delamere*, will your Lordship ask him any Questions?

L. Delamere. No, my Lord, I never saw his Face before this time, that I know of, in my Life.

L. H. Steward. Then who do you call next, Mr. Attorney?

Mr. Att. Gen. The next Witness that we call, my Lord, is *Story*.

(Who was sworn).

L. H. Steward. Well, what do you ask him?

Mr. Att. Gen. Mr. *Story*, pray will you give an account what notice you had of *Jones's* Message, and what was done upon it, and what Discourse you had with any body concerning my Lord *Delamere*, the Prisoner at the Bar, and with whom?

Story. My Lord, I had notice of it by one — that lived at *Bishopsgate*, who told me the 28th of *May* last, that Mr. *Jones* was returned home from *Holland* upon a Message from the Duke of *Monmouth*, and that he had agreed to go to *Taunton*, and there he expected Mr. *Dare* or Mr. *Williams* to bring an account that the Duke was landed; and he said that Mr. *Jones's* Message was delivered to *Disney*, in the absence of Captain *Matthews*, who was out of Town; that after *Disney* had receiv'd the Message from *Jones*, he went and had some discourse with my Lord *Delamere*, and that that night my Lord *Delamere* went out of Town with two Friends, and went a by-way through *Enfield Chase*, towards *Hatfield*.

Mr. Att. Gen. Pray when was it you went out of Town, *Story*?

Story. The 28th of *May*.

Mr. Att. Gen. Who went out of Town with you?

Story. No body, but I overtook Mr. *Brand* that Evening.

L. H. Steward. Pray repeat what it was he acquainted you with?

Story. He told me that the day before, *Jones* was returned home with a Message from *Holland*, which Message was to be delivered to Captain *Matthews*, but in his absence *Disney* received it, and that Evening after he had discoursed with my Lord *Delamere*, my Lord that night went out of Town, and two Friends of mine he said went with him, and did convey him away by a by-way through *Enfield Chase* towards *Hatfield*.

L. H. Steward. Have you any more Questions to ask him, Mr. Attorney?

Mr. Att. Gen. Pray, Sir, had you any discourse with the late Duke of *Monmouth* at *Shepton Mallet*? and about what?

L. H. Steward. By the way, Friend, where is that *Brand* that you speak of?

Story. He is kill'd; I did not see him dye, but he is said to be kill'd at *Keinsham Bridge*.

Mr. Att. Gen. Pray what discourse had you with the late Duke of *Monmouth* about the Prisoner at the Bar?

Story. I heard the late Duke of *Monmouth* say at *Shepton Mallet*, that his great Dependance was upon my Lord *Delamere* and his Friends in *Cheshire*, but he was afraid they had failed him, or betray'd him or some such word he used; and he said he could have been supplyd otherwise but that he had a dependance upon them.

Mr. Att. Gen. Pray what Office had you under the Duke of *Monmouth*?

Story. I was Commissary General.

Mr. Att. Gen. Well, we have done with you.

L. H. Steward. Will you ask him any Questions, my Lord *Delamere*?

L. Delamere. If your Grace please, I have a Question to ask him.

L. H. Steward. Ay, with all my Heart; what Question you will, my Lord.

L. Delamere. My Lord, I desire to know whether he knows one *Saxon*.

L. H. Steward. What *Saxon* does your Lordship mean, one that was in the Army?

L. Delamere. Yes, one *Thomas Saxon*.

Story. Yes, my Lord, I knew him a Prisoner in *Dorchester Prison*, where I was a Prisoner my self.

L. H. Steward. Has your Lordship nothing more to ask him but that?

L. Delamere. No, my Lord.

Mr. Att. Gen. Now, my Lord, we call some Persons to prove, that that very night when *Jones* came to Town, my Lord *Delamere* the Prisoner at the Bar goes out of Town without any Servant, changes his Name, and goes a by-way: Swear *Vaux* and *Edlin*.

Vaux was sworn.

L. H. Steward. Well, what says this Man?

Mr. Att. Gen. Pray give my Lords an account whether you went out of Town with my Lord *Delamere*, and when?

Vaux. My Lord, perhaps I may not remember the very words that I gave my Evidence in before, but I will repeat the Substance.

Mr. Att. Gen. It is not so long ago, but you may easily recollect your self; pray what day was it that my Lord *Delamere* sent for you?

Vaux. The 26th day of *May*, and I went out of Town the 27th.

Mr. Att. Gen. You are upon your Oath, and you must remember you are sworn to tell the Truth, the whole Truth, and nothing but the Truth.

Vaux. Sir, I shall take care to do it as far as I can remember.

Mr. Att. Gen. Whither was it that he sent for you?

Vaux. To the *Rummer Tavern* in *Queenstreet*, and the next day I went out of Town with him.

Mr. Att. Gen. What day of the Month did you go out of Town?

Vaux. It was the 27th day of *May*.

Mr. Att. Gen. What time of the night was it you went out of London?

Vaux. It was about nine or ten of the Clock.

Mr. Att. Gen. What name did my Lord *Delamere* then go by?

Vaux. He went by the name of *Brown*.

Mr. Att. Gen. My Lord, I would acquaint your

your Grace, that this is an unwilling Witness, and we are forc'd to pump all out of him by Questions?

Vaux. I do tell you the truth of all that I know.

Mr. Att. Gen. How far did you ride that night?

Vaux. To *Hoddesden*.

Mr. Att. Gen. What time did you get thither?

Vaux. About twelve of the Clock.

Mr. Att. Gen. Whither did you go then?

Vaux. We went to *Hitchen*, and I return'd back again the next day.

Mr. Att. Gen. Whither was my Lord *Delamere* going then?

Vaux. To see his Son that was sick in the Country.

L. H. Steward. What? he told you so, did he?

Vaux. Yes, my Lord.

Mr. Att. Gen. What other Company went with you?

Vaux. Two Gentlemen, the one I knew, th' other I did not.

Mr. Att. Gen. What was the name of him you did know?

Vaux. It was *Edlin*.

Mr. Att. Gen. Pray was that the direct Road to *Cheshire* that you went?

Vaux. We made it our way.

Mr. Att. Gen. You made it your way; but I ask you whether it be the best way?

Vaux. It is the freest Road from dust.

Mr. Att. Gen. But I ask you a plain Question, upon your Oath is it the best way into *Cheshire*?

Vaux. Truly, my Lord, I do not know that.

L. H. Steward. Pray who gave you Directions to call my Lord *Delamere* by the name of *Brown*?

Vaux. Himself, my Lord.

L. H. Steward. Was that the first time my Lord went by that name, as you know of?

Vaux. Yes, my Lord, I never heard that he was called by that name till that time.

L. Delamere. I was called by the name of *Brown* at that time, and I will give your Grace an account by and by of the reason of it.

L. H. Steward. Has your Lordship any Question to ask him?

L. Delamere. No, my Lord.

L. H. Steward. Then go on to the next.

Mr. Att. Gen. Our next Witness is *Edlin*, pray swear him (which was done). Pray will you give my Lords and the Court an account whither you went with my Lord *Delamere* out of Town, and when?

Edlin. The 27th of *May* last, I was at the *Custom-House*, and there came *Mr. Vaux*, the Gentleman that was here last, who told me he was going out of Town as far as *Hitchen*, and asked me to go along with him; he said he was to go that Evening; I asked him what time he intended to return? he told me he was resolved to return the next day. I told him, then I would go along with him, and we appointed the place of meeting to be at the *Bell-Inn* in *Coleman-street*; when I came there, he said there was a Friend that was going along with him, one *Mr. Brown*, we went as far as *Hoddesden* that night.

Mr. Att. Gen. Pray *Mr. Edlin*, will you look upon that Gentleman that stands at the Bar; is that he that went by the name of *Brown*?

Edlin. Yes, my Lord, that is he.

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Mr. Att. Gen. Well then, what time did you set out?

Edlin. It was very near nine of the Clock.

Mr. Att. Gen. Pray when was it that *Vaux* met you at the *Custom-House*?

Edlin. It was about ten of the Clock in the Morning.

L. H. Steward. Pray did you hear or know upon the Road, whither he was going?

Edlin. My Lord, I did never see my Lord *Delamere* before in my life.

L. H. Steward. But did not he tell you as he went along, whither he was going?

Edlin. He said he was going for *Cheshire* to see a sick Child.

Mr. Att. Gen. You say, Sir, that you went first for *Hoddesden*?

Edlin. We did so, my Lord.

Mr. Att. Gen. Pray, Sir, how long were you riding that, from the *Bell* in *Coleman-street* to *Hoddesden*?

Edlin. It was three Hours I believe, or about three Hours and a half.

Mr. Att. Gen. Then you rid hard out of Town.

Edlin. My Lord, it was towards nine of the Clock when we got on Horse-back, and it was about twelve or a little more, when we came to *Hoddesden*.

L. H. Steward. Well, *Mr. Attorney*, is that all you have to ask him?

Mr. Att. Gen. Yes, my Lord.

L. H. Steward. Will you ask him any Questions, my Lord *Delamere*?

L. Delamere. No, my Lord.

Mr. Att. Gen. Then, my Lord, to confirm this Evidence, and to explain it, I shall call you a couple of Witnesses to prove that this Gentleman went by the name of *Brown* in the Cant of those that were engaged in this Business, that the name was known as his name by all the Party, and called so constantly in their Letters and Messages; swear *Tracey Pounceford*, and *Thomas Babington*. (which was done)

L. H. Steward. Which will you begin with first?

Mr. Att. Gen. We begin with *Pounceford*; Pray will you give his Grace and these Lords an account what discourse you heard at *Disney's* concerning the Prisoner at the Bar, and what name was he usually called by, in your Meetings?

Pounceford. My Lord, I shall give as just an account as I can; I was acquainted with *Mr. Disney*, and the 14th of *June* I was at his House--

L. H. Steward. What *June* do you mean?

Pounceford. Last *June*, my Lord, and there were three more besides, one *Joshua Lock*, and a Country Gentleman that I have understood since to be one *Hooper*, and there was one *Halfey*; and being there, *Lock* staid for some Declarations.

L. H. Steward. What Declarations were those you speak of?

Pounceford. The Declarations of the late Duke of *Monmouth*.

L. H. Steward. Were they printed at that time?

Pounceford. They were not ready at four of the Clock in the Afternoon; but about nine of the Clock they were finished, and three were printed off, and were delivered to *Joshua Lock*, and when he had received them at that time,

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there

there was a discourse of having them sent into *Cheeshire* to one Mr. *Brown*; after we had received them, we came over the Water together, and we landed at *Salisbury Stairs*, and *Lock* was very earnest for going out of Town that night, with those three Declarations, which, as he said, were to be carried to one Mr. *Brown*: This was at nine of the Clock, and so we parted.

L. H. Steward. Pray into what Country was he to carry them?

Paunceford. A little way out of Town, he said.

L. H. Steward. Just now you said they were to go to *Cheeshire*.

Paunceford. My Lord, the discourse at *Disney's* House was, that they were to be sent into *Cheeshire*, but when we came over the Water, *Lock* said he was to go a little out of Town to one Mr. *Brown*.

Mr. Att. Gen. Pray who was that Mr. *Brown* as they meant, as you apprehended?

Paunceford. I understood Mr. *Brown* to be my Lord *Delamere* by some discourse.

L. H. Steward. Whose discourse did you understand it by?

Paunceford. The first time my Lord, that I heard of my Lord *Delamere's* going by the name of *Brown*, was upon a discourse with one *Edlin*.

L. H. Steward. Pristhee tell us what that discourse thou hadst with *Edlin*, was.

Paunceford. Mr. *Edlin*, about the latter end of May last, went out of Town, as I heard, and when he came back again, I asked him whicher he went? he said he was invited by a Friend to go with him out of Town, and my Lord *Delamere* went along with them, and went by the name of *Brown*.

Mr. Att. Gen. What discourse had you with *Disney*, or any body else about my Lord *Delamere's* going by the name of *Brown*?

Paunceford. Mr. *Disney* did use to mention my Lord *Delamere* by the name of *Brown*.

Mr. Attor. Gen. Pray were you at any Meeting with any body, and whom, at any Tavern, and what Tavern where any such discourse was had?

Paunceford. My Lord, I was at a Meeting at the *Castle-Tavern* with Mr. *Vermuyden*, and my Brother *Babington*, and one *Manning*, but there was no mention then of any *Brown* that I remember, nor of my Lord *Delamere*, but only there was something in relation to the landing of the Duke of *Monmouth*; the Question was asked where he was to land, and Mr. *Vermuyden* made answer he did not know.

L. H. Steward. Will your Lordship please to ask this Witness any Questions, my Lord?

L. Delamere. Pray, Sir, did you ever know any body else that went by the name of *Brown* besides me?

Paunceford. May I answer this Question, my Lord?

L. H. Steward. Answer it, yes you must, you are sworn to tell the Truth, and the whole Truth, Man.

Paunceford. My Lord, there was a discourse of Mr. *Vermuyden's* going by the name of *Brown*.

L. H. Steward. Will you ask him any more Questions, my Lord?

L. Delamere. No, my Lord.

L. H. Steward. Then go on, Mr. Attorney.

Mr. Att. Gen. Pray Mr. *Babington*, do you

tell my Lords what you know of my Lord *Delamere's* going by the name of *Brown*?

Babington. My Lord, I shall give an account. When I first knew any thing of the Transactions, I was with my Brother *Paunceford*, Mr. *Vermuyden*, and one *Chadwick* that went into the *West*, and there was a discourse of two Gentlemen that went by names I did not know; *Brown* was one, and I was desirous to know who was meant by it; I was at that time but newly acquainted with the Concerns of these People; and so I found they were fearful to entrust me; but afterwards I was at the *Castle-Tavern* where my Brother, and my Uncle *Vermuyden* was, and in discourse of Mr. *Brown*, some body happened to name my Lord *Delamere's* name, but he was presently taken up, you mean Mr. *Brown*; ay, faith he, I do.

L. H. Steward. About what time was this, pray you?

Babington. About the middle or latter end of May last.

Mr. Att. Gen. Were you at *Disney's* when the Declarations were printed there?

Babington. Mr. Attorney, I will give an account of that afterwards, but I have something else to say first; After this, I was diligent to know of my Uncle *Vermuyden* and my Brother, who this Mr. *Brown* was; my Uncle told me it was my Lord *Delamere*, and desired me whenever I discoursed of him, to call him by that name, and I have very good reason to believe Mr. *Vermuyden* knew of the matter, because he was acquainted with a great many of that sort of People, and declared he had collected and knew of Moneys that were gathered for that Purpose; and he had a good account of *Monmouth's* landing, and of the Force he had in the *West*, and how long it was presumed that he could maintain that Force without Assistance from any body else, and so I presume he was very well acquainted with the whole Transaction: Afterwards I happened to be at *Disney's* over the Water, there was my Brother *Paunceford*, Mr. *Halfey*, and my self.

Mr. Att. Gen. Tell what passed there at that time.

Babington. *Disney* shew'd me a Declaration that was not perfected quite, but after that we fell into a discourse about Mr. *Brown*, and afterwards my Lord *Delamere's* name was named by some body, that some of the Declarations were to be sent to him, and I remember Mr. *Disney* said he was afraid my Lord *Delamere* was not capable of doing that Service that was expected from him in *Cheeshire* for want of some of those Declarations, which would be mighty useful to him to inform the People, they being *Monmouth's* Declarations.

L. H. Steward. Had *Lock* any of those Declarations away for that Mr. *Brown* you speak of?

Babington. I never knew *Lock*, my Lord.

Mr. Att. Gen. What number of Declarations did *Disney* print?

Babington. *Disney* told us he hoped in twenty-four Hours to have 500 printed, a good number of them were to be sent to my Lord *Delamere*, and several of them were dispersed.

L. H. Steward. Have you any more Questions to ask him, Mr. Attorney?

Mr. Att. Gen. No, my Lord.

L. H. Steward. Will you ask him any Questions, my Lord *Delamere*?

L. Delamere. No, my Lord.

Mr. Att. Gen. Then may it please your Grace, the next Witness we shall bring, shall be to prove that my Lord *Delamere* took frequent Journeys backward and forward in a very little compass of time, and the same Witness will likewise tell you what Discourse he had with my Lord during the very time of *Monmouth's* Rebellion, to stir up the People to joyn with him. Swear *Hope*, (which was done). Pray tell my Lords what discourse you had with my Lord *Delamere*, and when?

Hope. Upon the *Sunday* before the Coronation, my Lord *Delamere* came down Post to my House, towards his own House in *Cheshire*—

L. H. Steward. Prithee where is thy House? for these Noble Lords do not know thee, perhaps so well as I do, therefore tell us where it is.

Hope. My Lord, my House is at the *Three Tuns* in *Coventry*.

L. H. Steward. Well, go on, tell what thou knowest.

Hope.—Some time after that he came down Post again, and a little after he went up again Post, and he told me he went down another way; and after that, the 21st of *June*, he came down Post again, this was upon a *Sunday*, the *Sunday* Seven-night after the Duke of *Monmouth* landed.

Mr. Att. Gen. Had he any Servant with him at that time?

Hope. Yes, he had.

L. H. Steward. Had he a Servant with him every time he came down Post?

Hope. No, he came over I remember, without any Servant, only with a Post-Boy.

L. H. Steward. Well, and what discourse had you with him at that, or at any other time?

Hope. My Lord, that *Sunday* the 21st of *June*, my House was very full of People to enquire News, it being in the time of the Rebellion, every one was desirous to know how things went; and there was one *Ingram* in the House, that came to me, and asked what News from *London*, for they say, saith he, that the Duke of *Albemarle* is killed, and his Hearse brought to *Westminster* Abby; thereupon I knowing my Lord *Delamere* was come from *London*, I went into the Room to my Lord, and desired to know of his Lordship what was the News in *London*; he told me he was little at Court, and therefore could not tell much News; I then asked him what he heard concerning the Duke of *Albemarle*; said I, they say here he is killed; saith my Lord, I am sorry for it, if it be so, but I fear it is too true; but if he be killed, it is said he is killed by his own Party; I asked him how? He told me a Party of the Duke of *Albemarle's* Men were commanded to fire at the Duke of *Monmouth's* Men, but instead of shooting at them, they shot into the Ground, upon which they were very severely handled by their Officers, which so enraged them, that they fired upon them, and killed several of them, and amongst others, the Duke of *Albemarle* was killed; and he told me the Duke of *Monmouth* had several Field Pieces, and Arms sufficient for near 30000 Men.

Mr. Att. Gen. Pray, did he shew you any Places in any Maps?

Hope. There was in the Room *Adams's* Map of *England*, and my Lord *Delamere* shewed me which way *Monmouth* went, and pointed out such and such Towns that he was possessed of, and withal said, he did fear there would be many bloody Noses before the Business was at an end.

Mr. Att. General. How many times do you think my Lord did ride post to and fro?

Hope. About five times I believe.

L. H. Steward. Within what space of time?

Hope. From the *Sunday* Sev'night before the Coronation to the Twenty first of *June* following.

L. H. Steward. Have you done with him, *Mr. Attorney*?

Mr. Att. General. Yes, my Lord.

L. Delamere. My Lord *High Steward*, with your Grace's leave, may I ask this Witness any Questions?

L. H. Steward. Yes, my Lord, what you please.

L. Delamere. Pray, Did I go down post four or five times, do you say in that space?

Hope. My Lord, I say you did go so often backward and forward.

L. Delamere. What time was that, you say, I came without any Servant, only with a Post-boy?

Hope. I cannot tell.

L. H. Steward. Will your Lordship ask him any more Questions?

L. Delamere. No, my Lord.

Mr. Att. General. Then, my Lord, we desire *Thomas Saxon* may be sworn (which was done) Pray, *Mr. Saxon*, will you give an account to his Grace, and my Lords, what you know of my Lord *Delamere*, the Prisoner at the Bar, concerning any Insurrection or Rebellion designed by him in *Cheshire*, and when?

Saxon. At the beginning of *June* last, I was sent for to *Mere*, my Lord *Delamere's* House in *Cheshire*, where when I came I was conveyed into a lower Room, where were my Lord *Delamere*, *Sir Robert Cotton* and *Mr. Crew Offceys*, and they told me I was recommended to them by my Lord *Brandon*, who had said, I was an honest useful man, and they hoped I would prove so: For they had sent to the Duke of *Monmouth*, who was in *Holland*, and received an answer by one *Jones*, and as soon as they had an answer, my Lord *Delamere* came away post into the Country under another Name, and by being conveyed through *Morefields*, came down to raise Ten thousand men for the Duke of *Monmouth* in *Cheshire*, by the first of *June*; but now they had considered of it, and found they could not raise them till *Midsummer*, for they must have time to raise a Sum of money, forty thousand pounds in that Country to maintain the men: They asked me, whether I would not undertake to carry a Message to the Duke of *Monmouth*, I told them I would, and I had there given me eleven Guineas, and five pounds in Silver for my Journey, and I did hire a Horse afterwards, and did deliver my Message to the Duke of *Monmouth*.

L. H. Steward. When was this do you say?

Saxon. This was the beginning of *June*.

L. H. Steward. What day of *June*?

Saxon. I cannot tell to a day, what day in *June* it was, for I did not set it down; but I believe it was the third or fourth of *June*.

L. H. Steward. How came you to be recommended by my Lord *Brandon* to these Gentlemen: Were you acquainted with my Lord *Brandon*?

Saxon. I was acquainted with him: The first time I was with him was at *Over*, the next time was at my Lord's own House.

Mr. Att. Gen. Ay, pray tell my Lord, how you came acquainted with my Lord *Brandon*?

Saxon. Upon the Monday in Easter Week last, being at *Over*, I was sent for by my Lord *Brandon* to drink a glass of Ale, and smoke a pipe of Tobacco with him, and when I came thither, my Lord told me he had a desire to be acquainted with me; so we drank a considerable while; and he was attended at that time with one *Hollingshead*, and one *Mr. Lee*; and after we had drank pretty smartly, and after some discourse, *Lee* and *Hollingshead* went forth, being called out to speak with some body, about an Estate or a Tenement that they were concerned in: After they were gone out, my Lord *Brandon* began to discourse about the Elections of Parliament-men, how unfairly they had been carried; he said, he stood both for the Town and County of *Lancaster*, but had lost it by an unfair Election; for the other Party had made Seventy-score Freemen in one night in the Town; and by that means had carried it against him; which had exasperated the Country so much, that they were resolved to make it an occasion of raising up the Country in Arms, under pretence of maintaining the Christian English Liberties; and that they had a design to send for the Duke of *Monmouth*, and make him King; and that they must make use of such men as me, that were men of Interest in the Country, to stir up the People to rise in Arms; and if I would come to *Gosworth*, his House, upon the Monday after, he would tell me more of that Business: I went according to the time, and there he told me a great deal to the same purpose, and withal he shewed me a Letter that he had written to the Duke of *Monmouth*; which Letter I afterwards saw at *Bridgewater*.

L. H. Steward. Have you any more Questions to ask him?

Mr. Att. Gen. No, my Lord; But if my Lord *Delamere* please to ask him any Questions, he may.

L. Delamere. I humbly pray he may repeat the Evidence he hath given against me, for I have not heard what he has said.

L. H. Steward. Turn toward my Lord *Delamere*, and repeat the Evidence that you gave against him, so as he may hear you: Which he did to the same effect, as before,

L. H. Steward. Pray, from whom did you receive that money?

Saxon. I received it from my Lord *Delamere*.

L. H. Steward. My Lord *Delamere*, will you ask him any Questions?

L. Delamere. Yes, may it please your Grace.

L. H. Steward. Then the Method you are to take, is this, you must propound your Questions to me, and then I will propound them to the Witness?

L. Delamere. I desire to know, may it please your Grace, when was the first time that he declared this that he has now sworn against me.

L. H. Steward. My Lord desires to know of you, when it was that you first made known this against him?

L. Delamere. And to whom, my Lord?

Saxon. I suppose I told Mr. *Storey* of it first, my Lord, at *Dorchester* after I was taken Prisoner for the Rebellion.

L. Delamere. When did he tell it *Storey*, my Lord?

Saxon. I think it was a Fortnight after my acquaintance with him.

L. H. Steward. Were you then in the same Prison with *Storey*?

Saxon. Yes, I lay with him in the same Bed.

L. Delamere. If your Grace please, I would ask him another Question.

L. H. Steward. Ay, what you will.

L. Delamere. I desire to know, when was the first time that he made Oath of this, and upon what occasion it was?

L. H. Steward. What say you to that?

Saxon. The first time I made Oath of it, was when I lay sick.

L. Delamere. Will your Grace please to ask him, where that was, and when?

Saxon. It was before His Majesty's Counsellors, that were sent to take my Examination in *Newgate*.

L. H. Steward. Prithee, I do not know when thou camest to *Newgate*, it may be thou hast been there oftner than once.

Saxon. I gave my first Information immediately after I was brought to Town; when I was removed from *Dorchester* Goal to *Newgate*.

L. Delamere. My Lord, I desire your Grace would ask him what time he came up?

Saxon. The beginning of the last Term.

L. Delamere. Then I desire to know, my Lord, whether he did remain a Prisoner in the Country all the other time?

Saxon. Yes, I did so, from the Tenth of *July*, till the time that I was brought up to *Newgate*.

L. Delamere. My Lord, I desire to know of him, whether I had ever employed him about any of my Concerns, that should give me an occasion of trusting him with such Secrets?

L. H. Steward. What Business of Importance had my Lord *Delamere* ever employ'd you about before this time?

Saxon. I was never employed about any Concerns of my Lord *Delamere*'s before that time, neither was I ever in his Company, but only then, and then as recommended by him to him; for they said, they must make use of such as me to make their Designs known to the Country, for the accomplishing what they did intend.

L. Delamere. Recommended by him, who does he mean?

Saxon. By my Lord *Brandon*.

L. Delamere. If your Grace please, I desire to know what the Business was that he was to do?

Saxon. I was to inform the Country concerning the time of the Rising, my Acquaintance abounded that way, and by their Discourse they had got Men in every Place to acquaint the Country when they should rise.

L. H. Steward. Were you acquainted with any great Number?

Saxon. My Lord, I was a publick Tradesman in *Middlewich*, and much acquainted with the ordinary sort of People.

L. Delamere. My Lord, he says he was sent for to my House, I desire to know who was the Messenger that was sent for him?

Saxon.

Saxon. My Lord, I did ask him his name, but he would not tell it me; he told me he was but a Tenant to my Lord *Delamere*; and had been employed in such Busineses for my Lord *Delamere's* Father, Sir *George Booth*, he was a lame Man in one Arm, for he had his Hand shot away at the Siege of *Nantwich*.

L. Delamere. It was *Tom Long* the Carrier, I suppose, or some such Fellow or other, that I sent for him; My Lord, I desire to know what time of Day or Night was it when he came to my House?

Saxon. It was just when it began to be Dark, the Messenger came to me in the Afternoon to fetch me thither, and I sent for a Man's Horse that lived near me, and when it was brought me, he asked me what made me go so late, I told him I had occasion to go late, and I should return late, and the Man stayed at my House for his Horse till it was late: but I not coming home, he left order for his Horse to be brought to him.

L. Delamere. Next my Lord, I desire to know when he came to my House, whether he did alight from his Horse at the Stables that belong to the House or no?

Saxon. I did alight just at the Old Buildings, and the Man's Horse that came with me and mine were taken into the Stables.

L. Delamere. Pray, my Lord, ask him who took his Horse from him?

Saxon. The Man that came with me, and he went into the House and brought out a Candle.

L. Delamere. My Lord, I would ask him whether the Door he was let in at was that which was nearest the Stable, or which Door?

L. H. Steward. Do you know what Door of the House you were let in at?

L. Delamere. My Lord, I ask him whether it were the next Door to the Stable?

Saxon. My Lord, I cannot very well give an account of that, for I never was at the House before.

L. Delamere. Pray, my Lord, let him recollect himself, whether it were the Door next the Stable or not.

L. H. Steward. Ay, with all my Heart, if he can.

Saxon. I did not see any other Door but that I came in at, and therefore I cannot tell which Door it was.

L. Delamere. These Questions, my Lord, I take to be proper for me to ask, and I believe I shall make it appear to your Grace to be so by and by.

L. H. Steward. Good my Lord, take your full Liberty, and ask what Questions you please; for I know my Lords here will be very well pleased that you have all the Scope allowed you that can be.

L. Delamere. I humbly thank your Grace, I desire to know of him, who let him into the House?

Saxon. The Man that came with me went with me just to the Door, and let me in within the Door, and I saw no other Man but that Man, till I came into the Room where my Lord and those two Gentlemen were.

L. Delamere. Was there no body else but we there?

Saxon. No, you were so wise, you would let no body be by.

L. Delamere. My Lord, I shall trouble this Witness no farther at present.

L. H. Steward. Then Mr. Attorney General, will you proceed?

Mr. Att. Gen. My Lord, we shall give no more Evidence at present, but shall rest here till we see what Defence this Noble Lord will make for himself.

L. H. Steward. Then, my Lord *Delamere*, your time is now come to make your Defence, you have heard what has been Evidenced against you, and my Lords now expect to hear what you have to say for your self.

L. Delamere. May it please your Grace, a great part of the Day is spent, and I would beg the Favour of your Grace, that I may have the Favour till to morrow Morning to review the Notes I have taken, and then I shall make my Defence.

L. H. Steward. My Lord *Delamere*, I had this very thing in my Thoughts before I came hither this Day, because I did foresee that this was likely to be a long Cause, and the proceeding in it would take up much time: I have a little doubt, I must needs say, in my own Mind, whether it may be done by Law; I know very well, if this were a Tryal in full Parliament, there have been Precedents to warrant the Adjournment till another Day, though it be in the midst of a Tryal; and in the middle of the Evidence: But this Court I take to be of the same nature, though of a degree higher, with the other ordinary Courts of Judicature; and whether it be not obliged and tied up to the same Method of Proceedings with those other Courts, where all Capital Offences are Tried, is a thing I am in some doubt about: In those Courts it has not been usual to Adjourn the Court after Evidence given; nay, it has been sometimes a Question, whether the Judges in those Courts, after the Jury are gone from the Bar, to consider of their Verdict, could Adjourn themselves: I say, the Judges have sometimes made a Doubt of it, though I know, the Point is now settled, and the Practice is, that they may, and do: But this is most certain, after the Evidence given, the Jury cannot be Adjourned, but must proceed in their Enquiry, and be kept together till they are agreed of their Verdict; this has caused some Hesitancy in me, what the Law may be in this Case; therefore I think it may be proper to consult with my Lords the Judges; for I desire the thing may be considered and settled.

L. Delamere. My Lord, I humbly beg this Favour of your Grace, but to Adjourn till to morrow.

L. H. Steward. With all my Heart, my Lord, if it may be done by Law.

L. Delamere. I hope it may, my Lord, and I beg that Favour of your Grace.

L. H. Steward. My Lord, I should be very glad to comply with your Lordship's Desires, but truly I have considered it, and do doubt whether I can by Law do it: In full Parliament it is clear it may be done, but upon this Commission, after my Lords the Peers are once charged, and the Evidence partly given, whether I can then Adjourn them till another Day, is with me a Doubt: My Lords, if your Lordships please, before such time as my Lord, the Prisoner at the Bar, enters upon his Defence, I will with your leave propound the Question to my

Lords

Lords the Judges, and hear their Opinion what the Law is.

L. Delamere. My Lord, I shall hardly be able to finish all I have to say in any convenient time this Day.

L. H. Steward. But, my Lord, if an Adjournment cannot be by Law, I cannot help it.

L. Delamere. There has a great deal been said, and it will require a great deal of time to give it an Answer.

L. H. Steward. Ay, but if it cannot be done as you would have it, we must be contented to stay the longer together; for I would not abridge you of your Defence; therefore, my Lords the Judges, if you will please to go together and consider of it, and report your Opinions, what the Law is in this Case, and we will stay till you come again.

Then the Judges withdrew into the Exchequer Chamber.

E. Nottingham. My Lord High Steward, I do humbly conceive this is a Matter that concerns the Privilege of the Peers, and because it is a matter that doth so much concern the whole Peerage; I think my Lords here ought in some measure to concern themselves about it: Therefore, my Lord, I have a short Motion to make to your Grace, that, considering the Consequence that the Precedent of this Case may draw with it, since my Lords the Judges are gone together to consult of this Point, of which, I may say, they are not altogether the sole Judges: We may also withdraw to consider of this Matter with them, because it may not be proper for my Lords in Publick here, to offer what they may have to say, to incline my Lords the Judges in their Judgments one way or other?

L. Falconberge. My Lord, I humbly offer this to your Grace, upon the Motion that this Noble Lord has made, that, with Submission, I take this to be a thing that concerns the Privilege of Peerage only, and I conceive the Judges are not concerned to make any Determination of that Matter. I think therefore, my Lords here ought to retire with them to consider of it.

L. H. Steward. My Lords, I think, with Submission to your Lordships, that this is a Question naturally proper for my Lords the Judges to give their Opinions in, whether this Court, as a Court of Judicature for the Tryal of this Noble Lord, may, in the midst of the Tryal adjourn till another Day: And the Privilege of the Peerage cannot at all come in Question here as I conceive.

L. Falconberg. My Lord, that we conceive is a Point of Privilege which certainly the inferior Courts can have no power to determine.

L. H. Steward. If your Lordships have a Mind to withdraw, you may.

Lords. Ay, withdraw, withdraw.

Then the Peers withdrew, and after half an Hour the Judges returned and took their places as before, and after about an Hour the Peers returned to their former places.

L. H. Steward. My Lords, the Judges have you considered the Matter that has been proposed to you, and what is your Opinion?

L. C. J. Herbert. May it please your Grace, the Judges in obedience to your Graces Com-

mands have withdrawn, and considered of what your Grace proposed to them, and with humble Submission they take the Question to be this.

Not, whether your Grace may Adjourn your Commission from one day to another, for that is clear you may, and has been practised, for that is the Case of the Earl of *Somerset* and his Wife.

But the Question is, Whether, after the Prisoner is upon his Tryal, and the Evidence for the King is given, the Lords being, as we may term it, charged with the Prisoner, the Peers Tryers may separate for a time, which is the consequent of an Adjournment to another Day.

And my Lord, the Judges presume to acquaint your Grace, that this is a matter wholly new to them, and that they know not upon recollection of all that they can remember to have read, that either this matter was done, or questioned, whether it might or might not be done in any Case.

My Lord, If the matter had been formerly done, or been brought into Question in any Case, where it had received a determination, and reported in any of our Books of Law, then it would have been our duty to contribute all our Reading and Experience for the satisfaction of this great Court: But being, as it is, a new Question, and a Question that not only concerns the particular Case of this Noble Lord at the Bar, but is to be a President in all Cases of the like nature for the future: All we can do is, to acquaint your Grace and my Noble Lords, what the Law is in the inferiour Courts in Cases of the like nature, and the Reason of the Law in those Points, and then leave the Jurisdiction of this Court to its proper Judgment.

My Lord, in the first place, where the Tryal is by a Jury, there the Law is clear, the Jury once charged can never be discharged till they have given their Verdict, this is clear; and the reason of that is, for fear of Corruption, and tampering with the Jury: an Officer is sworn to keep the Jury together without permitting them to separate or any one to converse with them; for no Man knows what may happen, for (though the Law requires honest Men should be returned upon Juries, and without a known Objection they are presumed to be *probi & legales homines*, yet) they are weak Men, and perhaps may be wrought upon by undue Applications.

This, My Lord, it is said, fails in this Case, because the Lords that are to try a Peer, are Persons of that great Integrity and Honour, that there is not the least Presumption of their being to be prevailed upon in any such way; and for that reason, because of the Confidence which the Law reposes (and justly) in Persons of their Quality, they are not sworn as common ordinary Jurors are; but are charged and deliver their Verdict upon Honour.

My Lord, in the Case of a Tryal of a Peer in Parliament, as your Grace was pleased to observe, and as is very well known by late Experience, there the matter has been Adjourned till another Day, and for divers Days; the Evidence being in several Parcels, and there the danger is as great (if any were to be supposed) of Tampering: But whether the Lords being Judges in that Case, and in this Case only in the nature of a Jury, makes the difference, though in both Cases it is but like a Verdict, for they give their Opinions *Seriatim*, whether the

the Peer tryed be Guilty or not Guilty, that they submit to your Graces consideration.

Upon the whole matter, My Lord; whether their being Judges in the one, and not in the other instance; alters the Case, or whether the Reason of Law in inferiour Courts, why the Jury are not permitted to separate till they have discharged themselves by their Verdict, may have any influence upon this Case, where that reason seems to fail, the Prisoner being to be tryed by his Peers, that are Men of unquestionable unsuspected Integrity and Honour, we can't presume so far as to make any Determination in a Point that is both new to us, and of great Consequence in it self; but think it the properest way for us, having laid matters as we conceive them before your Grace and my Lords, to submit the Jurisdiction of your own Court to your own Determination.

L. H. Steward. My Lords; I confess I would always be very tender of the Priviledge of the Peers, wherever I find them concerned; but truly I apprehend, according to the best of my understanding, that this Court is held before me. It is my Warrant that conveys the Prisoner to this Barr. It is my Summons that brings the Peers together to try him, and so I take my self to be Judge of the Court.

My Lords 'tis true may withdraw, and they may call the Judges to them to assist them, which shews they have an extraordinary Priviledge in some Cases more before the High-Steward, than Juries have in inferior Courts in Cases of common Persons: For, if it be in a common Case, no Jury can call either Council or Judges to assist them, in the absence of the Prisoner, but if they will have advice, it must be asked in open Court in the presence of the party accused.

But now, My Lords, if you have a mind to consult with me in private, as I now sit by Virtue of this Commission, which is His Majesties Warrant for me to hold this Court, I could not withdraw with you, but you must ask all your Questions of me, in the presence of the Prisoner in open Court; whereas if it were in full Parliament, as were the Cases of my Lord *Stafford*, and my Lord of *Rembroke*, then he that were the High Steward might go along with you when you withdrew, and consult with you, and give his Opinion, which I cannot do in this Case; for I am bound to sit in Court, while you withdraw to consider of the Evidence, and am not to hear any thing said to me, but what is said in open Court in the presence of the Prisoner, except it be when you deliver your Verdict.

This I confess my Lords has a great weight with me, and I know your Lordships will be very tender of proceeding in such a Case any way but according to Law; For though you are Judges of your own Priviledges, yet, with Submission, you are not Judges of the Law of this Court; for that I take to be my Province.

Why then, Suppose my Lords, I should take upon me to do as my Lord *Delamere* desires and adjourn the Court, and suppose the Law should fall out to be that indeed I ought not so to have done, would it be any advantage to this Noble Peer, if he should be acquitted by your Lordships after such an Adjournment, might not the evil consequence of that be, that he might be Indicted for the same Crime, and tryed again?

For all the Proceedings after that would be Void, and lyable to be reversed.

And if on the other side your Lordships should think fit, upon the Evidence you have now heard, and what he shall say for himself, to convict him after I have adjourned as is desired, and I pass Judgment upon him, as it will be a Duty incumbent upon me to pass Sentence on him, if you convict him; what will become of the Case then? and how shall I be able to answer it, as having done my duty, when I pronounce a Judgment notoriously Erroneous and Illegal? for so it will be, if the Law prove to be against my adjourning: This, my Lords, is a matter of great Moment, and worth the Consideration.

But in the other Case of a Trial in full Parliament, the Lord that Sits where I do, is only as the Chairman of the Court rather than Judge, he gives a Vote in such Proceedings; and therefore my Lord the Prisoner did very well at the beginning to ask the Question, whether I had any Vote in his Tryal, as a Peer jointly with your Lordships: If I sat in full Parliament I should without all question give my Vote as well as any other Peer, but sitting here by immediate Commission from the King *pro hac vice*, High-Steward; I acquaint you as I did him, I have no authority to give any Vote: my Business is to see the Law observed and fulfilled as Judge.

Certainly, My Lords, your Lordships and I, and all Mankind ought to be tender of committing any Errors in Cases of Life and Death, and I would be loath, I will assure you, to be recorded for giving an Erroneous Judgment in a Case of Blood, and as the first Man that should bring in an illegal Precedent, the Consequence of which may extend I know not how far.

Mr. Att. Gen. Will your Grace give direction for my Lord to proceed?

L. H. Steward. Yes, he must proceed I think.

L. Delamere. May it please your Grace, and you my Lords, it is an offence of a very high Nature for which I am this day to answer before your Lordships; yet I thank God I am not afraid to speak in this place, because I am not only certain and well assured of my own Innocency, no such thought having as yet entred into my Heart; but I am also well assured of your Lordships Wisdom and Justice, which cannot be imposed upon or surprized by Insinuations and florid Harangues, nor governed by any thing but the Justice of the Cause.

My Lords, I can with a great deal of Comfort and Satisfaction say, that these Crimes where-with I am charged are not only Strangers to my Thoughts, but also to what has been my constant Principle and Practice; for I think that in matters relating to the Church and the things enjoined therein, few have conformed more in Practice than I have done, and yet do I confess, and am not ashamed to say it, that I have always had a Tenderness for all those who could not keep pace with me, and Charity for those that have outgone me, and differed from me, though never so far; nay, though of a different Religion: For I always thought Religion lay more in Charity than Persecution.

While I had the Honour to be a Magistrate in my Country, I did constantly duly and impartially execute the Laws, and in every publick trust I was very faithful in the Discharge of it, for I never voted nor spoke in any manner but

as my Conscience and Judgment did dictate to me. I have always made the Laws the measure of my Loyalty, and have still been as Zealous and Careful to give the King his Prerogative, as to preserve to the People their Properties, and have endeavoured as far as in me lay to live peaceably with all Men.

This, My Lords, was not only the Dictates of my own Inclinations, but it was the Principle of my Father, and the Lesson that he taught me: I say my Father, who was so greatly Instrumental in snatching this Nation out of its Confusion, and restoring it to its ancient Government, by setting his late Majesty upon his Throne, and consequently was the means of his present Majesty, that now is, his coming so peaceably to the Crown: And this I may the more boldly speak, because I speak it by good Authority; because in the Patent that created my Father a Peer, his late Majesty is pleased to say, his Rising was mainly instrumental in his Restauration. I beg the Favour of your Grace and my Lords, that I may read you that Clause in the Preamble of the Patent, which I have here ready to produce.

Which was read, and then my Lord proceeded as follows, viz.

My Lords, I suppose most of your Lordships did know him, and whosoever did so, I dare say, did believe him to be a good Man: For my part I did not know a better Copy to write after than his Example, which I endeavoured always to imitate, and that I hope will go very far to vindicate me from the Imputation of being inclined to any such Crime as I stand charged with.

My Lords, it is now late, and therefore I shall cut off a great deal of what I had intended to say to your Lordships, that I may not take up too much of your time, and come immediately to my Defence, as to what I stand accused of.

And first, my Lords, I shall observe that here have been a great many Witnesses produced, and a great deal of Swearing, but little or nothing of Legal Evidence to affect me; for there is but one Man that saith any thing home and positively against me (and whom I shall answer by and by) all the rest are but Hearsays, and such remote Circumstances, as may be racked to any Evidence against any other Person, but are urged against me for want of greater matters to charge me with; and therefore I hope the producing and pressing of these things against me, is rather a strong Argument that I am Innocent, and that there have been mischievous and ill designs of some against me, than that I am Guilty; for if they had had other and greater matters, your Lordships would have been sure to have heard of them.

With your Lordships leave, I cannot but observe to your Lordships an excellent saying of that great Man my Lord of Nottingham (whose Name will ever be remembered with Honour in our English Nation,) when he sat in the same place that your Grace does now, at the Tryal of my Lord Cornwallis, which I will read to your Lordships. Speaking to the Peers he has this passage.

I know your Lordships will weigh the Fact, with all its circumstances, from which it is to receive its true and its proper Doom. Your Lordships are too just to let Pity make any abatement for the Crime, and too wise to suffer Rhetorick to make any Improvement of

it: This only will be necessary to be observed by all your Lordships, that the fowler the Crime is, the clearer and plainer ought the Proof of it to be; there is no other good Reason can be given, why the Law refuseth to allow the Prisoner at the Bar Council in matter of Fact, when Life is concerned, but only this, because the Evidence by which he is condemned ought to be so very evident and so plain, that all the Council in the world should not be able to answer it.

My Lords, I think the Evidence that has been given against me this day does not come up to this. And I hope your Lordships will regard this saying of my Lord Nottingham's, as more worthy of your consideration, than the fine Flourishings and Insinuations of the Kings Council, which tend (if it be not so designed) rather to misguide your Lordships, than to lead you to find out the Truth.

My Lords, I shall now tell you the method that I shall proceed in, in making my Defence; and I begin with Saxon, for he I perceive is the great Goliath, whose Evidence is to maintain this Accusation, and if I cut him down, I suppose I shall be thought to have done my own business; therefore to that I shall apply my self first, and do it if I can; and I will in the first place examine several persons that are his Neighbours and have conversed with him, what they have heard and know of him; and first I desire Richard Hall may be called.

L. H. Steward. My Lord Delamere, if you begin that way to call Witnesses against Saxon, it is fit he should be here to know what is said against him.

L. Delamere. Ay, with all my heart, My Lord.

L. H. Steward. Then call Saxon agen.

Then Saxon and Hall came both in.

L. Delamere. Pray Mr. Hall tell my Lords here what you know of Thomas Saxon.

L. H. Steward. What is it you ask of this Witness?

L. Delamere. My Lord, I desire him to give an account what he knows of a Letter, that was forged by Saxon, in the name of one Hildage.

Hall. About the nineteenth of December in the year 1683, I received a Letter by Thomas Saxon from Richard Hildage, wherein he desired me to send him the sum of six pounds odd money which I owed him: I received the Letter and paid the money, and to the best of my knowledge some little time after I met with the said Hildage at Newcastle, who asked me to pay him the money I owed him: I replied I had paid the money, according to his Note, but he said he never gave any such Note, and threatned to sue me; thereupon I sent one Lord to Hildage, that is here now in the Court, and desired Hildage his forbearance for a while, till I could get the money from Saxon back again, and afterwards he sent again for his money, and I sent to Saxon for it, but still the money did not come.

L. H. Steward. Did you ever speak with Saxon himself?

Hall. No, but with his Wife, who came to me about it, but he acknowledged, he wrote the Letter before John Lord.

Saxon. Did not my Wife tell you that Richard Hildage lent me the money?

L. H. Steward. Nay, you must not Dialogue with one another, but if you have any questions, you must propound them to the Court: My Lord Delamere, have you any questions to ask him?

L. Delamere. No, my Lord.

Lord

L. H. Steward. Then what is it you would have him asked, *Saxon*?

Saxon. I desire you would please to ask him whether or no, he did not lend me the money?

L. H. Steward. He, who do you mean?

Saxon. *Richard Hildage* did.

L. H. Steward. What say you, did *Richard Hildage* lend him the money?

Hall. No my Lord.

L. H. Steward. Look you, my Lord *Delamere*, the Objection carries a great deal of weight in it, to prove him a very ill man, if it be fully made out.

L. Delamere. My Lord, if your Grace please, I can prove that he owned the writing of the Letter to another man.

L. H. Steward. My Lord, he does own here, that he wrote the Letter and that he wrote it in *Hildage's* name, but he saith, the Letter, he so wrote in *Hildage's* Name was by *Hildage's* direction, and if so, that takes off the Objection made against him.

L. Delamere. I must submit that to your Grace, whether what he says in that matter be Evidence.

L. H. Steward. What *Hildage* did, or did not, is the main turn of the question in this Case; for he might lend him the money, and yet afterwards might say, when he thought he might lose it, that he did not send any such Letter, and all this be true, and *Saxon* in no fault: I must confess, if *Hildage* were here himself, and should deny the lending of the money, or the giving him Directions to receive it, you would have fixed a shrewd Objection upon him; but otherwise Hear-says and discourses at second hand are not to take off the Credit of any mans Testimony.

L. Delamere. But *Hall* says *Hildage* denyed the receipt of the money, or any Order for receiving of it.

L. H. Steward. That signifies nothing, being but by second hand.

Saxon. If it please your Grace, here is my Brother in Court will give you an account of it.

L. H. Steward. Well, well, hold your tongue; will your Lordship please to go on?

L. Delamere. The next Witness, my Lord, that I shall call, shall be *Francis Ling* (who came in.)

L. H. Steward. What do you ask this Witness?

L. Delamere. Mr. *Ling*, pray will you tell his Grace, and my Lords, what you know concerning *Saxon's* receiving any Money in the name of *Mrs. Wilbrabam*, without her Order.

Ling. He called at this same *Hildage's* at *Newcastle*, and received twenty five Shillings, and said it was for *Mrs. Wilbrabam* in her name, but she never received a penny of the Money, nor knew of his having received it, till he came to pay another Quarter.

L. H. Steward. Where is that *Mrs. Wilbrabam*, is she here?

Ling. No, my Lord, she is a Neighbour of ours, an Ancient Woman, fourscore years of Age, and cannot come so far.

L. H. Steward. This is the same Case with the other, you can never think to take off the Credibility of Witnesses by such Testimony; for this is only a Tale out of an Old Woman's Mouth: What if that Old Woman told him a false Story?

Ling. She said —

L. H. Steward. I care not what she said, this is no Evidence at all.

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L. Delamere. Then pray call *Richard Shaw* (who came in.)

L. H. Steward. Well, what says this Witness?

L. Delamere. *Shaw*, can you tell any thing of *Thomas Saxon's* writing a Letter, and sending it in the Name of one *Pangston* a Bayliff?

Shaw. He writ a Letter, as I understand, concerning some Money that I owed him; for I owed him a little Money, and being I did not pay it, he does forge a Letter, and puts *William Pangston's* name to it, so I got up the other Morning —

L. H. Steward. Where is *Pangston*? Is he here?

Shaw. No, my Lord, he is not, but he told me he did not write the Letter.

L. H. Steward. Why, this is just the same again, and we all know how easie a thing it is to hear a Bayliff tell a Lye.

Shaw. I cannot tell, but I called —

L. H. Steward. All that is nothing. It is a difficult matter to hear such Fellows speak truth, than any thing else, I am sure.

L. Delamere. The next Witness that I shall call, is *Peter Hough* (who appeared.)

L. H. Steward. There is your Witness: What say you to him?

L. Delamere. Pray acquaint his Grace, and my Lords, what you know of *Saxon's* cheating you in the making of a Bond.

Hough. My Lord, he had six Pound ten Shillings in money, and ten Shillings in work done, for which he was to give me a Bond, and hereof he made the Bond himself. I thought it had been right, and took it; but about the time when the money was become due, I looked upon it, and it proved to be but for 6*l*.

L. H. Steward. What should it have been for?

Hough. It should have been for six Pounds ten Shillings in money, and ten Shillings in work.

L. H. Steward. Did not he give thee a Bond for all thy money?

Hough. It should have been so, but I never had it.

L. H. Steward. Had you never the money?

Hough. No, I never had the money.

L. H. Steward. What did he say the Bond should be made for?

Hough. For seven Pounds.

L. H. Steward. What say you to it *Saxon*?

Saxon. My Lord, I had five Pounds ten Shillings of him, and Ten Shillings in work, for which I gave him Bond, there were the Witnesses names at it, the Bond was fairly read, and I sealed it, and he took it with him.

L. H. Steward. Ay, but he says it was to be for seven Pounds.

Saxon. I never had any more of him than six Pounds, and for that I gave him Bond.

L. H. Steward. Was the Bond read to you?

Hough. He read it himself, and he made it himself.

L. H. Steward. How did he read it? What did you apprehend by his reading it was made for?

Hough. I took it as he read it to be made for seven Pounds.

Saxon. He may say what he pleases, but I had no more of him but six Pounds; I was to give Bond for no more.

L. H. Steward. Now the Witnesses to this Bond would be very proper to be produced here: For, if he did make the Bond but for six Pounds, when the Debt that was to be secured was seven Pounds,

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that is a sign that he had an intention to cheat him of the Twenty Shillings.

L. Delamere. That shews what a kind of Man he is.

L. H. Steward. But this is but Witness against Witness, for he says he owed no more, and was to make the Bond for no more.

Hough. It was as I tell you, I assure you, my Lord.

Saxon. I had no more of him than six Pounds.

Hough. Did not I ask you afterwards one Question more, and told you it was a Cheat, and you said it should be mended?

L. H. Steward. Well, my Lords have heard it, they will consider what weight to lay upon it.

Lord Delamere. Pray call *Edward Wilkinson* (who appeared.)

L. H. Steward. What do you ask him?

L. Delamere. *Wilkinson*, pray tell my Lords, how *Saxon* dealt with you about your Horse?

Wilkinson. My Lord, he hired a Horse of me for three days, and was to give me twelve pence a Day, but he never came again, nor had I any satisfaction for my Horse, but I lost my Horse by the Bargain, and my Money too.

L. H. Steward. How long ago was it since he hired your Horse?

Wilkinson. My Lord, it was the Twenty third of June, to the best of my remembrance.

L. H. Steward. Did he not agree with you for 12 d. a day as long as he used your Horse?

Wilkinson. I expected to have my Horse in 3 days time.

L. H. Steward. But mind my Question, Did you agree that he should have him but 3 days? or, was he to give you 12 d. a day for so long as he kept him out?

Wilkinson. I was to have 12 d. a day for him.

L. H. Steward. What as long as he used him, or only for 3 days?

Wilkinson. He did agree with me to bring him again in 3 days.

L. H. Steward. I perceive by the time, he rid into the Rebellion with this Horse, and he was a very Knave for so doing, upon my Conscience.

L. Delamere. Call *William Wright*, (who came in) Pray will you give my Lords an account what Reputation this *Thomas Saxon* is of in his Country.

Wright. My Lord, this *Thomas Saxon* came to live at *Sambige*, and I had some dealings with him as well as other Men, and I never found him to perfect his word in any thing.

L. H. Steward. What didst thou never find him?

Wright. To perfect his word in any thing, My Lord.

L. H. Steward. That is, make good his word I suppose, but that is your *Cheshire* Phrase.

Wright. Whereupon I met with him one Evening after Evening Prayer, and said to him, *Thomas Saxon*, if I cared no more for keeping my word than thou dost, it were no matter if I were hang'd; for to be sure, if thy Mouth open, thy Tongue lyes; and he turn'd away from me, and would not answer me a word; and since that he owed me some Money, and when I asked him for it, he told me if I did trouble him for the Money it should be the worse for me; whereof all the Town knows as well as I that I cannot set him forth in words as bad as he is.

L. H. Steward. Can you instance in particular, Friend, of any Fraud, Cheat, or Cozenage that he has been Guilty of? for it is not what the Town says, but what can be proved, that we must take for Evidence; the Town that thou livest in may reckon thee but an idle Fellow, and yet thou may'st be a very honest Man for all that.

Wright. I trust, my Lord, I am so, and shall always prove so.

L. H. Steward. Well, what dost thou know ill of him?

Wright. He did not keep his word with me.

L. H. Steward. Wherein dost thou mean?

Wright. As to Money he owed me.

L. H. Steward. How much Money did he owe thee?

Wright. He owed me a deal.

L. H. Steward. How much dost thou call a deal?

Wright. I cannot tell how much exactly.

L. H. Steward. Does he owe thee any thing now?

Wright. Yes, but I cannot justly tell how much.

L. H. Steward. My Lord *Delamere*, I would be very unwilling to interrupt the method of your defence, or abridge you in your Evidence; but really this objection that you endeavour to prove by this Witness, is not at all, as I conceive, for your Lordships Service: For it is a very hard case, if any one that owes Money and does not pay it, shall for that very reason lose the credit of his Testimony, this rather gives a countenance to what he says, that you know no other Objections but such trivial ones to make against him.

L. Delamere. Then, if your Grace please, I will make short work of it, and spare your time; I shall pass over this part of my Evidence though I have more Witnesses to this Point, and come to other matters, to matter of Fact to encounter this positive Proof that has been given against me. Your Grace and my Lords do observe, that this Man *Saxon* has testified, that about the third or fourth of June last (for there he fixed the time) this Man as an extraordinary Person that was fit to be trusted in an Affair of this Nature, being confided in, and recommended by my Lord *Brandon*, was sent for by me to *Mere*, where he found me and *Sir Robert Cotton* and *Mr. Offley*, who did imploy him to transact the matter of stirring up the Country, in order to a rising and joyning with the late Duke of *Monmouth*: Now I will first prove to your Lordship in general, that *Sir Robert Cotton* was not in *Cheshire* for many Weeks, nay several Months, both before and after the time he speaks of: And next in particular I shall prove, as to the time that he has pitched upon, by divers Persons that saw *Sir Robert Cotton* here then in *London*, and give you particular reasons for it: First to prove that he was here in Town so long in general: I shall produce his Servants that saw him every day; Call — *Billing* (who appear'd) Pray, Sir, will you give an account what time *Sir Robert Cotton* came to *London*, when he went out of *London*, and whether you were frequently in his Company and saw him here?

Billing. My Lord, to the best of my remembrance, *Sir Robert Cotton* came to Town the 10th of April last, and I was with him here in Town, at his House at the Horse Ferry till the latter end

end of July, and saw him constantly more than once or twice every day for that time, I used to come into his Chamber most Mornings before he was up, I used to buy in his Provision for his House, I saw him a Bed, or heard he was in Bed every Night.

L. H. Steward. Did you belong to him?

Billing. I am his Servant.

L. Delamere. He lived with him in the House all the while he says?

Billing. Then about the latter end of July he went out of Town for three Days to *Essex*, and then he came to Town again, and continued here till the time he was committed to the Tower, and never was in *Cheshire* since the 6th of April last.

L. H. Steward. How came you to remember so punctually when he came to Town, and that he staid here all the while?

Billing. I know it by my Accounts for the Journey up, and by the Tradesmens Bills for the Provision of the House ever since.

L. H. Steward. In what Capacity did you serve Sir Robert Cotton?

Billing. I bought in all the Provision for his House, and paid the Tradesmens Bills.

L. H. Steward. Have you any Papers in your Pocket that will point to any particular time?

Billing. I have not the Tradesmens Bills here, my Lord, nor my own Accounts, but I have look'd upon them, and by that I am sure what I have testified is true.

L. H. Steward. Who do you call next, my Lord?

L. Delamere. Call *Margaret Davis*, (who appeared,) Pray will you give an account to my Lord, what time Sir Robert Cotton came to Town, and to the best of your remembrance when he went out of Town again.

Davis. He came to Town upon the Tenth of April last, or thereabouts, and he has not been out of Town any Night since, except it were in August.

L. H. Steward. What day did he come to Town do you say?

Davis. About the 10th of April.

L. H. Steward. And you say he did not go out of Town till August?

Davis. No, my Lord.

L. H. Steward. How do you know this?

Davis. I was constantly in the House with him.

L. H. Steward. But how came you to be so exact as to the time?

Davis. I saw him continually every day.

L. H. Steward. How came you to see him?

Davis. I live with him in the House.

L. H. Steward. Pray recollect your self as to the time he went out of Town, for I perceive the other Man says it was the latter end of July.

Davis. It was in August certainly, my Lord.

L. Delamere. My Lord, the other Witness saith it was the latter end of July, and that may be very well consistent, neither of them speaking to a day.

L. H. Steward. Well, are you sure he was in Town all the Month of June?

Davis. Yes, he was.

L. H. Steward. Well, who do you call next?

L. Delamere. Mrs. *Sidney Lane*, (who appeared.)

L. H. Steward. What do you ask this Gentlewoman?

L. Delamere. I examine her to the same Point: and I question not but I shall make it out to your Grace, and my Lords, none of us all three that he has named were there at that time.

L. H. Steward. I shall be very glad of it, my Lord.

L. Delamere. Pray Mrs. Lane will you give an account when it was Sir Robert Cotton came to Town, and how long he staid here?

Mrs. Lane. He came to Town the April before the Coronation, and never lay out of Town I am sure all those three Months of April, May and June after he came to Town.

L. Delamere. This Gentlewoman, my Lord, lived in the same House with him.

Mrs. Lane. I did so, My Lord, and saw him every Night and Morning.

L. Delamere. If your Grace please, I have two or three more Witnesses to the same purpose, but I would spare their Lordships time, if this point be fully cleared.

L. H. Steward. Pray, my Lord, do not abridge your self, for I know my Lords will not grudge the time, but are very desirous you should have full Liberty in what is pertinent.

L. Delamere. Then I desire *Charles Reeves* may be called, (who appeared) I pray, my Lord, that this Man may give an account what time it was Sir Robert Cotton came to Town, and how long he stay'd here.

Reeves. If it please your Lordship, he was in Town before the Coronation, and I saw him here every day from that time till after July, once or twice every Day.

L. H. Steward. Did you belong to him?

Reeves. Yes, and I do now.

L. H. Steward. In what Capacity, Friend?

Reeves. My Lord, I am his Footman.

L. Delamere. May it please your Grace, the next Witness I have to produce is Mr. *Ashburnham*; being he cannot easily remove, I beg he may be heard in the place where he is.

L. H. Steward. Ay, let him speak where he is, and let him speak out.

L. Delamere. Pray Sir, will you please to recollect your self what time you saw Sir Robert Cotton, and where the last Summer?

Ashburnham. My Lord, I being at Sir Robert Cotton's House at Westminster, he desired me to present a Petition of his to the House of Commons for him, and it was about the latter end of the time allotted for Petitions, I cannot exactly tell what day of the Week or Month it was, but I saw him that day I presented his Petition, and I saw him at the Committee of Elections two or three days after.

L. Delamere. Sir William Twisden I desire may be also heard what he has to say to the same Point. Who answered to the same effect.

L. Delamere. Mr. *Heveningham* is my next Witness, My Lord; who I desire that he would please to give your Grace and my Lords an account, when he remembers to have seen Sir Robert Cotton in Town.

Mr. Heveningham. My Lord, it was a more than ordinary occasion that makes me remember the thing and the time so particularly. I was engaged in a dispute in the House of Commons about my own Election, and that was up-

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on the 2d of June, then was a Case debated in the House, whether a Mayor that was elected a Burgess for any Town could sit upon his own Return, it was then carried he should not, and the next day which was the third of June, another question came on, whether Sir Joseph Williamson was duly elected and returned, and I remember at that time I was walking with Sir Robert Cotton in the Court of Requests, and Mr. Neal came out of the House and told me, that it was carried by five, that he was not, and then Sir Robert Cotton was with me.

L. H. Steward. So you speak as to the 2d and 3d of June?

Mr. Heveningham. My Lord, had it not been upon this particular occasion, I could not have remember'd the time so exactly.

L. H. Steward. You give a very good token for your remembrance, and my Lords hear what you have said.

L. Delamere. Will your Grace please that the Clerk of the House of Commons may be called, and examined to the Journal of that House, when it was Sir Robert Cotton preferred his Petition, and that will fix the time as to what Mr. Ashburnham and Sir William Twisden have said?

L. H. Steward. Call whom you please, my Lord.

L. Delamere. It seems he is not ready, but I hope I have given your Grace and my Lords sufficient satisfaction, that Sir Robert Cotton was not there at that time that this fellow speaks of. I will now go on and prove Mr. Offley was not there neither, and the first Witness I call to that, shall be Sir Willoughby Aston, whom I desire your Grace will be pleased to hear speak in his place.

L. H. Steward. Well, what do you say, Sir Willoughby?

Sir W. Aston. My Lord, I desire to be guided in what account I shall give by the Questions that shall be asked.

L. H. Steward. What is it you ask Sir Willoughby Aston?

L. Delamere. Pray can you remember, Sir Willoughby, what time it was, and whether about the latter end of May last, or when, that you know of Mr. Offley's being at your House, and how long he stayed there?

Sir W. Aston. I can give an account of his Motion for ten days together, but that perhaps may be more than is necessary.

L. H. Steward. It will not be improper, Sir, for you to give as exact and particular account as you can of the times.

Sir W. Aston. If your Grace please, I will do it.

L. H. Steward. Pray do, Sir.

Sir W. Aston. Upon the 26th of May, which was Tuesday, at Night Mr. Offley and his Lady, and some of their Relations, came to my House, upon Wednesday the 27th of May Mr. Offley was so sick that he kept his Chamber and his Bed all day, upon the 28th of May which was Thursday, he was so ill that he kept his Chamber all day, and rose about five at Night, and I then waited upon him, and sat with him three Hours in his dressing Room, on Friday the 29th of May he went to Church, that Day was employed a great part in Devotion, upon the 30th of May which was Saturday, Mr. Offley and his Lady went, and a great part of my Family went with them, to one Mr. Pickering's six Miles off my House, there they dined, and returned at Night to my House,

upon Sunday the 31st of May, I have a particular remark whereby I remember that Mr. Offley went to visit Mr. Needham; upon Monday the first of June, Mrs. Offley and the Women of my Family went to visit my Lady Brooks, but Mr. Offley not being well staid at home: On Tuesday the second of June he was still at my House, there was a great deal of Company there, and he was in the Company all the day long: On Wednesday the 3d. I fell sick in the Morning about 4 of the Clock, but Mr. Offley was in the House all the Morning, but in the Afternoon he went to make a Visit two Miles from my House, at a place called the Ware-house, where the Ships ride at Anchor; and upon Thursday Morning which was the 4th of June, he went from my House: Now if your Lordship desire to know any thing about any particular time about this Compass, I'll give you the best account I can.

L. H. Steward. Can you tell where he went when he went from your House?

Sir W. Aston. He went directly home, as he said.

L. H. Steward. Did you hear at any time that he stay'd by the way, between his going from you and coming to his own House?

Sir W. Aston. My Son went with him two or three Miles of his way, and I heard that at Middlewich he staid to speak with some of the Militia Officers that he met with by the way there at a Muster, and afterwards went directly home.

L. H. Steward. Pray is the usual way from his House to yours by my Lord Delamere's?

Sir W. Aston. No, my Lord, directly another way.

L. H. Steward. Will you ask Sir Willoughby Aston any more Questions?

L. Delamere. No, my Lord.

Mr. Att. Gen. If your Grace please, I would ask Sir Willoughby Aston one Question. Sir, I desire to know how far it is from your House to my Lord Delamere's?

Sir W. Aston. Sir, it is about Eleven Miles.

L. H. Steward. Eleven Miles you say, Sir?

Sir W. Aston. Yes, my Lord, Eleven of those Northern Miles.

L. Delamere. My Lord, I have some more Witnesses to examine to this Point.

L. H. Steward. Call whom you please, my Lord?

L. Delamere. I call Mr. Gregory next, my Lord. (who appeared) Pray give my Lord an account, when Mr. Offley went from Sir Willoughby Aston's last Summer, and whither he went?

Gregory. My Lord, my Master went from Sir Willoughby Aston's House——

L. H. Steward. Who is your Master?

Gregory. Mr. Offley, my Lord. It was upon the 4th of June, at 9 of the Clock in the Morning, and went from thence to Middlewich, and was at home at his own House about five of the Clock in the Evening, as I was told, for I did not go directly home with him.

L. H. Steward. Was he at Mere that day at my Lord Delamere's?

Gregory. No, not that I know of, I was not with him.

L. Delamere. Then pray call Thomas Kidd. (who appeared) Pray were you that day with Mr. Offley when he went from Sir Willoughby Aston's?

Kidd. Yes, my Lord, I was.

L. Delamere. What day was it?

Kidd. The 4th of June.

L. Delamere. Then whither went he?

Kidd. He went the direct Road to his own House, I never parted from him, nor did he stop any where till he came to *Middle-wich*, where the Country Militia were exercising, and he just alighted off his Horse, and spoke with Major *Minshaw* and some of the Officers, but never so much as drunk by the way till he came to his own House.

L. H. Steward. What to his House in *Staffordshire*?

Kidd. No, but to *Crew Hall* in *Cheshire*.

L. H. Steward. Does *Mere* lye in the Road between *Sir Willoughby Aston's* and *Crew Hall*, so that your Master might be there within that time?

Kidd. No, that he could not do.

L. H. Steward. Were you with *Mr. Offley* the whole Journey home?

Kidd. Yes, my Lord, I was.

L. H. Steward. Were you no time from him?

Kidd. No, my Lord I was not.

L. H. Steward. What time did he come home?

Kidd. He came to his own House about 4 or 5 a Clock at night.

L. H. Steward. And did not he go from thence that night?

Kidd. No, my Lord.

L. Delamere. Now my Lord, I will prove as to my self that I was in *London* at the time as he speaks of. And First, I desire *Sir James Langham* may be heard to that:

He appeared, but gaye no Evidence.

L. Delamere. Pray call—*Booth* (who appeared)

L. H. Steward. What is this Gentleman's name?

L. Delamere. He is my Brother, my Lord, his Name is — *Booth*.

L. H. Steward. What do you ask him?

L. Delamere. Pray can you remember what time in *June* you saw me in Town here?

Mr. Booth. My Lord, I saw my Brother here in Town, the 3^d, 4th, 5th, 6th, and so on to the 10th of *June*, and the 10th of *June* I went out of Town my self, I saw him sometimes twice or thrice a day in that time, for I did not lodge above half a score doors from him.

L. H. Steward. Where was that?

Mr. Booth. In *Great Russel-Street*.

L. H. Steward. How come you to remember the time so particularly?

Mr. Booth. It was that day Sennight before I went out of Town, which was *Wednesday* the 10th of *June*, and had it not been for that particular Circumstance, I had not remark'd it so much as to be able particularly to remember it.

Mr. Att. Gen. Pray, *Mr. Booth*, did you know of your Brother's going out of Town the 27th of *May*?

Mr. Booth. I heard he was gone out of Town about that time.

L. H. Steward. Why then, when came he hither to Town again?

Mr. Booth. I cannot tell, but I saw him upon the 3^d of *June* in the Evening.

Mr. Att. Gen. My Lord, it is not possible for him so to do in that time, if he rode Post.

L. H. Steward. He did make a great deal of haste backward, and forward, that is certain.

L. Delamere. My Brother does not know when I went, but as he heard, he says.

L. H. Steward. But pray my Lord, mind the

Objection that has been made, for it carries a great deal of weight in it. It is plainly proved by two Witnesses, that you went out of Town the 27th of *May* at 9 of the Clock at Night, and rode to *Hoddesden*, and the next day came to *Hitchin* about Noon, then they left you and return'd back again to *London* that Night, and you told them you were going to see a sick Child of yours in *Cheshire*, how came you to make such Post-haste back again, that he should see you here in *London* the 3^d of *June*?

Mr. Booth. My Lord, I am certain I saw him that day in the Evening, and so on to the 10th.

L. H. Steward. Did my Lord then tell you how your Friends did in *Cheshire*?

Mr. Booth. I cannot remember the particular discourse we had.

Mr. Att. Gen. Pray, Sir, when did he tell you he came to Town?

L. H. Steward. You say you used to see him every day oncc or twice a day.

Mr. Booth. Yes, I did so.

L. H. Steward. Pray where was he the Second of *June*?

Mr. Booth. He was not come to Town.

L. H. Steward. How long time was it before that, that you had not seen him?

Mr. Booth. I had not seen him of several days before.

L. Delamere. If it please your Grace, here is another Brother of mine that saw me at the same time, and tho' he be my Brother I hope he is a good Witness.

L. H. Steward. Ay, God forbid else; what is his name?

L. Delamere. *George Booth*.

L. H. Steward. Well, what say you, Sir;

Mr. George Booth. My Lord, I saw my Brother *Delamere* here in Town the 4th of *June*, by this particular Circumstance which I cannot err in, that the next day, as I take it, I went down with him to the House of Lords, to hear my Lord *Macclesfield's* Cause, which was then there to be heard upon the Appeal of *Mr. Fiston*, and my Brother was in the House of Lords at that time, which was the 5th of *June*.

L. H. Steward. My Lord *Delamere*, I think it not amiss to put you in mind of one thing, which it is fit your Lordship should give some answer to: Does your Lordship deny that you went out of Town the 27th of *May*?

L. Delamere. No, my Lord, I do not; I acknowledge I did so.

L. H. Steward. Then it will be fit for you to give an account where you were the 28th of *May*, and so all along till the 3^d of *June*?

L. Delamere. If your Grace please, I hope I shall give you full Satisfaction in that by and by, but I have one Witness more to this point of my being in Town at such a time, that I could not be in *Cheshire*, when this Fellow says I was; and that is my Lord *Lovelace*.

L. H. Steward. There is my Lord *Lovelace*, what will you ask him?

L. Delamere. Whether he did not see me at the Tryal of my Lord *Macclesfield* in the House of Lords?

L. Lovelace. I was in the House of Lords that day that my Lord *Macclesfield's* Tryal was, and I remember I did see my Lord *Delamere* there.

L. H. Steward. But we are as much at a loss now as ever we were, for what day that Tryal was

was does not appear : What day was my Lord *Macclesfield's* Tryal?

L. Delamere. The Journal of the House of Lords proves that to be the 5th of *June*.

L. Lovelace. My Lord stood just by the Bar, and if I am not mistaken took Notes.

L. Delamere. My Lord, I hope now I have satisfied your Grace, and the rest of my Lords, that none of us three whom this Fellow has mentioned were there at that time at *Mere*, when he says we were: For my own part I do positively affirm, and I speak it as in the Presence of Almighty God, that I have not seen Sir *Robert Cotton* at my House that I know of these many Years, and I believe Mr. *Offley* was never in my House since I was Master of it: And I do likewise protest, that to my Knowledge, I never saw the face of this Man till now that he is produced as a Witness against me; I am sure I never spoke with him in all my Life, nor never sent for him to come to my House: And if your Lordship please to consider the Story that he tells, it will easily appear to be very improbable, for he neither tells you who the Messenger was that was sent for him, nor the way that he came into the House, which any body that has ever been at the House could not mistake. For when I asked him what door it was he came in at, it was for this reason, because he must needs have gone a great way about, if he had not come in at the usual Entry into the House, for I have but one door into my House except that by the Stables, which is a great way off the House? and it being about that time of the Year, if it were 8 or 9 of the Clock in the Evening, he must needs discern which way he came in: And, besides, My Lords, is it probable what he says, that he should see no body stirring about the House except it were this Man without a Hand, that he says was sent for him? I assure your Lordships, I have not, nor had my Father ever that I know of, any Servant or Tenant that was maimed in that manner that he speaks of; he saith, he was recommended to us by my Lord *Brandon*: But he cannot tell your Lordship any thing that ever he had done, to recommend him either to him or us: I did ask him what important Service he had ever done for me, that might give a credibility to my employing him in such a business as this. My Lord, I cannot help it, if People will tell false Stories of me, but I hope your Lordships will consider the credibility of it; is it to be imagined that I would take a Man I knew nothing of, upon another Man's Word, into so great a Confidence, as to employ him about a business of this Nature? I am glad that he was called in here again for your Lordships to view him. I beseech your Lordships to look at him; Is this Fellow a likely Fellow to be used in such an Affair? Does he look as if he were fit to be employed for the raising of ten thousand Men? Does he seem to be a Man of such considerable Interest in his Country? A Fellow, that though it be not direct Evidence, yet by several Witnesses, I have shewn to be a Man of no Reputation in his Country, nay of a very ill one; and could we have none else to employ in a matter of this Moment but such a Fellow as his Neighbours would not take his Word for any thing? It is an improbable Story upon these accounts, if I should say no more. Your Lordships likewise see, that he is so well thought of,

that he dare not be trusted out of *Newgate*, but is kept still a Prisoner, and as such gives Evidence here: And I know your Lordships will not forget that he swears to save himself, having been a Rebel by his own Confession, and he would fain exchange his Life for mine; till he has a Pardon, which as yet, as I am informed, he has not; the Objection will still lye upon him, that he swears to save himself, which will render his Testimony not credible, and the Law requires the Witnesses in Treason, to be credible ones: And yet forsooth! this Man, that no body that knows him will believe a Word he says, must be taken to be the Man of Integrity, Zeal and Industry; the Man of Management and Dispatch, the Man of Interest and Authority in his Country, that nothing can be done, but he must have a hand in it. My Lords, I think I need say no more of him; your Lordships time is precious, too precious indeed to be spent upon such a Subject, and so I set him aside.

My Lords, there is a thing that I perceive the King's Council lay a great weight upon, and that is my going down upon the 27th day of *May*, and my frequent riding Post to and fro. I shall now satisfy your Lordships of the Reasons of my Journeys. The first time which was betwixt the Coronation and the sitting of the Parliament was upon this reason; I went down to take Possession upon a Lease of a considerable value which was renewed to me by the Bishop. I did not think of going down at that time so soon; but I had Word wrote me out of the Country that the Bishop was ill, and that obliged me in point of interest to make haste down. And this I shall prove by one that was Attorney for me, and another that was a Witness of my taking Possession: and for this, I first call Mr. *John Edmonds* (who came in) Pray, Sir, will you tell his Grace and my Lords, what you know of my coming down into the Country in the beginning of *May*, and upon what account, and what time it was?

Mr. *Edmonds.* May it please your Lordship, upon the 5th of *May* my Lord *Delamere* did me the Honour to come to my House, and he stayed there a little while, and desired me to be a Witness of his taking Possession upon a Lease of my Lord Bishop of *Chester's*, and we went into the House that was next to mine, which was and there did take Possession.

L. H. Steward. Where is your House?

Mr. *Edmonds.* At *Boden*, in *Cheshire*.

L. H. Steward. When was this, do you say?

Mr. *Edmonds.* The 5th of *May*.

L. Delamere. Pray Sir, will you satisfy my Lord, whether the Bishop was not ill at that time?

Mr. *Edmonds.* My Lord, I had been a little before at *Chester*, and hearing my Lord Bishop was not very well, I went to Mr. *Allen*, and told him I was desirous to see my Lord, and speak with him, if I might; he told me my Lord was so ill, that he would speak with no body.

L. H. Steward. Was it a Lease for Years, or a Lease for Lives?

Mr. *Edmonds.* It was a Lease for Lives.

L. H. Steward. Then that might require my Lord's taking Possession. Who do you call next, My Lord?

L. Delamere. Mr. *Henry*.

L. H. Steward. What do you ask this Man, my Lord?

L. Delamere. Pray will you give his Grace and my Lords an account, whether you were not Attorney, and delivered me Possession upon the Lease of my Lord Bishop of Chester?

Mr. Henry. My Lord, I was Attorney by Appointment, and the 5th of May last I delivered Possession to my Lord Delamere at one of the most remarkable places of the Land that belonged to that Lease of the Bishop.

L. Delamere. My Lords, I hope this is a satisfactory reason for my going down at that time, the Bishop being ill, and the Lease being worth 6 or 7000*l.* The next time that I have to speak to is, That of my going the 27th of May, and for that I give this answer; I did go out of Town the 27th of May, the occasion of my going was, I had taken up a Resolution before to go see my Child that was not well, but I had not taken my Journey so soon, nor with such Privacy, but that I had notice, there was a Warrant out to apprehend me, and knowing the Inconveniences of lying in Prison, I was very willing to keep as long out of Custody as I could, and therefore I went out of the way, and under a borrowed Name. When I came to my House in *Cheshire*, there were not above five of my own Servants that saw me all the while I was there, and I saw no body but them, but while I was there, my Wife sent me an Express, that as to the Warrant she hoped it was a Mistake, and there was no such thing; but my eldest Son was very ill, and if I intended to see him alive I must make haste up, this was the occasion of my quick return, and I shall satisfy your Lordships by Proof, that I came thither in that manner to avoid the Warrant, and for no other Reason.

L. H. Steward. You say you went to see a sick Child in the Country.

L. Delamere. May it please your Grace, my Mother that is here, wrote me word that my Child was not well.

L. H. Steward. Pray what made you come back again so soon?

L. Delamere. Because I had an Express sent me by my Wife that my other Son was like to dye.

L. H. Steward. Call your Witness, my Lord.

L. Delamere. Mrs. Kelsey, (who came in) Pray will you give an account what I said, when I came down, was the occasion of my coming so privately and changing my Name?

Mrs. Kelsey. My Lord heard he said, there was a Warrant for taking of him up, and he gave me that for a Reason; besides his little Son in the Country was ill.

L. H. Steward. What, she lived in the Country, did she?

Mrs. Kelsey. My Lord, I was in the House with him.

L. Delamere. If your Lordships please my Mother may be examined?

L. H. Steward. Yes, with all my Heart.

She sate by him at the Bar.

L. H. Steward. Pray Madam, will you lift up your Voice, that my Lords may hear what you say.

Lady Delamere. My Lords, This Child of his that was in the Country, was more than ordinarily precious to him, in regard it was born to him at that time, when he was an innocent honest

Man, (as he is now a Prisoner in the Tower for High-Treason,) above two years ago, and I think it increased his Affection to the Child, that God had given it to him when he was in that Affliction. My Lord, I knowing the Affection that the Father and Mother both had to the Child, my Care in their absence I thought ought to be more exercised about him: The Child sucked, but I saw the Child decline, and therefore I was of Opinion that he should be weaned, and I sent up word that if they did not take care quickly and look a little after him, I was afraid he would go into a Consumption. Upon this my Son came down, I saw him not indeed, because he was very private all the while he was in the Country, but while he was there, it pleased God to visit his eldest Son with a dangerous Distemper, upon which my Daughter sent for him Post, if he intended to see his Son alive. And thereupon I think he made what haste back again he could.

L. H. Steward. Were you in the same House with him, Madam?

Lady Delamere. My Lord, I say, I did not see him all the time he was there, I only tell you what I heard.

L. H. Steward. How long was he in the Country?

Lady Delamere. I cannot tell exactly that, I think he was not above two days.

L. H. Steward. He must be but one day by Computation of time?

L. Delamere. Pray, my Lord, I will satisfy you in that point presently: Mrs. Kelsey will give an account what time it was that I came down, and when I went away.

Mrs. Kelsey. My Lord came down on the Sabbath-day night, and stayed there Monday, and went away the Tuesday Morning.

L. H. Steward. Look you, my Lord; the 27th of May was upon a Wednesday, that night you went out of Town, and went to Hoddesten. Thursday which was the 28th you came to Hitchen at Noon. Friday was the 29th, Saturday the 30th, Sunday was the 31st, then you came to your House, Monday the 1st of June, Tuesday the 2d, then you came away, and upon Wednesday the 3d you were in Town, so says your Brother.

L. Delamere. It was so, my Lord.

L. H. Steward. Which way did you come back?

L. Delamere. I came Post through Coventry, my Lord, and that was the time that Hope speaks of, that I told him I had come another way into *Cheshire*, when I came down.

L. H. Steward. My Lord, you say you went down to secret your self from a Warrant that you apprehended was out against you, and that made you go a by-way, how came you then to come so publickly back, the ordinary Post-Road?

L. Delamere. If your Grace please, I have told you I had an Express came from my Wife, that told me it was a Mistake as to the Warrant, but that my Child was very ill, and I must make haste up.

L. H. Steward. Have you any more Witnesses my Lord?

L. Delamere. Yes my Lord; I desire Mr. Kelsey may be called, (He came in.)

L. H. Steward. Well, what say you?

Mr. Kelsey. My Lord came down upon the Sunday night at eleven of the Clock, and stayed at home all Monday, and on Tuesday Morning

at 3 of the Clock in the Morning, he took Horse for London, and I have Letters by me that are dated the 4th of June which was *Thursday*, that told me my Lord was come to Town the night before.

L. H. Steward. Whose are those two Letters?

Mr. Kelsey. They were from my Lady and Mrs. Vere Booth, and both came by the same Post.

L. Delamere. I shall call one Witness more, my Lord, to prove that my Child was sick here in Town, and the time, and that is Sir Thomas Millington, who was his Physician.

Sir Thomas was called, and came in.

L. Delamere. Pray Sir Thomas, can you recollect your self what time my Son was ill last Year?

Sir Thomas Millington. My Lord, I was sent for to my Lord Delamere's Son upon the 28th of May, and I found him then very ill, and he continued so for two days, insomuch as I told my Lady Delamere his Mother that I thought the Child would not escape. I told it likewise to Sir James Langham, who is my Neighbour in *Lincolns - Inn - Fields*; what they did upon it, whether they sent for my Lord Delamere to Town or no, I cannot tell, but I know punctually this was the time by reason the Bills I wrote are dated on that day, otherwise I could not have remembred the time, but the Bills being sent me from the Apothecary, I find that date to them.

L. H. Steward. Pray, Mr. Attorney will you call Edlin again, or Vaux, either of them.

Mr. Att. Gen. Here is Edlin, my Lord.

L. H. Steward. Where did you part with my Lord Delamere, and when?

Edlin. Upon *Thursday* the 28th of May at *Hitchin*.

L. H. Steward. What time of the day was it when you parted?

Edlin. It was about ten of the Clock.

L. H. Steward. He went forward Post into *Cheshire*, did he not?

Edlin. He did not go Post I suppose, for he went upon his own Horse.

L. H. Steward. Did he go upon his own Horse?

Edlin. It was the same Horse he went to *Hitchin* upon.

L. H. Steward. Have you any more Witnesses, my Lord?

L. Delamere. No, my Lord. I hope I have given their Lordships Satisfaction in all Points, and need to give no further Evidence.

L. H. Steward. Have you any thing more then to say, my Lord?

L. Delamere. My Lords, I acknowledge I did go at that time privately a By-Road, and by the name of *Brown*, and as for *Jones*, who it is said came from *Holland* that day, I appeal to him himself, and I call God to Witness I never saw the Man before now in my Life; nay, till after I was made a Prisoner upon this account, I never so much as heard of his Name; and your Lordships see by the Proofs, that all that has been said against me, except what this Fellow *Saxon* has testified, is but hearsay, nay indeed but hearsay upon hearsay at the third and fourth hand.

My Lords, if People will make use of my name, and say this, and that and the other, and among themselves talk of Messages sent to me; can I or any Man in the World help it? at this rate who can be innocent, if a Man must be

guilty because others intend to draw him into Treason? For there is no more in the utmost that this proof can amount unto. It is at the pleasure of any two men in the world, to take away the Lives, Honours, and Estates of any of your Lordships, if it be a proof sufficient to make you guilty of Treason, for them to swear you were intended to be drawn into Treason.

And, my Lords, as to the truth of the thing itself, that there was any Message or Correspondence between the late *D. of Monmouth* and me, I call God to witness I have neither wrote nor sent Letter or Message to him, or received Letter or Message from him, this 3 years: I cannot tell what expectation he might have concerning me or any body else. It is very probable he might have expectation of assistance from some body, and that without such expectations he would not have made the attempt he did: But, my Lords, all that is nothing to me, I had no correspondence either by Letters or Messages with him, so that all that has been said upon that point of his expectations, and what he declared, I must give the same answer to that I gave to the Evidence about *Jones's* Message, That admitting it to be true, he did declare so, yet, no proof being made of an actual correspondence, it is no more but only an intention in him to draw men into Commission of Treason; and if that be allow'd for proof of guilt, I must repeat it again, there's no man can be innocent.

Upon the whole matter, my Lord, I must leave my Case to the consideration of your Lordships: I am not Master of so much Law or Rhetorick as the Kings Council, to plead in my own Cause, and I have had but little time to recollect and apply my defence to my accusation, but I hope what Evidence I have offered has given your Lordships full satisfaction that I am not guilty of what I stand charged with.

And after all that has been said, my Lords, I would beg your Lordships to consider this, that if in case I were guilty of these things, and were conscious to my self of having been engaged in an Affair of this nature, can any man imagine I could have been so hardy as to have surrendered my self upon the Kings Proclamation, nay, if I with those other two Gentlemen that he has named, had had any transactions of this kind, with such a Fellow as he has been made appear to be by his Neighbours (that must needs be thought a man of no Faith, because of no Reputation, tho' he gives himself a great Character as a man of great Interest, of wonderful dispatch and dexterity in the management of such matters) so as at first sight to put this large confidence in him; Can it be imagined I so little regarded my own Life and all that is dear to me, as to have surrendered my self, were it not that I was certain of my own innocence and integrity: Life it self, my Lords, is to be preferred above all things but Honour and Innocence; And *Job* saith, *Skin for skin and all that a man hath will he give for his life*, and why should I be presumed to have so little a value for it, as voluntarily to deliver up my self to destruction, had I been conscious that there was any one, who could really testify any thing that could hurt me.

Besides, My Lords, this very Fellow *Saxon* is but one Evidence, and how far you will believe him, I must submit it to you, but surely one Witness will never be sufficient to convict a man of Treason, tho' thousands of hear-says, and such trivial

trivial circumstances be tacked to it, especially when they are tacked to an Evidence, which I dare say your Lordships are far from thinking it deserves any Credit.

My Lords, I desire your leave to ask this one Question; Would not any of your Lordships think himself in a bad condition as to his Fortune, if he could produce no better Evidence to prove his Title to his Estate than what has been produced against me this day to take away my Life? and if such Evidence as this would not be sufficient to support a Title to an Estate, certainly it can never be thought sufficient to deprive a man of Life, Honour, Estate, and all.

My Lords, I am not the only Man that has been or may be falsely accused; God knows how soon the misfortune of a False Accusation may fall to the Lot of any of your Lordships; I pray God it never may, but since that may happen, I question not, but your Lordships will be very cautious, how by an easy Credulity you give encouragement to such a wickedness: For Knights of the Post will not end in my Tryal if they prosper in their Villany, and perhaps it may come home to some of your Lordships, if such practices be encouraged, as I cannot but firmly believe they will not.

My Lords, the Eyes of all the Nation are upon your Proceedings this day; Nay I may say, your Lordships are now Judging the cause of every man in *England*, that shall happen to come under like Circumstances with my Self at any time hereafter: For accordingly as you judge of me now, just so will inferior Courts be directed to give their Judgments in like Cases in time to come.

Your Lordships very well know, Blood once spilt can never be gathered up agen, and therefore unless the Case be very clear against me, you I am sure will not hazard the shedding of my blood upon a doubtful Evidence: God Almighty is a God of Mercy and Equity: Our Law, the Law of *England*, is a Law of Equity and Mercy, and both God and the Law require from your Lordships Tendernefs in all Cases of Life and Death, and if it should be indifferent, or but doubtful to your Lordships (which upon the Proofs that I have made, I cannot believe it can be) whether I am innocent or guilty, both God and the Law require you to acquit me.

My Lords, I leave my Self, my Cause and all the Consequences of it with your Lordships; And I pray the All-Wise the Almighty God direct you in your Determination.

Lord High Steward. Have you any thing more to say, My Lord?

Lord Delamere. No, My Lord.

Lord High Steward. Then Mr. Attorney, and you that are of the Kings Council, What have you to say more?

Mr. Soll. General. May it please your Grace, and you my Noble Lords the Peers of my Lord *Delamere*, the Prisoner at the Bar.

The Evidence that hath been given against this Noble Lord is of two-Natures, part of it is positive Proof, and part is circumstantial, and though it be allowed that there must be two Witnesses in Cases of Treason, and that Circumstances tho never so strong, and sufficient to fortify one positive Proof, do not nor can make a second positive Witness; Yet I crave leave to say, that there may be Circumstances so strong and

cogent, so violent and necessary to fortify a positive Testimony, that will in Law amount to make a second Witness such as the Law requires.

My Lords, I do not say every Circumstance will do it, but such as is necessarily and violently tending to the same thing that was positively proved. As for Example,

If a Man comes and Swears against another that he said he will go immediately and kill the King, and another Man that did not hear those words, comes and testifies his lying in wait, that circumstance of lying in wait, that was an action indifferent in it self, yet, when applyed to the positive Proof, will be a second Witness to satisfy the Law, which requires two Witnesses in Treason.

I must confess, my Lords, when we will make Circumstances to be a second Evidence they must be such as are necessarily tending to fortify the positive Evidence that was given by the single Witness: Now whether that be so in this Case, I must, as becomes me, leave to your Lordships Consideration: It is not my business to carry the Evidence further than it will go, and I am sure it is not my duty to let it lose any of its weight; and if it have not that force it ought to have, I should be to blame, as, not having done what belongs to me to do: I will therefore state the Fact to your Lordships plainly as it stands upon the Proof, and submit the whole to your Lordships Determination.

My Lords, Our positive Proof with which I crave leave to begin, is but by one single Witness, and that is *Saxon*, and his Evidence is this, that being in *Cheshire* where he lives, he was sent for about the 3^d or 4th of *June* last to my Lord *Delamere's* House at *Mere*, and there he was brought into a lower Room, where he saw my Lord *Delamere*, Sir *Robert Cotton*, and Mr. *Crew Offey*: That my Lord *Delamere* told him he had received a Message lately by one *Jones*, that was sent from the Duke of *Monmouth*, whereby he understood that the Duke would speedily be in *England*, and that they must provide Men and Arms to assist him when he came; That he was a Man recommended to them by my Lord *Brandon*, and that upon his recommendation they had thought fit to intrust him in the matter, and withal told him, they were to raise 40000 *l.* and 10000 Men in that County: He tells you likewise, these Gentlemen gave him 11 Guineas and 5 *l.* in Silver to go of an Errand for them to the Duke of *Monmouth*, which he undertook to do, and hired a Horse to that purpose.

This, my Lords, is the positive Proof, and this, I must acknowledge, standing single and by it self, will make but one Witness; but whether the Circumstances that have been offered to your Lordships by the other Witnesses, be such violent Circumstances as necessarily tend to fortify and support that positive Evidence, and so will supply the defect of a second Witness, is the next question that I come to consider, and I shall take them into consideration in the same order that the Evidence was delivered.

The first Step, my Lords, that was made as to any Evidence that toucheth this Noble Lord at the Bar, was what was testified by my Lord *Gray*, for as to the other part of the Evidence that related to the Conspiracy in general, I need not trouble your Lordships with the repetition of it (that there was such an one is notoriously known)

known) but I say that part of the Evidence in his History of the Conspiracy, which my Lord Gray brought home to my Lord Delamere was this,

That upon the first Meetings and Consultations, it was resolved upon, That the Duke of Monmouth should go into *Cheshire* to make an Interest there, and among the Persons that he was directed to go to, and to apply to for advice there, as Persons fit to be trusted, this Noble Lord was one.

That upon the Duke of Monmouth's Return out of *Cheshire*, he did give his Confederates here in Town an Account, how well he had been received, and that he liked all things very well there: This my Lords is the first Circumstance that has been offered to you, to shew that he had a Confidence in my Lord Delamere, as a Principal Support of his Designs at that very time.

The next thing that we offer, is this Message of Jones's, and for that, our Evidence has fully and plainly made it out to your Lordships, that Jones did go over into *Holland*, and his Business there was an Errand from Disney and Major Wildman, and the Confederates here. The effect of his Message was, That it was their Opinion, That the Duke of Monmouth should go for *Scotland* and joyn with my Lord Argyle; but upon the Receipt of the Message, he being angry, said, it was too late for such a Message now, and he would come into *England*, for he was ready to Sail, and thereupon he did send this same Jones back again into *England* upon a Message, to inform the Lords and others of his Party, among whom my Lord Delamere was one, that he would have them betake themselves into their several Countries, and not stay to be taken or clap'd up here, for that, he did understand, was the design; and this Message was delivered in Writing (now that the Duke of Monmouth did write a Note and give it to Jones, is verified by my Lord Gray's Testimony too) and this Sealed up, and he was not to open it till he came to Sea, and when he did open it, he found it containing a Signification of the Place where he was to Land, and where he was to Rendezvous, which was *Taunton*, and who were the Persons that were to have Notice of it, among whose Names we find my Lord Delamere's to be one; but he likewise tells you, he was not the Man that was to carry the Message to these Persons, but he was to deliver it to Matthews or Wildman, and they were to transmit it to the other Persons.

He tells you likewise, that when he came to Town, which was the 27th of May, he met neither with Matthews nor Major Wildman; whereupon being at a loss what he should do with his Message, for want of those other Persons, he acquainted Disney, that was Executed, with his Errand, who promised to take care that it should be delivered.

This, my Lords, is all Jones's Evidence, for Jones does not say that he himself acquainted, or that Disney did acquaint my Lord Delamere with the Message.

But here my Lords, is the main Circumstance that renders the matter suspicious, That very Night that Jones came to Town, and Disney being acquainted with the Message, had undertaken to get it delivered, does my Lord Delamere at Ten of the Clock at Night go out of Town, in the Company of two Friends under the Disguise of the Name of Brown, and a Bye Road, and so

goes down to his own House in *Cheshire*; This I say, is the Circumstance that renders the thing suspicious.

Now my Lords, if we do prove by such sufficient Evidence, as may make the matter manifest to you, that my Lord Delamere had Notice of Jones's Message (for upon that Point the Case will turn, whether he had Notice such a Message was brought, that such things were in agitation, such Preparations made, and that they were all to go into the Country) then I say, his going down is a violent Presumption, he had an intent to comply with the Message, and joyn in the Design.

But now, my Lords, comes the Question; the main Question, How is it made out that he had Notice, Jones brought such a Message?

Jones indeed, my Lords, does not say that he himself imparted it to him, or that Disney told him he had Communicated it, but I think there is another Witness, and that is Storey, who saith, that Brand, one that knew of the Message, did acquaint him, that my Lord had received it at the Coffee-House, and that Night went out of Town.

It is true my Lords, this is but a Hear-say, but that which followed being matter of Fact, my Lord's going out of Town that Night, so late in the Night, and in such an unusual suspicious manner, gives more Credit to the Relation, than a bare Hear-say could have of it self.

For unless there be some good account given of my Lords thus going out of Town, it is a kind of necessary Presumption, that he was acquainted with the Message, part of which was, that he should go out of Town; and if so, it can have no other Construction, with Submission, than to be in pursuance of, and complying with the Directions that that Message brought him from the Duke of Monmouth.

My Lords, to carry this a little further, there were two Witnesses produced that went out of Town with him; they seem indeed unwillingly to give their Evidence, but I shall faithfully repeat what Testimony they gave: Their Names were Vaux and Edlin.

Vaux he saith he met my Lord Delamere at the Rummer-Tavern in *Queen-street* the 26th day of May, which was the day before Jones came to Town, and that then he appointed to go out of Town the next day, which was the 27th, and accordingly he did go.

Edlin he saith, he met Vaux at the Custom-House upon the 27th of May in the Morning, and being desired by him to go with him out of Town he did so, and there was with him a Gentleman whose Name was Brown, and who now appears to be my Lord Delamere; they went in Company with him as far as *Hitchin*, where they left him upon *Thursday* the 28th at Noon.

This Evidence is produced to shew, that my Lord did go out of Town at that time, and in that manner as has been alledged, and that these Persons went with him to conduct him a private way that he should not go the common Road. Your Lordships will consider what Answer hath been given to this, and what account my Lord Delamere has given of himself.

Another thing my Lords, that renders this matter suspicious, is the Name which my Lord was pleased to assume to disguise himself by, it being a Name by which the Party use to call

call my Lord in their Discourses of him; and to prove that, we have likewise produced two Witnesses, *Babington* and *Paunceford*.

Babington, he says, That in their Consultations there were Discourses of my Lord *Delamere* under the Name of *Brown*, and once at a Tavern when my Lord *Delamere* was named by one in the Company, he was presently caught up for it, and replied to, You mean Mr. *Brown*; and so it seems that was the Canting Name under which they discoursed of my Lord *Delamere*.

The other Witness *Paunceford*, he tells you, That being at *Disney's* House, and concerned with him in the Printing the late Duke of *Monmouth's* Declarations (for the printing of which, *Disney* was Executed) one *Lock* came for some of those Declarations for Mr. *Brown*, and they were to be sent into *Cheshire*: so that though your Lordships observe the Witness saith, some body else was called by the Name of *Brown*, yet you have had no account given you, that there was any other *Brown* in *Cheshire*.

It is true indeed, my Lords, that these are only things that *Disney* said, and *Lock* said; But I must take leave to say, it is very suspicious, that if my Lord went out of Town into *Cheshire* under the Name of *Brown*, and some Persons shall on the behalf of *Brown* come for Declarations to be sent into *Cheshire*, and my Lord commonly in that Party go by the Name of *Brown*, that those Declarations were for my Lord, and that will be a great Evidence of his Correspondence with *Monmouth*.

But I confess, my Lords, all this while our Proof is Circumstantial, and indeed there is no positive Proof but that of *Saxon*, and in him our Proof must center, for without him I must acknowledge nothing that has been offered will be Proof against my Lord upon this Indictment, for bare Circumstances and bare Suspicions will be no Proof against any Man, but such as are violent and necessary, and those joyned to a positive Proof, such as the Law requires.

Now then, my Lords, I come to the Consideration of what weight and stress is to be laid upon this positive Evidence of *Saxon*: And here I must confess there are objections made to this Testimony, to which I cannot readily give an Answer; for *Saxon* has Sworn, that he was there at such a time, and that he was sent for and entertained as a Person recommended by my Lord *Brandon*, as fit to be intrusted with the Secret, and capable of being employed to stir up the Country, in order to the prosecution of a Design they had on foot to raise a Rebellion, and he does Charge Sir *Robert Cotton* and Mr. *Crew* *Offley* to have been there at the same time.

The Evidence, my Lord, that has been produced to falsifie this positive Witness, in the Point of Sir *Robert Cotton's* being there, has been by or five or six Witnesses, who testify Sir *Robert Cotton's* being in Town, and not elsewhere from the 10th of *April* to the latter end of *July*; and I do not see what we have to say in answer to their Testimony; I must agree the Proof to be full in that Point, and if the Evidence they give be true, I cannot say that *Saxon's* Evidence can be true in that Point.

Likewise as to Mr. *Offley*, Sir *Willoughby Aston* and others have testified, that he was not at my Lord *Delamere's* at the time *Saxon* speaks of: For he gives you an account where he was every day from the 26th of *May* to the 4th of

June, and his own Servants bring him to his own House, upon the 4th of *June* in the Evening, which is quite another way than from Sir *Willoughby Aston's* to my Lord *Delamere's*; If this likewise be true, what *Saxon* says cannot be true, I must agree to it.

There is another thing that is offered on my Lord *Delamere's* part, that he was himself in Town at that time that *Saxon* says he was at *Mere*; But here indeed the matter seems to be a little more strange and dubious, that my Lord should make so much hast down, as to go out late at Night, and so cautiously as to go by a wrong Name, and yet to ride to Town again the Post-way to be here just the 3d of *June*, when *Saxon* swears he was in *Cheshire*.

I must confess there is the Proof of his two Brothers that say, they saw him in Town the 3d and 4th of *June*: There is likewise some account given of his going out of Town, that it was upon a Message received from his Mother; that his Child in the Country was Sick, and indeed he did go a By-way and change his Name, for fear of a Warrant in a Messengers Hands that was out against him to apprehend him.

Now, my Lords, I do not hear any thing that has been offered, that there was any such Warrant, or any discourse to ground that apprehension upon; my Lord had the first and only apprehension of a Warrant; but upon what Reasons he himself best knows: This apprehension made him go out of Town so privately, he says, because he would not be prevented of seeing his sick Child.

But how comes it to pass that my Lord makes such a speedy Return? By the Proofs it appears he did not get there till Sunday Night, and upon the Tuesday Morning comes Post for London.

The account that he gives of that, is this, his hast was to see another Child, that was here sick in Town: For he had received an express from his Wife upon the Monday to acquaint him, that the Coast was clear, and there was no Warrant out against him, but if he intended to see his Child alive, he must make hast up to Town; and accordingly upon the Tuesday Morning early he sets out, and upon the Wednesday in the Evening is here in Town again.

But, with submission, my Lords, there is no good Account given by this noble Lord, what reason there was for so many Post-Journeys backward and forward, as, had been testified, he to have made within a very little compass of time; for besides this of his return Post upon the 2d of *June*, there is only an Answer given to one of the rest, which is, that of the 5th of *May*, when he saith he went to take possession of the Land that he held by a Lease then renewed to him by the Bishop, which being of some Value and Consideration to his Lordship, and the Bishop being sick, he thought it necessary to go down Post himself, and would not be content to receive Livery by Attornment. This is the only answer that is given to all those times of his riding Post that have been given in Evidence.

These are matters of Suspicion that are offered to your Lordships, but I confess matters of Suspicion only, unless clear, positive, probable Proof be joyned with them, will not weigh with your Lordships to convict a Man of High-Treason where two Witnesses are required. But whether these matters of Suspicion be such violent and necessary Presumptions as tend to for-

tify the positive Testimony, I must leave that to the Consideration of your Lordships.

L. H. Steward. You do not call any more Witnesses then I perceive.

Mr. Sol. Gen. No, my Lord.

L. H. Steward. My Lords, it has not been usual of late, for those who have sat in the place where I now am, upon those Occasions to give your Lordships any trouble in repeating or observing upon the Evidence: In this Case the Evidence that hath been given has been very long, and it would be too great a Presumption in me, should I have any manner of doubt in the least, that either your Lordships have not well observed it, or the learned Council for the King have been defective in collecting or remarking upon it, so as to need my Assistance.

But my Lords, I confess there is something I cannot omit taking notice of, not for your Lordships sakes; but for the sake of this numerous and great Auditory, that one Mistake in point of Law might not go unrectified, which seemed to be urged with some earnestness by the Noble Lord at the Bar, that there is a necessity in point of Law, that there should be two positive Witnesses to convict a Man of Treason.

He seemed to lay a great stress upon that, but certainly his Lordship is under a great mistake; as to the Law in that Point; for without all doubt, what was urged in answer to this Objection by that learned Gentleman that concluded for the King, is true, There may be such other substantial Circumstances joyned to one Positive Testimony, that, by the Opinion of all the Judges of England, several times has been adjudged and held to be a sufficient Proof.

As for the purpose, in this Case, suppose your Lordships, upon the Evidence that has been given here this day, should believe *Saxon* swears true, who is a positive Witness, and shall then likewise believe that there was that Circumstance of *Jones's* coming over from Holland with such a Message upon the 27th of May (which is directly sworn in Evidence, you are the Judges of that Evidence) and what the other Witnesses have sworn likewise, and is not denied by my Lord, the Prisoner at the Bar, that he went out of Town that Night, changed his Name, and went an indirect By-Road, certainly these Circumstances if your Lordships be satisfied he went for that purpose do necessarily knit the positive Testimony of *Saxon*, and amount to a second Witness.

That is, if *Saxon's* positive Testimony be true, then suppose all these Circumstances that gave the Jealousie do make up a strong Presumption to join with the positive Evidence of *Saxon*, then you have two Witnesses as the Law requires, especially if the answer given by the Prisoner to those Circumstances be not sufficient (as the slender account he gives of his so frequent Journeys in so short a compass of time) but that there still remains some Suspicion; I could have wished indeed, that matter might have been made somewhat more clear; that no shadow of Suspicion might remain.

Your Lordships are Judges: And if you do not believe the Testimony of *Saxon*, whose Testimony hath been so positively contradicted by divers Witnesses of Quality, the Prisoner ought to be acquitted of this Indictment: if your

Lordships please, you may go together and consider of it.

Lords. Ay, withdraw, withdraw.

Then the Peers withdrew in their order according to their Precedency, with the Serjeant at Arms before them.

L. H. Steward. Lieutenant of the Tower, take your Prisoner from the Bar.

The Prisoner was taken into the little Room appointed for him at the Entrance into the Court.

The Peers staid out about half an hour, and then returned in the same Order that they went out in, and seated themselves in their places as before.

Cl. Crown. Serjeant at Arms, take the Appearance of the Peers. *Lawrence Earl of Rochester Lord High Treasurer of England.*

He stood up uncovered and answered.

Lord Treasurer. Here.

And so did all the rest.

L. H. Steward. My Lords, are you agreed of your Verdict?

Lords. Yes.

The Lord High Steward took their Verdict Seriatim, beginning with the puisne Peer in this manner:

L. H. Steward. How say you my Lord Churchill, is Henry Baron of Delamere guilty of the High-Treason whereof he stands indicted and hath been Arraigned, or not guilty?

The Lord Churchill stood up uncovered, and laying his Hand on his Breast answered,

Lord Churchill. Not guilty upon my Honour.

And so did all the rest of the Peers.

L. H. Steward. Lieutenant of the Tower, bring your Prisoner to the Bar.

The Prisoner was brought again to the Bar.

L. H. Steward. My Lord Delamere, I am to acquaint you that my Noble Lords your Peers, having considered of the Evidence that hath been given, both against you and for you, after they were withdrawn, have returned and agreed of their Verdict, and by that Verdict have unanimously declared, that you are not guilty of the High-Treason, whereof you have been indicted, and this day Arraigned, and therefore I must discharge you of it.

L. Delamere. May it please your Grace, I shall pray to Almighty God, that he will please to give me a Heart to be Thankful to him for his Mercy, and my Lords for their Justice; and I pray God deliver their Lordships, and all honest Men, from wicked and malicious, lying and false Testimony; I pray God bless His Majesty and long may he Reign.

L. H. Steward. And I pray God continue to him his Loyal Peers, and all other his Loyal Subjects.

Cl. Crown. Serjeant at Arms, make Proclamation.

Serjeant at Arms. Oyes. My Lord High-Steward of England, his Grace straightly willeth and commandeth all manner of Persons here present to depart hence in God's Peace and the Kings, for his Grace my Lord High Steward of England now dissolves his Commission.

God save the King.

At which words his Grace taking the white Staff from the Usher of the Black Rod, held it over his own Head and broke it in two: Thereby dissolving the Court.

*Proceedings against the Lord Bishop of London,
in the Council Chamber at White-hall, by the Lords Com-
missioners appointed by His Majesty to inspect Ecclesiastical
Affairs. 2 Jac. 2. 1686.*

The King's Ecclesiastical Commission.



James the Second, by the Grace of God, King of England, Scotland, France and Ireland, Defender of the Faith, &c. To the most Reverend Father in God, Our Right Trusty and Wellbeloved Councillor, William Lord Archbishop of Canterbury, Primate of all England, and Metropolitan. And to Our Right Trusty and Right Well-beloved Councillor, George Lord Jeffreys, Lord Chancellor of England. And to our Right Trusty, and Right Well-beloved Cousin and Councillor, Lawrence Earl of Rochester, Lord High Treasurer of England. And to Our Right Trusty, and Right Well-beloved Cousin and Councillor Robert Earl of Sunderland, President of Our Council, and Our Principal Secretary of State. And to the Right Reverend Father in God, Our Right Trusty and Well beloved Councillor Nathanael Lord Bishop of Durham. And to the Right Reverend Father in God, Our Right Trusty and Well-beloved Thomas Lord Bishop of Rochester. And to Our Right Trusty and Well-beloved Councillor, Sir Edward Herbert, Kt. Lord Chief Justice of the Pleas, before Us to be holden, Assigned, Greeting. We for divers good, weighty and necessary Causes and Considerations, Us hereunto especially moving, of Our meer Motion and certain Knowledge, by force and virtue of our Supream Authority and Prerogative Royal, do Assign, Name, and Authorize by these Our Letters-Patent, under the Great Seal of England, You the said Lord Archbishop of Canterbury, Lord Chancellor of England, Lord High Treasurer of England, Lord President of Our Council, Lord Bishop of Duresme, Lord Bishop of Rochester, and Our Chief Justice aforesaid, or any Three or more of you, whereof You the said Lord Chancellour to be one, from time to time, and at all times during Our Pleasure, to Exercise, Use, Occupy and Execute under Us all manner of Jurisdictions, Privileges, and Prebeminencies in any wise touching or concerning any Spiritual or Ecclesiastical Jurisdictions, within this Our Realm of England, and Dominion of Wales, and to visit, reform, redress, order, correct and amend all such Abuses, Offences, Contempts, and Enormities whatsoever, which by the Spiritual or Ecclesiastical Laws of this Our Realm can or may lawfully be reformed, redressed, corrected, restrained, or amended, to the Pleasure of Almighty God, and increase of virtue and the Conservation of the Peace and Unity of this Realm. And we do hereby give and grant unto you, or any Three or more of you, as is aforesaid, whereof you the said Lord Chancellour to be one, thus by us named, assigned, authorized and appointed, by force of our Supream Authority and Prerogative Royal, full Power and Authority, from time to time, and at all times during our Pleasure, under us to exercise, use and

execute all the Premises, according to the tenor and effect of these our Letters-Patents, any matter or cause to the contrary, in any wise notwithstanding. And we do by these Presents give full Power and Authority unto you, or any Three or more of you, as is aforesaid, whereof you the said Lord Chancellour to be one, by all lawful ways or means from time to time hereafter during our Pleasure, to enquire of all Offences, Contempts, Transgressions, and Misdemeanours done and committed, and hereafter to be done and committed, contrary to the Ecclesiastical Laws of this our Realm, in any County, City, Borough, or other place or places exempt or not exempted, within this our Realm of England, and Dominion of Wales; and of all and every Offender or Offenders therein, and them and every of them to order, correct, reform, and punish, by censure of the Church. And also we do give and grant full power and authority unto you, or any Three or more of you, as is aforesaid, whereof you the said Lord Chancellour to be one, in like manner as aforesaid, from time to time, and at all times during our Pleasure, to enquire of, search out, and call before you all and every Ecclesiastical Person or Persons, of what degree or dignity soever, as shall offend in any of the particulars before-mentioned, and them, and every of them to correct, and punish for such their misbehaviours and misdemeanours, by suspending or depriving them from all Promotions Ecclesiastical, and from all Functions in the Church, and to inflict such other Punishments or Censures upon them, according to the Ecclesiastical Laws of this Realm. And further we do give full Power and Authority unto you, or any three or more of you as is aforesaid, whereof you the said Lord Chancellour to be one, by Virtue hereof, and in like Manner and Form as is aforesaid, to enquire, hear, determine, and punish all Incest, Adulteries, Fornications, Outrages, Misbehaviours, and disorders in Marriage, and all other Grievances, great Crimes or Offences which are punishable, or reformable by the Ecclesiastical Laws of this our Realm, committed or done or hereafter to be committed or done, in any place exempt or not exempt, within this our Realm, according to the Tenor of the Ecclesiastical Laws in that behalf: Granting you, or any three or more of you as is aforesaid, whereof you the said Lord Chancellour to be one, full Power and Authority to order and award such Punishment to every such Offender, by Censures of the Church, or other lawful Ways, as is aforesaid; and further we do give full Power and Authority unto you, or any three or more of you, as is aforesaid, whereof you the said Lord Chancellour to be one, all and every Offender and Offenders in any of the Premises, and also all such, as by you, or any three or more of you as is aforesaid, whereof you the said Lord Chancellour to be one,

one, shall seem to be suspected Persons in any of the Premises, and them to examine, touching every or any of the Premises which you shall object against them; and to proceed against them, and every of them, as the nature and quality of the Offence, or suspicion in that behalf shall require. And also to call all such Witnesses, or any other Person or Persons that can inform you concerning any of the Premises, as you, or any three or more of you as is aforesaid, whereof you the said Lord Chancellor to be one, and them, and every of them, to examine upon their corporal Oaths, for the better tryal and opening of the Truth of the Premises, or any part thereof. And if you, or any three or more of you as is aforesaid, whereof you the said Lord Chancellor to be one, shall find any Person or Persons whatsoever obstinate or disobedient in their Appearance before you, or any three or more of you, as is aforesaid, whereof you the said Lord Chancellor to be one, at your Calling and Commandment, or else not in obeying, or in not accomplishing your Orders, Decrees and Commandments, or any thing touching the Premises or any part thereof, or any other Branch or Clause contained in this Commission, that then you, or any three or more of you, as is aforesaid, whereof you the said Lord Chancellor to be one, shall have full Power and Authority to punish the same Person and Persons so offending, by Excommunication, Suspension, Deprivation, or other Censures Ecclesiastical; and when any Persons shall be convicted or prosecuted before you as aforesaid, for any of the Causes above expressed, at the instance and suit of any Persons prosecuting the Offence in that behalf, that then you, or any three or more of you as is aforesaid, whereof you the said Lord Chancellor to be one, shall have full Power and Authority to award such Costs and Expences of the Suit, as well to and against the Party, as shall prefer or prosecute the said Offence, as to and against any Party or Parties that shall be convicted according as their Causes shall require, and to you in Justice shall be thought reasonable. And further our Will and Pleasure is, That you assume our Well beloved Subject William Bridgman Esquire, one of the Clerks of our Council, or his sufficient Deputy or Deputies in that behalf to be your Register, whom we do by these Presents depute to that Effect, for the Registering of all your Acts, Decrees and Proceedings, by virtue of this our Commission; and that in like manner, you, or any three or more of you, whereof you the said Lord Chancellor to be one, by your Discretion shall appoint one or more Messenger or Messengers, or other Officer or Officers necessary and convenient to attend upon you for any Service in this behalf. Our Will and express Commandment also is, That there shall be two Paper Books indented and made, the one to remain with the said Register, or his sufficient Deputy or Deputies, the other with such Person, and in such places as you the said Commissioners, or any Three or more of you, whereof you the said Lord Chancellor to be one, shall in your Discretions think most fit and meet; in both which Books shall be fairly entered all the Acts, Decrees and Proceedings made or to be made, by virtue of this our Commission. And whereas our Universities of Oxford and Cambridge, and divers Cathedral and Collegiate Churches, Colledges, Grammar Schools, and other Ecclesiastical Incorporations, have been erected, founded, and endowed by several of our Progenitors, Kings and Queens of this Realm, and some other by the Charity and Bounty of some of their Subjects, as well within our Universities as other Parts and Places, the Ordinances, Rules and Statutes whereof be either imbraced, lost, corrupted, or altogether imperfect. We do therefore give full Power and Authority to you, or any Five or more of you, of whom

we will you the forenamed the Lord Chancellor always to be one, to cause and command in our Name, all and singular the Ordinances, Rules and Statutes of our said Universities, and all and every Cathedral and Collegiate Churches, Colleges, Grammar Schools, and other Ecclesiastical Incorporations, together with their several Letters Patents, and other Writings, touching or in any wise concerning their several Erections and Foundations, to be brought and exhibited before you, or any five or more of you, as is aforesaid, whereof you the said Lord Chancellor to be one, willing, commanding, and authorizing of you, or any five or more of you, as aforesaid, whereof you the said Lord Chancellor to be one, upon the exhibiting, and upon diligent and deliberate view, search and Examination of the said Statutes, Rules and Ordinances, Letters Patents and Writings as is aforesaid, the same to correct, amend and alter; and also where no Statutes are extant, in all or any of the aforesaid Cases, to devise and set down such good Orders and Statutes as you, or any five or more of you, whereof you the said Lord Chancellor to be one, shall think meet and convenient, to be by us confirmed, ratified, allowed, and set forth, for the better order and rule of the said Universities, Cathedral and Collegiate Churches, Colleges and Grammar Schools, Erections and Foundations, and the Possessions and Revenues of the same, and as may best tend to the Honour of Almighty God, increase of Virtue, Learning and Unity in the said Places, and the publick Weal and Tranquillity of this our Realm. Moreover, our Will, Pleasure and Commandment is, that you our said Commissioners, and every of you, shall diligently and faithfully execute this our Commission, and every part and branch thereof, in manner and form aforesaid, and according to the true meaning thereof, notwithstanding any Appellation, Provocation, Privilege or Exemption in that behalf, to be had, made, pretended, or alledged by any Person or Persons resident or dwelling in any place or places exempt, or not exempt, within this our Realm; any Law, Statutes, Proclamations or Grants, Privileges or Ordinances, which be, or may seem contrary to the Premises notwithstanding. And for the better Credit, and more manifest notice of your so doing, in the Execution of this our Commission, our Pleasure and Commandment is, That to your Letters missive, Proseses, Decrees, Orders and Judgments, for or by you, or any three or more of you, as is aforesaid, to be awarded, sent forth, had, made, decreed, given or pronounced, at such certain publick places as shall be appointed by you, or by any three or more of you, as is aforesaid, for the due Execution of this our Commission, you or some three or more of you as is aforesaid, whereof you the said Lord Chancellor to be one, shall cause to be put and fixed a Seal, ingraven with a Rose and Crown, and the Letter J. and figure 2. before, and the Letter R. after the same, with a Ring or Circumference about the same Seal, containing as followeth, *Sigillum Commisionariorum Regiæ Majestatis ad Causas Ecclesiasticas.* Finally, We will and command all singular other our Ministers and Subjects in all and every place and places, exempt and not exempt, within our Realm of England, and Dominion of Wales, upon any Knowledge or Request from you, or any three or more of you, as is aforesaid to them, or any of them, given or made, to be aiding, helping or assisting unto your Commandments, in and for the due executing your Precepts, Letters and other Proseses, requisite in and for the due Executing of this our Commission, as they and every of them tender our Pleasure, and will answer the contrary at their utmost Perils. In Witness, &c.

The King's Letter.

Dated Monday, July the 14th.
Delivered at Fulham on Thursday, being the 17th
of the same June in the Afternoon, by
Mr. Atterbury the Messenger.

James R.

Right Reverend Father in God; We greet you well.
Whereas We have been inform'd, and are fully
satisfied, that Dr. John Sharp, Rector of the Parish
Church of St. Giles in the Fields, in the County of
Middlesex, and in your Diocese, notwithstanding our
late Letter to the most Reverend Fathers in God the
Archbishops of Canterbury and York, and our Direc-
tions concerning Preachers, given at our Court at
Whitehall, the 15th of March, 1685. in the second
year of our Reign; yet he, the said Dr. John Sharp,
in Contempt of the said Orders, hath in some of the Ser-
mons he hath since preached, presumed to make unbe-
coming Reflections, and to utter such Expressions as were
not fit or proper for him; endeavouring thereby to beget
in the Minds of his Hearers an Evil Opinion of Us
and Our Government, by insinuating Fears and Jealous-
ies to dispose them to Discontent, and to lead them into
Disobedience and Rebellion. These are therefore to
require and command you immediately upon Receipt
hereof, forthwith to Suspend him from further Preaching
in any Parish-Church or Chappel in your Diocese, until
he has given Us Satisfaction, and Our further Pleasure
be known herein. And for so doing this shall be your
Warrant: And so We bid you heartily Farewell.

Given at our Court at Windsor, the 14th Day of
June, 1686. in the Second Year of Our Reign.

By His Majesties Command.

Sunderland.

The Bishop of London's Answer.

Sent by Dr. Sharp to the Earl of Sunderland, then
at Hampton-Court, upon Friday June 18. who
could have no Answer.

To the Right Honourable the Earl of
Sunderland, Lord President, &c.

My Lord,

I always have, and shall count it my Duty to obey
the King in whatever Commands he lays upon me,
that I can perform with a safe Conscience: But in
this, I humbly conceive, I am obliged to proceed ac-
cording to Law; and therefore it is impossible for me
to comply; because, tho' His Majesty commands me
only to execute his Pleasure, yet in the Capacity I am
to do it, I must Act as a Judge; and your Lordship
knows no Judge condemns any Man before he has
Knowledge of the Cause, and has cited the Party.
However, I sent to Mr. Dean, and acquainted him

with His Majesties Displeasure, whom I find so ready
to give all Reasonable Satisfaction, that I have thought
fit to make him the Bearer of this Answer, from him
that will never be unfaithful to the King, nor other-
wise than,

My Lord, your Lordships

most humble Servant;

H. London.

On Sunday after Dr. Sharp carried a Petition
to Windsor, which was not admitted to be
Read. Which is as follows.

To the King's Most Excellent Majesty,

The Humble Petition of John Sharp, Clerk,

Sheweth,

That nothing is so afflictive to Your Petitioner,
as his Unhappiness to have incurred your Ma-
jesties Displeasure, which he is so sensible of, that
ever since your Majesty was pleased to give notice of
it, he hath forborn all publick Exercise of his Fun-
ction, and still continues so to do.

Your Petitioner can with great Sincerity affirm,
that ever since he hath been a Preacher, he hath
faithfully endeavoured to do the best Service he could
in his Place and Station, as well to the late King,
your Royal Brother, as your Majesty, both by preach-
ing and otherwise.

And so far he hath always been from venting
any thing in the Pulpit tending to Schism or Fa-
ction, or any way to the Disturbance of your Ma-
jesties Government, that he hath upon all Occasions
in his Sermons, to the utmost of his Power, set him-
self against all sorts of Doctrines and Principles that
look that way: And this he is so well assured of,
that he cannot but apprehend that his Sermons have
been very much misrepresented to Your Majesty.

But if in any Sermon of his, any Words or Ex-
pressions have unwarily slipped from him, that have
been capable of such Constructions, as to give Your
Majesty Cause of Offence, as he solemnly professes
he had no ill Intention in those Words or Expressions,
so he is very sorry for them, and resolves for the
future to be so careful in the Discharge of his Du-
ty, that Your Majesty shall have Reason to believe
him to be Your most faithful Subject.

And therefore he earnestly Prayeth, that Your
Majesty out of Your Royal Grace and Clemency,
would be pleased to lay aside the Displeasure
You have conceived against Your Humble Petiti-
oner, and restore him to that Favour which the
rest of the Clergy enjoy under Your Majesties
Gracious Government.

So shall Your Petitioner ever Pray, &c.

In the Council-Chamber at White-Hall, &c.

Mercurii 4 die Augusti, 1686.

Present in Council, Lord Chancellour, Lord Bishop of Durham, Lord Treasurer,
Lord Bishop of Rochester, Lord President, Lord Chief Justice Herbert.

Upon my Lord Bishops appearing before them, according to a Summons sent unto him, the Lord Chancellour Jeffreyes began, viz.

Lord Chancellour. MY Lord Bishop of London, the Lords here present have received Orders from the King to inspect all Ecclesiastical Affairs and Persons; and he hath commanded us to cite you before us; and I desire you would give a positive and direct answer to it: What was the reason you did not suspend Dr. Sharp, when the King commanded, and sent you express Order so to do, and told you what it was for, viz. for Preaching Seditiously, and against the Government.

Lord Bishop. I have received such an Order; and if what was done in that affair was done amiss, and contrary to my Duty, it was my ignorance and inadvertency, and not a wilful fault: I have been always ready to express my duty to his Majesty, and if in this particular I have not complied, it was because, as I was told, I could not. I was not so shallow as to go on my own Head, but took the best advice I could get: I consulted those whose business it is more perfectly to understand these proceedings, all told me I could not legally do it, but by way of Citation and hearing him.

Lord Chanc. *Ignorantia Juris non excusat*; you ought to have known the Law, and it was a wonder you did not: The King is to be obey'd, and if you have any reason to shew in this particular, we are ready to hear you.

Lord Bishop. I knew not what would be laid to my Charge, and therefore was not provided to make such a Defence as I might have done; but if your Lordships will give me a Copy of your Commission, and a Copy of my Charge, and allow me some time, I will endeavour to give your Lordships satisfaction.

Lord Chanc. My Lord, I would not misinterpret your Words, but shall desire you to explain their meaning: If by desiring a Copy of our Commission, you design to quarrel with the Jurisdiction and Legality of the Court, I have another answer for you; but till I know your meaning here my answer is, that no Copy of the Commission can be granted, and it is unreasonable to desire it, it is upon Record, all the Coffee-houses have it for a penny a piece, and I doubt not but your Lordship has seen it.

Lord Bishop. I have never seen it; nor have I desir'd it for such ends to dispute the legality of it: But your Lordship knows it is a thing altogether new to this Generation, and it may be something may be found in it whereby I may be instructed and directed in my answer, and behaviour in the matter: But, my Lord, if I

may not have a Copy of it, will your Lordships please I may either read, or hear it read.

Lord Chanc. That is a thing I cannot grant of my self, I must ask my Lords Commissioners Judgment; and if you will be pleased to withdraw you shall hear it.

The Bishop and all the Company withdrew for a quarter of an Hour, then returning, the Lord Chancellour said,

My Lord, all the Commissioners are of opinion that your Request is not to be granted, and that it is unreasonable: Might every one that appears here challenge the sight of our Commission, and the Reading of it, all our time will be spent in the Reading, and we have something else to do.

The Proceedings of Courts in this kind are never by Libel and Articles: *sapientem succinctim ore tenus*, by word of Mouth only; and it is a short Question I ask, Why you did not obey the King?

Lord Bishop. It is a short Question, but requires more words to Answer it. I pray your Lordships to consider I am Peer, a Bishop, and have a Publick Trust, though unworthy, under a Publick Character; and I would behave my self as becomes one in these Capacities.

Lord Chanc. We know very well your Lordships Quality and Character, and are willing to shew all due respect to your Lordship, but yet we must have a due regard for the King and Government too: His Majesty must not be neglected.

Lord Bishop. My Lord, I suppose there is no Appeal from the Court; and when a Man is to be Condemned at one Bar, and is in danger of being knockt down at one blow, you would think it unreasonable he should not have some time to make his Defence.

Lord Chanc. My Lord, I suppose their Lordships will be willing to grant some time: I pray what time does your Lordship desire?

Lord Bishop. My Lord, it is the Assize time, and most of the Council, upon some occasion or other, (either business or diversion) are in the Country: I pray you, my Lord, I may have till the beginning of the Term.

Lord Chanc. Hah! That's unreasonable: His Majesties business cannot admit of such delays; methinks a Week should be enough: What say your Lordships, Is not a Week enough?

The Commissioners being asked, signified by the Chancellour that a Week was enough.

Lord Bishop. Since your Lordship will grant no more, I will ask no more.

Lord Chanc. Adjourn until Monday next, the Ninth of August, 1686.

Upon

Upon the Tenth day his Lordship came, attended with his Nephew, the Earl of Northampton, his Brother in Law Sir John Nicholas, and his Brother Sir Francis Compton, &c.

There being present in Council the same as before in the same Proceedings.

Lord Chanc. MY Lord, we are here to hear your Reasons.

Lord Bishop. My Lord, I have lost no time for preparing my Answer, but am not so ready as I might have been, because I could not light of the Commission your Lordship told me was upon Record, and in every Coffee-house, but imployed a whole Week to search for it, and could not have a sight of it until last Night; if your Lordship doubts the truth of this, I have the person ready to make Oath here of it.

Lord Chanc. My Lord, you are a person of Honour, and we will not question the truth of what you say, there needs no Oath: But my Lord I must tell you, that we will not admit of any quarrelling with our Commission, we are well assured of the legality of it, otherwise we would not be such Fools as to sit here.

Lord Bishop. My Lord, I have other Reasons why I desire a sight of your Commission; it may be it may not reach me, being a Peer and a Bishop; and it may be it may not reach this particular Case, and therefore I desire a sight of it, in regard I could not see it until the last Night. I have not had time to take advice what to answer; if your Lordship will not be satisfied, I must give such an answer as I have prepared, but it is my desire to have longer time for it.

Lord Chanc. Is this all you have to say?

Lord Bishop. This is the first thing: I do not desire to prolong the time, the necessity of the Case requiring it, the Council being out of Town in whom I think to confide.

Lord Chanc. If your Lordship will withdraw, we will give you an Answer.

He withdrew for a quarter of an Hour.

L. C. My Lord, as I formerly told you, we will not endure any quarrelling at our Commission; it will be an odd thing in us to give you time to pick holes in it, but we are willing to pay all due respect to your Lordship: What time do you require?

Lord Bishop. I shall submit to your Lordships; but I hope a fortnight will not be unreasonable.

Lord Chanc. Agreed: You shall have it until to Morrow fortnight in the Morning.

To which my Lord Chancellour added,

L. C. My Lord, when I told you our Commission was to be seen in every Coffee-house, I did not speak with any design to reflect on your Lordship, as if you were a hunter of Coffee-houses. I abhor'd the thoughts of it, and intended no more by it but that it was common in the Town.

Note, When the Bishop spake concerning the Commission, Sir Thomas Clarges spake with a loud Voice, saying, Well put, well put; my Lord speaks nothing but truth. There was also another Gentleman, Sir John Lowther, of Lincolnshire, who as he was coming away in the Crowd, said, There are some who have represented me as a Papist, but the contrary shall appear; I will not be afraid, nor ashamed, to Vindicate

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my Lord Bishops Cause, before the Commissioners themselves.

Tuesday, August 1686.

There being present in Council the same as in the former proceedings: The Lord Bishop attending, the proceedings were as follow.

Lord Chanc. MY Lord, we are now ready to hear your Lordships Answer.

Lord Bishop. My Lord, notwithstanding the time hath been very short, considering the weightiness of the matter, and the absence of many of the Learned Council; I have taken what advice I could, and have consulted those that are very Learned in the Laws. I hope there will be no Mis-interpretation of my Words, I do not intend any thing which is derogatory to the Kings Supremacy; that is undutiful to His Majesty, or Disrespectful to your Lordships. My Council tells me, that your proceedings in this Court, are directly contrary to the Statute Law, and are here to plead it if your Lordships will admit them.

Lord Chanc. We will neither hear your Lordship nor your Council in the matter; we are sufficiently satisfied of the legality of our Commission, as we often told you.

Lord Bishop. My Lord, I am a Bishop of the Church of England, and by all the Law in the Christian Church, in all Ages, and by the particular Law of this Land, I am, in case of offence, to be Tryed by my Metropolitan and Suffragans; I hope your Lordship will not deny the Right and Priviledge of Christian Bishops.

Lord Chanc. My Lord, you know our proceedings are according to what has been done formerly, and that we have an Original Jurisdiction; this is still questioning our Court.

Lord Bishop. It is partly.

Lord Chanc. Nay, it is absolutely so.

Lord Bishop. My Lord, I hope you will interpret every thing in your Commission in favour of the Person that is brought before you: I humbly conceive that your Commission doth not extend to the Crimes laid to my Charge, for you are to censure faults which are committed: This that I am accused of, was before the Date of your Commission.

Lord Chanc. I confess there is such a Clause; but those are general Clauses that take in things that are past, as well as those that are to come; hath your Lordship any thing more?

Lord Bishop. My Lords, protesting in my own Right, to the Laws of the Realm, as a Subject, and the Rights and Priviledges of the Church, as a Bishop, I shall, with your Lordships leave, give you my answer.

Which was accepted; and the Bishop withdrew, and left Dr. Sharp's Petition, which the King had refused to accept.

Lord Chanc. My Lord, we have read the Paper.

Lord Bishop. My Lords, it is Dr. Sharp's Petition to the King.

Lord Chanc. My Lord, be pleas'd to take it again, we are not concerned in it; will you please that your Lordships answer be read?

Lord Bishop. Yes, if your Lordship please. My Lord, I have this to say further, What I did

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in this matter was *Jurisperitorum Concilio*. I consulted my Council, who is the Judge of my Courts, as well as others; and the Law says, That what is done by the advice of Council, shall not be interpreted to be done maliciously, or obstinately. The Law, in this Case, requires, that if a Prince require a Judge to execute an order, which is not agreeable to the Law, he shall *Rescribere & Reclamare Principi*: Now, my Lord, I conceived I acted in this according to my Duty, for I wrote back to my Lord President, in as becoming words as I could; and acquainted him, that an Order to suspend before Citation and hearing the Person, is against Law, and expected his Majesties further pleasure.

In the next place, my Lords, I did in effect what the King commanded to be done, for I advised Dr. Sharp to forbear Preaching till His Majesty had received Satisfaction concerning him; and accordingly he hath forborn in my Diocess.

Lord Chanc. My Lord, will you have your Paper read?

Lord Bishop. Yes, if your Lordship please. Which contained the Kings Letter, and the Bishops answer thereto.

Lord Chanc. Hath your Lordship any more to say?

Lord Bishop. My Lord, I desire your Lordship would hear my Council, by whom you may have more clear and full Satisfaction concerning what I have said.

Whereupon the Bishop was desired to withdraw, and after half an Hour, he and his Council were called in; who were Drs. Oldish, Hodges, Price, and Newton. A brief Account of what they pleaded.

Dr. Oldish. My Lord, the question before your Lordship, is, whether the Bishop of London hath been Disobedient to the Kings Command; concerning which it must be considered,

First, What was commanded to be done.

Secondly, What he did in Obedience to it.

Thirdly, What Judgment ought to have been given by him.

It is apparent by the Letter, that the King did not take cognizance of the Cause, for the Words are (being inform'd) that Dr. Sharp, &c. so that it could not be an absolute Suspension, for that supposeth a Proof of the Crime charged upon him: Then let us consider the Words themselves:

That you Suspend him from Preaching. Now, my Lords, we have no such thing in our Laws, so that the meaning must be Silencing of him. Where there is an absolute Suspension, there ought to be Citation, form of Proceeding, Judgment and Decree; to act otherwise is contrary to the Law of God, of Nature, of all Nations in all Ages, and was never known in the World.

Lord Chanc. I am loth to Interrupt you, but I must tell you, this is an unnecessary Harrangue; we know that it was not an absolute Suspension, but the Question is, Whether the Bishop could Suspend him from Preaching?

Dr. Oldish. Then, my Lords, I have gained another Point; if it were only Silencing him, the Question is, Whether the Bishop did not execute the Kings Commands? I think he did, and in such a Method as is observed in our Courts,

When any eminent Person is accused, the Judges send to him by a Letter, and if he appears and complys with the Judges order, the Law is satisfied.

Judicium redditur in invitum non involentem: The Bishop did send for Dr. Sharp, shewed him the Kings Letter, advised him not to Preach till the King had received Satisfaction; in which he promised to observe his Lordships command, and hath not Preached to this day, so that His Majesties command was in effect fulfilled. My Lord, there is the like proceeding in the Common Law, for if an Attorney takes a Mans Word for his appearance, there lyes no Action against the Attorney.

Lord Chanc. *Cujus contrarium*: There lyes an Action of Escape against the Attorney —

Dr. Hodges. My Lords, the matter of fact hath been stated, and the Question is, Whether the Bishop hath been disobedient to the Kings Command? It appears that he has not: Because upon the receipt of his Majesties Letter, he requir'd the Doctor not to Preach, and he hath obeyed him in that which the King commanded. To suspend him the Bishop could not do, the Act of Suspension is a Judicial Act: The King writes to him as to a Bishop, to suspend as a Bishop and as a Judge, which could not be done without the hearing of the Cause. If the Prince sends to a Person that is not a Judge, that is only in a Ministerial Office, that Office is to execute his Commands: But when the King commands a Judge, he commands him to act as a Judge. This is no light matter the Doctor is accus'd of; it is for Preaching Sedition and Rebellion, which requires a severe Censure. And if the Bishop, as a Judge, had Suspended him, he had begun at the wrong end, for this had been Judgment before Process: In this Cause there ought to have been a Citation, our Books giving many Instances which would be too tedious to your Lordships — I will give this one: The Emperours proceedings against the King of Sicily, upon Information which he had received; and giving him no Citation, the King appealed to the Pope, who declared the Proceedings to be void; and that it was against the Law of Nature, which is above all positive Laws, to pass Sentence before Citation. This is the method of proceeding before all Courts, and I humbly conceive it is, and will be, the method of this Court; for otherwise, the Bishop need not to have been cited before you. The Bishop has done what was his Duty, he was bound to return his Reason to the King, why he did not do that which he commanded, and to expect his further answer; which was done. I affirm, that if a Prince, or a Pope, command a thing which is not lawful, it is the Duty of a Judge *Rescribere*; which is all he can do, Quoting his Author.

Dr. Price. The Question is *ut supra*: A Citation is *Jure Gentium*, and can never be taken away by any positive Command or Law whatsoever: The Bishop hath obeyed the King so far, as that he could not Rescribe, and expecting His Majesties further pleasure. If the Bishop could have Suspended him, it must have been done in *Agnes*; but in regard it was only silencing him, which was requir'd, it might be done in a private Room: The advice of a Bishop is in some sense an admonition, which is a Judicial

dicial Act, and this was given by a Bishop, and obeyed by the Doctor.

Dr. Newton. My Lord, the Question is not *ut supra*, the Bishop hath not been disobedient. As in Nature no Man can be desired to do that which is impossible, so no Man can be obliged to do an unlawful Act. (*Id non fit quod non legitime fit.*) This Rule obliges all Men, at all places, and at all times. The charge against *Dr. Sharp* is of a very high Nature, and he desired to be heard before he was condemned.

My Lords, the Bishops are *Custodes Canonum*, and therefore must not break them themselves: I affirm, the Bishop was so far from being Disobedient, that he was Obedient to the King: For where he did *Rescribere*, and heard not the further pleasure of the King returned, he ought to conclude, the King was satisfied with what he had written, according to his Duty, and the King had altered his Commands. A Citation, as your Lordships have heard, is according to all Laws, in all Places; in all Judicial Acts; there is something to be done according to Law, and somewhat according to the Discretion of the Judges, and for that Reason as well as these, the Offenders ought to be cited before him; that which was in the Bishops power to do he hath done, and it was in effect what the King commanded to be done.

Lord Bishop. If through mistake I have erred in any circumstance, I am ready to beg His Majesties Pardon, and shall be ready to make any reparation I am capable.

The Bishop withdrew for half an Hour, then was called in.

Lord Chanc. We will be here again on *Wednesday* next, and I desire your Lordship to be here again about 10 in the Forenoon.

Lord Bishop. My Lord, I desire that care may be taken concerning the Minutes which are taken by the Clerks of what hath passed, and that I may not be misrepresented to the King by the mistake of the Pen-man.

Lord Chanc. My Lord, you need not fear it; I hope you have a better Opinion of us; there shall be no advantage taken by them or us.

Bishop Robt. There shall be no advantage taken, but all imaginable care taken concerning it.

Note, When the Councillors were Pleading, *Dr. Pinfold*, the Kings Advocate, stood at the Chancellors Elbow and took Notes; by which it was expected that he should make a Reply, but he said nothing; and 'tis supposed that he staid with the Council, when the Bishop withdrew, and gave them Reasons for his silence.

Die Lunæ, 6. Septemb. 1686.

There being present in Council the same as in the former proceedings.

Lord MY Lord, pray sit down: You were desired to appear this day to hear your Sentence, which (to prevent mistake) we have ordered to be put in writing.

Lord Bishop. My Lord, may I have leave to speak before Sentence is read?

Lord Chanc. My Lord, we have heard you and your Council already.

Then the following Instrument whereby the Bishop of London was Suspended, was, by the Commissioners order, read by *Mr. Bridgman*, their Lordships Register.

By His Majesties Commissioners for Ecclesiastical Affairs.

WHereas *Henry*, Lord Bishop of London, hath been convened before us, for his Disobedience, and other his Attempts, mentioned in the Proceedings of this Cause; and the said Bishop being fully heard thereupon, We have thought fit, upon mature consideration of the matter, to proceed to this Our definitive Sentence, Declaring, Decreeing and Pronouncing, that the said *Henry*, Lord Bishop of London, shall for his said Disobedience and Contempt be Suspended, during his Majesties Pleasure; and accordingly, we do by these presents, Suspend him the said Lord Bishop of London, Peremptorily Admonishing and Requiring him hereby, to abstain from the Function and Execution of his Episcopal Office; and from all Episcopal and other Ecclesiastical Jurisdiction, during the said Suspension, upon pain of Deprivation and Removal from his Bishoprick.

Given under our Hand and Seal the 6th day of September, 1686. Sealed with the Seal of the Court, C. J. 2. Rose and Crown with this Inscription round it, *viz. Sigillum Commissionariorum Regiæ Majestatis ad Causas Ecclesiasticas.*

Signed by no body at all.

Some days since one of the Messengers attending the Court, deliver'd to the Dean of *St. Pauls*, a Warrant, the Tenour whereof followeth:

By His Majesties Commissioners for Ecclesiastical Affairs.

WHereas We have given Sentence of Suspension against *Henry* Lord Bishop of London, a Copy of which Sentence, under our Seal, is hereunto affixed. We have thought fit, and do hereby enjoin and require you, to cause the said Sentence to be affixt on the Door of that Chapter House, and on the place now called the South Door of the said Church; to the end that publick Notice may be taken of the said Suspension. And you are to certifie us, under your Common Seal, of the due Execution of what is hereby required.

At our Council Chamber at *White Hall*, on *Tuesday* the 28. of this Instant *September*, at 11 of the Clock in the Morning. Given under our Seal this Day of *September*, 1686. Sealed with the same Seal as the Sentence, but no Persons Names: Subscribed to the Dean and Chapter of *London*.

The Proceedings against the Vice-Chancellor and University of Cambridge. 3 Jac. 2.



ON the 9th. day of February, being *Ashwednesday*, came a Letter under His Majesties Signet Manual, dated the 7th of the same Month; the substance whereof, was, That hearing much in Commendation of one *Alban Francis* a Benedictine, the King was pleased to command the University, that they should admit him to the degree of Master of Arts, without administering to him any Oath or Oaths whatsoever, any Law or Statute, to the contrary in any wise notwithstanding, with which His Majesty was graciously pleas'd to dispence in the behalf of the said *Alban Francis*. On Monday the 21st the Vice Chancellor having summon'd a Congregation, read His Majesties Letter, purporting as before, and superscrib'd to our Trusty and well beloved Vice Chancellor of our University of Cambridge, to be communicated to the Senate there; on the Reading whereof the Senate, who made the best advantage they could of the Vice Chancellours delay in order to get advice, resolv'd to resist, their common and almost unanimous sence of the thing, and in a matter of such consequence and novel matter to interpose; accordingly there was a Paper, it is commonly call'd a Grace, the original Paper whereof I have seen drawn up in order to be put to the Vote of the House after the ordinary and usual way; but the constitution of that Body being such, that this must then of necessity have been first proposed to what we call the Head, which consists of six Persons, each of which has an Arbitrary Voice and Power, upon dislike to stop any proceedings finally, and hinder it being put to the House at all; this method was laid aside as impracticable upon that occasion, because Mr. *Basset* a declar'd Roman Catholick, and one that had openly asserted Mr. *Francis's* Cause, hapned to be one of the six who compose the Head for this Year; it was therefore presum'd, with great appearance of Reason, that he would put a bar to the proceedings, so the Grace not being suffered to be offered to the House, the Senates sence could never have been fully and particularly known thereupon.

This consideration constrain'd them to the use of another course, which was, without the formality of a Suffrage, voluntarily to testify their concurrence with the Vice Chancellor, and advise him to forbear the admitting Mr. *Francis* till the King had been Petitioned to revoke his Mandate; as soon as the Letter came to Town, the Vice Chancellor wrote a Letter to the Duke of *Albemarle* our Chancellor, to beg his Intercession with the King, which he returned word was tryed with none effect, but possibly such a body as the University concurring and signing a Petition, if that could be admitted, might prove better and more Successful. Now perhaps if every single Man present to the number perhaps of 150 or 200 should Address in Person to the Vice Chancellor, this might look tumultuary, and it was

thought the more quiet, decent, and respectful way to send up their sence by Messengers from each House; to this purpose, Dr. *Smoult* Professor of Casuistical Divinity, was made choice of by the Non Regents, and Mr. *Norris* Fellow of Trinity Colledge by the Regents. The substance of what they delivered, was, That the House thought the admission of Mr. *Francis* without the usual Oaths, illegal and unsafe, and for that reason advis'd the King might be petition'd, in the doing which they were ready to joyn and make it their act. The Opinions were given freely to the two Messengers of each House, and the thing was so unanimously approved of, that the only Persons taking notice of it, were three Papists, and one or two besides; afterwards there was a Gentleman admitted Doctor of Physick, having first taken the Oaths; and the Esquire Beadles and Registers were sent to let Mr. *Francis* know, that the Senate were ready to admit him also, provided that he would swear as the Laws appointed; but he refused, insisting on the Kings dispensation: and this was the business of the first Meeting about this matter.

Immediately upon the Congregations breaking up, Mr. *Francis* took Horse for London, to represent at *White-Hall* what had been done, and the same Afternoon the Heads met in the Consistory, to consult what Letters should be sent, and to whom; they agreed upon one to the Duke of *Albemarle*, and another to the Earl of *Sunderland*, being the Secretary of State, through whose hands the Mandate pass'd: An Esquire Beadle was dispatched presently to London, who after having waited on the Duke of *Albemarle*, endeavoured several times to get access to the Lord *Sunderland*, but could not; at last having sent in his Letter, the main whereof was a most humble Submission to His Majesty, with very Solemn and unfeigned Protestations, that what was now done, proceeded from no Principle of Disobedience and Stubbornness, but a Conscientious sence of our Obligation to Laws and Oaths, and a respectful intimation that we were ready to Petition the King that it might be admitted, but not daring to approach Him without some significations, that it would be acceptable, we applyed our selves to his Lordship, desiring him to do the University the favour to mediate for them, &c. He was dismissed without any particular answer; within a few days came a second Letter, dated February 24th, which by reason of the Assizes and some other publick business intervening, was not read in the Senate till Thursday March the 11th; the University and the Vice Chancellor in the mean time received a Letter, wherein they found great Satisfaction by the Opinions of some Eminent Lawyers, who concurr'd in the approbation of what was already done, and for the future, could advise no better course than humbly to represent the Case to His Majesty, and entreat him not to think amiss of so Loyal a Body, as always the University has shewed her self

self to be. The second Letter being read the day aforesaid, which was exactly the same as the former, excepting only the addition of a Clause, to do it at our own Peril: The Senate proceeded as before, to advise the *Vice Chancellour* to some expedient Form representing the Case fully and clearly to the King, as well with respect to the Illegality of such admission, as the many ill consequences that were likely to ensue from it; this the *Non Regent House* did by Mr. *Billers*, Fellow of *St. John's Colledge* (the Publick Orator), and Mr. *Newton* Fellow of *Trinity Colledge* (the Mathematical Professor,) the *Regent House* by Mr. *Henry Finch*, Son to the late Lord Chancellour, Mr. *Burton* of *St. John's Colledge*, and Mr. *William Bowles* of *Kings Colledge*; all which was done without the least hurry, or irregularity, without so much as asking an Opinion, but every Man went and gave it quietly and of his own accord, so that no manner of inducement was put upon any one to declare himself in the business, but what proceeded meerly from his own Conscience, and a due sense of things. Another large Letter being prepared for the Duke of *Albemarle*, wherein was every thing that could be thought of to prevail with His Majesty, and one likewise shorter and less particular to the Earl of *Sunderland*; that very Afternoon Mr. *Braddock* Fellow of *Catherine Hall*, and Mr. *Stanbope* of *Kings Colledge*, were desired by the *Vice Chancellour* to go to *London* with these Letters, and other Instructions to apply themselves to several Persons of Quality and Character, that they would joyn forces, and think it a common cause, for so addressing to the King, the success would be more probable, and the honour done to the University the greater. Sunday, March the 13th, the two Gentlemen waited on the Duke of *Albemarle* their Chancellour, who received them with all the goodness in the World, with assurance, that notwithstanding he had waited on the King before, and knew his Inclinations; nay, though he had been received with something of displeasure, yet considering the relation he bore us, he would make another attempt, and thought himself oblig'd to omit no endeavours for the Universities Safety and Advantage. Monday the 14th in the Evening the Duke of *Albemarle* waited on the King; and in the passage towards the Bed-chamber, took the two *Cambridge* Gentlemen into the Anti-chamber, that they might be introduced if occasion were; the King, on the Duke of *Albemarle's* acquainting him with the affair, told him he had not then leisure to talk, but he commanded the Letter, which the *Vice Chancellour* sent to the Duke of *Albemarle*, with which in his hands he passed through the Rooms; and making that Evening a visit to the Queen Dowager, gave the Duke no further opportunity of knowing his pleasure at that time. At the Dukes Return from the Inner Room, the Gentlemen desired him to give leave that they might use his Name to procure an easie admittance to the Earl of *Sunderland*; for they resolved to deliver their Letter to no hands but his own, if that might be: The Duke immediately sent one of his Gentlemen of the Horse to one of the Lord *Sunderland's* Secretaries, making it his desire that Mr. *Braddock* and his Companion might see the Earl, who accordingly appointed them to attend next Morning, and then conducted them to the Earl of *Sunderland's* Bed-side, who took the Let-

ter, and after some further Application to him by Word of Mouth, he promised to acquaint His Majesty, and tell them his Pleasure. On Thursday, at that time when Mr. *Braddock*, and Mr. *Stanbope* came, the account they received was only this, That the King had seen the *Vice Chancellours* Letter, and was offended at the proceedings of the University; and would take care very shortly to give a further answer.

Saturday the 9th. of April, Mr. *Atterbury* came down with a Summons from the Ecclesiastical Commissioners to this effect; That whereas complaint to them was made against the *Vice Chancellour* and Senate of *Cambridge*, for having refused to comply with His Majesties Royal Letters in behalf of Mr. *Francis*; they were therefore commanded to appear, the *Vice Chancellour* in Person, the Senate by themselves, and their Deputies before the Lords Commissioners, in the Council Chamber the 21st. of April, to answer to such things as shall be objected against them in His Majesties behalf upon the premises, &c. Monday April the 11th. a Senate was called, and persons nominated to represent the University; together with the *Vice Chancellour*, all which being unanimously approved by the Senate, they impowered them by an Instrument under the Common-Seal, to answer in their behalf; and be their full Actors, Attorneys and Proctors, as to what should arise from the Commission upon the late Summons; and Mr. *Atterbury* having received private Instructions to stay, and cite every Man that was chosen personally: He came accordingly into the Senate House, and Summon'd as many as were present, waiting on the rest on a convenient time: The persons deputed by the Senate to Represent and Act were these.

- Dr. *John Peachell*, Vice Chancellour.
- Dr. *John Eacherd*, Master of *Catherine Hall*.
- Dr. *Humphry Babington*, Fellow of *Trinity Colledge*.
- Dr. *Tho. Smout*, Fellow of *St. John's College*, and Professour of Casuistical Divinity.
- Dr. *Will. Cooke*, Dr. of Civil Law, and Fellow of *Jesus College*.
- Mr. *John Billers*, Fellow of *St. John's College*, and the Publick Orator.
- Mr. *Isaac Newton*, Fellow of *Trinity College*, and Mathematical Professor.
- Mr. *James Smith*, Fellow of *Queens College*.
- Mr. *George Stanbope*, Fellow of *Kings College*.

Thursday, April the 21st, Council-Chamber.
Commissioners present,

L. Chancellour <i>Jeffreys</i>	}	L. Bishop of <i>Durham</i> .
L. President <i>Sunderland</i> .		L. Bishop of <i>Rocheſter</i> .
L. <i>Mulgrave</i> .		L. Ch. Justice <i>Herbert</i> .
Earl of <i>Huntington</i> .		

L. Chancellour. I S Mr. Vice Chancellour here?—
Which is he? He standing over against the Lord Chancellour, bowed and shewed himself.

L. Chancellour. Is there any one come from the Senate to attend him?

Mr. *Stanbope*. Yes, my Lord, we are Eight of us here deputed by the Senate to answer what shall be objected against them, according to your Lordships Summons. (The noise and croud being

being great, Mr. Bridgman the Register, was forced to repeat that again to the Lord Chancellor.

L. Chancellor. Read the Summons. — Which was done.

L. Chancellor. Now Mr. Vice Chancellor what have you to say why you did not obey His Majesties Command, in behalf of the Gentleman mention'd there?

Mr. Vice Chancellor. My Lord, you enquire of me why I did not admit Mr. Francis, according to the King's Letters?

L. Chancellor. Yes, that's the Question I ask you.

Mr. Vice Chancellor. Is this the only Question your Lordship is pleased to ask me?

L. Chancellor. Nay, Mr. Vice Chancellor, we will not Capitulate in the very beginning; pray answer the first, and then you shall know what we have to say more.

Mr. Vice Chancellor. It is but a little while since we met in Town, and this is a Question of great Concern; I am not prepared to answer it on a sudden.

L. Chancellor. Why, Mr. Vice Chancellor, my Lords specified it in their Summons what would be question'd, on purpose you should not come unprepared; but it may be Mr. Vice-Chancellor did not attend sufficiently to that part of the Summons, therefore let it be read to him once more — which was done.

Lord Chanc. Now, Sir, you hear it is for refusing to comply with the King's Commands.

Mr. Vice-Chanc. My Lords, I beg time to answer you; my Lords, I am a plain Man, not used to appear before such an Honourable Assembly, and if I should answer hastily, it may be I might speak something indecent or unsafe, which I should be afterwards sorry for, therefore I beg leave, my Lords, to have time allowed us, for giving in such answer, as may be both for our Safety and your Lordships Honour.

Lord Chanc. (Smiling) Why, Mr. Vice-Chancellor, as for your own Safety, my Lords are willing you should take all the care you can, but for what concerns our Honour, do not you trouble your self, we are able to consult that without any Interposition of yours.

Mr. Vice-Chanc. My Lords, I beg your Pardon if I have said any thing unbecoming, I mean only the Honour that is due to your Lordships Quality my Lord; and therefore being to answer before Persons of Quality, I beg leave to do it with Council and in writing.

Lord Chanc. Well, withdraw a little, and my Lords will consider of your Request.

Then all the Company withdrew, and about three quarters of an hour after the Vice-Chancellor was sent for into the Anti-Chamber, where Mr. Bridgman told him the Lords Commissioners had given him time till Wednesday next, till four in the Afternoon, and leave to put his Answer in writing and with Council; and by what Council he would.

When the Council had heard the Commissioners had granted it, they were something surprized, and loath to move in the thing without a Rule of Court, therefore on Friday Morning Dr. Eachard and Mr. Stanhope went to Mr. Bridgman's Office, to desire such an Order, or at least a Copy of what had been said to the Vice-Chancellor; but he told them he had no Power to give either: only he repeated the Words over again, for the Satisfaction of them and

the Council, which was the same the Vice-Chancellor had related from his Mouth before.

Wednesday, April 27. In the Council Chamber, Commissioners present as before.

About a quarter of an hour before the Lords met, Mr. Bridgman came to the Vice-Chancellor, and desired to know of him whether he gave his answer in writing only, or whether any Council would appear to argue it; to which the Vice-Chancellor answered, that his Answer was drawing out in writing, and that he did not expect any Council there that day; Mr. Bridgman replied, the Lords had commanded him to ask these Questions, and would expect to know so much before they began to proceed. When the Delegates were call'd in, the Lord Chancellor said,

Lord Chanc. Mr. Vice-Chancellor, the last time you were here you desired time to put in your answer in writing, my Lords have indulged you so far, now where is your Answer?

Mr. Vice Chanc. My Lord, here it is — and gave it to Mr. Bridgman; who after a Whisper put it round the Table.

Lord Chanc. Read it — to Mr. Bridgman.

The Answer of the University and Senate of Cambridge, to the Question: Why they did not admit Alban Francis to the Degree of Master of Arts in the same University, according to His Majesties Mandatory Letters under His Signet Manual. The Vice Chancellor and Senate of Cambridge, for, and in behalf of themselves, and the said University, Say,

THAT by the Statute made *Primo Eliz.* and Entituled, *An Act to restore to the Crown the Ancient Jurisdictions over the State Ecclesiastical and Spiritual, and abolishing Foreign Power repugnant to the same*; It is enacted amongst other things, That every Person that shall be promoted to any Degree of Learning in any University within this Kingdom, before he shall receive or take any such Degree, shall before the Chancellor or Vice Chancellor of the University, take the Oath in the Statute mention'd and appointed; purporting, that he doth thereby testify and declare in his Conscience, that His Majesty is the only supream Governour of this Realm, as well in all Spiritual and Ecclesiastical Things and Causes, as Temporal; That no Foreign State or Potentate, hath or ought to have any Jurisdiction, Superiority or Authority, Ecclesiastical or Spiritual within this Realm; and that therefore he doth renounce and forsake all Foreign Jurisdiction and Authority, and promise to bear Faith and true Allegiance to the King, his Heirs and Successors, and to his Power assist and defend all Jurisdictions and Authorities granted, united or annexed, to His Majesties Imperial Crown of England. That by the Statute made 5th Elizabeth, Entituled, *An Act for the Assurance of the Queen's Royal Prerogative, over all Estates and Subjects within Her Dominions*, it is likewise Enacted, That every Person that shall be admitted to any Degree of Learning in any of the Universities, before he shall be allowed or suffered to take upon him such Degree, shall take the aforementioned Oath before such Person or Persons, as shall have Authority

Authority by common use to admit him to such Degrees.

That by the Statute made by His Majesties Royal Grandfather King *James the 1st*, in the 3^d Year of His Reign, Entituled, *An Act for the better Discovering and Representing of Popish Recusants*, another Oath is commonly prescribed, the Oath of Obedience; by which Oath, is the Person that takes it among other things enjoyned to Swear, that His Majesty is Lawful and Rightful King of this Realm, and all other His Dominions and Countries; and that the Pope, neither of himself, or by any other means, hath Power or Authority to depose His Majesty, or dispose of Him, His Kingdoms or Dominions; or to authorize any Foreign Prince to invade him or them, or to discharge His Subjects from their Obedience or Allegiance to His Majesty, or to give leave to bear Arms against Him; and that he with true Faith and Allegiance to His Majesty, will defend Him to the utmost of his Power. And afterwards, in the Statute made in the 9th Year of His Majesties said Royal Grandfather, Entituled, *An Act for Administring the Oath of Allegiance*; in it is enacted, That the said last mention'd Oath, shall be taken by the Vice Chancellour and Principal of Houses in the University, in the Convocation before the Senior Masters, and by every other Person that shall be permitted or promoted to any Degree in Schools, before the Vice Chancellour for the time being in the Congregation House.

That the Vice Chancellour, and every Member of the Senate have taken the said Oath, and the Vice Chancellour and Senate are intrusted to put them in Execution in the said University.

That the Vice Chancellour by his Oath of Office has also sworn duly to execute his Office according to the Laws, and cannot admit to any Degree without the Senate.

That the said Statutes were made for the Preservation of Doctrine and Religion, professed by the Church of *England*, and established by the Laws of this Realm, and of the Prerogative and rightful Power of His Majesty; that upon the Receipt of His Majesties Royal Letters Mandatory, the same were by the Vice Chancellour communicated to the Senate; and in order to the admitting the said *Alban Francis* to the Degree of Master of Arts, the said Oaths were offered to be Administred to the said *Alban Francis*, if he would take the same, but he refused.

That the admitting him without the said Oaths had been contrary to the said Statutes, and a Breach of the Trust in the Vice Chancellour and Senate reposed, and a Violation of their Oaths, and therefore they could not admit him to the said Degree of Master of Arts; and by humble Application to His Sacred Majesty, did, and now again do humbly desire your Lordships to represent this their Case to His Majesty, that they may not lye under His Majesties Displeasure upon any Misapprehension thereof; But, whether your Lordships will as a Court take Cognizance of this Matter, they humbly pray your Lordships Consideration, since that the taking a Degree of Master of Arts in the University, or the admitting and refusing to such a Degree, is not any cause or matter Ecclesiastical or Spiritual, but of Lay and Temporal Cognizance.

And they further offer to your Lordships, that in the Statute made in the 16th of the Reign of His Majesties most Royal Father King *Charles the First*, Entituled, *An Act for repealing of the Branch of a Statute Primo Elizabethæ, concerning Commissioners for Causes Ecclesiastical*; and whereby the said Branch is Repealed; it is enacted, That no New Court shall be erected, ordained or appointed within this Realm, which shall or may have like Power, Jurisdiction or Authority, as the High Commission Court then had or pretended to have; but that all and every such Commissioners and Grants, and all Powers and Authority granted or pretended to be granted thereby, shall be void and of none Effect, as in and by the said Statutes more fully appears.

Which being read, my Lord Chancellour said, Is it sign'd?

Mr. *Bridgman*. Yes my Lord.

Lord Chancellour. Read their Names——
Which was done.

L. Chancellour. Well, have you any more to say?

Mr. Vice Chancellour. No my Lord; not at this time.

L. Chancellour. Then withdraw.

All the Company withdrew, and about an hour and a half after the Court rose; and afterward Mr. *Bridgman* desired to speak with the Vice Chancellour and Delegates in the Council Chamber, to whom he said, That their Lordships had commanded him to tell them, they put off all further Consideration of this matter till *Saturday* come Sevensnight, and then they expected their Attendance: Again Mr. Vice Chancellour asked him, if Council would be expected to plead on their Answer; he replied their Lordships had given him no Commission to say any thing to that. So they all withdrew.

Saturday May the 7th.

This day it was publickly discoursed through the Town, that the Lords had received a new Commission; and immediately Lawyers were consulted whether it were proper to urge that at this Appearance: What could be gathered thereupon, was to this Effect: That it were a good Plea, if it could be well proved, for in receiving a new Commission in the midst of Process, especially, if there be any Alteration in it as to the extent of their Power, would at least be a good Pretence to begin the whole Cause again and gain time; but that it was by no means safe to alledge the thing, for a flying Report is no Evidence: And if that Report were false, it might be a great Prejudice to them and their Cause.

Council-Chamber——Commissioners present as before.

L. Chanc. MR. Vice-Chancellour, the last time you were here, you gave in a Paper to my Lords, signed by your self and several others coming from the University, which consists of several parts; but there is one thing I must crave leave of my Lords to Discourse you on, which concerns your self: The Lords took notice that you alledge an Oath, that Oath it seems hindred you from obeying the King's Mandate——Pray what was the Oath?

Mr.

Mr. *Vice-Chanc.* My Lord, this is a new Question which you were pleas'd not to put before, and I beg leave and time to answer it.

Lord *Chanc.* Why, Mr. Vice Chancellor, this requires no time; my Lords, I tell you, took notice of an Oath you pleaded for your self, and now they desire to know what the Oath is.

Mr. *Vice-Chancellor.* I beg I may not answer hastily, but that your Lordships would let me know what Questions you would ask me, and let me answer them in writing and by Council.

Lord *Chancellor.* Why did you not consult Council when you took your Oath? I am really concerned for the University of Cambridge, whereof I my self was once a Member, that the Vice-Chancellor, who is the Head, and the Representative of so learned a Body, should come here before the King's Commissioners, and not be able to give an account of the Oath he acted by all this time, but desires Council and time to tell him what the Oath is.

Dr. *Cooke.* My Lord, if your Lordship pleases, I think I remember the Words of the Oath.

L. *Chancellor.* Nay, good Doctor, how came you, who never were Vice Chancellor, and so never took this Oath, to know it better than one that is Vice-Chancellor, and hath taken it?

Vice-Chancellor. I cannot call to mind the very Words of the Oath, but the substance of it is this, *That I should well and faithfully, præstare or administrare munus or Officium procancellarium.*

L. *Chancellor.* Ay, *Munus or Officium*: Well, what then?

Vice-Chancellor. And my Lord, this Office I take to be stated by the Statutes of the University, and the Laws of the Land.

Lord *Chanc.* Well, and how long has this been the Vice Chancellours Oath?

Vice *Ch.* Indeed, my Lord, I am not able to tell you exactly.

Lord *Ch.* How long do you think? I will not tie you to any time.

Vice *Ch.* Ever since I knew what belonged to it; ever since I was Head of a Colledge.

Lord *Ch.* How long have you been Head of a Colledge?

Vice *Chanc.* Six or Seven Years, my Lord.

L. *Ch.* Have not other Vice Chancellours admitted to Degrees without Oaths, who have taken the Obligatory Oath as you have done?

Vice *Ch.* Indeed my Lord I cannot tell; I cannot remember every particular thing that has been done.

L. *Ch.* Well, because we will keep close the Question, don't you remember any Master of Arts made without Oaths?

Dr. *Cook.* Not under the Quality of an University Noble Man, my Lord.

L. *Ch.* Nay, good Doctor, you never were Vice Chancellor yet. When you are, we may consider you.

Vice *Ch.* The Answer to your Question will depend upon our University Book and Records, and if you'll allow us time to consult them, we can give your Lordship an Account.

L. *Ch.* Nay, look you Mr. Vice Chancellor, you have given in Answer in Writing already, and because there is something in that, my Lords would be further satisfied in, they have left it to me to ask you some Questions. I ask you therefore if you remember any Master of Arts, who hath been admitted heretofore without these Oaths?

Vice *Ch.* I cannot say I remember any, my Lord.

L. *Ch.* Did you never hear of one Dr. *Lightfoot*?

Vice *Ch.* I think, my Lord, I have heard of such an one.

Dr. *Cook.* My Lord, I beg leave to speak a few Words.

L. *Ch.* Well, Doctor, What is it you have to say?

Dr. *Cook.* My Lord, Dr. *Lightfoot* did Subscribe.

L. *Ch.* What Supercription do you mean?

Dr. *Cook.* To the 39 Articles; and the first of them is the Kings Supremacy.

L. *Ch.* Supercribing is Swearing, Doctor. But Mr. *Vice Chancellor*, how many have you admitted by Mandate?

Vice *Ch.* Never but one, my Lord, and he took the Oaths.

L. *Ch.* Do you never admit without Oaths them who have not such particular Letters Patent from the King?

Mr. *Stanhope.* Never, my Lord: And as for Dr. *Lightfoot*, they were aware before of this particular Persons being objected, and therefore provided an Answer to it.

Mr. *Stanhope* undertook it, because the Books and University Papers had been committed to his Inspection and Care: In Answer, had he been permitted to speak, he had this to offer, That the Register of Subscribers was then in Court, and had a Paper ready in his Hands to be produced, where Dr. *Lightfoot* Subscribed with his own Hands to the 39 Articles: The first whereof is the Kings Supremacy, and that he could not refuse the Oath upon a Principle, because the same must have hindred his Subscription: And as a farther Proof he did Swear, they were ready to offer this, That two Gentlemen, Roman Catholicks, Servants to the Queen Dowager, did by Virtue of the same Letters from the King, at the time of his coming to Cambridge, desire their Master of Arts Degree; their Names were Perara and Stevens. These Gentlemen were Proposed and Granted, but upon refusal to Swear, not admitted: Of this, they could have produced, First, A Testimony upon Oath of a Gentleman then in Court; and besides that, the University Papers and Graces, which shew these Gentlemens Names, among the Persons past in the House, but wanting in the List of Subscribers and Commencers. After which they would have referred it to the Court, whether it was probable that the University should admit one of the Queens Servants without Oaths, and yet refuse two more, who had the same Title every way, because they would not take the Oaths; but the Lord Chancellor would not bear him.

L. *Ch.* Nay, look you now, that young Gentleman expects to be Vice Chancellor too; when you are Sir, you may speak, but till then it will become you to forbear. Mr. *Vice Chancellor*, When was it pray that you received the Kings Letters? the first I mean.

Vice *Ch.* I do not perfectly remember, my Lord, I can't call to mind the day of the Month.

L. *Ch.* When were they dated, do you know? (to Mr. *Bridgman*) My Lord pausing.

Vice Ch. My Lord, I remember it was *Asb-Wednesday*.

L. Ch. And when was it these Letters were Published in the Senate?

Vice Ch. It was the Seven night after, my Lord.

L. Ch. What's the meaning of the delay, Mr. *Vice Chancellor*? the Kings business used to have a quicker dispatch.

Vice Ch. It was a Novel thing, and I was willing to give my self and others time to consider on it.

L. Ch. But when you had read the Letters, why was not the Gentleman admitted?

Vice Ch. My Lord, the Senate sent to me, to desire me, that I would forbear admitting Mr. *Francis*, till I had Petitioned the King to revoke the Mandate.

L. Ch. Why does the King's Mandate used to be disputed? Did you ever see a Mandate voted in the House, whether it should be obeyed or not?

Vice Ch. No, my Lord, usually they are not; but the House sent to me to forbear, for they have not had any of this nature before.

L. Ch. Did you ever know any Mandates of the Kings refused by the University before?

Vice Ch. After some pause—Yes, my Lord, several.

L. Ch. Pray, give us one instance.

Vice Ch. My Lord, one *Tatnell*.

L. Ch. When pray? How long was that ago?

Vice Ch. I cannot recollect just the time, but it was in His late Majesties Reign; I believe, about fourteen or sixteen Years ago.

L. Ch. How was that?

Vice Ch. My Lord, the Mandate was given to one *Tatnell*, a Non-conformist Minister, and he refused to Subscribe and take the Oaths; whereupon my Lord, the University Petitioned the King, and represented the matter to him, and the King was pleased to recal his Mandate.

L. Ch. Mr. *Vice Chancellor*, had not you a Mandate for another Gentleman at the same time with this, which you refused?

Vice Ch. Yes, my Lord, it was to make a Gentleman Doctor of Physick.

L. Ch. And he was admitted upon it, was he not?

Vice Ch. Yes, my Lord.

L. Ch. Did the Senate Vote his Mandate?

Vice Ch. No, my Lord, they did not.

L. Ch. Why should they interpose in the one and not in the other?

Vice Ch. They had no Dispensation, my Lord, for the Oath in it.

L. Ch. But however, if they did not Vote it, nor do any others of the Kings Letters, how do you know their Consent?

Vice Ch. My Lord, it is presumed upon their being silent, and offering nothing to the contrary.

L. Ch. Ay, we have a Proverb, Mr. *Vice-Chancellor*, *Silence gives Consent*, but it seems he was admitted immediately, was he not, before you could know whether they consented to both or no?

Vice Ch. No, my Lord, he was not admitted till the House desired me to forbear in Mr. *Francis's* Case.

L. Ch. But, as to this business of the Senate, desiring you (my Lords) I hope you will Indulge me to speak a little of that, for having been formerly a Member of that University my self,

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I think I have some small Remembrance of the manner of the Proceedings there: Pray, Mr. *Vice-Chancellor*, how was it that you knew their Minds in this Business?

Vice Chancellor. My Lord, the House sent up their Opinions.

L. Chancellor. How, pray? By whom?

Vice Chancellor. The Non-Regents by Dr. *Smoult* the first Day; and Mr. *Billers* the Orator, and Mr. *Newton* the Mathematical Professour, my Lord, the second Day.

L. Chancellor. By whom do you say the first Day?

Vice Chancellor. By Dr. *Smoult*, my Lord, from the Non-Regent House, and Mr. *Norris* from the Regent House.

L. Chancellor. Well: What said these two to you?

Vice Chancellor. My Lord, I don't know the very Words, but it was to this Effect, That I should forbear admitting Mr. *Francis* till the King was petitioned.

L. Chancellor. Is that Dr. *Smoult* in Court?

Vice Chancellor. Yes, my Lord, he is here—then he shewed himself.

L. Chancellor. Come, Sir, What was it, I pray you, that you told the *Vice Chancellor*?

Dr. *Smoult*. I have forgot, my Lord, the Words, but it was to the same purpose the *Vice Chancellor* told you just now; That the House desired me to acquaint him they were petitioning, that the Mandate might be recalled.

L. Chancellor. And pray, Sir, who are you, that you should be thought fit to represent a whole House? Why should they choose you rather than any Body else?

Dr. *Smoult*. My Lord, I suppose because I was one of the Seniors.

L. Chancellor. One of the Seniors! If you come to that, why was not the very Senior chosen?

Dr. *Smoult*. I cannot tell, my Lord, they came to me

Vice Chancellor. My Lord, he is one of our Professors.

L. Chancellor. Nay, when I ask you Questions they prompt you, and now you prompt them; but I must tell you Mr. *Vice Chancellor*, you ought to take an account of what is done in the House your self, and not from others.

Vice Chancellor. My place is at a great distance from the Non-Regent House, and I could not see what was done there.

L. Chancellor. But should you take the Sense of a whole House from one Man?

Vice Chancellor. He came and told me, my Lord, the House was of that Opinion, and I thought I had no reason to question what he said.

L. Chancellor. How loud did he speak when he told you this?

Vice Chancellor. Pretty loud my Lord.

L. Chancellor. Was it so loud that all the House might hear it?

Vice Chancellor. No my Lord.

L. Chancellor. Did you send afterwards to enquire whether he had told you their Opinions true or not?

Vice Chancellor. No, my Lords, I confess I did not.

L. Chancellor. But how came this new way of giving Opinions, are not the Proctors usually

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the

the Men that bring the Sense of the House to the Vice Chancellour?

Vice Chancellour. Not the Non-Regent; my Lord, they are not admitted into that House, nor have at all to do there.

L. Chancellour. Have you any thing else to offer to my Lords?

Dr. Cook. My Lord, if the answer that we gave in the last day be not satisfactory, we desire to have time allowed us to make a farther Defence, and to do it with Council.

L. Chancellour. Have you nothing to say besides?

Dr. Cook. No my Lord.

L. Chancellour. Nor you Gentlemen?—then withdraw.

After the Vice Chancellour, and three or four of the Delegates were gone off, and the Crowd was retiring. Mr. Billers, being a Person engaged in carrying up the Sense of the House, would have informed the Court (who seemed under a Mistake) more particularly of the Senates Proceedings; and how it came to pass that the usual way of Suffrages was impracticable at that time.

Mr. Billers. My Lords, I beg leave to speak one Word.

L. Chancellour. Who are you?

Mr. Billers. My Name is Billers, my Lord.

Mr. Bridgman. My Lord, he is one of the Gentlemen that sign'd the Paper in which was the Answer.

Mr. Billers. I am one of the Persons, my Lord, that Sign'd the Paper in which was the Answer.

L. Chancellour. Nay, hold Mr. Billers, give me leave to compare your Memory with Mr. Vice Chancellour's a little; Mr. Vice Chancellour tells me, Mr. Billers and Dr. Smout went up both of a Day; then comes Mr. Billers and says that Dr. Smout and he went up two several Days.

Mr. Billers. My Lord, I could not possibly go up from the House; I do not belong to the Regent House.

L. Chancellour. Indeed he said so, Sir; indeed he did, my Lords—did he not? [To Mr. Bridgman.]

Mr. Bridgman. Yes, my Lord.

Mr. Stanhope, *behind the Bishop of Rochester.* My Lord, under favour, my Lord Chancellour is mistaken; the Person Mr. Vice Chancellour told your Lordship, went up from the Regent House the same Day, with Dr. Smout, was Mr. Norris.

Bishop of Rochester. My Lord, I think your Lordship forgets; it was Mr. Norris that went up from the House the same day with Doctor Smout.

L. Chancellour. Well, Sir, was this that you would say?

Mr. Billers. I was only just acquainting your Lordship what was done, and that there was no other way—

The thing Mr. Billers intended to urge, was, That the usual way of Suffrage could not be practised at that time; so the other was taken.

Earl of Sunderland. We heard that before.

L. Chancellour. Ay, Sir, we took both what was done, and what was not done; therefore withdraw.

Then all the Company retired, and after an Hour and a half's Attendance, they were call'd in again, and the Lord Chancellour pronounced the Sentence upon Mr. Vice Chancellour, in the following manner:

Lord Chanc. Mr. Vice-Chancellour, the Lords have commanded me to tell you, that they have taken some time to consider your Answer, and are at last come to a Resolution upon it; my Business is to tell you what the Resolution is, Mr. Vice Chancellour. My Lords consider you have been guilty of an Act of great Disobedience to the King's Commands, and other Crimes and Contempts, and such that now you appear before us, you have little to say in excuse of it; therefore as a mark of His Majesties and their Lordships Displeasure, they have thought fit to appoint, that you be henceforth deprived of the Office of Vice Chancellour of Cambridge. They likewise order, that you don't presume, at any time hereafter, to meddle with any of the publick Business of the University. Likewise, Mr. Vice Chancellour, their Lordships consider you have a Headship of a College, and because the Example of so ill a Man may be a pernicious Consequence to all under your Government, they have likewise thought fit that you be deprived of it, during His Majesties Pleasure; but because they have a Tenderness for the Colledge, for which all along you have shewed little regard, my Lords are pleased to appoint, that the Revenues of your Headship shall go to the benefit of the Society: This is their Lordships Pleasure, and to this they require your Obedience. There are likewise some other Gentlemen that have signed a Paper here, but my Lords expect their Attendance when they sit next, which will be on Thursday next; then we shall take them into Consideration.

On Monday, Dr. Peachell wrote by an Esquire Beadle, who attended him, to desire a Copy of the Sentence, but answer was return'd, The Sentence as yet was not committed to writing, but Verbal only, and so he could not have a Copy; but he repeated the Heads only with this Alteration, That he was suspended his Mastership and not deprived; which was an Error in the Lord Chancellours delivering it.

The beginning of the next Week was employed in making Inquiries after the new Commission, the Hannaper Six Clerks, and the Riding Six Clerks Office knew nothing of it, nor any Court of Record could be directed to: Mr. Bridgman did own there was such a thing, but did not instruct them how to come to the sight of it: those that spoke best of the Commissioners, urged the removal of the Lord Chief Justice of the King's Bench to the Common Pleas, as a thing that made a new Commission necessary for rectifying his Title, but a Gentleman, who pretended to have read it, gave them private Intimations that there were very large Additions, and very considerable Alterations in it; at my Lord Chancellours own House, the Servants brought Word, that my Lord would speak with the Person himself that desired to see it, and appointed him a time; the Solicitor went at the Hour, but did not gain access to my Lord, and so they could not see it at all, for it was Wednesday Night, or Thursday Morning.

Thursday May the 12th.

Council-Chamber, Commissioners present as before, the Delegates appear with Dr. Peachell.

Lord Chanc. **T**HE last time you appeared here before us, my Lords thought fit to set a mark of their Just Displeasure upon the

the *Vice Chancellor*. Gentlemen, you cannot but be sensible, and so must all the World, how pernicious and obstinate the University has shown themselves in refusing the King's Commands, and such Commands, I must tell you, that ought to be obeyed.

There was a time, you may remember Instances, if you do not, I'll turn you to one in the Year 1667. when the Letters were so far from being disputed, that they passed for a Law among you, and do this day stand Recorded among the solemn Acts, and Publick Statutes of the *University*. Gentlemen, my Lords consider there is a Difference between the *Vice Chancellor's* Case and yours, and therefore did not conclude you, who represent the Senate with him, but have required your Attendance at this time; they impute the miscarriage of the Body to the Head Disease chiefly, though neither are you without Fault, for shewing so much as uneasie under the King's Commands. Gentlemen, I must tell you, my Lords understand very well, the sly Insinuations in your Paper, and have commanded me to tell you, That they know upon what Grounds they go, though they do not think fit to descend to particulars; they know too how far that Authority extends, not only to you of the *University*, but to the Societies within this Kingdom. Gentlemen, your best Course will be by a ready Obedience to His Majesties Command for the future, and by giving a good Example to others, to make amends for the ill Example that has been given you; therefore I shall say to you what the Scripture says, and rather because most of you are Divines; *Go your way, and sin no more, lest a worse thing come unto you.*

The late King's Letters, mentioned by my Lord Chancellor, Anno 1667. concern the Regulating some of the publick Exercises in the *University*; the meaning whereof is this, The King is their Visitor, and whenever there is any thing belonging to the local Statutes and Customs which they think ought to be altered, or any use which should be rectified and redress'd, their way is to beg the King's Royal Conjunction in the Case, which they keep upon Record, and obey as a Statute; how good an Argument is this against them, for not obeying a private Mandate contrary to four known Laws of the Land, and how parallel, the Case is easily discern'd.

As they were drawing off, he call'd them again, and said.

Lord Chanc. Hold, Gentlemen, I know something more to say to you. My Lords require, as a Testimony of your Obedience, that you, who represent the Senate, should take care they have the *University* Statutes brought to lye before them here.

Dr. Cook. My Lord, we do no longer represent the Senate, our Delegation is determined with the *Vice Chancellor's* Deprivation, my Lord.

Lord Chanc. Well, if your Commission be expired, we will give you a new one, we are able to give you a Commission; we suppose you had sufficient Authority for appearing here.

Dr. Cook. Does your Lordship expect that we should attend with the Statutes our selves?

Lord Chanc. No, no, send them up by a proper Officer; you are only to carry a Message from us to the Senate, and tell them what we expect.

Dr. Eachard. In what time does your Lordship expect them?

Lord Chanc. In a convenient time, we will not tie you up, but if you be tardy, my Lords will take care to quicken you by an Intimation; I mean only a Copy, not original Statutes: You are now discharged from any farther Attendance here.

The Delegates, upon the *Vice Chancellor's* Deprivation, being no longer capable of acting as publick Persons, and consequently of deriving any ill Consequence upon the Body they have represented, thought they might venture their own Persons more boldly; therefore, in order to satisfy the World, they were mighty desirous to bring about a Second hearing of the same Points, which before the *Vice Chancellor's* Sentence, they were not suffered to speak to, and which, when the *Vice Chancellor* was asking, they had not an Opportunity of answering so very particular as they could have wish'd, confining themselves to such Questions, all the while, as did not concern the *Vice Chancellor* solely and personally, but affected the whole Senate jointly with him; which Order they had likewise observed in interposing at the Tryal. This Answer they had ready to offer in Writing, if that could be admitted, but if not, resolved to argue it by Word of Mouth; the substance of it may be reduced to two Heads:

First, the Business of admitting others, and particularly Dr. Lightfoot, without Oaths: As to Lightfoot's Case, what they intended to have urged in Court, you have seen already; but as to others:

I. That Peers are by the very Act of Parliament 5to. Eliz. Exempted from the Oath.

II. That all such as the *University* calls Noblemen, have time out of mind, enjoyed the Privilege of Peers.

III. That under that Quality they never admit any without Oaths.

IV. That if at any time, upon the entertaining of a Prince, or any such Solemnity, any one has slipped out in the Croud, which they are not conscious of; this is to be imputed to hurry and inadvertency, and cannot be parallel to this Case, where the Senate acted with Leisure and Deliberation.

V. That even these Degrees, given to Noblemen and Strangers, are Honorary and Complemental, and so different from what the Statute calls Degrees of Learning, and Men use, exercise and make a Gain of their Profession.

VI. That supposing never so many to be admitted without Oaths, this they acknowledged to be irregular; and the Breach of a Law in one can be no Precedent for another to follow.

VII. That however they are very fully and particularly assured, no Man was ever admitted who positively refused the Oaths, which this Mr. Francis did.

I. That every Man who is a Member of that, or any other Senate, hath such a Right to propose, debate and advise, as occasion shall require, and protest against any irregular Proceedings in it.

II. That in a matter contrary to the Laws, and so highly concerning their *University* and Religion, as the opening such a Gap for the Men of any Perswasion to become Members of their Body and Senate (which every Resident Master of Arts is) it had been the greatest Infidelity and Negligence to have sat still.

III. That their Suffrage not being ask'd by the common way, ought not to have been a Bar, because every Man in his Matriculation Oath, obligeth himself to be assisting to the Chancellour and Vice Chancellour, and to defend the State, Honour and Dignity of the University, according to his Power and Capacity; and this to do Suffragio & Concilio, rogatus & non rogatus.

IV. That representing the whole Houses Opinions by a few, is a Practice common to all numerous Congregations; and usual in this, for any single Man, voluntarily to go and Address the Vice Chancellour in behalf of this whole College, or otherwise.

V. That the late King commanded, by His Royal Letters, that all Address to the Vice Chancellour should be made in the most quiet, decent, and respectful manner: and this way was thought more conformable to that Command, than the hurry of every Man applying himself personally.

VI. To give the better Reputation to the thing, and make it unexceptionable, the Persons sent from the Senate to the Vice Chancellour, were all Men either of publick Character in the Body, or the Seniors of their Houses, or some way eminently known in the University; but they being admitted, as you have seen, on Thursday, there was no Opportunity at all of offering a Dispute.

Animadversions on Wednesday, April the 27th.

THIS Day the Plea was given in, and the only thing needful to be remark'd, is, The usual way of demurring to the Courts Jurisdiction, which is commonly either the only, or first Plea, in such Cases; but the Delegates look'd upon themselves as oblig'd not only to defend their Cause, but to satisfy the World, therefore they were desirous that all People should be satisfied upon what Reasons they acted, and to this Purpose they first insisted upon them, which they did not at all doubt, but it would be patiently heard; whereas, if the Courts Jurisdiction had come first, that would, in all Probability have occasion'd the whole Plea to be stifled and over-ruled.

Saturday, May the 14th.

Mr. Atterbury came to Cambridge, with two Orders under the Commissioners Seal, one to

the Proctors to proceed in the Choice of a new Vice Chancellour, and the other to Magdalen College Fellows; to each of which was annexed a Copy of the Sentence to be fixed upon the School Doors, and Magdalen College Gates; and on Thursday, May the 17th Doctor Balderston, Master of Emmanuel College succeeded in the Office of Vice Chancellour.

A Copy of Dr. Peachell's Sentence, as it was fix'd on the publick School Doors, and Magdalen College Gates.

By His Majesties Commissioners for Ecclesiastical Causes, and the Visitation of the University, and of every Collegiate and Cathedral Churches, Colledges, Grammar Schools, Hospitals, and other the like Incorporations, or Foundations or Societies.

WHEREAS John Peachell, Dr. of Divinity, Vice Chancellour of Cambridge, Master of Magdalen Colledge, in the said University, has been Convend before us for his Disobedience to His Majesties Royal Letters Mandatory, and other his Contempts; and the said Dr. John Peachell having been fully heard thereupon, we have thought fit, after mature Consideration of the Matter, to Declare, Decree and Pronounce, that the said Dr. John Peachell, shall for the said Disobedience and Contempts, be deprived from being Vice Chancellour of the said University, and from all Power of acting in the same: And also, that he be Suspended ab Officio & beneficio of his Mastership of the said Colledge, during His Majesties Pleasure; and accordingly we do by these Presents deprive him, the said Dr. John Peachell, from being Vice Chancellour of the said University, and from all Power of acting in the same. And we also Suspend him ab Officio & Beneficio of his Mastership of the said Colledge, peremptorily admonishing and requiring him hereby, to abstain from the Function of Master of the said Colledge, during the said Suspension, under pain of Deprivation from his Mastership. And we also farther Order and Decree, that the Profits and Perquisites belonging to his said Mastership, shall during the same Suspension, be apply'd to the Use and Benefit of the said Colledge.

Given under Our Seal, the 7th of May, 1687.

An impartial Relation of the whole Proceedings against St. Mary Magdalen College in Oxon, in the Year of our Lord 1687. containing only Matters of Fact as they occurred.

A Narrative of the Election of Dr. Hough, President to S. Mary Magdalen Colledge, Oxon, 1687.



HE Presidentship of St. Mary Magdalen College, in the University of Oxon, being void by the death of Dr. Henry Clerk, late President of the same, the Vice President gave notice to all the Fellows present in the Chappel, on

Thursday the 31st of March, 1687. where it was unanimously agreed to proceed to the Election of a President on Wednesday the 13th of April following, at Nine of the Clock in the Morning, in the Chappel: And in order thereto, the Vice President caused a Citation to be fix'd on the Chappel

pel Docr of the said College, signifying the Vacancy, Time and Place of the Election; according to the Direction of the Statutes. But before the Day of Election, being credibly informed, that His Majesty had been pleased to grant his Letters Mandatory in behalf of Mr. *Anthony Farmer*, they most humbly represented to His Sacred Majesty, in their Petition bearing Date April the 9th, That the said Mr. *Farmer* was incapable by their Statutes, of being President; and therefore did most humbly pray His Majesty to leave them to a free Election, or recommend such a Person to them, as was capable by their Statutes. Monday, April the 11th, His Majesties Letters Mandatory were delivered by the Hands of Mr. *Robert Chernock*, Master of Arts, and Fellow of the said College, directed to the Vice President and Fellows of *Magdalen College* in *Oxon*, requiring them forthwith to Elect the said Mr. *Farmer*, and admit him President: Which Letter the Vice President read in the Chappel of the said Colledge, between the Hours of four and five of the Clock in the same day, after Evening-Service, before the Fellows of the College, there present, and asked them, Whether they in Obedience to His Majesty's Letters, would forthwith Elect and Admit Mr. *Farmer* President? Who all agreed, in consideration to Mr. *Farmer's* not being qualified, and the danger of Expulsion to any of the Fellows that should be absent from the Election, and that the time of Election, according to the Citation, was so near, to defer their Answer till *Wednesday* following; whereupon the Vice President required all the Fellows to be present in the Chappel the said *Wednesday* Morning at nine of the Clock. All the Fellows being then met, the Vice President read the Statute *De Electione Presidentis*; and the Statute, 5 *Eliz.* against corrupt Elections was read also; after which the Vice President read the King's Letter in behalf of Mr. *Farmer*, and the second time demanded an Answer of the Fellows thereto. Their Answer was to this Effect: That having a Petition now lying before His Majesty, they ought not to proceed to Election, till they had received His Majesty's Answer to the same: And thereupon they all agreed, (except Mr. *Charnock*) that the Election should be deferred: which was accordingly done, until the next Morning nine of the Clock.

Thursday April the 14th, at nine a Clock in the Morning, all the Fellows being met, the Vice-President told them, That the Election of a President had been deferred upon account of their Petition to His Majesty, in answer to which, they had not then received His Majesty's Pleasure; that the next day was the utmost time they could defer the Election by the Statutes, and therefore it was necessary they should come to some Resolution: he told them farther, That the King had commanded them to Elect Mr. *Farmer*, and asked their Sense therein: Which was unanimous (except Mr. *Chernock*) that the Election should be deferred till the next Morning eight of the Clock; and in order thereunto, the Sacrament to be administered first; and accordingly it was adjourned.

Friday April the 15th, at eight a Clock in the Morning the Vice President and Fellows being met, Dr. *Tho. Smith* and Captain *Bagshaw*, two of the Fellows, acquainted the rest, from my Lord President of the Council, That in answer

to their Petition, His Majesty having sent his Letter to the Colledge, expected to be obeyed. After which, the Vice President read again the King's Letter to them, and ask'd, whether in Obedience thereunto, they would elect and admit Mr. *Farmer* President? They answered, That they desired they might proceed to an Election. Then the Vice President having proposed, whether having received His Majesties Pleasure in answer to their Petition, they would make any further Address? The Vice President, Dr. *Fairfax*, Dr. *Pudsey*, and Dr. *Tho. Smith*, were for a second Address; but all the rest declared immediately for proceeding to the Election.

Then the Vice President proposed, whether they would go to an Election *Viva voce*, or by Scrutiny? The Vice President, Mr. *Thompson*, and Mr. *Charnock* were for proceeding to an Election *Viva voce*; all the rest were for going to an Election by Scrutiny, except Dr. *Tho. Smith*, who was not for going to Election, until the King should again be petitioned.

This therefore being their Sense, That they ought to proceed to the Election of a President according to the Statutes, and this the last day limited for Election: In order thereunto, the Holy Sacrament was solemnly taken by all, except Mr. *Charnock*. Then the Statute *De Electione Presidentis*, and 5 *Eliz.* against corrupt Elections was read by the Vice President. Every one took the Oath prescribed in the Statutes to be taken, in order to the Nomination of a President, (except Mr. *Thompson* and Mr. *Charnock* who refused it): And the two Senior Fellows were sworn Scrutators in the Scrutiny of the whole Society: For the Nomination of a President, Mr. *Hough* and Mr. *Maynard* had each of them the major part of all the Voices; and were accordingly pronounced by the Senior Scrutator, *Nominati in Ordine ad Electionem Presidentis*: Then the Thirteen Senior Fellows being met to elect one of these two President; and every one of them sworn according to the Statute; eleven of them elected Mr. *Hough*, who was accordingly pronounced President of *St. Mary Magdalen College* in *Oxon*, by the Senior Scrutator, in the presence of all the Fellows: and Mr. *Maynard* was appointed by the thirteen Senior Fellows to present the said President Elect to the Visitor, in order to his Admission. After this, Mr. *Thompson* and Mr. *Charnock* declared *Viva voce* for Mr. *Farmer*; according to His Majesty's Letter.

Saturday April the 16th, Mr. *Hough*, President Elect, was presented to the Visitor by Mr. *Maynard*, who at the same time delivered to his Lordship an Instrument under the College Seal, containing the Proceedings of the Election; after a sight whereof, Mr. *Hough* was sworn and admitted President by his Lordship, according to the Statutes.

Sunday April the 17th, Mr. *Hough* at his return to the College, took the same Oath again before the Society, and afterwards as President took his Seat in the Chappel, at four a Clock Prayers in the Afternoon.

A Copy of the King's Mandate to the Fellows of *Magdalen College*.

James Rex.

TRusty and Well-beloved, We greet you well. Whereas we are well satisfied, of the Piety, Loyalty and Learning of our Trusty
and

and Well-beloved *Anthony Farmer*, Master of Arts, of that your Colledge of *St. Mary Magdalen*, We have thought fit hereby effectually to recommend him to you for the place of President of our said Colledge, now void by the Death of Doctor *Clark*, late President thereof; willing and requiring you forthwith, upon Receipt hereof, to elect and admit him the said *Anthony Farmer*, into the said place of President, with all and singular the Rights and Privileges, Emoluments and Advantages thereunto belonging, any Statute, Custom or Constitution to the contrary notwithstanding, wherewith We are Graciously pleased to dispence with in this behalf. And so, not doubting of your Compliance herein, We bid you Farewel.

Given at our Court at *White-hall*, the Fifth Day of *April*, 1687. in the Third Year of Our Reign.

A Copy of *Magdalen Colledge's* Petition.

To the King's most Excellent Majesty.

The Humble Petition of the Vice President and Fellows of St. Mary Magdalen Colledge, in Oxon.

Most humbly sheweth,

WE have been credibly informed, That Mr. *Anthony Farmer*, who was not of our Foundation, has obtained Your most Excellent Majesty's Recommendation to be President of Your Majesty's College, in the room of Doctor *Henry Clark*, deceased.

We therefore, with all Submission, as becomes Your most Dutiful and Loyal Subjects, most humbly Represent to Your Sacred Majesty, That the said Mr. *Farmer* is a Person in several respects incapable of that Character, according to our Founder's Statutes: And do most earnestly beseech Your Majesty, as Your Majesty shall judge fittest in Your most Princely Wisdom, either to leave us to the discharge of our Duty and Consciences, according to Your Majesty's late most gracious Toleration, and our Founder's Statutes; or to recommend such a Person who may be more serviceable to Your Majesty, and to this Your Majesty's Colledge:

And Your Petitioners shall ever pray, &c.

A Copy of the Lord Sunderland's Letter to the Fellows.

Gentlemen,

THE King being given to understand, That notwithstanding his late *Mandate*, sent to you for Electing Mr. *Farmer* to be President of your Colledge, you have made choice of another Person; His Majesty commands me to tell you, He is much surprized at these Proceedings, and expects you should send me an account of what passed on that Occasion, and whether you did receive His Majesty's said *Letters Mandate*, before you chose Dr. *Hough*. I am,

Gentlemen,

Your Affectionate and Humble Servant,
Sunderland.

The Case of the Vice President and Fellows of St. Mary Magdalen Colledge in Oxon, in their late Election of a President.

UPon the Notice of the Death of Dr. *Henry Clark*, late President of *St. Mary Magdalen Colledge in Oxon*; the Vice President cal-

led a Meeting of the Fellows, in order to appoint a day for the Election of a new President. The 13th of *April* was the day prefix'd with Power to prorogue the Election to the 15th, as they should see Cause, beyond which time it was not in their Power to defer the same. This being agreed, a Citation, or Præmonition was fix'd upon the Chappel-Door of the College, signifying the same; and summoning all the absent Fellows to repair home to the ensuing Election, as the Statute in that Case directs. After this, upon the 11th of *April*, they receiv'd His Majesty's Letter in behalf of Mr. *Farmer*, requiring them to elect and admit him President: But he having never been Fellow of that Colledge, nor *New College*, in which are the only Persons capable of being chosen by the Statutes; and wanting likewise such personal Qualifications as are required in the Character of a President, they did not imagine it was, or could be His Majesty's Pleasure, that they should act so directly contrary to the express Words of their Statutes, to which they are strictly and positively sworn: But did humbly conceive they were bound in Duty to believe, that His Majesty had been mis-informed in the Character and Capacity of Mr. *Farmer*. And therefore on the 15th of *April*, the last of those days within which they were confin'd to finish the Election, they proceeded to a Choice, and having first received the Blessed Eucharist, and taken an Oath as the Founder enjoins, to choose a Person so qualified, as is there specified; they did elect the Reverend Mr. *John Hough*, Batchelor in Divinity, who is a Person every way qualified by the Statutes of the said College: And if it shall be objected that His Majesty did in His Letter for Mr. *Farmer* graciously dispense with all the Statutes that rendered him incapable of being elected; and that therefore they might have obeyed without breach of their Oaths: They humbly beg leave to represent, that there is an express Clause in that Oath, which every Man takes when he is admitted Fellow of the College; wherein he swears not to procure, accept, or make use of any Dispensation from his Oath, or any part thereof, by whomsoever procured, or by what Authority soever granted. As to their former Practice when they have elected in Obedience to the King's Letter heretofore; it has been always in such Cases where the Persons recommended have been every way qualified for the Office by their Statutes; in which Cases they always have been, and ever will be, ready to comply with His Majesty's Pleasure; it not being without unspeakable regret, that they disobey the least of His Commands. They know how entirely their Welfare depends upon the Countenance of their Prince; nor doth any thing more deeply affect and grieve their Souls, than when they find themselves reduc'd to this unfortunate Necessity, of either disobeying his Will, or violating their Consciences by notorious Perjuries.

A Copy of a Letter to the Duke of Ormond, April the 18th, 1687.

May it please your Grace,

WE the President, and Fellows of *Magdalen College in Oxon*, sensible of the Benefits and Honour we enjoy under Your Grace's Patronage, and how much it imports us to

to have your Advice in all the Difficulties where-with we are press'd; having as we fear, displeased His Majesty, in our Election of a President; do humbly beg leave to represent to your Grace, a true state of our Case, and hope you will please to inform the King how incapable we were to perform His Commands.

His Majesty was pleas'd on the Death of Dr. *Henry Clark*, President of *St. Mary Magdalen Colledge*, to Command us by His Letter, to Elect and admit Mr. *Anthony Farmer* in that Office, a Person utterly incapable of it by our Statutes, as we are ready to make appear in many Particulars; and since we have taken a positive Oath of Obedience to them, and that exclusive to all Dispensations whatsoever; we humbly conceive we could not obey that Command in favour of Mr. *Farmer*; unless he had brought those Qualifications with him, which our Founder requires in the Person of the President; and being confined as to the time of Election, we have been forced to proceed to the choice of one, who has approved his Loyalty in the whole course of his Life, and whom we think suitably qualified for the place.

May it therefore please your Grace to interpose with His Most Sacred Majesty for us, that we may not lye under the Weight of His Displeasure, for not being in a capacity for obeying his Commands. We know him to be a Prince of eminent Justice and Integrity, and cannot think he will value any instance of Duty to himself, which manifestly breaks in upon the Obligation of our Consciences. And your Grace's extraordinary unblemish'd Loyalty to the Crown; and that Regard which, we assure our selves, our Most Honoured Lord and Chancellor has to the Peace and Welfare of this Place, induceth us to presume your Grace will omit no Endeavours to set before His Majesty the true Reason and Necessity of our Proceedings. That God Almighty protect your Grace, shall be the daily Prayers of,

May it please your Grace, &c.

The Bishop of *Winton's* Letter to the Lord President of the Council.

My Honoured Lord,

TH E Obligation I have upon me as Visitor of *St. Mary Magdalen College* in *Oxon*, occasions this Address: For I am inform'd that great Endeavours are used with His Majesty to recommend one Mr. *Farmer*, who is not at present, nor ever was Fellow of the College, to be President of it; which is directly contrary to the Statutes of the Founder, (as I am confident some who promote Mr. *Farmer's* interest, cannot be ignorant of:) And were there not many Persons now actually Fellows, and several who have been (in particular the Bishop of *Man*, and Dr. *Jessop*) very eminent for Learning and Loyalty, and every way qualified according to the Statutes, I should not press your Lordship to lay the Concern of the College (which hath upon all occasions express'd its Zeal and Forwardness in Defence of the Crown, and (as I particularly know) in the great Affairs of the Succession) before His Majesty; who, I hope, will leave them to their Rules as the Statutes, which have hitherto (excepting in the times of Rebellion) been conscientiously observed, and which will

be the highest Satisfaction to the truly Loyal University, and promote His Majesty's Service, which has always been the Endeavour of,

Your Lordships Most Humble Servant.

A Copy of the Citation to the Vice-President and Fellows, for to appear at *White-Hall*, June the 6th, 1687:

By His Majesties Commissioners for Ecclesiastical Causes, and for the Visitation of the Universities, and of all, and every Cathedral and Collegiate Churches, Colleges, &c.

Complaint having been made unto Us, that the Vice-President, and Fellows of *St. Mary Magdalen College* in *Oxon*, have refused to comply with His Majesties Letters Mandatory, for electing and admitting Mr. *Anthony Farmer* President of the same College, in the room of Dr. *Clark* deceased; and that notwithstanding His Majesties Letters they have elected Mr. *John Hough* President of the said College: You and either of you are hereby requir'd to Cite and Summon the said Vice-President and Fellows, requiring 'em, or such of the said Fellows as they shall depute in their behalf, to appear before Us in the Council-Chamber at *White-Hall*, upon Monday the 6th of the next Month of June, at four in the Afternoon, to answer to such Matters as shall be objected against them, concerning the Premises; and of the due Execution thereof, You are to certify Us then and there:

Given under our Seal the 28th of May, 1687.

To Thomas Atterbury,

and

Robert Eldows.

Or to either of them.

The Answer of the Vice-President, and other Fellows, of *Magdalen College* in *Oxon*, who were deputed by the said College, to the Question propounded by the Right Honourable, and Right Reverend the Lords Commissioners for Ecclesiastical Affairs, viz.

Why they did not obey His Majesties Letter, requiring them to Elect, and Admit Mr. *Anthony Farmer* President of the said College?

TH E said Vice President, and other deputed Fellows answered and said, That the said College of *St. Mary Magdalen* in *Oxon* is a Body Corporate, governed by Local Statutes, granted and confirmed to them by His Majesty's Royal Predecessor, King *Henry* the 6th, for Him and His Heirs and Successors, under the Great Seal of *England*, which are also since confirmed by several other Patents of others of His Majesties Royal Predecessors, under the Great Seal of *England*. That by the said Statutes of the College (to the Observation of which, each Fellow is sworn) it is ordered that the Person elected President thereof, shall be a Man of good Life and Reputation, of approved Understanding and good Temper, Discreet, Provident, and Circumspect, both in Spiritual and Temporal Affairs. And at the time of Election of a President, the said Fellows are bound by the said Statutes, to take an Oath that they shall nominate none to that Office, but such as are, or have

have been Fellows of the said College, or of *New College* in *Oxon*: or if they are not actually Fellows at that time of Election; that they be such as have left their Fellowships in their respective Colleges upon credible accounts. And when two qualified Persons shall be nominated at the time of Election, by the greater number of all the Fellows, to the said Office of President; the thirteen Seniors also swear that they will Elect one of them, whom in their Consciences they think most proper and sufficient, most discreet, most useful, and best qualified for the Place; without any regard to love, hatred, favour or fear. And every Fellow when he is first admitted into his Fellowship in the said College, swears that he will inviolably keep and observe all the Statutes and Ordinances of the College, and every thing therein contained, so far as does or may concern him, according to the plain, literal, and grammatical sense and meaning thereof, and as much as in him lies will cause the same to be kept and observed by others; and that he will not procure any Dispensation contrary to his aforesaid Oath, or any part thereof, nor contrary to the Statutes and Ordinances to which it relates, or any of them; nor will he endeavour that such Dispensation shall be procured by any other, or others, publicly or privately, directly or indirectly. And if it shall happen that any Dispensation of this sort, of whatsoever Authority it shall be, whether in general or particular, or under what form of Words soever, it be granted, that he will neither make use of it, nor in any sort consent thereunto. That upon Notice of the Death of Dr. *Clark*, late President of the said College, the Vice-President called a Meeting of the said Fellows, in order to the appointing a day for the Election of a new President, and the 13th of *April* was the time prefix'd, with power to prorogue the same as they should see Cause, till the 15th, beyond which time they could not statutely defer their Election, and in pursuance thereof a Citation or Premonition was fix'd upon the Chappel-door of the said College, signifying the same, and by which the absent Fellows were Summoned to repair home, as the Statute in the Case requires. And the said Vice President, and other deputed Fellows farther say, that on the 11th of *April* aforesaid, they received His Majesties Letters Mandatory, to Elect and Admit the said Mr. *Anthony Farmer* President of the said College: But forasmuch as the said Vice-President and Fellows, apprehended the right of Election to be in them, and believed His Majesty never intended to dispossess them of their Rights: And forasmuch as the said Mr. *Farmer* had never been Fellow either of *Magdalen* or *New College* in *Oxon*, and had not those Qualifications which in, and by, the said Statutes of the College are required in the Character of a President, as they in their Consciences did, or do verily believe; and in regard that they could not comply with His Majesties Letter, without the Violation of their Oaths, and hazard of their legal Interest and Property, wherewith they are by their Statutes possessed, and which by their Oaths they are bound to maintain, they represented the same by their humble Petition to His Majesty. And having deferred their Election of a President to the last day limited by their Statutes, then they proceeded to Election, and having first received the Eucharist, and

taken the said Oaths, as the Statutes enjoin, to choose a Person so qualified as before expressed, they did Elect the Reverend Mr. *John Hough*, B.D. and one of the Fellows of their College, a Person every way qualified to be President, who has been since confirmed by the Bishop of *Winton* their Visitor; as the Statutes of the said College direct.

And that they might not lye under His Majesties Displeasure by their Proceedings, they did on the 18th of *April* make an humble representation thereof to His Majesty, by his Grace the Duke of *Ormond*, Chancellor of the University of *Oxon*, setting forth their indispensable Obligations to observe their Founder's Statutes.

All which Matters the Vice President, and other deputed Fellows, do humbly offer to your Lordships, and pray to be dismissed with your Lordships favour.

The Fellows Reasons why they Elected not Mr. *Farmer*, &c.

Whereas the Vice President, and other deputed Fellows of *St. Mary Magdalen Colledge* in *Oxon*, have in their Answer to your Lordships, set forth, that by the Statutes of the said College, it is ordered, That the Person to be elected President thereof, should be a Man of good Life and Reputation, and of good Manners and Temper; and likewise, that Mr. *Anthony Farmer* hath not those Qualifications which in and by the said Statutes are requir'd in the Character of a President, as they in their Consciences did and do verily believe. They humbly crave leave to represent to your Lordships some of those Reasons which induced them to such belief, viz.

That Mr. *Farmer* did mis-behave himself in *Trinity College* in *Cambridge*: That he received Admonition from the Master of the College, in order to his Expulsion; which remains in the Register of the said College, under his own Hand.

That having left *Cambridge*, he taught School at *Chippenham* in *Wiltshire*, under a Nonconformist Minister, without License.

That in *September* 1683. the said Mr. *Farmer* was entred into *St. Mary Magdalen Hall* in *Oxon*, where such frequent Complaints were brought against him to the Principal, for his troublesome Humour and unquiet Temper, that to preserve the Peace of the Society, he was desired to leave the said Hall.

That after his leaving *Magdalen Hall*, he was admitted into *Magdalen College*, where discoursing about Religion, he declared, That there was no Protestant but would cut the King's Throat: notwithstanding which, at other times he declared to some of the Fellows of the said College, That whatsoever he pretended, he was really a Member of the Church of *England*; and that he made an Interest with some Roman Catholicks, only to get Preferment by their Means, and for that reason was willing to be thought of their Religion.

That at the very time when His Majesty's Letter came to the College in his behalf, the said Mr. *Farmer* was at *Abington* in very ill Company, where he continued drinking to excess two or three days and Nights together; and amongst other Disorders, was one of those that then in the night time threw the Town-Stocks into the River:

River: and that in general the said Mr. Farmer hath had the Unhappines to lie under an ill Fame, as to his Life and Conversation, as by several Letters and Certificates, ready to be produced, will more largely appear.

Copies of Letters and Certificates delivered to the Lords Commissioners for Ecclesiastical Affairs, June 27. 1687.

I. *Anthony Farmer*, Batchelour of Arts, and Scholar of this College, do confess, That I have behav'd my self very unlike a Member of this College, and even a Christian, at the Dancing-School: for which I humbly ask Pardon, and do acknowledge before the Seniority, that I have deservedly received of the Master my first Admonition in order to Expulsion.

Trinity Coll. Camb.
June 11. 1678.

Anthony Farmer.

This is a true Copy of *Anthony Farmer's* Admonition, attested by us whose Names are hereunto under-written.

Humph. Babington,
John Hawkins,
Benj. Pulleyn,
John Laughton; } Vice-Magist. Deput.

II. These are to certifie, That Mr. *Anthony Farmer* was Usher to Mr. *Benj. Flower*, a Nonconformist Preacher in the Town of *Chippenham* in the County of *Wilt*, for the space of half a Year or upwards, the said Mr. *Flower* keeping School without License from the Bishop, and the said Mr. *Farmer* continuing his Usher for the time mentioned, without any License also. Witness our Hands,

Will. Lake,
Will. Loude,
Will. Gale. } Vicar.

III. *MR. Anthony Farmer* was entred of *St. Mary Magdalen Hall* in *Oxford*, *Septemb.* 1683. Where, after he had been some time, frequent Complaints were brought to me by some of the Masters, that he raised Quarrels and Differences amongst them; that he often occasioned Disturbances, and was of a troublesome and unpeaceable Humour. Whereupon, that Love and Friendship might be preserv'd and continu'd in the Society, as it used to be, I advis'd the said Mr. *Farmer* to make tryal if he could live more easily and quietly in some other House. Accordingly he did voluntarily leave the Hall, *July* the 13th, 1685. and got himself admitted into *Magdalen College*.

William Levett, Principal.

IV. I Do certifie, That Mr. *William Bambrigg*, Gentleman Commoner of *Magdalen Hall*, *Oxon*, did say, That Mr. *Anthony Farmer*, Master of Arts, did intice him from his Studies in the University to go to *London*, where he the said Mr. *Farmer* did attempt to draw the said Mr. *Bambrigg* into several Debaucheries both at Taverns and Bawdy-houses. Witness my Hand,

John Ryland, Mr. of Arts of *Magd. Hall*,
Vol. III.

V. I Do certifie, That Mr. *William Bambrigg*, Gentleman Commoner of *Magdalen Hall*, did say, That Mr. *Anthony Farmer*, Master of Arts of the said Hall, did receive Money of him and other Gentlemen, publickly to expose unto him a naked Woman; which he accordingly did. Witness my Hand.

Richard Clerk, Mr. of Arts of *Magd. Hall*

June 9. 1687.

VI. I Am very willing to justifie any thing I have formerly said, relating to so serious a matter as this is you enquire after.

Mr. *Farmer*, one Night in the Cloyster, asked me why I did not get a Commission: I told him truly, I had not Friends to do it for me. He then asked me, what I would do for one: I told him, I would fight for my King, and whatsoever he should command me. He then ask'd me; if I would fight for the King's Religion: I told him, there would be no occasion for that, nor would it ever be required of me. He ask'd me of what Religion I was: I told him a Protestant. And then he said, There was no Protestant but would cut the King's Throat; and that he should lose Three Thousand Pounds, for being of that Religion heintended to be of; which he said was a *Papist*. This, to the best of my Remembrance, is the full of what he said. If I have omitted any thing, it is my care not to write more than I would honestly and justly swear to. I am,

S I R,

Your most Obliged and most Humble Servant,
John Brabourin.

VII. IN or about *January* last, 1687. Mr. *Anthony Farmer* declared before us, That the Report of his being a *Papist* was false; but that he was willing to be thought so, because it might do him a Kindness: That the reason of his Acquaintance with Mr. *Brent* and Mr. *Walker*, was to get Preferment by their Interest: That he had not forsaken the Protestant Religion; adding, we should call him Rogue, if ever he did: That he would not make any publick Declaration of this, but would declare it amongst Friends, when and where he pleased.

Henry Dobson.
Ja. Fayer.
Tho. Goodwin.

VIII. I Do hereby certifie, That *Robert Gardiner*, Porter of *St. Mary Magdalen Colledge*, did tell me, that Mr. *Farmer* did very often come into the College late at Night, so much in drink, that he could scarce go or speak. Witness my Hand, this 9th day of *June* 1687.

George Fulham.

IX. UPon *Monday April* the third, Mr. *Farmer* came to the *Lobster* in *Abington* with Mr. *Clerk*, Mr. *Gravener*, and Mr. *Jennyfar*, about eight in the Morning, and staid some time in the House, and went from thence to the Tavern; return'd again about eleven at Night, and sat up till one in the Morning: The next day they went to the *Bush Tavern* and sent for a quarter of *Lamb* for their Supper, and there Mr. *Farmer*, Mr. *Clerk*, Mr. *Gravener*, and two Troopers and others, continued till past eleven at Night, and so return'd to the aforesaid place, and sat up till past three in the Morning.

Y y y y

This

This I do assert, was the Company that the said Mr. *Anthony Farmer* kept, and these were the unseasonable Hours. In witness whereof, I am ready to swear, whenever a Subpoena shall be sent to me.

George Mortimer.

X. **M**rs. *Mortimer* is ready to assert, That when Mr. *Anthony Farmer* return'd to the *Lobster* about eleven at Night, he came much concern'd in Drink, and was for kissing the said Mrs. *Mortimer*, which, he being a Stranger, she permitted him to do; but in doing of it, he the said Mr. *Anthony Farmer* put his Tongue in her Mouth, which was such a Rudeness, that she immediately went out of his Company and would not come nigh him any more.

Martha Mortimer.

XI. **B**eing in Company with *William Hopkins* of *Abington*, the 12th of June last 1687. I heard him declare, That himself, with one Mr. *Farmer* of the University of *Oxon*, and some others, did in a Frolick, at an unseasonable time of Night, take away the Town-Stocks from the place where they constantly stood, and carried them in a Cart a considerable way, and threw them into a Pool commonly call'd *Mad Hall's* Pool. Witness my Hand, the Day and Year above written.

Charles Peacock.

Some Clauses of particular Statutes to which the Case relates.

IN their Statutes concerning their Election of a President, his Character is thus described: That he must be a Man of good Reputation, and good Life, and circumspect both in Spiritual and Temporal Affairs.

In the same Statutes the Oath which every Fellow is obliged to take, before he can give his Vote in the Nomination of a President, is this: *viz.*

That he will name one or two of *St. Mary Magdalen* College, or of those who have been Fellows there, or have left their places upon a legal and credible account: Or that he will name one or two of the Fellows of *St. Mary Winchester* College, commonly called *New College* in *Oxon*, or of those who have been formerly Fellows there, and have left their places upon a credible account. After this, the thirteen Senior Fellows swear, That out of the two thus nominated, they will with all speed, Elect one to exercise the Office of a President, whom in their Consciences they think most proper and sufficient, most discreet, most useful, and best qualified for it, either without any regard to Love, Hatred, Favour, Fear, &c. as in the forementioned Statute is more largely expressed. —

Part of the OATH which every Fellow takes when Admitted.

Item. **I** Do Swear that I will not procure any Dispensation contrary to my aforesaid Oath, or to any part thereof, nor contrary to the Statutes and Ordinances to which they relate, or any one of them; nor will I endeavour that such Dispensations be procured by any

other or others, publickly or privately, directly or indirectly: And if it shall happen that any Dispensation of this sort shall be procured, or freely granted or obtain'd, of what Authority soever it be, whether in general or particular; under what form of Words soever it be granted; I will neither make use of it, nor in any sort consent thereunto.

So help me God.

A Copy of Dr. Hough's Deprivation, by His Majesty's Commissioners for Ecclesiastical Affairs, &c.

WHereas it appears to us, that Mr. *John Hough*, B. D. hath been unduly Elected President of *Saint Mary Magdalen* College, in the University of *Oxon*, we have thought fit, upon mature Consideration thereof, That the said Election be declared void, and the said Mr. *John Hough* be amoved from the said Presidentship; and accordingly we do hereby declare and decree, That the said Election is void; and do amove the said Mr. *John Hough* from the place of President of the said College.

Given under Our Seal this 22d Day of June, 1687.

A Copy of Dr. Aldworth's and Dr. Fairfax's Suspension.

WHereas *Charles Aldworth*, Doctor of Laws, Vice President of *St. Mary Magdalen* College *Oxon*, and the Deputies, Fellows of the same House, have been conven'd before Us for their Contempt in not obeying His Majesty's Letters Mandatory, for Electing and Admitting Mr. *Anthony Farmer* President of the said College; and the said Dr. *Aldworth* and Deputies having been heard thereupon, We have thought fit to declare, pronounce and decree, That the said Dr. *Aldworth* shall for the said Contempt be suspended from being Vice President of the said College: And that *Henry Fairfax*, Doctor of Divinity, one of the Fellows of the said College, shall for the said Contempt be Suspended from his Fellowship; and accordingly We do hereby Suspend Dr. *Charles Aldworth* from being Vice President of the said College, and the said Dr. *Henry Fairfax* from his Fellowship in the said College.

Given under Our Seal the 22d Day of June, 1687.

A Copy of the King's Inhibition to Magdalen College.

James Rex.

TRusty and Well-beloved, We Greet you well: Whereas We are informed, That a Sentence or Decree lately made by Our Commissioners for Ecclesiastical Affairs, touching an Election in that our College, hath not been obeyed, Our Will and Pleasure is, No Election or Admission be made of any Person or Persons whatsoever, into any Fellowship, Demyship, or other Place or Office in Our said College, till We shall signifie Our further Pleasure, any Statute, Custom, or Constitution to the contrary notwithstanding. And so, expecting Obedience herein, We bid you farewell.

Given at Our Court at Windsor, the Eighteenth of July, 1687. in the Third Year of Our Reign.

By His Majesty's Command.
Sunderland.

A Copy of his Majesty's Mandate for the
Bishop of Oxon to be President.

James Rex.

TRUSTY and Well beloved, We Greet you well: Whereas the place of President of Our Colledge of *St. Mary Magdalen*, is now void, Our Will and Pleasure is, That We do hereby Authorize and Require you forthwith, upon receipt hereof, to Admit the Right Reverend Father in God *Samuel Lord Bishop of Oxon*, into the said place of President, to hold and enjoy the same, with all the Rights, Priviledges and Profits, Emoluments and Advantages thereunto belonging, any Statute or Statutes, Custom or Constitution to the contrary, in any wise, notwithstanding, wherewith We are Graciously pleased, and do accordingly hereby Dispense in his behalf: And so, expecting your ready Obedience herein, We bid you Farewel.

Given at Our Court at *Windsor*, Aug. 14th 1687.
in the Third Year of Our Reign.

By His Majesty's Command.

Sunderland.

A Copy of the Lord Sunderland's Letter to the Senior Fellow of St. Mary Magdalen Colledge, in the University of Oxon, or in his absence, to the Senior Fellow residing there.

THE King having been pleased by His Letters Mandatory, to require the Fellows of *St. Mary Magdalen Colledge*, to Admit the Lord Bishop of *Oxon*, President of that Colledge; His Majesty Commands me to let you know, That immediately upon the receipt hereof, he would have you Assemble the Fellows, and Communicate to them His Majesty's said Letters: And I am further Commanded to tell you, That His Majesty expects a ready Obedience to be paid to His Pleasure herein. I desire you would send me an Account of your Proceedings, as soon as you can, that I may acquaint His Majesty with it. I am

Yours Sunderland.

A Copy of the Bishop of Oxon's Letter to the Senior Fellow of St. Mary Magdalen Colledge, in Oxon, or in his absence, to the Senior Fellow residing there.

S. I. R.

YOU will receive herewith His Majesty's Mandate to Admit me President of your Colledge of *St. Mary Magdalen*, in *Oxon*, together with a Letter of my Lord *Sunderland*, pursuant to His Majesty's Commands. I am indisposed, as I have been for some time, and not in a condition as yet to Travel; and therefore my request to you is, That upon receipt of the King's Pleasure, you would do me the Favour to Admit me by Proxy, (*i.e.*) Either the next Senior Fellow under your self, resident, or either of my Chaplains, *Mr. William Wickins*, or *Mr. Thomas Collins*, whom I depute in my stead, which is as valid in Law, as if I were present my self; and is the most usual and customary Practice. And by so doing, you will oblige

Your Very Loving Friend and Brother,
Samuel Oxon

Vol. III.

OXON, September 4th, 1687.

The Lord Sunderland sent an Order to the Fellows of St. Mary Magdalen Colledge, to attend the King at Christ-Church, at three in the Afternoon. They attended accordingly.

King **W**Hat's your name, are you *Dr. Pudsey*?
Dr. P. Yes, may it please your Majesty.

K. Did you receive my Letter;

Dr. P. Yes, Sir, we did.

K. Then you have not dealt with me like Gentlemen. you have done very uncivilly by me and undutifully.—Here they all kneeled, and *Dr. Pudsey* offered a Petition, which His Majesty refused to receive: And said

K. Ye have been a stubborn turbulent Colledge, I have known you to be so these 26 years: You have affronted me in this. Is this your Church of *England Loyalty*? One would wonder to find so many Church of *England* men in such a business. Go home and shew your selves good Members of the Church of *England*. Get you gone; know I am your King, I will be obey'd; and I command you to be gone: Go and admit the Bishop of *Oxon* Head, Principle; What d'ye call it of the Colledge.—? (*One stood by said President*) I mean President of the Colledge. Let them that refuse it look to it; they shall feel the weight of their Sovereign's Displeasure.

The Fellows going out of the Lodgings were call'd back.

K. I hear you have admitted a Fellow of the Colledge, since you receiv'd my Inhibition; Is this true? Have you not admitted *Mr. Holden* Fellow?

Dr. P. I think he was admitted Fellow: But we conceive—

Mr. Cra. May it please Your Majesty, there was no new Election or Admission, since Your Majesty's Inhibition; but only the Consummation of a former Election. (They always Elect to one years Probation) then the Person Elected is received, or rejected for ever.

K. The Consummation of a former Election; 'twas downright Disobedience, and 'tis a fresh aggravation. Get you gone home, I say again; go, get you gone, and immediately repair to your Chappel, and Elect the Bishop of *Oxon*, or else you must expect to feel the weight of my hand—

The Fellows offered again their Petition, on their Knees.

K. Get you gone, I will receive nothing from you till you have obey'd me, and admitted the Bishop of *Oxon*.

Upon which they went immediately to their Chappel, *Dr. Pudsey* proposing whether they would obey the King, and elect the Bishop of *Oxon*? They answered in their turns; They were as ready to obey His Majesty in all things that lay in their power, as any of the rest of His Subjects: But the Electing the Bishop of *Oxon*, being directly contrary to their Statutes, and the positive Oaths they had taken, they could not apprehend it in their power to obey Him in this Matter.

Y y y y 2

A

A Copy of the Petition offer'd at Oxford,
September 4. 1687.

To the King's Most Excellent Majesty, &c.

Humbly sheweth,

That upon the 27th of August we receiv'd Your Majesty's Letters Mandatory, Dated August 14th, requiring us to admit the Right Reverend Father in God Samuel Lord Bishop of Oxon, to be our President; and dispensing with all Statutes and Constitutions to the contrary. It is an unexpressible Affliction to us, to find our selves reduced to such an extremity, that either we must disobey Your Majesty's Royal Command, contrary to our own Inclinations, and that constant course of Loyalty which we have shew'd in all instances hitherto upon all occasions whatsoever; or else break our Founder's Statutes, and deliberately perjure our selves.

For our Founder hath obliged us under Oath, when we came in Fellows, inviolably to observe his Statutes, and one Clause therein enjoyns us never to admit, or make use of a Dispensation granted by any Authority whatsoever, whereby we may be absolved from the same. In this Statute for the Election of a President, he commands us upon Oath to Elect such a Person into the place of President, within 15 days after the vacancy, who either is, or has been Fellow of our own, or New-Colledge: Which we represented to Your Majesty in our humble Petition, sign'd April 9th, wherein we offered our selves ready to Elect any Person capable of the same, who Your Majesty should be pleased to recommend, and having waited the utmost time limited by our Statutes, and receiv'd no Answer to that effect, we did then according to the exigence of our Statutes (having first taken the Holy Eucharist, and our several Oaths to that purpose) nominate and Elect such a Person, as we in our Consciences did believe to be every way qualified for the Place: By which Act of ours we have conveyed all that right to him, which our Founder hath intrusted us with, and it does not lie in our power to admit any other. Our Founder in another Statute obligeth us under the pain of Perjury, a dreadful Anathema, and eternal Damnation, not to suffer any of his Statutes to be altered, infringed, or dispensed with, and commands us under the same Sacred Obligations, not to execute any Orders or Decree whatsoever, contrary or repugnant to the said Statutes; by which said Statutes, and Oaths, we are utterly incapacitated to admit the said Reverend Father in God to be our President.

May it please Your Sacred Majesty, to give us leave to lay this our Case, and our selves, with all submission, at Your Royal Feet, most earnestly beseeching Your Sacred Majesty, to extend to us Your humble Petitioners, that Grace and Tenderneſs which Your Majesty hath vouchsafed to all Your other Subjects; and not to believe us guilty of any obstinacy or undutifulness, Crimes which our Souls abhor; but to receive us into Your Majesty's Grace and Favour, the greatest temporal Blessing which our Hearts can wish.

And your humble Petitioners shall always (as in Duty bound) pray to Almighty God, to bless Your Majesty with a long and happy Reign over us, and afterwards to receive you to an immortal Crown of Glory.

A Copy of the Address which the Fellows of St. Mary Magdalen gave to the Lord President of the Council, Sept. 6. 1687; and which was delivered his Majesty at Bath.

WE Your Majesty's most humble, and most dutiful Subjects, the Fellows of St. Mary Magdalen Colledge in Oxon, being deeply afflicted with the late sence of Your Majesty's heavy Displeasure; grounded, as we in all reason humbly presume, upon a most unkind misrepresentation of our Actions, in relation to an Election of a President, into Your Majesty's said Colledge: Do humbly beg leave to prostrate our selves at Your Royal Feet, offering all real Testimonies of Duty and Loyalty. And as we have never fail'd to evidence both our Principles and Practices to be truly Loyal, in obedience to the Commands of Your Royal Brother, and Your Sacred Self, in matters of the like Nature: So whatsoever way Your Majesty shall be pleased to try our readinesſ to obey Your Royal Pleasure, in any instance that does not interfere with and violate our Consciences, which Your Majesty is studious to preserve, we shall most gladly and effectually comply therewith: A stubborn and a groundless resistance of Your Royal Will and Pleasure, in the present, and all other Cases, being that which our Souls eternally abhor, as becomes,

Your Majesty's most Loyal and most Obedient Subjects, &c.

A Copy of a Letter directed to Dr. Bayly, Fellow of Magdalen Colledge, Oxon; supposed to be Writ by Mr. W—— P——

Sir,
UPon an inquiry made of your present Fellows of Magdalen Colledge, I am inform'd that you are a person eminent in that Learned Body, for your Temper, Prudence, and good Conduct in Affairs; and therefore very fit to be address'd to by me, who do not send you this to trapan you, and your Brethren; but out of a passionate concern for your interest, to persuade you, either to a compliance with his Majesty's Letters Mandatory; or to think among your selves of some Expedient to prevent the ruin of your Colledge, and your selves: And to offer it to His Majesty's Royal Consideration, that the Order for the *Quo Warranto* against the Colledge may be recall'd, before it be too late; for you cannot be sensible how highly His Majesty is incens'd against you, neither can you give one instance whether ever that sort of proceeding was judged against the Crown. Your Cause most think it very hard; but you are not in Prudence to relye on the goodness of your Cause; but to do what the present instant of Affairs will permit, and in patience to expect a Season that will be more auspicious to Persons of your Character. Every Mechanick knows the temper of His present Majesty, who never will receive a baffle in any thing that he heartily espouseth, and that he doth this, your selves have had too late and manifest an instance, to doubt of his zeal in the Affair.

Where there are so many Statutes to be observed, 'tis impossible but some must be broken at one time or another; and I am informed by the Learned of the Law, that a failure in any one point,

point, forfeits your Grant, and lays your Colledge open to the Royal disposal.

I could give many other prudent Arguments, that might possibly incline you to a speedy endeavour of putting an end to your Troubles, almost, at any rate; but I shall suggest this one thing to you, that your fatal overthrow would be a fair beginning of so much aimed at Reformation, first of the University, then of the Church, and administer such an opportunity to the Enemy, as may not perhaps occur in His Majesty's Reign. I am

Your affectionate Servant, &c.

The Answer to the aforementioned written Letter, Dated Oct. 3d. 1687.

THE inclosed Paper is a Copy of a Letter, which by the charitable purpose of it, seems to be writ by you, who have been already so kind as to appear on our behalf, and are reported by all that know you to imploy much of your time in doing good to Mankind, and using your Credit with His Majesty, to undeceive him in any wrong impressions given him of his conscientious Subjects, and where his Justice and Goodness have been thereby abused, to reconcile the Persons injur'd to His Majesty's Favour, and secure them by it from Oppression and Prejudice. In this confidence, I presume to make this application to you, desiring your excuse for not subscribing it: For if you did write the Letter, you know to whom it was directed; and if you did not, I hope your Charity will induce you to make such use of your light you have by it, into the Affairs of our Colledge, as to mediate for us with His Majesty, to be restored to his good opinion, as the only thing which is desired by us, who are zealous, above all earthly things, for his Felicity and Glory.

We are not conscious of ever giving His Majesty any just offence, as it will appear with you, when you shall have perused the enclosed Papers; and have therefore no reason to fear the issuing out of a *Quo Warranto* against us. And though you are pleased to apprehend it, no instance can be given of a Judgment against the Crown, upon the process of that Writ: The Learned in the Law tell me, there is nothing more common, and whereof many Cases are reported by *Kellaway*, from Page 128, to Page 152, of his Book of Reports: And I think I have heard of a Case in *Coke's* ninth Report of the Abbess of *Prata Marcella*, which evinces the same; wherein also there is a recital of Judgment given against *Roger Mortimer* for the King, upon a *Quo Warranto* in Court of *Eyre*, revers'd for Errour in the King's Bench. We hope though we have many Statutes, it will be found that we have not wilfully transgress'd any of them, for all our present Troubles are derived to us from our adherence to them, and our fear to offend God, and blemish our Consciences, by departing from them.

His Majesty is intentionally righteous and just in all his Proceedings, He will never knowingly invade any Man's Property, as He was solemnly pleased to declare in his Excellent Speech made in Council, on the 6th of *February*, 1684, at his Accession to the Government; which is again repeated in His gracious Declaration for Liberty of Conscience, of the 4th of *April* last past. It is upon His sacred, inviolable, and Royal Word and Promise, we must depend; not doubting but

when His Majesty shall be rightly inform'd of our Case, in reference to both His Mandatory Letters to our Colledge, His Anger towards us will be totally extinguished. Our compliance to the first (which was Mr. *Farmer's* Election) would have involv'd us in the guilt of manifest Perjury, and the wilful violation of our Statutes: And we are confident his Majesty would never have granted the second on the behalf of my Lord Bishop of *Oxon*, if he had known we were then possess'd of a President duly Elect'd according to our Statutes, and confirmed by the Bishop of *Winton*, our Visitor (as the Statutes require); and if he is thereby invest'd with a Lay-Freehold under the protection of his Majesties Laws; which we cannot undo or attempt to invade, without subjecting our selves to Suits at Law, and doing an apparent injury to the President; who doth not conceive himself to be affected with the Sentence of the Lords Commissioners, (to which he was no Party) whereby his Place is declared void, without any Citations, Summons, or hearing of him

I believe no instance can be given of a *Quo Warranto* brought against a Colledge or Hall in the Universities, from the first foundation of them to this day, or any other Ecclesiastical Corporation: for the Abuses of some Constitutions or Franchises in them, and the Misdemeanours of particular Persons will not destroy a Colledge: And if the Corporation of a Colledge should be dissolv'd, the Revenues therefore will return to the Founders Heirs, and not devolve to the Crown. And if our Colledge must be the first Example of that kind, we shall be better justified by the strict Observation of our Statutes, (at least to God and our own Consciences) than we could have been by a voluntary and deliberate Breach of them.

It was Loyalty and Conscience, that in the Reign of King *Charles* the First, made thirty four of our forty Fellows, and most of the Scholars of our Foundation, rather quit their Places, and embrace Misery and Ruine, than to submit to the Government of the Usurpers of the Crown. And in *Monmouth's* Rebellion, the same Inducements prevailed on us to raise a Company at our own charges, under the command of one of our Fellows, to engage against him. And we hope that these and many other the like instances, which may be given of the Loyalty and Zeal of our Society to the Royal Family, will be received as Evidences thereof, and that our good and gracious Sovereign will not exclude us from that Liberty of Conscience, which he was pleas'd to extend to all his Subjects.

SIR, I am your most Affectionate Servant.

Some QUERIES sent to the Fellows of Magdalen Colledge from Windlor, September 15. 1687.

First, **W**Hether, waving your Election of the Bishop of *Oxon*, you cannot, without violence to your Conscience, signify to his Majesty, or the above Reverend Bishop, your willingness to admit the Lord Bishop President of your Colledge?

Secondly, Whether it be not more Interest to the Protestant Religion, to have a suspected Popish President, than to have all the places of the Colledge refiled by the Kings sole Authority with Popish Novices and Priests?

Thirdly

Thirdly, Whether you are not under a mistake, in thinking you should render your selves more acceptable to the Protestant Nobility and Gentry, by your being turned out of your Fellowships by Injustice and Violence, as you conceive; or rather will not they be very cautious how they receive you into their Families, for fear of giving of Offence?

Fourthly, Whether his Majesty, as Supream Visitor of the University, cannot place or displace there *ad libitum*; or whether you have a right notion of the Proceedings which have been practised against you? Whether you suppose that the Lords Commissioners proceeded against you as Lords Commissioners, or Visitors? Which Notion, I am sure, will overthrow some bodies Plea and exception against their Authority.

Fifthly, Whether you acted like men skilled in business, when you refused Mr. Pen's Mediation, who you may be sure had good Authority for what he did? You could not but know that man, and therefore must needs be forearmed against any Wiles that could be offered to you. Whether an unanimous Subscription for an Expedient, (which indeed I think you ought not to refuse in good manners, since the King was pleased to propose it) presented to his Majesty by Mr. Pen, or another Favourite, would prevent the destruction of the best Foundation in Europe?

Lastly, Whether you be not drawn beyond your Knowledge, by some hotheaded Advisers, which never consider the present state of his Majesty's Court of Justice?

An Answer to several Queries to the Vice-President and Fellows of Magdalen Colledge in Oxon, sent from Windsor, dated the 25th of September, 1687.

To the First. **W**E cannot, without violence to our Consciences, and deliberate Perjury, admit any person to be President of our Colledge, that is not elected thereunto, and qualified according to our Statutes; whereby the Bishop of Oxon is in no sort capable; nor is there any Memorial in all our Register of any admission of a President without Election, but of one Dr. Nicholas Bond, whose case was as followeth, (*viz.*) Upon the death of Dr. Lawrence Humphreys, about the 30th or 32th of Queen Elizabeth's Reign, the Queen recommended Dr. Bond (being a Fellow of our Colledge) to be Elected President. Many of the Fellows inclin'd in their judgment to Elect one Smith (another of the Fellows) and at their meeting for Election, the Contention was so great, that they rose without Electing, and the Obstinacy continued till the place became laps'd: And there being no provision in our Statutes to direct us what to do in such a Case, the Queen, by her Letters Patents, Constituted the said Dr. Bond to be President; and therein declared, That her Majesty being inform'd that the Fellows had neglected to make Election of a President in due time, (as their Statutes required) and those Statutes having made no provision for such an Omission, She, out of her Princely care for the place, and indulgence for those persons who had been guilty of that neglect, did by advice of the Bishop of Winton, their Visitor, constitute Dr. Bond their President; with protestation nevertheless, that She did not thereby pretend to supersede their Statutes, or invade their Right of Election, which was thereby invested in them,

but took this course as the only means left to supply their Defect of Election.

To the Second. We must not make our selves guilty of deliberate Perjury, for any considerations whatsoever, both in respect to our Consciences, and that we may not by such a Breach upon our Statutes, expose our Constitution to a Forfeiture, nor do Evil that Good may come on it.

To the Third. We conceive we shall be more acceptable to all good men, for acting honestly according to our Consciences, than for voluntarily and unjustly departing from our Right.

To the Fourth. We pretend not to make it a Question, whether his Majesty, by his Authority Royal as Supream Visitor, can grant a Commission for Visitation of any Colledge that has a Local Visitor by their Statutes, and are not Royal Foundations: But we are advised, that no Commission can be granted under the Great Seal to Visitors, to place and displace Members of Colledges (whose places are Freeholds) *ad libitum*, or *discretum*; but they must proceed according to legal discretion, that is, by the Laws and Statutes of the Land, and the Local Statutes of the Colledge. And places concern'd for the Headships and Fellowships of Colledges, are Temporal Possessions and cannot be impeach'd by Summary Proceedings. One Dr. Thomas Loweney President of our Colledge, was deprived in Queen Elizabeth's time, by the Bishop of Winton the Legal Visitor thereof Establish'd by Royal Authority, and he appeal'd to the Queen; but by the advice of all the Judges, it was held, that that the Queen by her Authority, as Supream Visitor, could not meddle in it, but he must bring

Westminster-Hall, because Deprivation was a Cause merely temporal. The King has a great Authority Spiritual as well as Temporal; but no Commissioners can be authorized by the Crown to proceed in any Commission under the Great Seal or otherwise, but according to Law; in Spiritual Causes by the Canon Law, in Temporal by the other Laws, and Statutes of the Land. And wherein the proceedings in some Commissions are directed to be *summariæ & de plano, &c.* those words are to be applied to shorten the Forms of Process, and not formatter of Judgment: for *Magna Charta* provides for our Spiritual Liberties, as well as our Temporal.

An Account of the Visitation of St. Mary Magdalen Colledge in Oxon.

ON October 19th, Mr. Atterbury the King's Messenger fix'd a Citation on the Colledge and Chappel-Doors, requiring the Pretended President and Fellows, and other Members of the Colledge to appear before the Lords Commissioners, Bishop of Chester, Lord Chief Justice Wright, and Mr. Baron Jenner, in the Chappel, at Nine of the Clock on Friday Morning, November 21.

On Thursday the Lords Commissioners came to Oxon, attended with three Troops of Horse which Quarter there.

On Friday-Morning at Nine they went into the Chappel; the President and Fellows thinking they had design'd to sit in the Quire, made no preparation of Seats in the outward Chappel; upon which their Lordships adjourn'd to the Hall, where their Commission was then read, which

which in general was the same with the former: These three being added to the other Lords Commissioners, and particularly empower'd to visit *Magdalen Colledge* only.

This done, the Names of the President and Fellows were called over, *Dr. Hough* being first called. All in Town appeared, (except *Dr. Fairfax*) and excuses were made for the absent.

Then a Speech was made by the Bishop of *Chester*, and in it his Lordship was Severe against Disloyalty and Disobedience. He urg'd that the Church of *England* taught an unconditionate and unlimited Obedience; He spake of the Kings Gracious Promises to Arch-Bishops and Bishops, &c. which had deserved thanks on bended Knees, notwithstanding the *Oxon* Reasons to the contrary, which they knew best who was the Author thereof. He told them that it could not be expected, but that the King would give all encouragement to those of his own Religion, which could be done without severity and cruelty which His Majesty abhorr'd, and without injuring the Church of *England*, which was at present establish'd by Law: He told them that this Corporation as well as others were the Creatures of the Crown; and that it was insolence in their Local Statutes to spurn against their Maker.

That their Distempers had brought this Visitation upon them, the Consequences of which might beill to the Church and Universities: That however they might escape in this World, these Sins were to be accounted for above their other Sins in the next. He Exhorted them by the Bowels of Christ to consider these things: He told them, that the Eyes of the World were upon them, and they ought to take care that their Practices might not influence their deluded admirers. In short, the whole design of the Speech seem'd to be promises and threats, to aim at the inducing them to a compliance.

The Court was then Adjourned till Two in the Afternoon.

In the Afternoon were called over the Names of the Demys, Chaplains, Clerks, Choristers, and Colledge Servants. The President then interpos'd, desiring leave to speak before they proceeded any further, which being granted, he told their Lordships: That

President. **T**HE time betwixt your Citation and Appearance was so short; that the Society had not time to advise with the Council how to behave themselves on this Occasion: Therefore desired of your Lordships a Copy of the Commission, and time to consider of it.

Bishop Ch. 'Tis upon Record, you may have it above.

Pr. Is it the same the other Lords Commissioners had?

Bish. Ch. Yes for the most part it is.

Pr. Then my Lord, I do assure you (and will make Oath if you please) that I have often endeavoured to get a Copy of it, and could not procure it.

L. C. J. Have you not heard it Read, or will you hear it again?

Pr. I am not capable of making a Judgment of it my self, but it is possible there may be Errours and Defects in't, such as the Society may make use of to their own advantage, and I am con-

fidant it is neither his Majesties intention nor your Lordships we should be debar'd from it.

A Copy was then denied.

Bish. Ch. *Dr. Hough*, will you submit to this Visitation?

Pr. My Lords, I do declare here in the name of my self, and the greater part of the Fellows; that we submit to the Visitation, as far as it is consistent with the Laws of the Land, and the Statutes of the Colledge, and no further. I desire your Lordships that it may be Recorded.

This was twice Repeated.

L. C. J. You cannot imagine that we Act contrary to the Laws of the Land, and as to the Statutes the King has dispensed with them: Do you think we come here to act against Laws?

Pr. It does not become me (my Lords) to say so, but I'll be plain with your Lordships; I find that your Commission gives you Authority to change and alter the Statutes, and make new ones as you think fit: Now my Lords we have an Oath, not only to observe these Statutes (laying his hand on the Book) but to admit of no new ones, or alterations in these; This must be my behaviour here, I must admit of no alteration from it; and by the Grace of God never will.

Bish. Ch. Do you observe all these Statutes?

Pr. Yes, my Lord, I hope we do.

Bish. Ch. You have a Statute there for Mafs, why don't you read Mafs?

Pr. My Lord, the matter of this Oath is unlawful; and in such a Case, no Man is oblig'd to observe an Oath: Besides, the Statute is taken away by the Laws of the Land.

Bish. Ch. By what Law?

Dr. Stafford. By that which obliges to say Common-Prayer.

Bish. Chester. What, the Act of Uniformity? I have often considered it, and don't remember one word of Mafs in it.

Dr. Staff. But that obliges us to use the Liturgy of the Church of *England*, in all Collegiate Churches and Chappels. And, I hope, my Lords, you do not imagine that we can say Common-Prayer and Mafs together.

Bish. Ch. Do you allow that Act of Parliament can free you from the obligation of a Statute?

Pr. I do not say, but that his Majesty may alter our Statutes, nor do I know but a Parliament may do the same; I dispute not their Power: only this, my Lord, I say, that I who already have taken an Oath to observe these Statutes as they now stand, and am sworn not to admit of any change or alteration by any Authority whatsoever, [*And then turning to the Oath where they were to observe those Statutes and no other, according to the Literal and Grammatical sense, &c. and reading it to their Lordships.*] can obey none: But then those who come after such Limitations and Restrictions are made, are not oblig'd to observe 'em; and that, my Lords is our Case as to the Statutes of the Mafs.

Then the Decree of the 22d of *June* was read, declaring the President's Election Null and Void.

Bish. Ch. Did you know of this Commission, &c?

Pr. Yes, my Lord, I have heard of it.

Bish. Ch. Why then did you not obey it?

Pr. I was never Cited before their Lordships, nor was either heard by them in Person or Pro-

xy; and I think I am the only instance that is extant, of any Man that was ever depriv'd of a Freehold, wherein he was legally invested, and of which he was quietly possess'd, without being Summon'd or Heard.

Here mention was made of Dr. *Fairfax's* Suspension.

Pr. My Lord, he is absent, and if your Lordships give me leave, I have somewhat to say on his account; your Lordships may please to observe in that Decree, that the reason given, why Dr. *Fairfax* was Suspended from his Fellowship, was, because had not obeyed his Majesty's Command, in not Electing Mr. *Anthony Farmer* President of the Colledge: Now the Charge of Immorality given in against Mr. *Farmer* by the Colledge-Delegates was made out, and their Lordships fully satisfied in it, on the 29th of July, notwithstanding which, this Decree for Suspension of Dr. *Fairfax*, was fix'd on the Colledge Gates, August 2d.

Bish. Ch. The King hath for the most part recommended to the Presidentship of this Colledge.

Pr. I am the Twentieth President, and only four of that number have been recommended by the Kings and Queens of *England*, whereof three were every were qualified for that Office.

Bish. Ch. Who were those?

Pr. My Lord, there was one in the time of *Edward the Sixth*, one in *Queen Elizabeth's*, and two in the late King's Reign.

Bish. Ch. Was there never a one in King *Charles the First's* Reign?

Pr. Not that we know of.

Bish. Ch. What think you of Dr. *Oliver*?

Pr. It doth not appear to us, my Lord, that he ever had a Mandate.

Bish. Ch. But it appears to us, and that I will bring you one to swear, that he had a Mandate.

Pr. The truth is, we have lost the Register of Dr. *Oliver's* Election and Admission; the Register betwixt the Year 1640, or thereabouts, and 60. being taken away by those who were turn'd out of the Colledge at that time; but I believe, my Lord, we are able to prove that he was Elected and Admitted according to the Statute.

Bish. Ch. Was Dr. *Clarke* a Statutable Person?

Pr. Yes, my Lord.

Bish. Ch. Do not the Statutes require that he should be in Orders? was he in Orders?

Pr. My Lord, the Statutes only require that he should be Doctor of Divinity, Physick, Law, or Master of Arts: There is indeed one Statute which says, The President or Seniour Fellow should Read Prayers upon such certain Days; from whence we conclude, that the Founder suppos'd we might have a President that might not be in Orders; and in such a Case he takes care that the Seniour Fellow should do his Duty.

Mr. Char. My Lord, will you be pleased to ask Dr. *Hough*, whether Dr. *Clark* was Married or not?

Pr. No, Sir, he was a Widower.

Then a Petition was read from the Society to his Majesty, signed the 9th of April, and presented the 10th to the Earl of *Sunderland*, by the hands of Dr. *Thomas Smith* and Captain *Bagshaw*, wherein 'twas set forth, that having heard that his Majesty would recommend Mr. *Farmer* to them, a Person incapable; they

did humbly beseech him; either to leave them to a free Election, or to recommend a qualified Person.

Bish. Ch. Was this the Petition?

Answer. Yes.

Bish. Ch. Why then did you not stay for his Majesty's Answer?

Pr. My Lord, We did till the very last Day wherein we are limited to finish the Election; and my Lord *Sunderland* returned in the King's Name, this Answer, that His Majesty expected to be obeyed. Now, my Lord, we did no longer defer the Election, because our Statutes enjoin us within such a time, and we staid to the utmost. Nor could we chuse the Person his Majesty did recommend, knowing him to be so unfit, as we afterwards made him appear to be. The Society was therefore to proceed to the Election of another Person, and did agree on such as you see.

Bish. Ch. A Mandate always implies an Inhibition.

Pr. My Lord, I cannot conceive that.

Bish. Ch. But I can; and if you question it, here's the King's Council ready to argue it.

Pr. My Lord, Whilst the Person his Majesty recommends appears duly qualified for the place, it seems indeed to imply that we should not proceed to the Election of another; but when he is known to be utterly incapable, it seems to be the same as if there were no Letter at all.

Some other things and questions less material were put, and then the Court was Adjourned to Saturday the 22d. at Nine in the Morning, to the common Room, the Hall being (as they said) too publick and incommodious.

Saturday, October 22d. 1687.

As soon as their Lordships met in the common Room, and the Society before them, the first Word was Withdraw; and after a little time, the President was called in alone.

Bish. Ch. DO you submit to the Decree of the Commissioners, whereby the Election is declared Null?

Pr. As to that Decree of the Lords above, it is a Nullity in its self from the beginning to the end, as it relates to me, I never having been Cited, nor having ever appeared before them, either in Person or Proxy: Besides, my Cause it self was never before them; their Lordships never inquiring or asking one question concerning the Legality or Statutableness of my Election: for which reasons (as I am informed) that Decree was of no Validity against me, according to methods in the Civil Law: But if it were, I am possessed of a Free hold, according to the Laws of *England*, and the Statutes of the Society, having been Elected as Unanimously, and with as much Formality as any one of my Predecessors Presidents of this Colledge, and afterwards Admitted by the Lord Bishop of *Winton*, our Visitor, as the Statutes of the Colledge require; and therefore I can't submit to that Sentence, because I think I cannot be depriv'd of my Free hold, but by course of Law in *Westminster Hall*, or by being some ways incapacitated by the Founder's Statutes.

Bish. Ch. Will you deliver up the Keys of the President's Office and Lodgings, to the use of that Person whom the King has appointed your President, as the Statutes require?

Pr.

Pr. I will immediately do it, if that appear.

Bish. Ch. Turn to that part of the President's Oath where he promifeth to submit quietly if he fhall be Expelled, either for his own Fault *vel ob aliam Causam*.

Pr. My Lord, that Statute only concerns me, if I am Expelled for any fault committed by me.

Bish. Ch. *Vel ob aliam causam?*

Pr. Then, my Lord, to be fhort, here is no caufe at all.

Bish. Ch. I ask you again, Will you deliver up the Keys to the President whom His Majesty hath appointed?

Pr. There neither is nor can be a President fo long as I live, and obey the Statutes of the Colledge; and therefore I do not think fit to give up my Right, the Keys and Lodgings.

Bish. Ch. We may demand them of you as Visitors.

Pr. My Lords, we never deliver up the Keys to the Bishop of *Winton*; and we own no greater Vifitatorial than his, he hath the King's Authority. 'Tis by Vertue of a Royal Charter that we live together, and enjoy the benefit of this Place; that impower'd our Founder to give us a Rule, and obliged us by Oath to act fuitable unto it: and the Bishop of *Winton* is hereby constituted to be our Vifitor; and all this we own from the King's Authority. The Bishop of *Winton* is our ordinary Vifitor; the King (I prefume) our extraordinary. But your Lordships know it hath been controverted, whether the King can vifit a private Colledge or not? The Authority of the President is made by delivering up the Statute-Book, and Keys; and therefore I look upon them as an effential Badge of my Office.

But I humbly beg that I may ask your Lordships one Queftion.

Your Lordship is pleas'd to demand of me to give up thefe things: Does your Lordship own my Right? For if not, what is it your Lordships would have me give up?

Bish. Ch. No, we look upon you as an Intruder.

Pr. If I am an Intruder, the Bishop of *Winton* made me one, and I thank God for it. My Lords, the time we have been allowed for this appearance, has been very fhort, but one day betwixt it and the Citation: We are Men ignorant in the Laws, and I muft confeß it of my felf in particular, that I have endeavour'd to give your Lordships a plain fatisfactory Reply to fuch Queftions as your Lordships have been pleas'd to put to me. It is very probable that through ignorance and inadvertency I may exprefs my felf unwarily: If fo I befeech your Lordship let no advantage be taken of it, my intention has been always to exprefs my felf with all imaginable Duty to the King, and Refpects to your Lordships. If I have done otherwife, I befeech your Lordships Candour in a favourable Interpretation of what I faid, that nothing may be taken amifs, where all was dutifully intended. And now my Lords, thus far have I appear'd before you as Judges; I now address to you as Men of Honour, and Gentlemen, I befeech you to represent me as dutiful to His Majesty to the laft Degree, as I always will be, fo far as my Confcience permits me, to the laft Moment of my Life; and when I am difpossest here, I hope your Lordships will interceed, that I may no longer lie under His Majesty's Difpleasure, or be

frown'd upon by my Prince, which is the greateft Affliction can befall me.

Upon this the President was ordered to withdraw, and after a little time, he and the Fellows were called in again. Then the Bishop repeated this Queftion.

Bish. Ch. Dr. *Hough*, Will you deliver up the Keys, and quiet Poffeffion of the Lodgings, to the Perfon whom His Majesty has appointed President? To which no Answer was return'd. The Bishop repeated a fecond time.

Pr. My Lords, I have neither feen nor heard any thing to induce me to it.

Bish. Ch. Dr. *Hough*, Will you deliver up the Keys and quiet Poffeffion of the Lodgings, to the Perfon whom His Majesty has appointed President?

Whereupon the King's Proctor flood up and accus'd Dr. *Hough* of Contumacy; then the Bishop of *Chefter* admonish'd him in thefe Words, three times.

Bish. Ch. Dr. *Hough*, I admonish you to depart peaceably out of the Lodgings, and to act no longer as President, or pretended President of this Colledge.

Which being fo done, they fuck his Name out of the Book, and admonish'd the Fellows, and others of the Society, that they fhould no longer submit to his Authority.

Saturday, October the 22d, 1687. Oxon.

Dr. Fairfax's Cafe before the Commiffioners.

AT the firft Sefßions Doctor *Fairfax* purpofely abfented himfelf; but Mr. *Asterbury* making Affidavit he was in Town, and that he advis'd him to appear, the Doctor accordingly did fo the next day. The Doctor being called in alone, and the Doors immediately fhut, he beg'd of their Lordships fome Company might be let in; becaufe, as all had obferv'd, the Bishop in his Speech, at the opening their Commiffion, promis'd to tranfact every thing in the Face of the World. The Bishop complain'd of the Crowd. The Doctor then desired to fetch in but Two or Three, at length but One, and him at the Door, *viz.* The Colledge Steward, a Publick Notary.

Bar. Fen. You muft not think to prefcribe to the Court.

Bish. Ch. What's the Caufe of your Contempt, in not appearing at either Sefßions Yesterday?

Dr. Fair. No Contempt, my Lord, but for thefe enfuing Reafons.

First, I thought my Suspension above had eafed me of that trouble. The Doctor tendring a Copy of it, which was read by the Commiffioners. The Doctor infifted very much on the Reafons their Lordships at *White-Hall* gave for his Suspension, (*viz.*) For not obeying His Majesty, in Electing Mr. *Farmer*, he tendring a Copy of Articles made good againft him; and yet their Lordships order'd his Suspension to be fix'd on the Colledge-Gates five Days after that famous Hearing. Second Reason for his Non-appearance, that upon the firft day of the enfuing Term, he intended to meet the Lord Chief Juftice, at his Court of King's Bench, for relief againft the Sentence, his Fellowship being a Freehold; witneß *Coveny's Cafe*.

Bish. Ch. You will find but little Favour there.

Dr. Fair. My Lord, in Courts of Judicature, I only expect Justice, and turning to the Lord Chief Justice. I have my self said he, been above four Years in all the Courts of Westminster-Hall, and found excellent Justice, and I will see how it is now.

L. Ch. Just. You shall have Justice.

Dr. Fair. But your Lordship may save me the labour of two Journies and my Charges, by improving your Lordships deserved Interest with my Lords Commissioners there, and get them now to take off my Suspension: It is ill travelling at this time of Year; and besides I am not rich.

Bar. Jen. To sue in Westminster-Hall requires a Purse.

Dr. Fair. My Lord, I did not say I was poor.

L. Ch. Just. You must make your Supplication and Submission to the King.

Dr. Fair. My Lord, they tell me that this business lyes in your Lordship's Court, and only there, (besides the trouble I am otherwise to give your Lordship) What a noise will the cause make that Dr. Fairfax is suspended for this very reason, (*viz.*) not obeying the King in Electing Anthony Farmer, such a Virtuoso, and under Correction, your Lordships are obliged to take off my Suspension, to take off the shame from that Body, whose number by a common Adjunct you your selves have lately increas'd.

Bar. Jen. We must not endure these Reflections on the Court.

Bish. But will you submit to this Visitation?

Then Dr. Fairfax read a Paper subscribed by him, Dated October the 22d, in these Words: 'My Lords, I have been Summon'd, and appeared in this Cause before the Lords Ecclesiastical at White-Hall, with whom your Lordships are now joyn'd in Commission; and then gave in my Answer: I have nothing to add to it, and find no reason to retract it.'

Henry Fairfax.

Bish. Will you admit of the Bishop of Oxford?

Dr. Fairfax. I am suspended.

Bish. Have you done no Collegiate Act since your Suspension?

Dr. Fair. My Lord, I have gone into the Hall, and laid in my Chamber: I did not think their Lordships, when they suspended me, ever intended that I should not eat, drink or sleep.

Bish. If your Suspension was off, would you submit to the Bishop of Oxford?

Dr. Fair. Truly my Lord, I cannot do it. Then all the Fellows were called into Court.

The President being withdrawn, the Bishop put the Question to all the Fellows, (*viz.*) Whether they would assist at the Admission of the Bishop of Oxford to be installed President by virtue of the King's Mandate? To which was answered by all the Fellows, to this Effect: (except Dr. Pudsey, and Dr. Tho. Smith, who answered doubtfully, and Chernock that he would assist) That they were under Oaths to the contrary, and therefore could not do it.

Then all were ordered to withdraw; and Dr. Pudsey being called in alone, they asked him concerning the Manner and Form of Installing a President; which he instructed them in.

The Court Adjourn'd till Two in the Afternoon.

AS soon as they met, a Letter from the Earl of Sunderland to Dr. Pudsey, was read, dated the 2d of August, signifying, That the Society in answer to His Majesty's Letter commanding them to admit the Bishop of Oxford, agreed unanimously in this Answer, That the place was full. Their Lordships were pleased to ask the Fellows singly, Whether that was their Answer? And as many as were there, owned that it was.

During this Examination, the President came into Court, and having waited until it was ended, and their Lordships at a Pause, he made his Application to them: 'My Lords, if your Lordships please to give me leave, I would gladly speak a few Words'. They were all pleased to put off their Hats, and say he might. Whereupon he said, 'My Lords, you were pleased this Morning, in pursuance to a Decree of the Lords Commissioners at London, to deprive me of my place of President of this College, and to strike my Name out of the Buttery Book: I do hereby protest against all your Proceedings, and against all that you have done, or hereafter shall do in Prejudice of me and my Right, as illegal, unjust and null: and therefore I appeal to my Sovereign Lord the King in his Courts of Justice'. Upon which the Strangers and young Scholars in the Room gave a Hum; which so much incensed their Lordships, that notwithstanding all the Protections the President and Fellows could make, the President in particular offering to purge himself by Oath, that he was no way accessory to or abetting of it, and declared that he was heartily ashamed and troubled at it; yet the Lord Chief Justice was not to be pacified, but charging it upon the President, bound him in a Bond of 1000 l. and Security to the like value, to make his Appearance at the King's Bench-Bar, the 12th of November.

After this, was read the Answer the Fellows returned to His Majesty upon his Command to them upon the 4th of September, to elect the Bishop of Oxford: the Answer was under the hand of a publick Notary, subscribed by all the Fellows then present, except Mr. Chernock. The Bishop of Chester was pleased to charge the Fellows of Unmannerliness, for sending such an Answer to their Prince after such a manner.

So they Adjourned till Tuesday the 25th, at Eight in the Morning.

Tuesday the 25th of October.

WHEN the Court met, Dr. Stafford offered a Paper in answer to what was objected on Friday, that a Mandate implied an Inhibition; which their Lordships having perused, would not suffer to be read publicly, but askt the Fellows whether they would sign it, bidding them to do it at their Peril.

Then the Fellows had leave to withdraw into the Hall, and not being satisfied that it was necessary to sign a Plea, which their Lordships refused to have argued, they returned the Paper into the Court, subscribed only by Dr. Fairfax and Dr. Stafford. The latter after some debate, desired to withdraw, but Dr. Fairfax stood to it.

A Copy of Dr. *Stafford's* and Dr. *Fairfax's* Plea.

To the Right Reverend and Right Honourable His Majesty's Commissioners for the visiting of S. Mary Magdalen College in Oxford.

May it please your Lordships,

ON Friday last in the Afternoon, you seem'd to insitt very much on this, (*viz.*) That His Majesty in commanding the Fellows of the said College to Elect Mr. *Farmer* President, did thereby inhibit them to Elect any other Person whatsoever; which has not yet been made appear to be Law, either out of the Books of Civil; Canon or Common Law. Neither is it agreeable to Reason, that a Command to Elect a Person incapable, should include in it an Obligation not to Elect a Person capable, that being a kind of Contradiction *in terminis*. Yet this being granted, it cannot in the least affect the said Fellows, or invalidate their Election of Dr. *Hough*, notwithstanding His Majesty's Mandate in behalf of Mr. *Farmer*, who being incapable of the place, the Fellows cannot be said to be guilty of any Disobedience or Disloyalty, in proceeding to the Election of another Person who was qualified according to Statute, being forced to make an Election. For they are obliged by the Statutes of their College, (when call'd together) to Elect a President, or any Officer under pain of perpetual Expulsion from the College, to meet and make an Election; which Punishment they incur *ipso facto*, who either refuse to meet when so call'd, or being met, to nominate or elect a Person into the Office void, as appears by the Statutes of the said College: *Titulo de numero Scholarium & electione Presidentis*. Now according to the Founders direction in the said Statute, on the 15th of April last, the Fellows were call'd together by the Vice President to Elect a President in the place of Dr. *Clark* deceased, and the Oath desired to be taken before the Election was administred by the Vice President to them, whereby they are oblig'd to nominate and Elect a Person that either is or has been Fellow of *Magdalen College* or *New College* in *Oxon*; which Oath when the Fellows had taken, it was not in their Power to Elect Mr. *Farmer*; and yet they were then oblig'd to make an Election, under pain of perpetual Amotion from the College, as appears by the forecited Statute. And it cannot be imagin'd that his most Sacred Majesty did expect that the Fellows should be either perjur'd, or forfeit their Right to their Fellowships, rather than disobey his Command; His Majesty having most graciously declar'd, that Conscience ought not to be forced, and that none of his Subjects should be molested in the Enjoyment of their Rights and Privileges, &c. Now that our Proceedings at the Election cannot lay any Imputation of our Disobedience or Disloyalty upon us, will thus be made appear: Either we had the Power to Elect a President, or we had not; if we had not, to what end or purpose did His Majesty command us to elect one? if we had, our Power was either restrain'd to Persons so and so qualified, or we were at liberty to chuse whom we pleas'd; but we could not do the latter, as appears by our Statutes: and therefore we could not Elect Mr. *Farmer*, being not invested with

any Power to Elect a Person unqualified. And if we had so done, our Election would have been null and void in it self, and the Person elected liable to be turn'd out by our Visitor.

As for the Decree of His Majesty's Commissioners (in pursuance of which your Lordships have admonish'd Doctor *Hough* to recede from the place of President, and quietly to resign the Keys of his Office, and have struck his Name out of the College Book) we humbly conceive it to be null and void in it self, to all intents and purposes, Dr. *Hough* being thereby depriv'd of Freehold for Life, (of which he was duly and legally possess'd) without ever being call'd to defend his Right, or any Misdemeanour objected against him. Wherefore we humbly beg leave of your Lordships, that Dr. *Hough* may be permitted to defend his Right and Title to the Presidentship at Common-Law, before any other Person is put in Possession of the place.

Thomas Stafford.

Hen. Fairfax.

After this Mr. *Wiggins*, Chaplain to the Bishop of *Oxford* was called in, who delivered a Paper impowering him as Proxy, to be Installed President for his Lord; which being read, together with the King's Mandate for the Bishop of *Oxon*. The Question was put to two or three of the Seniors, Whether they would assist at this Instalment? which they refusing, the Court Adjourned to the Chappel, where the Bishop of *Chester* put Mr. *Wiggins* into the President's Stall, where he took the Oath which the Statutes enjoyn the President at his Admission; and the Oaths of Allegiance and Supremacy; the latter of which he was ordered to take upon his Knees, which he accordingly did. Then their Lordships conducted him to the Door of the President's Lodgings, where knocking three times, and the Door not being opened, they returned to the Common Room, and Commission'd *Atterbury* and a Tipstaff, to fetch a Smith to force it open, which was done, their Lordships being present all this while. None of the Fellows except Mr. *Chernock* assisting, or being so much as present at either of these Performances. Then the Commissioners being returned to the Common Room, Dr. *Fairfax* desired leave at their leisures to speak; which was granted.

Dr. *Fair*. My Lords, your Lordships have been doing of what I can by no means consent to.

Bish. *Ch*. You are big to be delivered of your own Destruction. Will you submit to the Bishop of *Oxon*, as now installed President, by vertue of the King's Mandate?

Dr. *Fair*. I will not; I cannot; because we have a Statutable and legal President already.

Then the same Question was put to the Society, which being a business of Moment, they desired time till the Afternoon to consider it.

Then the Court Adjourned till Three a Clock; at which time the Answer was given in by the Society, (except Dr. *Fairfax*, who had given his in the Morning) 'That whereas His Majesty hath been pleased by his Royal Authority to cause the Right Reverend Father in God, *Samuel* Bishop of *Oxon*, to be Installed President; we whose Names are hereunto Subscribed do submit, as far as is lawful and agreeable to the Statutes of the College, and

'no way prejudicial to the Right and Title of Dr. Hough'.

This Answer was accepted, except the last Clause; which the Lord Chief Justice, and Baron Jenner declared, as Judges, to be insignificant, since nothing they could do, could any way invalidate Dr. Hough's Title, but left them still at liberty to be Witnesses for him, or any other way be serviceable to him in the recovery of his Right. Upon this Assurance, the Society was prevailed with to leave out the last Clause.

Then all were commanded to withdraw: And Dr. Fairfax being called in, the Bishop asked him what he meant by his Paper abovementioned, dated *October* the 22d; and whether he did submit to the Authority of the Court?

Dr. Fair. As I have denied it above, so I do here.

Then the Court was opened; and the Doctor complained before them all, that he was twice cloistered, and being asked Whether he would obey the Court and Bishop of Oxon? he plainly denied both. Upon which the *Buttery-Book* was called for, and the Bishop of *Chester* commanded his Name to be struck out: And this Sentence passed, *viz.*

Forasmuch as you have denied the Authority of the Court, and refused to obey the Bishop of Oxon, whom the King hath made your Prebendary; and taken Commons after your Suspension: We declare your place void, and command you quietly to depart the College within Fourteen Days.

Dr. Fair. My Lords, all the huge Calamities that have befallen me, are on the sole account of a religious and conscientious Observation of our pious Founder's Statutes; whose Bread I have eaten almost this Thirty Years.

L. C. J. No Speeches: besides, if you have any Papers, instead of reading them, leave them in the Court.

Then with much ado, the Doctor prevailed with them to let him read his Protestation, which he left in the Court. —

I Henry Fairfax, Fellow of St. Mary Magdalen College, do under my former Answer heretofore made, and to the intent it may appear that I have not consented, nor agreed to any thing done against me, and to my Prejudice, I protest that your Sentence given here against me, is *Lex nulla*, and so far as it shall appear to be *aliqua*; I do say it is *iniqua & injusta*, and that therefore I do from it, as *iniqua & injusta*, appeal to our Sovereign Lord the King, in his Courts of Justice, as the Laws, Statutes, and Ordinances of the Land will permit in that behalf. Subscribed

October 25, 1687.

Henry Fairfax.

This Protestation was over ruled, and a Copy of the Sentence denied, though most earnestly desired at the instance of Dr. Hedges, and Mr. Vice Chancellor, two days after.

At the close of the Sessions, their Lordships declared, that they were very well satisfied with the Answer the Society had given them; and though before they had laid a Libel to their charge, yet that Night they declared, they had met with nothing from them but Civility, and that they should receive the same from them; that they had shewn themselves Men of excellent Tempers this day and before; and that

they would represent it faithfully above to their advantage, and that if it any way lay in their power to serve them, they should be very ready to do it.

Then they Adjourned till *Wednesday* Morning, ordering them to bring in their Answer to the following Questions:

I. *What Gifts and Provisions have you for Entertainment of Strangers?*

II. *What is the Value of it?*

III. *How is it applied?*

IV. *And where is the Place of Entertainment?*

Wednesday, October the 26th, 1687.

IN the Morning they made it appear to their Lordships very satisfactorily, that they were obliged to give in Charity-Money, 2 *l.* 3 *s.* 4 *d.* and that besides that, they gave *communibus annis*, almost 100 *l.* as appeared by a Paper they then delivered in. Upon this their Lordships were pleased to expatiate upon their generous Bounty and Liberality, saying the Complement of this account was groundless, and that it would induce the King to a better belief of them in all other matters.

Then a Petition of Dr. Rogers, late Organist, was given in, desiring to be restored, which was read; but several Misdemeanours being proved against him, it was thrown out; and he advised to rest satisfied with 30 *l.* per annum, which the College had bestowed on him when they turn'd him out of his Place.

Thursday, October the 27th, 1687.

THIS Morning they received a List of Leases, &c. which had been renew'd two Years last past: Mr. Chernock, the new Convert, asked their Lordships, whether those Leases stood good, which had been sealed since Dr. Hough's Election? The Lord Chief Justice answer'd, Yes; for Corporations always stick by their Seals. Then their Lordships perused the College Registers, and finding nothing in them to object against, they were returned, and the Court Adjourned till the Afternoon: At which time their Lordships told them, That having received no Express from above, as they expected, they would Adjourn till *Friday* at Eight in the Morning.

Friday, October the 28th, 1687.

THE Commissioners being seated, all were commanded to withdraw: then only the Fellows were called in, and the Bishop of *Chester* said they had represented them fairly to the King, but His Majesty expected some farther Submission, which they advised them to make, by acknowledging their Contempt to His Sacred Majesty in Person, and to His Letters; and that they should promise to behave themselves Loyal for the future; and that they should some ways own the Proceedings and Legality of the Court, and implore His Majesty's Pardon, and lay themselves at His Feet.

The Fellows making a little Pause, the Bishop of *Chester* told them, they might word it themselves; or if they thought fit Mr. Tucker should assist them in a Form. Then all the Fellows withdrew into the Hall, and drew up the following Answer.

May

May it please your Lordships,

WE have endeavoured in all our Actions, to express our duty in all humility to His Majesty, and being conscious to our selves, that in the whole Conduct of the Business before your Lordships, we have done nothing, but what our Oaths and Statutes indispensably oblige us to, we cannot make any Declaration, whereby we acknowledge that we have done any thing amiss, having acted according to the Principles of Loyalty and Obedience, so far as we could, without doing Violence to our Consciences, or Prejudice to our Rights, (one of which we humbly conceive the Electing a President to be) from which we are sworn upon no account whatsoever to depart. We therefore humbly beg your Lordships to represent this favourably, with our utmost Duty to His Majesty, whom God grant long and happily to Reign.

Upon their Lordships perusing of the Answer, they expressed their dislike of it, saying, It did not come up to the Address sent to His Majesty at Bath which was read; to this it was replied, That they hoped their Behaviour since, had been every way answerable to what they had therein promised. Then their Lordships said, that it did not come up to what they delivered in on Tuesday.

Dr. Bayly. My Lords, we have acted conformable to our selves; and truly my Lords, I cannot possibly confess any Crime.

Bish. We do not expect of you to confess any Capital Crime, only to make some Acknowledgement.

Mr. Fulham. My Lord, We were ordered to address our selves, as having acted in Contempt of His Majesties Authority, which my Lord, I look upon as so great a Crime; that on no account I would be guilty of it. My Lord, We have endeavoured to obey His Majesty to the utmost of our Power, and seeing your Lordships were pleased to accept our Answer on Tuesday, I humbly conceive your Lordships Honour is engaged, that nothing further be required of us.

Bish. You are a very forward Speaker, and abound in your own Sense.

Mr. Fulham. My Lord, I hope your Lordship will give me leave to speak, when our Fortunes are so considerably at Stake.—

Then Dr. Bayly desired of their Lordships, to give him leave to explain what he meant by the word *submit* in his Answer on Tuesday; because (saith he) I hear your Lordships understood more than was meant, and least your Lordships should go away under a Mistake, by the word *submit* in the former Answer, I did not intend any future Obedience to the Bishop of Oxford; but meant it in reference to the King's Authority, inasmuch as I did not oppose or resist the Bishop of Oxford's Instalment.

Upon this, a fresh Question was put to the Fellows, whether they would obey the Bishop of Oxford as their President *in licitis & honestis*; to which all except one or two answered; They could not obey the Bishop of Oxford as their President.

Then Mr. Fulham was particularly asked the Question.

Mr. Fulham. Dr. Hough being duly Elected and admitted President, doth thereby obtain a right, which I am not satisfied he hath any way forfeited, and therefore can obey no Person as President.

Bish. Ch. Will you obey the Bishop of Oxford as in Possession?

Mr. Fulham. I cannot, because the Bishop hath not lawful Possession.

Then he was ask'd wherein?

Mr. Fulham. He hath not Possession in due form of Law, nor by proper Officers: I am informed that the proper Officers to give Possession of a Freehold, is the Sheriff with a *Posse Comitatus*.

L. C. J. Pray, who's the best Lawyer, you or I? Your Oxford Law is no better than your Oxford Divinity: If you have a mind to a *Posse Comitatus*, you may have one soon enough.—

Mr. Fulham. My Lords, I intended nothing but respect to your Lordships, and have endeavoured to speak and behave my self with due Reverence, and I hope your Lordships will put a favourable Construction on what I said.—

Then all were commanded to withdraw, and the Buttery-Book was called for, and after that, Mr. Fulham was sent for in; and by the Bishop of Chester suspended as followeth.—

Bish. of Ch. Mr. George Fulham, We have thought fit to suspend you from the Profits of your Fellowship during His Majesties Pleasure, for your Contempt and opprobrious Language.—

Then they Adjourned till Wednesday the 16th of November, ordering the absent Fellows to be sent for home against that time. So they immediately went for London.

Wednesday November the 16th, 1687. at Nine in the Morning.

THE Lords Commissioners being sate, the first thing they did, sent for the Buttery-Book; then called for Mr. Feyner and Mr. Allibone, and entered them actual Fellows. The former in the room of Dr. Fairfax whom they had Expelled; the latter in place of Mr. Ludford lately deceased: All Oaths being dispensed with, besides that of a Fellow. That done, the Fellows being called, and Reasons given in for those that were absent. The Bishop of Chester spoke a Speech to this Effect.

Gentlemen, your many Contempts and wilful Disobedience, have occasioned this Visitation, which will end at last in your Ruin. This Society of yours has been long exercised in the Methods of quarrelling; has always been troubled with factious Spirits, and testy Mutineers, ever since the Restoration of the late King: You have encourag'd Quarrels among your selves; Quarrels between your selves and President; Quarrels, at length between your selves and Visitor. For I have often heard your late Visitor complain, that this Society was ever stocked with an unquiet and turbulent Generation. By these Steps from quarrelling with the President and Visitor, you have at last advanced to the highest pitch of Insolence, to quarrel with your Prince, and affront His Sacred Majesty. I endeavour'd before, at the opening our Commission, to make you sensible of the Scandal that your Disobedience will bring upon your Religion; how much you stain and dishonour your liberal and ingenious Education, in this Society.

You cannot but know His Majesty is your Supreme Ordinary. You cannot but have read in Bracton, who was twenty Years Lord Chief Justice under King Henry the Third: *Nemo presumat de factis ejus disquirere, ne dum contra factum ejus venire: All Disobedience employs Pride: For no Man can disobey his Governor, but he who thinks himself wiser. The Reputation and Honour of a Prince at home, and his*

his Respect abroad, are chief Standards of a Government. But these Pillars as much as in you lies, you have endeavour'd to shake. And unless His Majesty's Honour and Right be vindicated by us, He can neither be feared at home, nor observed abroad. Your Punishment must be as publick as your Crime. It cannot be conceived but His Majesty in Justice, in Honour, in Clemency, and in His Royal Tenderness, could have proceeded otherways than he has done. On the first of April it was published that Dr. Clark was dead: On the Eleventh a Mandamus was directed to you, for choosing Mr. Farmer. On the Ninth you presented a Petition to the Lord President: wherein you laid your selves prostrate at His Majesties Feet, representing to him the Incapacity of Mr. Farmer, desiring the Benefits of His Gracious Declaration for preserving your Rights and Properties, and beseeching him to Nominate another Person qualified according to your Statutes, in the Election of wh^m you would shew your ready Obedience. So said and so done, Gentlemen, had been very well.

But immediately after the delivery of the Petition, you not waiting His Majesties Answer, proceeded on April the 15th to an Election of Dr. Hough; so that by this Act, which was plainly contrary to His Majesty's Authority, whose Mandate did certainly imply an Inhibition; you directly confronted your former Promises of ready Obedience, and were resolved to give the King nothing but good Words; when you had done this, as Men of ill Designs are always in haste, for a Confirmation of it, you immediately went and surprized your Visitor, and by that means perswaded him to confirm Dr. Hough, that very day he received an Order from the Lord President to the contrary.

Upon this News the King was much amazed, and required an account of your Proceedings; therefore the Lords Commissioners issued out a Citation; and after hearing the Plea, upon mature Consultation with the Learned of both Laws, judged the pretended Election of Dr. Hough to be void and null, and him to be removed, by an Instrument dated the _____ which was affixed on the Gate. After this a Mandate was sent on the _____ to you to Elect the Bishop of Oxon; upon which terms His Majesty was graciously pleased to dispence with your Disobedience hitherto. But this being disobeyed, His Majesty in Person on the 4th of September sent for you to Christ Church, and required you immediately to Elect the Bishop of Oxon President. You went strait to the Chappel, a place one would think should have inspired more Devotion and Awe of His Sacred Majesty in you; and there contemptuously subscribed and signed a Paper, directly thwarting His Majesties Command. The ground of your Disobedience you pretend that you could not Elect him, whereas you could not but know by a written Mandate that lay by you, that Admission would have satisfied His Majesty. Conscience the stale Topick of Rebellion was here brought to vindicate your petulant and contumacious behaviour. You pretended that you were obliged by Oaths, and I am sorry that at the same time you forgot that of Allegiance. And indeed there is not a greater sign of Hypocrisie, than partial Obedience. Had you any respect to the Father of your Country, and your Mother the Church, you would have sacrificed your pretended Scruples, as a Peace Offering to the King. The best of us, I am sure, have reason to beg God and the King's Pardon. But you, as if His Majesty reigned by Courtessie, would have a King under you, but none over you. You urged the Observance of your Statutes, of which as it hath appeared, you have not been so constant Observers, when your own Humour prompts you to a Dispensation, then you can readily embrace it; by witness but that of being served per Masculos; by which

great Scandals have come to this Society by reason of Bastards.

But when the King interposed, in whose Power alone it is to dispence with them, then you presently affected according to such Methods as these. None of these Pretextes will ease you with wise and sober Men.

This was the only Opposition His Majesty in his Progress received: Where-ever His Sacred Majesty came, he worked a miraculous Conversion, except in Oxford; and so far satisfied every one with the Equity of His Proceedings, that none went away discontented from His Presence, unless it was for this Reason, that they could not enjoy it any longer.

October the 20th. We came down, and upon opening our Commission, I took care to represent to you the Heinousness of your Offence, and to perswade you to a serious Repentance; but all in vain.

For on Saturday Morning we required you to Admit and Instal the Bishop of Oxon; which all, except three, refused: In the Afternoon Dr. Hough having been deprived, and by us commanded to depart the College, came unto us without any leave, but not without great Attendance; Circumstances I think, much unbefitting a Man pronounced Expelled; and there entered a Protestation against all that we had done, or hereafter should do, as illegal, unjust and Null; which he delivered not in Writing, but by Word of Mouth: a thing repugnant to the nature of all Appeals: and which was worse, without the usual Salvo to His Majesty's Supream Power. When he had spoken it, there followed such a Tumultuous, Seditious and Insolent HUM, which if you your selves had not applauded, or at least consented to, it was impossible but that you would have discovered some of those Mutineers. However, since his Carriage and Language gave occasion to it, 'twas thought fit that he only should be obnoxious; and accordingly he was bound over.

On Tuesday we our selves caused the Bishop of Oxon to be Installed by his Proxy; after which we proposed to you, whether being now Installed, you would submit to him in licitis & honestis? To which you gave an Answer under your Hands in the Affirmative. You then also desired of us to represent your Case favourably to His Majesty, giving all assurance of your Loyalty and Obedience. But this assurance of Submission lasted not long; for on Thursday, being required of us to subscribe such a Submission to His Majesty as we thought agreeable to your Duty, you required time to consult of it; and after Deliberation, sign'd such a Paper, which seem'd rather to be a Protestation against your former Submission, than an Acknowledgment of your Crime. Upon this we might justly then have proceeded to an Expulsion: but we thought fit, in Compassion to you, to take a Journey to London, and acquaint His Majesty with your disobedience and ungrateful Behaviour. His Majesty was extremely amaz'd that His Clemency should be despised; but yet, to your Comforts be it spoken, His Patience and Goodness extends as far as your Provocations can: But if you still persist in your Obstinacy, those that are too Tall to Stand, and too Stubborn to Bend, deserve to be Broken. And now I think, I have said enough to let you know, that the Figg-leaves you have so artificially stitched together, are not sufficient to cover your Nakedness. I wish to God you had the same Tenderness for your Concern, as His Majesty's Commissioners have for you. But if you still persist to oppose the Royal Power of the King, we who are come to vindicate the Right and Honour of His Majesty, resolve to discharge our Consciences and Duties to God and the King, without any respect of Popularity; that's but the Paradise of Fools, and Scorn of Wise Men: and therefore as for us, we have no more regard

regard to Peoples dislike, than what they dream: By reason therefore of your late Hypocritical Submission, the Commissioners have thought fit, upon mature Consideration, to draw up an Instrument which shall be read to you, to which, if you shall immediately subscribe, before you leave the Room, we shall leave you to His Majesty's Pardon, And this we expect from you all, except Dr. Tho. Smith and Mr. Charnock, with whose Behaviour the King is so well satisfied, that he expects no more from them.

Then all the Fellows being called in, their Lordships tendred a Form of Submission to them to be sign'd. Which take as followeth:

To the King's Most Excellent Majesty:
The Humble Petition and Submission of the Fellows of St. Mary Magdalen College in the University of Oxon, whose Names are subscribed.

WE Your Majesties most humble Petitioners, have a deep sense of being justly fallen under Your Majesties Displeasure, for our Disobedience and Contempt to Your Majesty; and to the Authority of Your Majesties Commissioners and Visitors; We do in all Humility prostrate our selves at Your Majesties Feet, humbly begging Your Pardon for our said Offences, and promising that we will for the future behave our selves more dutifully, and as a Testimony thereof, we do acknowledge the Authority of Your Majesties said Visitors, and the Justice of their Proceedings; and we do declare our entire Submission to the Lord Bishop of Oxon as our President.

To which Paper all (except Dr. Thomas Smith, and Mr. Charnock) refused to subscribe.

Dr. Aldworth as Vice President was first call'd in to sign the Paper which had been read to all the Fellows.

Vice President. My Lords, we desire time to consider of it, and to give our Answer in Writing.

Bish. Ch. No, you must every one sign, or refuse as you are called.

Bar. Jenner. There is no answer to be given, but ay or no.

They all moved again for time, but 'twas refused.

Vice President. My Lords, this is the first time of my Appearance before your Lordships since your sitting here, and therefore I pray to be heard.

My Lords, I am as ready to comply with the King's Pleasure, as any Man living; neither do I know, that we have ever in this place been disobedient to the King, where it was in our Power to obey His Commands: Our Founder in the first Clause of the Oath we take at this Election, has provided, that no one shall be President of his College, but who was bred in it, or in the College where he himself was bred. Now for us who have Elected Dr. Hough, a Person qualified according to our Statutes, who has been Installed, Sworn, Confirm'd and Approv'd of in all the ways and manner prescribed in the Statutes for us. My Lords, to accept and admit of a Stranger, and a Forreigner in his place, is to the best of my Understanding, a giving up the Rights of the College to other Uses than the Founder designed it. *Here he was interrupted.*

Bish. Ch. Your Statutes are over-rul'd by the King's Authority.

Vice President. My Lords, Your Lordships sit here as the Visitors; which implies, there are certain Laws and Statutes we are bid to observe,

and by which we are to be govern'd; and if it shall appear to your Lordships, that we have acted conformably to these Statutes, I hope we shall neither incur the King's Displeasure nor your Lordships. The whole Tenour of our Statutes run, That we should inviolably maintain our Rights, and observe the Rules of our Founder; he has laid his Curse upon us if we vary from them. (Here he repeated the Words of the Founder) *Ordinamus sub pœnâ Anathematis, & indignationis Omnipotentis Dei, &c. Item sub interminatione Divini Judicis interdicimus.*

Bish. Ch. Are you not to obey the King as well as the Founders Statutes?

Vice President. My Lord, I ever did obey the King, and ever will: Our Statutes which we are sworn to observe, are confirm'd by several Kings and Queens before and since the Reformation, and as we keep them, are agreeable to the King's Laws both Ecclesiastical and Civil, and so long as we live up to them, we obey the King.

Bish. Ch. Your Statutes were never confirm'd by His Present Majesty.

Dr. John Smyth. My Lord, Neither have they been repealed by His Majesty, and what is not repeal'd is confirm'd.

Then their Lordships pressing to sign or refuse; the *Vice President* said,

Vice President. My Lords, I'll then deal plainly, in regard to my Oath and the Statutes, to the right of all our Successors and of Dr. Hough, whom I believe to have been as fairly Elected, and as legally possessed as ever any since the Foundation of the College: I cannot submit to the Bishop of Oxon as President. *So he was ordered to withdraw.*

Then the same Question was put to all the other Fellows singly, who all refused to sign the Submission, (except Dr. Thomas Smyth and Mr. Charnock, who were not prest for the Reasons above.)

Mr. Thompson being called in to sign the Paper said,

Mr. Thompson. My Lords, I have been always obedient to His Majesties Commands, I was not concerned in the Election of Dr. Hough; I voted for Mr. Farmer, and am ready to submit to the Bishop of Oxon.

Bish. Ch. Did you not put your Hand to this Petition? Is not this your Hand—Read the Petition—It was Read—In which the Fellows desired His Majesty, to nominate any qualified Person, and to retract His Mandate granted for Mr. Farmer.

Mr. Thompson. My Lord, I conceive the Petition not to be disobedient. We had not yet receiv'd the Mandate, as soon as it came, I humbled my self.

Bar. Fen. Then why can't you humble your self again; is there any hurt in it?

Mr. Thompson. This Paper requires me to own my Disobedience to His Majesty; I am not conscious of any, and therefore I cannot subscribe.

After a short time, all who refused to sign the Submission were called in, and by Sentence of their Lordships, expell'd the College for Contempt, &c. (except as before)—After Sentence, all that were expell'd spoke to this Effect:—'My Lords, we profess all Duty to the King, and Respect to your Lordships, but must beg leave to declare; That we think our selves injur'd in your

your Lordships Proceedings, and therefore protest against them, and shall use all just and legal ways of being Relieved.—

After a short time, an Instrument was fix't on the College-Gates, in these Words.

By His Majesties Commissioners for Ecclesiastical Causes, &c. particularly authorized and impowered to visit St. Mary Magdalen College in the University of Oxon.

WHereas in our Visitation of the said Colledge, it appeareth unto us, that Doctor Charles Aldworth, Dr. Alexander Pudsey, Dr. John Smith, Dr. Tho. Bailey, Dr. Tho. Stafford, Master Robert Almond, Mr. Manwaring Hamond, Mr. John Rogers, Mr. Richard Strickland, Mr. Henry Dobson, Mr. James Bailey, Mr. John Davies, Mr. Francis Bagshaw, Mr. James Fayrer, Mr. Joseph Harwar, Mr. Tho. Bateman, Mr. George Hunt, Mr. William Cradock, Mr. John Gillman, Mr. George Fulham, Mr. Charles Pennyston, Mr. Robert Hyde, Mr. John Yerbury, Mr. Robert Holden, and Mr. Stephen Wilks, Fellows of the same College, have been severally guilty of Disobedience to His Majesty's Commands, and obstinately contemn'd His Royal Authority, and do still persist in the same: We have thought fit, upon mature Consideration thereof, to Declare, Pronounce and Decree, That the said Dr. Charles Aldworth, &c. and every of them, be Deprived and Expelled from their respective Fellowships: And we do by this our Sentence and Decree, Deprive and Expel them and their said several and respective Fellowships.

Given under our Seal, this 16th day of November, 1687.

WHITE-HALL December 10.

HIS Majesty's Commissioners for Ecclesiastical Causes, and for visiting all Cathedral and Collegiate Churches and Colleges, &c. met this Day; and taking into their Consideration

all that had passed in the business of S. Mary Magdalen College in Oxford, and the contemptuous and disobedient Behaviour of Dr. John Hough, and several of the Fellows of that College, throughout the whole Proceeding, their Lordships Declared, Decreed and Pronounced, That Dr. Hough, Dr. Charles Aldworth, Dr. Henry Fairfax, Dr. Alexander Pudsey, Dr. John Smith, Dr. Thomas Bailey, Dr. Thomas Stafford, Mr. Robert Almond, Mr. Manwaring Hamond, Mr. John Rogers, Mr. Richard Strickland, Mr. Henry Dobson, Mr. James Bailey, Mr. John Davies, Mr. Francis Bagshaw, Mr. James Fayrer, Mr. Joseph Harwar, Mr. Thomas Bateman, Mr. George Hunt, Mr. William Cradock, Mr. John Gillman, Mr. George Fulham, Mr. Charles Pennyston, Mr. Robert Hyde, Mr. Edward Yerbury, Mr. Henry Holden, and Mr. Stephen Wilks, should be incapable of receiving, or being admitted to any Ecclesiastical Dignity, Benefice or Promotion: And such of them who are not yet in holy Orders, were adjudged incapable of receiving or being admitted into the same. All Archbishops, Bishops, and other Ecclesiastical Officers and Ministers within the Kingdom of England, being required to take notice of the said Sentence and Decree, and to yield Obedience thereunto.

THE 17th of January, 1687. being the day that the Thirty Demies of Magdalen College were, by Summons from the Bishop of Oxon, the new President, commanded to appear before him; and none appearing, Mr. Chernock, the new Vice President, called for the Buttery-Book, and struck out the Names of Mr. Holt, Mr. Adams Senior, Mr. Vesey, and Mr. Brabourn Masters of Art; Mr. Hyde, Mr. Woodward, Mr. Fulham, Mr. Watkins, Mr. Stacy, Mr. Sherwin, and Mr. Kenton, Batchelors of Art; Mr. Crast, Mr. Bush, and Mr. Wells, Under Graduares: Which Fourteen were then Resident in the University, and three more, who escaped Expulsion at that time.

The Tryal of the Most Reverend Father in God, Dr. William Sancroft, Lord Archbishop of Canterbury, and of the Right Reverend Fathers in God, Dr. William Lloyd, Lord Bishop of St. Asaph, Dr. Francis Turner, Lord Bishop of Ely, Dr. John Lake, Lord Bishop of Chichester, Dr. Thomas Kenn, Lord Bishop of Bath and Wells, Dr. Thomas White, Lord Bishop of Peterborough, and Sir Jonathan Trelawny, Lord Bishop of Bristol. 1688.

De Termino Sanctæ Trinitatis Anno Regni Jacobi Secundi Regis, Quarto, In Banco Regis. Die Veneris Decimo Quinto Die Junii, 1688. Dominus Rex versus Archiep. Cantuar. & al.

Sir Robert Wright, Lord Chief Justice
Mr. Justice Holloway
Mr. Justice Powell
Mr. Justice Allynbone

Judges.



HIS being the first day of the Term, His Majesties Attorney General, (as soon as the Court of Kings Bench was sat) moved on the behalf of the King for a Habeas Corpus, returnable immediate, directed to the Lieutenant of the Tower, to bring up his Grace the Lord Archbishop of Canterbury, and the Bishops of St. Asaph, Ely, Chichester, Bath and Wells, Peterborough and Bristol; which was granted.

And with great dispatch, about Eleven a Clock the same Day, the Lieutenant returned his Writ, and brought the said Lord Archbishop and Bishops into Court, where being set down in Chairs set for that purpose, Mr. Attorney General moved the Court, viz.

Mr. Att. Gen. My Lord, I pray
Sir Tho. Powis. that the Writ and Return may be read, by which my Lords the Bishops are brought hither.

L. C. J. Read the Return.

Clerk reads the Return, which in English is as follows, viz.

I Sir Edward Hales, Baronet, Lieutenant of the Tower of London, named in the Writ to this Schedule annexed, To our Most Serene Lord the King do most humbly certify, That before the coming of the said Writ, to wit, the Eighth day of June, in the Fourth Year of the Reign of our Lord James the Second, King of England, &c. William Lord Archbishop of Canterbury, William Lord Bishop of St. Asaph, Francis Lord Bishop of Ely, John Lord Bishop of Chichester, Thomas Lord Bishop of Bath and Wells, Thomas Lord Bishop of Peterborough, and Jonathan Lord Bishop of Bristol, mentioned in the aforesaid Writ, were committed and delivered to, and are retained in my Custody; by Virtue of a certain Warrant under the Hands and Seals of George Lord Jefferies, Baron of Wem, Lord High Chan-

cellor of England, Robert Earl of Sunderland, Lord President of the Privy Council of our Lord the King, Henry Lord Arundel of Warder, Keeper of the Privy Seal of our said Lord the King; William Marquess of Powis, John Earl of Mulgrave, Lord Great Chamberlain of England; Theophilus Earl of Huntingdon, Henry Earl of Peterborough, William Earl of Craven, Alexander Earl of Moray; Charles Earl of Middleton, John Earl of Melfort, Roger Earl of Castlemain, Richard Viscount Preston, George Lord Dartmouth, Sidney Lord Godolphin, Henry Lord Dover, Sir John Earnly, Knight, Chancellor of the Exchequer of our said Lord the King; Sir Edward Herbert, Knight, Chief Justice of the Common Bench of our Lord the King, and Sir Nicholas Butler, Knight, Lords of His Majesties most Honourable Privy Council, to me directed, the Tenor of which Warrant follows in these Words; viz.

TH E S E are in His Majesties Name, and by His Command to require you to take into your Custody the Persons of William Lord Archbishop of Canterbury, William Lord Bishop of St. Asaph, Francis Lord Bishop of Ely, John Lord Bishop of Chichester, Thomas Lord Bishop of Bath and Wells, Thomas Lord Bishop of Peterborough, and Jonathan Lord Bishop of Bristol, For Contriving, Making and Publishing a Seditious Libel in Writing against His Majesty and His Government, and them safely to keep in your Custody untill they shall be delivered by due Course of Law; for which this shall be your sufficient Warrant. At the Council Chamber in White Hall, this Eighth day of June, 1688. And this is the Cause of the taking and detaining, &c.

L. Ch. Just. Well, what do you desire, Mr. Attorney?

Mr. Att. Gen. We pray for the King, that the Return may be filed.

L. C. J. Let it be filed.

Mr. Att. Gen. By this Return your Lordship observes, what it is my Lords the Bishops were committed to the Tower for; it is by Warrant from the Council Board, where, when their

A 2 a 2 a

Lordships

Lordships appeared, they were not pleased to give their Recognizances to appear here, as they were required by the King to do; and thereupon they were committed to the Tower, and now come before the Court upon this Return of the King's Writ of *Habeas Corpus*, and by the Return it does appear, it was for *Contriving, Writing, Framing, and Publishing a Seditious Libell* against His Majesty and the Government; my Lord, it is our Duty, who are the King's Council, pursuant to our Orders, to prosecute such kind of Offences, and when the proper time shall come for us to open the nature of the Offence, your Lordships will then judge, what reason there is for this Prosecution; but in the mean time, what we are now to offer to your Lordship is, The Officer of this Court has an Information against his Grace the Archbishop of *Canterbury*, and the rest of my Lords the Bishops, which we desire may be read to them, and pray that they may plead to it, according to the Course of the Court.

Sir Rob. Sawyer. If it please your Lordship, to spare us a Word for my Lords the Bishops.

Mr. Att. Gen. My Lord, We pray for the King the Information may be read.

Sir Rob. Sawyer. We desire to be heard a word first.

* Sir Will. Williams. * Mr. Soll. Gen. We oppose your speaking any thing, till the Information hath been read.

Sir Rob. Sawyer. But what we have to offer is proper before it be read.

Mr. Att. Gen. Your time is not yet come, Sir Robert.

Sir Rob. Sawyer. Yes, this is our proper time, for what we have to say, and therefore we move it now, before there be any other Proceedings in this matter.

Mr. Soll. Gen. It is irregular to move any thing yet, pray let the Information be read first.

Mr. S. Pemberton. If your Lordship please to spare us, we will offer nothing but what is fit for us to do.

Sir Rob. Sawyer. And now is our proper time for it.

Mr. Soll. Gen. Gentlemen, You do know the way of Proceeding in such Cases better than so, I am sure, as for you, Sir Robert Sawyer, you have often oppos'd any such Motion as irregular, and I hope the Case is not alter'd, however you may be; the course of the Court is the same.

Sir Rob. Sawyer. With Submission, if your Lordship please to spare me a Word, that which I would move, is, to discharge my Lords the Bishops upon this Return, and from their Commitment upon this Warrant.

Mr. Att. Gen. Surely these Gentlemen think to have a Liberty above all other People; here is an Information, which we pray my Lords the Bishops may hear read, and plead to.

Mr. Soll. Gen. Certainly, Sir Robert Sawyer, you would not have done thus half a Year ago.

Sir Rob. Sawyer. What would not I have done? I move regularly (with Submission) to discharge my Lords the Bishops from their Commitment; if they are not here legally imprisoned, now they are before your Lordships upon this Writ, then you will give us leave to move for their Discharge, before any thing else be said to them; and that is it we have to say, to demand the

Judgment of the Court upon this Return, whether we are legally imprisoned?

Mr. Att. Gen. Under Favour, my Lord, neither the Court, nor they, are ripe for any Motion of this Nature yet.

Mr. S. Pemberton. If we do not move it now, it will afterwards (I fear) be too late.

Mr. Soll. Gen. These Gentlemen are very forward, but certainly they mistake their time; this is a *Habeas Corpus* that's brought by the King, and not by the Prisoners; and therefore they are too soon, till they see what the King has to say to them.

Mr. Att. Gen. Your Lordship cannot as yet be moved for your Judgment about the Legality of this Commitment, because this Writ was granted upon our Motion, who are of Council for the King, and upon this Writ they are brought here: and what is it we desire for the King? Certainly nothing but what is Regular; we have here an Information for the King against my Lords, and we desire they may plead to it.

Mr. S. Pemberton. Good my Lord, will you please to hear us a little to this Matter.

L. C. Just. Brother Pemberton, we will not refuse to hear you by no means, when you speak in your proper time, but it is not so now; for the King is pleased, by his Attorney and Solicitor, to Charge these Noble Persons, my Lords the Bishops, with an Information, and the Kings Council call to have that Information read, but you will not permit it to be read.

Mr. S. Pemberton. Pray my Lord spare us a word: if we are not here as Prisoners regularly before your Lordship, and are not brought in by the due Process of the Court, then certainly the Kings Council, or the Court have no Power to charge us with an Information; therefore we beg that you will hear us to that, in the first place, whether we are Legally here before you?

Mr. Soll. Gen. These Gentlemen will have their proper time for such a Motion hereafter.

Mr. Pollexfen. No, Mr. Solicitor, this is, without all Question, our only time for it, we shall have no time afterwards.

Mr. Att. Gen. Yes, you will, for what do we who are of Council for the King now ask of the Court, but that this Information may be read? when that is done, if we move to have my Lords the Bishops plead, then they may move what they will; but before we make that Motion, they cannot break in upon us with their Motion; and with Submission to your Lordship, whether my Lords the Bishops were duly Committed, is not yet a Question.

Mr. Finch. But it is, and this the fittest time for it.

Mr. Soll. Gen. Pray will you hear us quietly what we have to say, and then answer us with Reason, if you can; I think we are in a proper way, but they are not my Lord; for (as I said,) my Lords the Bishops are brought by the Kings Writ upon our Motion for the King, not upon theirs, and now we have them here before the Court, We for the King would charge them with an Information; which Information, that they and the Court may know what it is they are charged with, we pray it may be read to them by the Clerk; and when it is read, let these Gentlemen say what they will for them, they shall have their time to speak; but certainly they ought not to obstruct the Kings Proceedings, nor oppose the Reading of the Information to these

these noble Lords, who are brought here in Custody into Court, to this very purpose, that they may be charged with this Information.

Mr. S. Pemberton. But we have somewhat to say, before you can come to that, Mr. Solicitor.

Mr. Soll. Gen. You ought not to be heard as yet.

Mr. S. Pemberton. Under favour we ought to be heard.

Sir Rob. Sawyer. My Lord, Mr. Solicitor has opposed our being heard, but we now desire he would hear our answer to it, and that which we have to say, is this, That my Lords the Bishops are not here Regularly in the Court to be charged with an Information; and if the Law be not with us in this point, as we doubt not to make appear it is, no question but when your Lordship has heard what we have to say, you will give a right Rule in it: My Lord, we say, that by the Rules of Law, no man ought to be Charged with an Information or Indictment, by the Express Statute of *Edward the Third*, unless he come into the Court by Legal process; that is a standing Rule, and the practice of this and all other Courts is pursuant to it; Now in this Court you have several processes that go out of this Court, and he that comes as taken by virtue of a *Capias*, or an Attachment after a Summons, or by *Venire* in the nature of a *Subpoena*; I say, he that comes in upon these processes, may be charged with an Information; but where a person is in Prison, committed by another Jurisdiction, and another Authority, than that of this Court; when the Prisoner is brought here by *Habeas Corpus*, the first thing the Court has to do, is to enquire whether he be Legally Committed; to that end the Return is filed, and the party has leave to make his Exceptions to it, as we do in this Case. My Lords are brought here upon a *Habeas Corpus*, the Return of which has been read, and now the Return is filed, we are proper to move, that my Lords may be discharged; for you now see what they are Committed for, it is for a Misdemeanour in making and publishing a Libel, that's the matter for which they are committed; and it appears by the Return likewise, that they who are thus committed are Peers of the Realm, for so my Lords the Bishops all are, and for a Misdemeanour they ought not by Law to have been committed.

L. C. J. You go too far now, *Sir Robert Sawyer*, I would willingly hear you whatsoever you have to say; but then it must be in its due time.

Mr. Att. Gen. This very discourse (indeed I have heard) has pass'd up and down the Town for Law; We may see now whence they had it.

Mr. Soll. Gen. I know it has heretofore been urged by me, but denied by them who now urge it, and I am glad that they now learn of me to tack about.

L. C. J. Look you Gentlemen, do not fall upon one another, but keep to the matter before you.

Mr. S. Pemberton. So we would, my Lord, if the Kings Council would let us; First, we say, we being brought here upon a Return of a *Habeas Corpus*, there was neither at the time of the Commitment Cause to Imprison us, nor was there by the Warrant any Cause to detain us in Prison; and for that, besides what has been hinted at, we say further, that here it is returned, that we were Committed by such and such Persons, Lords of the Privy Council; but the Return doth not say,

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that it was done by them, as Lords of the Privy Council, which must be in Council; for if it be not in Council, they have not power to make such a Warrant for the Commitment of any Person, and that we stand upon; here is a Return that is not a good Return of a Legal Commitment, and therefore we pray my Lords may be discharged.

Mr. Pollexfen. Pray, my Lord, spare me a word, that is the thing we humbly offer to your Lordships Consideration; and under Favour, I think we are proper both as to the Matter, and as to the Time; the Return is now filed before you: if by this Return there appears to have been such a Cause to commit these Lords to Prison, as is Legal, then we acknowledge they may in a Legal course be brought to answer for their Offence; but with Submission, it appears not by any thing that is in this Return, that my Lords the Bishops were committed by the Order of the Privy Council. All that is said, is, That they were Committed by my Lord Chancellor, and those other Persons, named Lords of the Privy Council; which we conceive is not a good Return, for they can do nothing as Lords of the Privy Council, except only as they are in Council, and by order made in Council; except that do appear, they have no Power to commit; then take the Case to be so; here is a man committed by one that has no Authority to commit him, and he is brought by *Habeas Corpus* into this Court, what shall the Court do with him? Shall they charge him with an Information? No, it does appear that he was never in Custody, but under a Commitment, by those who had no Legal Power to commit him; and therefore he must be discharged; and that we pray for my Lords the Bishops. What the Kings Council may have to say to them afterwards, by way of Information or otherwise, they must take the Regular Methods of the Law to bring my Lords the Bishops to answer; but as the Case stands here before you, upon this Return, it does appear, they had no Authority to commit them, by whose Warrant they were committed; and therefore this Court has nothing to do but to discharge them.

Mr. Finch. I beg your Lordships leave to say one word farther on the same side, I think with humble Submission, this is the most proper time for us to make this Motion, for here is a *Habeas Corpus* Returned, this Return is filed, and then the Kings Council move to charge my Lords the Bishops with an Information, that Motion of theirs (we say) is too soon, unless my Lords are here in Court; I mean Legally in Court; for no man is in Court so as to be liable to be charged with an Indictment, or Information, that is not brought into Court by Legal process, or as a prisoner upon a Legal Commitment; then, my Lord, with humble submission we say, that it doth appear by this Return, that my Lords the Bishops are not here Legally in Court, because this Commitment of theirs was not a Legal Commitment; and two Objections we have to it, The one is, that the Persons committing had no Authority to commit, for the Return says, that it was by Vertue of a Warrant under the Hands of such and such, being Lords of the Council, and they (we say) have no Authority to do this; The other Objection is, that the Fact for which they were committed, they ought not to have been Imprisoned for: the Fact charged upon them is in the nature of a bare Misdemeanour,

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nour, and for such a Fact it is the Right of my Lords the Bishops (as Peers of the Realm) that they ought to be served with the usual Process of *Subpœna*, and not to be committed to Prison. These are the two Objections that we have to this Return, and this is (under favour) the proper time for us to make this Objection, before the Kings Council can charge my Lords the Bishops with an Information.

L. C. J. What say you to it, Mr. Attorney?

Mr. Att. Gen. With submission, my Lord, these Gentlemen have out of course, and preposterously let themselves into this Discourse, and when all is done, we must recur to that which we moved to your Lordship before, to desire that your Lordship would order the Information to be read, and when we call my Lords to plead to the Information, then will be their proper time to make this Objection; for 'tis a strange thing certainly for Men to make Objections before they know what it is they are charged with; They say, the ground of their Motion is, because my Lords the Bishops are here in Court upon the Return of an *Habeas Corpus*, and therefore they come in upon a Commitment (as they say) for that which they ought not to be committed for at all, and we cannot charge them unless they be properly in Court. Now for that, it is true if that Commitment of theirs were the only thing that was here before the Court, then the Court would, if that Commitment were illegal, discharge them of that; but when a Man is present here in Court, brought into Court, let him come how he will, he is not to have any longer time than that Instant to appear to, and be charged with the Information; 'Tis true, upon a *Subpœna*, which is in the Nature of a Summons, there a Man hath (as it were) an *Essoyn*, and may make his Excuse, and he shall have time; but when he is present in Court, either as a Person privileged, as an Officer, or as a Prisoner, he shall be charged presently; and these Gentlemen are not to let themselves into Invectives against the Commitment, thereby to keep off their being charged with the Information. Besides that, it is strange these Gentlemen should know the Privilege of my Lords the Bishops as Peers, better than all the Lords of the Council, who are most of them themselves Peers, and they that make the Objection should have considered, whether these Lords that made the Commitment, did not think themselves concerned in all the Privileges of Peerage, as well as these seven Noble Lords?

Sir Rob. Sawyer. Is this an Answer to our Objection, Mr. Attorney?

Mr. Att. Gen. I say, it is a strange Objection, and I answer, 'tis out of due time; for this we say, that my Lords the Bishops being now here in Court as Prisoners upon a Commitment, and we desiring to charge them with an Information, you are not to examine the matter of their Commitment, and therefore I do insist upon it, that the Information should be read, and then you will consider, whether they are not bound to plead to it.

Mr. Finch. My Lord, I hope Mr. Attorney General will not think *Legal* Objections to be Invectives.

Mr. Att. Gen. Truly I know not what you call *Legal* Objections, I do not think yours are so, nor do I think *Legal* Objections are Inve-

ctives, but I used that Expression, as very proper for what you urged against the Commitment.

L. C. J. Nay, Gentlemen, don't quarrel about words.

Mr. Finch. My Lord, we would not willingly have Words given us to quarrel at.

Mr. Sol. Gen. My Lord, the Question is, whether we are in the right Method of Practice, as to the course of the Court, or they? It may be these Gentlemen think to make us angry, and take Advantage of our being in a Passion.

Mr. Finch. Mr. Solicitor, we desire to have our Objections answered.

Mr. Sol. Gen. Nay, if you begin to be angry, Gentlemen, we can be angry too.

L. C. J. I would have neither of you be angry.

Mr. Sol. Gen. It seems they would have an Answer to their Objections, but will not suffer us to give it; they would first examine whether my Lords the Bishops have been duly committed, that (we say) is not to be done by the Court as yet; your Lordship sees they are actually in Custody, by a Commitment of the Lords of the Council, that appears by the Return before your Lordship, and for what they were Committed; what do we now pray for the King? First, we move for a *Habeas Corpus*, then that this Information may be read, and all is in Order to bring this Fact, (for which they were Committed) to a Trial; 'tis said upon the Return, they were sent to the Tower, for Contriving, Writing, and Publishing a Seditious Libel against the Kings Person and Government, which (I think) is Crime enough for a Man to deserve to be committed for; they would have you to discharge these Lords from this Commitment, (the Return as they say, being not *Legal*) before the Information be read: But we think their Motion is Irregular, for here is a Crime charged in the Commitment, and upon that Commitment they are here now as Criminals before your Lordship; and Mr. Attorney has exhibited an Information for the King, which is in the Nature of a Declaration at the Kings Suit; and that in this Court, which is the Supreme Court now in being for the Trial of Matters of this Nature. We will come to that Question, whether they were legally committed, when there is a proper time for it; but now we find my Lords the Bishops in Court, upon a Commitment for a great Crime; I repeat it again, it is for Contriving, Writing, and Publishing a Seditious Libel against the Kings Person, and against the Kings Government; and whether the Kings Council shall not have leave to make out this Charge by an Information, sure can be no Question at all in this Court; I hear them mention the Statute of *Edward the Third*. But that is not at all to the purpose, that is but what was offered in another Case that may be remembered, and offered by way of Plea, and pressed with a great deal of Earnestness, but Rejected by the Court; and now what could not be received then by way of Plea, these Gentlemen would by their Importunity, have you receive by way of *Parole* at the Bar; I suppose the Design is to entertain this great Auditory with an Harrangue, and to persuade the weak Men of the World, (for the Wise are not to be imposed upon) that they are in the Right, and we in the wrong; under Favour my Lord, we are

are in the Right for the King, we desire this Information may be read, and let them plead what by Law they can to it, according to the course of the Court; but that which they now urge, is untimely, and out of Course.

Sir Rob. Sawyer. My Lord, we offer this to your Lordship —

Mr. Att. Gen. Why, Gentlemen, you have been heard before your time already.

Mr. S. Pemberton. Pray, my Lord, give us leave to answer what the Kings Council have objected.

L. C. J. The Kings Council have answered your Objections, and we must not permit Vying and Re-vying upon one another; if you have no more to say, but only as to the Matters that have been urged, you have been heard to it on both sides already.

Mr. S. Pemberton. I would, if you please, answer what has been objected by the Kings Council, and state the Case aright.

Mr. Just. Allybone. Brother Pemberton, I do not apprehend that the Objection you make against this Commitment has any weight in it. The Objection (as I take it) is this, that these Lords were not legally committed, because they were committed (says the Return) by such and such Lords of the Council particularly named, and it does not specify them to be united in the Privy Council; now truly, with me that seems to have no weight at all; and I will tell you why. If my Lord Chief Justice do commit any Person and set his Name to the Warrant, he does not use to add to his Name, Lord Chief Justice, but he is known to be so, without that Addition; and would you have a different Return from the Lieutenant of the Tower to a Habeas Corpus, than the Warrant it self will justify? the Lords do not use to write themselves Privy Counsellors, they are known to be so; as well as a Judge, who only writes his Name, and does not use to make the addition of his Office.

Sir Rob. Sawyer. Pray, my Lord, give me leave to be heard to this, I think truly it is a weighty Objection, for, under Favour, we say, it must upon the Return here appear, that they were legally committed, before you can charge them with an Information; I do not take Exceptions to the Warrant, because it is subscribed by such Lords, and they do not write themselves Lords of the Council, they need not do that; and the Return has averred that they are so; but the Return ought to have been, that it was by the Order of the Privy Council, and so it must be, if they would shew my Lords to be legally committed, that they were committed by Order of the Privy Council, and not by such and such particular Persons, Lords of the Privy Council; so in the Case put by Mr. Justice Allybone, of a Commitment by your Lordship, or any of the Judges; it must be returned to be by such a Warrant, by such a One Chief Justice, for that shews the Authority of the Person committing, and then your Lordships Name to it indeed is enough, without the Addition; But if it does not appear by the Return that there was sufficient Authority in the Person to commit, your Lordship cannot take it to be a Legal Commitment; but now in this Case, they could have no Authority to commit but in Council; and this Return seems to make it done by them as particular Persons, and that's not a good Return (with your Lordships Favour) upon which these Re-

verend and Noble Lords can be detained in Prison; But what do they on the other side say to this? Why, we shall be heard to it anon: but, my Lord, they very well know, it would be too late for that Effect which we desire of our Motion, and therefore we lay the Objections before you now in its proper time (say we) you ought not to read any Information against us, because we are not legally here before the Court; and sure, that which was said by the Kings Council, that your Lordship may charge any One that you find here in Court, which way soever he comes in, cannot be legal.

Mr. Att. Gen. Who ever said so?

Sir Robert Sawyer. I apprehend you said so, Mr. Attorney, or else you said nothing.

Mr. Att. Gen. Sir Robert Sawyer, You of that side have a way of letting your selves in to say the same things over again, and of making us to say what you please.

Sir Rob. Sawyer. Truly I did apprehend you laid down that for Doctrine, which I thought a very strange One; for we say, with your Lordships favour, he that is in Court without a Legal Process, is not in Court so as to be charged with an Information.

Mr. S. Pemberton. My Lord, It is not the Body being found here that intitles the Court to proceed upon it, but the Person accused is to be brought in by Legal Process: Then if we be not here by legal Process, the Information cannot be charged upon us; and if we suffer it to be read, it will be too late for us to make this Objection.

L. C. J. That you have all said over and over, and they have given it an Answer.

Mr. Att. Gen. Pray, Mr. Serjeant, will you make an end; you have repeated your Objection over and over, I know not how often, and will never be contented with our Answer.

Mr. J. Allybone. Sir Robert Sawyer, that which you said in answer to the Case I put, methinks does not answer it: For if the Return be as good, that it was by a Warrant from such an one, Lord Chief Justice; as if my Lord Chief Justice had added the Title of his Office to his own Name, when he subscribed the Warrant: Then this Return, That this was done by such and such Lords of the Council, must be as good, as if they had added that to their own Names.

Sir Rob. Sawyer. That is not our Objection.

Mr. Att. Gen. Your Objection has been heard, and answered; we pray the Information may be read.

Mr. Serjeant Pemberton. No, we are not come to that yet.

Mr. J. Allybone. Pray, would you have an Averment by the Lieutenant of the Tower, in his Return to an Habeas Corpus, that it was done by them in the Council Chamber?

Mr. Finch. My Lord, The Difference is this, with Submission; a Commitment by Sir Robert Wright, Ch. Justice, is a good Commitment, and a Return of that Nature, were a good Return, because he is Chief Justice all over England, and hath Authority to commit wherever he is; but a Commitment by such an one, or such and such Lords of the Privy Council, cannot be a good Return of a Commitment; because, though they be Lords of the Council, yet neither single, or apart, nor all together, have Authority to do such an Act, unless they be assembled in the Privy Council; there their Authority is circumscribed;

scribed; so that that must needs be a great difference between a Commitment made by a Judge, who is always so, and a Commitment by a Lord, or so many Lords, by the Name of Lords of the Privy Council, who carry not their Authority about with them, but are limited to their Assembly in Council.

Mr. *F. Allybone*. Mr. *Finch*, Indeed your Objection is worth something, if my Lord Chief Justice could not act but as under the character of Chief Justice; for you are now arguing, that these Lords could not do this Act, but as Lords of the Council, in Council; the same (say I) may be said of a Commitment by the Lord Chief Justice; he cannot do it but under the formality of his Authority, as he is Chief Justice, unless you will make it impossible for him to do any thing, but as Chief Justice, or unless you make it impossible to separate his Person from his Authority.

Mr. *Finch*. Sir, the difference lies here; the Authority of the one is general and universal, and goeth with him wherever he goes; the other's Authority is limited to a particular sphere.

Mr. *F. Allyb.* Why, would you have it averred, That they did it being assembled in Council?

Mr. *Finch*. Under favour, they cannot justify any thing that was done by them as Lords of the Council, but in the Privy Council.

Mr. *F. Powell*. Truly, my Lord, for my part, I think there is no such great necessity of haste in this matter; Here are Exceptions taken to this Return; and the matter transacted now before us, appears to me to be of very great weight, peradventure a greater, or a weightier, has not been agitated in this place in any Age; it concerns these Noble and Reverend Lords, in point of Liberty: it comes suddenly upon us, and therefore, my Lord, I think it very fit we should consider a little of this matter, and consult the Precedents of Returns, how they are; for there are multitudes of Returns of Writs of *Habeas Corpus* in this Court; therefore it were requisite, that we did consult the Forms of other Returns, and how the Precedents, as to this matter, have always been: if they are according as this is, then all is well, but if they be otherwise, it is fit we should keep to the usual Forms.

L. C. *J.* What's your Opinion of it, Brother *Allybone*?

Mr. *F. Allybone*. I am still of the same mind I was, my Lord, That he could make no Return, but this Return he has made; and if his Warrant was insufficient upon this Account, that these particular persons, Lords of the Privy-Council, did this Act without saying, that they did it in Privy Council, then 'tis not his Return that could mend it; and truly I do not know that there does need any Precedent for this; for every one knows where the Lords of the Council are; and 'tis a sufficient Averment, this, that is in the Return.

Mr. *Pollexfen*. They are Lords of the Council every where, but they do not act as Lords of the Council any where but in Council.

Mr. *F. Allybone*. So my Lord Chief Justice is Chief Justice every where.

Mr. *Finch*. And he can do Judicial Acts, as such, every where; but the Lords of the Council, cannot act but in the Council.

Mr. *F. Allyb.* Nor is it to be presumed that they did do it.

Mr. *Finch*. It is not a presumption that is to make any thing in this case, but the Question is, whether here be a legal Return of a legal Commitment?

Mr. *F. Allyb.* Such publick Persons, in such publick Acts, can never be presumed to act in their separate private capacities.

Mr. *Finch*. But, with submission, your Lordships can judge only what is before you in this Return, whether it be a good Return, and whether here be a good Authority asserted in the Persons that did commit my Lords the Bishops.

L. C. *J.* Truly, as to this Objection and Exception that has been made by them, I have considered of it, and what has been said on all sides, and I think 'tis the usual way of Commitment; I never saw any other; all the Warrants that ever I saw, are of this Form; if there were any Precedents, they should be shewn of that side.

Sir *Robert Sawyer*. There are multitudes of Precedents otherwise, and none of this Form.

L. C. *J.* I confess, 'tis a Case of great Weight, and the Persons concerned are of great Honour and Value; and I would be as willing as any body to testify my Respects and Regards to my Lords the Bishops, if I could see any thing in it worth considering of.

Mr. *Sol. Gen.* There's no colour for it, if they do but look upon the Statute of the 16th and 17th of the late King, which arraigns the Proceedings of his Privy Council; that tells you what things belong to the cognizance of the Privy Council, and what not; and there you have all the Distinctions about Commitments by the King and Council, and by the Lords of the Council: And that Act will shew, that this is a Commitment according to the usual Form: they know very well what the common Style of the Orders and Commitments of Council is, as in other places, and other Commitments; By such an one, *Chief Justice*, that is the Style that is very well known for such Warrants: So a Commitment by such and such, naming them particularly, *Lords of the Council*, that's an Order made by the *Lords in Council*; and that Statute distinguishes between Commitments of one sort and the other; and it does it, because sometimes Warrants run in one Form, and sometimes in another; but they all come within the Direction of that Statute. My Lord, we are in a plain Case, my Lords the Bishops come Regularly before you, upon a Commitment by the Council; and therefore we pray they may be charged with this Information.

Sir *Robert Sawyer*. Pray, will your Lordship give us leave to have that Statute lookt into, which Mr. *Solicitor* speaks of; and then we shall see whether it be to his purpose.

L. C. *J.* Let the Statute be read.

Mr. *Sol. Gen.* If it be *Keeble's Book*, it is the 16th of *Charles the First*; if it be the Old Book, it is the 16th and 17th of *Car.* towards the end.

Clerk reads. Provided always, and be it enacted, that this Act, and the several Clauses therein contained, shall be taken and expounded, to extend only to the Court of *Star-Chamber*; and to the said Court holden before the President and Council in the *Marches of Wales*, and before the President and Council in the *Northern parts*.

Mr. *Sol. Gen.* It is the Paragraph before that.

Clerk reads. And be it also provided and enacted, That if any person shall hereafter be Committed,

Committed, Restrained of his Liberty; or suffer Imprisonment; by the Order and Decree of any such Court of Star-Chamber, or of other Court aforesaid, now, or at any time hereafter, having, or pretending to have the same, or like Jurisdiction, Power, or Authority to commit, or imprison, as aforesaid; or by the Command or Warrant of the King's Majesty, His Heirs or Successors, in their own Persons; or by the Command or Warrant of the Council-Board, or of any of the Lords; or others of his Majesty's Privy-Council, that in every such Case, every person so Committed, Restrained of his Liberty, or suffering Imprisonment, upon demand—

Mr. Sol. Gen. That is all: Your Lordships sees these several Distinctions of the Style of Commitment.

Mr. Att. Gen. Now, pray favour us a little: My Lord, I think these Gentlemen will not deny, but that the Lords of the Council can commit; I must confess, they ask that which was pretty reasonable; if the Case was as they would make it; They would have my Lords the Bishops discharged, because there is not a Return of a good Commitment, and that stands upon this presumption, that what is here said to be done by all these Lords, at the end of whose Names this is added, *Lords of the Privy Council*, was done by them out of Council, which, I suppose, your Lordship will not presume, but will take it, that they did this as Lords of the Council in Council; And no Man can say, but the Lords in Council can Commit.

Mr. Sol. Gen. You may as well presume upon a Warrant made by my Lord Chief Justice, because it is not said where he did it, and therefore he did it in Scotland.

Mr. Att. Gen. I say again, unless your Lordship will presume that which is not to be presumed, this must needs be a very good Return.

Mr. J. Allyb. Truly (as Mr. Solicitor says) you may as well desire us to presume, that my Lord Chief Justice would commit a Man in Ireland or Scotland; I can see no imaginable difference.

Mr. Finch. My Lord, that which we pray, is, not that your Lordship would presume, but that you would not presume, but take the Return as 'tis before you; and then see whether it can be thought to be a Commitment by the Lords in Council?

Mr. S. Pemberton. Pray, my Lord, spare us a little in this matter: Here has been the Clause of a Statute read to you, from whence Mr. Solicitor would conclude, that all Commitments by several sorts of Persons there named, are legal; or else the Enumeration of the several sorts of Commitments, signifies nothing to this purpose. But I pray your Lordship would consider this, that the very scope and end of that Act of Parliament is, to relieve against illegal Commitments and Oppressions; then the several Commitments therein named, can never all be called legal; so that this signifies nothing to our purpose; My Lord, they tell us we stand upon Presumption, no, we do not so; we say your Lordship ought not to presume the One or the other, but to judge upon what is before you, but here is nothing before you but this Return of a Commitment of these Noble Persons, my Lord the Arch-Bishop of Canterbury, and the rest of the Bishops which is said to be by these

particular Lords. Now if your Lordship will please to give us time to look into it, (for this is an Exception we take at the Bar upon hearing the Return read) we would shew the constant way has been quite otherwise than this Return makes it; therefore we desire leave to satisfy your Lordship concerning the usual Form of Precedents, and thereby it will appear, that it ought to have been, that they were committed by Order of the Privy Council, and then he should have set forth the Warrant it self which would have shewn the Names of the Privy-Councillors, and he needed not to have put their Names in the Return as the particular Persons that committed them; but now, my Lord, this does not appear to be an Order made in Council, as it ought to be, and the Return is that which is before you, and you are to judge only upon what is before you.

L. C. J. So we do.

Mr. Justice Allybone. Pray Sir Robert Sawyer, would the saying of a Governour of the Tower in his Return to a Writ of *Habeas Corpus* alter the Nature of the Commitment?

Mr. Att. Gen. My Lord, we are in your Lordships Judgment.

Mr. Just. Allybone. I say, Brother Pemberton, would any collateral Saying of the Lieutenant of the Tower alter the Nature of the thing, his Return in this Case is only an inducement to the Warrant of Commitment, and his Saying one way or t'other would neither vitiate nor mend the Commitment.

Mr. Sol. Gen. Your Lordship cannot take notice of the Commitment but from the Warrant.

Mr. Pollexfen. The Return is the Fact upon which you are to judge

Mr. Just. Powel. Certainly we must judge of the Record, and nothing else, and the Return is the Record now, being filed.

L. C. J. The Return is as certain, I think, as can be.

Mr. Sol. Gen. By the Return it appears, the Bishops were Committed by the Warrant of such and such Lords of the Council; and that which is before you now is, whether you will not intend it to be done by them in Council.

Mr. Just. Powel. We can intend nothing, but must take the Return as 'tis.

L. C. J. The Warrant is good enough, I think truly, and so is the Return.

Mr. Pollexfen. I think in all the *Habeas Corpus*'s that have been since the King's Return, of Persons committed by the Council, the Returns have been quite otherwise than this Return is; We do all pretty well agree (for ought I can perceive) in these two things; We do not deny but the Council Board has Power to commit; they on the other side do not affirm, that the Lords of the Council can commit out of Council.

Mr. Att. Gen. Yes, they may, as Justices of the Peace.

Mr. Pollexfen. This is not pretended to be so here.

L. Ch. Just. No, no, that is not the Case.

Mr. Pollexfen. Then, my Lord, with submission, I will compare it to any thing else of this nature. I deny not but that the Council may commit, but the Question is, whether this Return of their Commitment be right; Suppose there should be a Return to a *Habeas Corpus*, that such a one was committed by Sir Robert Wright, and three others by Name, Justices of this Court, for

for a *Contempt*, without saying, that it was done in Court, this would be an ill Return; although they had Power in Court to commit for a *Contempt*, yet it must appear, that it was done in Court, or it cannot be a good Return: If I had thought or foreseen that such a Return would have been made, I could easily have made out our Objection, but we could not foretell what they would return, and therefore we can only make this Objection now upon the hearing of it read. In all the Debates that have been heretofore in the great Case of the *Habeas Corpus* concerning my Lord *Hollis*, and those other Gentlemen who were in Prison upon Commitments by the Privy Council, the Returns are, that they were committed by Order of the Privy Council, as near as I can remember; I will not take it upon me to be positive in it, but I believe, if your Lordships thought fit to give us a short time to look into it, we should be plainly able to shew you, that all the Returns of Commitments of this nature, are said to be by Order of the Council Board, and never any of them naming the Lords, for that may be true, and yet not a legal Commitment.

L. C. J. I have seen several Precedents of Commitments in this Form, and if you make no Exception to the Warrant, you can make no Exception to the Return, because that only sets forth the Warrant.

Mr. Pollexfen. The Commitment you are to judge of, is upon the Return, with Submission, and supposing the Warrant to be right and good, yet the Return is not Legal.

Mr. Att. Gen. We say, in common Understanding, it cannot be but a Commitment in Council.

Mr. S. Pemberton. But *common Understanding* and *legal Understanding* are two things, and we pray the Judgment of the Court.

Mr. Sol. Gen. And so do we, my Lord, and pray your Rule in it.

Mr. Just. Allyn. You may by the same reason say, That upon all Commitments by Warrant from Justices of the Peace, that the Commitment was out of the County, if the Party does not alledge in the Warrant or Return, that the Commitment was in the County. 'Tis an Objection that would put us upon presuming, what we have no reason to presume.

L. Ch. J. If you would have our Opinions, let my Brothers declare theirs, I will soon tell you my mind.

Mr. J. Holloway. Pray let the Return be read again. (*which was done.*)

Mr. Att. Gen. So that the Return says, they were committed by vertue of a Warrant of such and such by Name, *Lords* of the Council, and whether this be a Warrant of the Council is the Question, and we think it is plain enough, that 'tis a good Return.

Mr. J. Powell. I have given you my Thoughts already, I think we ought to consult Precedents in a Case of this Weight and Nature; and truly I will not take upon me to say, whether it be a good Return or not a good Return, without looking into Precedents.

Mr. J. Allyn. For my own part, it does not stick at all with me, for the Reasons I gave before; when any Man that has an Authority to *commit*, does commit a Person to an inferior Officer, and that Officer has an *Habeas Corpus* brought to him, it is enough for him to return his War-

rant, by which the Party was committed, and whatsoever he says by the Bye, cannot have any Influence one way or other, to alter the nature of the thing; now unless you would make every Man that is a Justice of the Peace write his Name and stile himself Justice of the Peace, this must be a good Commitment. Every Commitment shall be presumed to be pursuant to the Power of the Person *committing*, and I am sure, take these Lords separately, and they had no Power to *commit*, and consequently such a Warrant would be no Authority to the Lieutenant of the Tower to receive them; But when they send such a Warrant as this, we shall presume it to be according to the Power they have, and not according to the Power they have not; this Warrant is returned by the Officer, and I cannot but presume that it is all very well.

Mr. J. Holloway. My Lords, I am very desirous and willing your Lordships should have all the Right and Justice done you that can be, and by the Grace of God, I will endeavour it all I can: I see in this Case it is agreed on both sides, that the Council have a Power to *commit*, and the Commitment is here certified in the words of the Warrant, and the Lieutenant has made his Return, that they were committed by vertue of this Warrant; if the Lieutenant of the Tower had returned any other Commitment, you would have blamed him for a false Return; but now you find fault with his Return, because he does not say, the Warrant was made by the Lords of the Council, and in Council; That is a thing so notoriously known to all the Kingdom, that my Lords were sent to the Tower by the Council, that no body doubts it; and being thus sent by this Warrant, I do not see but that this is a very good Return, and my Judgment is, that the Information ought to be read.

L. C. J. I told you in the beginning, after you had made your Objections, that I thought it was as all other Returns are, and I am of the same Opinion still, I find no fault with the Warrant, nor with the Return.

Mr. S. Pemberton. There is no Objection to the Warrant at present upon this Question.

L. C. J. Neither do I take upon me to say any thing, nor is there any thing now to be spoken of touching the Fact for which these Noble Lords were committed.

Mr. Att. Gen. We pray, my Lord, the Information may be read.

Mr. J. Holloway. There is no question about the Fact, but whether this be a good Return which is here made, that they were committed by such and such Lords of the Council.

L. C. J. I would do as much to give my Lords the Bishops ease, and set them at liberty, as I could possibly by Law; but we must not break the Rules of Law for any one.

Mr. Sol. Gen. Pray read the Information.

Mr. Finch. No my Lord, we oppose the reading of it.

Mr. Sol. Gen. Why! Will not you be satisfied with the Opinion of the Court?

Mr. Finch. We have another thing to offer, which we must have the Opinion of the Court in, before this Information can be read.

Mr. Att. Gen. Pray let us hear it what it is?

Mr. Finch. My Lord, we did humbly offer one Objection more to your Lordship against the reading of the Information, the former Objection was concerning the Persons committing, in

in that it does not sufficiently appear upon the Return, that they were committed by the Lords in Council; the Court have given their Opinion in that. But the other Objection still remains, whether they ought to have been committed at all, and therefore when they now appear upon this *Habeas Corpus*, we say they were not legally committed to Prison, because a Peer ought not to be committed to Prison in the first instance for Misdemeanour.

Mr. Sol. Gen. If you please you may speak to that by and by, but that is not proper now for you to offer, or for the Court to determine, whether a Peer may be committed upon an Accusation for a Misdemeanour?

Mr. Finch. With Submission, that is such a difficulty that lyes in the way against the reading of the Information, that you must get over it, before you can come at the reading of it.

Mr. Att. Gen. You will have your time for all this matter by and by, but certainly you cannot be admitted to it yet.

L. C. J. Truly I think you are too early with that Exception.

Mr. Finch. With Submission, we think this is the proper time, and I will tell your Lordship the reason why.

L. C. J. Mr. Finch, certainly every thing in the World that can be said, you will say for your Client, and you shall be heard; for we are very willing to deliver these Noble Lords, if we can by Law, and if the Exceptions you make be legal.

Mr. Finch. My Lord, we do not doubt your Justice, and therefore we desire to offer what we have to say in this Point; the only Question (now it seems) is about our time of making our Exception. Mr. Attorney, (we apprehend) did say one thing which was certainly a little too large; that however any Man comes into Court, if the Court find him here, they may charge him with an Information.

Mr. Att. Gen. Who says so? I said no such thing.

Mr. Finch. Then I acquit Mr. Attorney of it, he did not say so: Then both he and I agree the Law to be, That a Man that does come into Court, if he does not come in by legal Process, he is not to be charg'd with an Information; then since we do agree in that Proposition, certainly we must be heard to this Point, whether we are here upon legal Process, before you can charge us with this Information?

Mr. Att. Gen. You think you have said a fine thing now, and take upon you an Authority to make me agree to what you please.

Mr. Finch. Certainly the Consequence is plain upon your own Premises.

Mr. Att. Gen. Do you undertake to speak for me?

Mr. Finch. I am in the Judgment of the Court, and to them I leave it.

Mr. Att. Gen. I know you thought you had got an extraordinary Advantage, by making me say what you please; but there has been very little said, but what has been grounded upon Mistakes all along: This is that I do say, if a Man comes in voluntarily upon any Recognizance, though he be not in Custody; or if he comes in upon any Process, if the Court find him here, though that Process be not for the thing charged in the Information, yet the Court is so much in Possession of the Person, that he

shall plead to any Information, and that I do say; and will stand by.

Mr. Sol. Gen. My Lord, we are here in a very great Auditory, and this Court is always a very great Court, (but here is a greater and nobler Assembly, than usually we have here) and these Gentlemen to shew their Eloquence and Oratory, would, by converting Propositions otherwise than they are delivered, put another meaning upon them, and so draw strange Inferences from them; but these Arts we are sure will not prevail here; we say plainly, and we are sure the Law is so, (let them apprehend what they will) that your Lordship cannot exhibit an Information to any Man that you find accidentally here in Court; then says Mr. Finch, we are agreed; but withal (say I) take my other Proposition, If a Person be brought into Court by legal Process, or upon any Contempt whatsoever, by an Attachment or Warrant, or upon a *Habeas Corpus* after a Commitment, being thus found in Court, your Lordship may certainly charge him with an Information; when these Gentlemen who are so eager on the other side, did preside here, and stood in the places where Mr. Attorney and I now are; I can name them abundance of Cases of the like nature with this, when men have been compelled to appear to Informations, and plead presently; they are the Persons that made the Precedents; they made the Law for ought I know: I'm sure I find the Court in Possession of this as Law, and we pray the usual Course may be followed.

Mr. Finch. Pray my Lord spare us a word in this matter: I do agree with Mr. Attorney in this matter, but I do not agree with Mr. Solicitor.

Mr. Sol. Gen. You do not agree with your self.

Mr. Finch. I hope I do, and always shall agree with my self, but I do not agree with you, Mr. Solicitor.

Mr. Sol. Gen. You do not in 1688. agree with what you were in 1680.

Mr. Finch. Says Mr. Attorney, a Man that comes voluntarily in, cannot be charged with an Information; with him I agree: Says Mr. Solicitor, a Man that comes in, and is found in Court by any Process, may be charg'd with an Information: I say no, if the Process be wholly illegal, for he cannot be said to be legally in Court: Suppose a Peer of the Realm be taken upon a *Capias*, and is committed to the *Marshalsea*, and is brought up upon a *Habeas Corpus*, I would fain know whether you could declare against him.

Mr. Att. Gen. No, we cannot.

Mr. Finch. And why is that, but because the Process is illegal, and he is not truly in Court: Then is it a proper time now to make this a Question, Whether my Lords here were legally committed, before you can lay any thing to their charge by way of Information; for if the Commitment be illegal, it is a void Commitment, and if the Commitment be void, the Process is void, and then my Lords are not legally in Court.

L. C. J. That sure is but returning again to the same Question that has been determined already.

Mr. Sol. Gen. If your Lordship will permit them to go over and over the same things, we shall never have an end.

Mr. Finch. My Lord, we pray these Gentlemen of the King's Council may be a little cool

with us, and then they will find, we do not talk the same things over and over again, nor meddle with that which the Court have given their Judgment in.

L. C. J. Well, go on Sir.

Mr. Finch. My Lord, we say it is the Privilege of the Peers of England, that none of them shall be committed to Prison for a Misdemeanour, especially in the first Instance, and before Judgment; this (we say) is the right of my Lords the Bishops, and that which they claim as Lords of Parliament. Now it appears upon this Return and the Warrant, that the Council-Table hath committed them, (for your Lordship and the Court hath rul'd it, that this Commitment must be taken to be by Order of the Privy Council, and we meddle not with that further) but we say that the Council Table may commit a Man unjustly, that is certain: There has been relief often given in this Court against Commitments by the Council Table: And that they were unjustly committed, depends upon that point of their Privilege as Peers.

Mr. S. Pemberton. My Lord, we say, that the Lords of the Council have illegally committed these Noble Persons, who are Peers of the Realm, and ought to have the privilege of their Peerage, which is not to be committed for a Misdemeanour; that the Council ought not to have done: For the Peers of England ought no more to be committed for a Misdemeanour, and to be imprisoned, especially upon the first Process, than they may be in a Case of Debt. It is true, in the Case of Treason, Felony or the Breach of the Peace, the Peers have not such a Privilege; they may be committed; but for a Misdemeanour (as this does appear to be in the Warrant of Commitment) they ought not to be committed; but they were committed by the Lords of the Council, and we now complain of this to your Lordship as illegal, and therefore pray my Lords may be discharged.

Sir Robert Sawyer. Will your Lordship be pleased to favour me a Word on the same side for my Lords the Bishops. It must be agreed to me, that if a Peer be brought into Court, as taken by a *Capias*, he cannot be charged with a Declaration; and the reason is, because the Process is Illegal: Then, my Lord, with submission, When a Peer comes upon a Foreign Commitment, and is brought in Custody upon a *Habeas Corpus*, this is either in the nature of a Process, or a final Commitment, as a Judgment; they will not say, that this is a good Commitment so as to amount to a Judgment; for the Council-Board could not give a Judgment in the case; besides, the Commitment is Illegal because it is not a Commitment till they find security to answer an Information here, but 'tis a Warrant to keep them for a Misdemeanour; besides, there is another thing we have to say to this Warrant, (for I am making Objections against the Validity of this Commitment) it does not appear that there was any Oath made, and therefore the Court must adjudge that there was no Oath made; and then no man ought without an Oath to be Committed, much less a Peer; but that which we chiefly rely upon, is, That my Lords ought not to have been Committed for this, which is but a Misdemeanour at most: And if they use it, as Process to bring my Lords the Bishops to answer an Information, we say, By Law no such Process can be taken out against the Persons of Peers for bare misde-

meanours. I do agree, that for Felony, Treason, or Surety of the Peace, the Persons of Peers may be Committed; and that which is called Surety of the Peace in our Books, Mr. Solicitor knows very well, in some of the Rolls of Parliament, is called Breach of the Peace, but it is all one; and the meaning, in short, is, That it is such a Breach of the Peace, as for which a Man by Law may be obliged to find Sureties for the Peace. If it should mean a Breach of the Peace by implication, as all Trespasses and Misdemeanours are said to be *Contra Pacem* in the Indictment or Information, then it were a simple thing to enumerate the Cases wherein Priviledges did not lie; for there could be no Information whatsoever, but must be *Contra Pacem*, and so there could be no such thing as Priviledge at all: And besides, we say, the very Course of this Court is contrary to what they would have; for in the Case of a Peer, for a Misdemeanour, you go first by Summons, and then you do not take out a *Capias* as against a common Person, but the next Process is a *Distingas*, and so *ad Infinitum*; And I do appeal to them on the other side, and Challenge them to shew any one President, when a Peer was brought thus into Court, to be charged with an Information, without it were in the Case of an apparent Breach of the Peace, for he must be Charged in Custody, and there must be a *Committitur* to the Marshal, to intitle the Court to proceed; your Lordship will find very few Presidents of Cases of this Nature about common Persons, for till within these 14 or 15 years there was no such thing ever done against a common Person; But this was the Rule; first there went out a *Subpœna*, and then an Attachment, and when the Party was taken upon the Attachment, he is taken to come in upon Process, and then the Court would Charge him presently, but if he did appear upon the Summons, they would not Charge him, but he had time to take a Copy of the Information, and an Imparance of Course, till the next Term, before he could be compelled to Plead. But in the Case of a Peer, there never was any such President, as the Attaching his Person, but only a Summons and Distress; and I would be glad the KING's Council would shew that ever there was any such process taken out against the Person of a Peer, for a meer Misdemeanour. My Lord, 'tis plain, what Breach of the Peace means in every Information, and I only speak this to acquaint the Court how the constant Proceedings in all these cases have been. These Informations were anciently more frequent in the Star-Chamber; and what was the Process there? Not the common Process of a *Subpœna*, that was not the course there; but the Process was a Letter from the Chancellor, that if the Party upon that Letter did not appear, in a Common Case, there went out an Attachment; but in a Peers Case, never; and so it appears by *Cromptons Jurisdiction of Courts. Tit. Star-Chamber* 32. This appears likewise by the Proceedings in Chancery against the Peers, till the Queens time, they did not so much as take out an Attachment after default upon a *Subpœna*, but they would then in the Queens time, be so bold as to take out an Attachment against a Lord for not appearing; but that Course was condemned as illegal; so we find in my Lord Dyer.

Mr. Attor. Gen. That was at a common Persons Suit.

Sir Robert Sawyer. But the proceedings in the Star-

Star-Chamber were at the King's Suit, and I am sure Mr. Solicitor knows that the Peers Priviledges reach to Informations, but as I was saying, it was so adjudged as to the Chancery in my Lord *Cromwell's Case*. *iiii Eliz. Dyer*, 315.

Id. Ch. Just. You take a great compass, Sir *Robert Sawyer*, but pray remember what you laid down at first, for the Ground of your discourse, That there was never any Commitment of a Peer for a bare Misdemeanour, you must keep to that, that is the Point you are to look after.

Sir *Robert Sawyer*. My Lord, I will so, I do not Cite these Cases but for this purpose, to shew, that in all Courts the Peers have particular Priviledges, and I am sure they can produce you no Precedents for any such proceedings against a Peer; in my experience of these matters, I never knew any such; nay, I knew it always to be otherwise, That in Informations for Misdemeanours, there did never issue out a *Capias* against a Peer; and Mr. *Attorney* knows very well, it was so in the late Case of my Lord *Lovelace*; for that Case of my Lord *Devonshire*, that was an express Breach of the Peace, tho' it was debated and disputed then; so that I take it, these Noble Lords cannot be charged with this Information, because they do not come in by Legal Process; and unless they can shew me any Cases, where a Peer did ever come in upon such a Commitment, and answered to an Information upon that Commitment, it must certainly be allowed not to be the Legal Course; though if such a Precedent could be shewn, that past *sub Silentio*, without debate or solemn determination, that would not do, nor could bind the rest of the Peers; If one man would lose a particular Benefit he has, all the whole Body must not lose it; and the benefit is not small, of Time to make his Defence; of Imparling; of taking a Copy of the Indictment, and preparing himself to plead as his Case will bear; and indeed a common person has used to have these priviledges, tho in some Cases of late, they have taken the other Course; and if a *Capias* went out (which We say, cannot go against a Lord) and the Party were brought in, he was to answer immediately: Now, my Lord, I take it, That the Priviledges of Peers is in all times the same with the Parliamentary Privilege in Parliament time, which reacheth to Informations, as well as other Actions. (My Lord *Coke* is express in this point) in the 4 *Instit.* 25. If that Objection should hold good, that every Information being *Contra Pacem*, that should be a Breach of the Peace, then (as I said before) Priviledge will hold in no Information, which is contrary to that and all our other Books; 'tis only such a Breach of the Peace, as for which Security of the Peace may be required. But further, that this a Priviledge enjoyed by the Peers Spiritual as well as Temporal, I suppose will not be denied, for I think they will not question, but that the Bishops, and Abbots that were Lords of Parliament were Peers, and we find in our Books when the Court has been moved for a *Capias* against an Abbot, if he were a Mitred Abbot, and sat in the Lords House, it was always said, that no such Process ought to go, and so it is in the case of Bishops; but indeed for other Noblemen, the difference is this, Where it does not appear upon Record, that they are Lords in Parliament, there the Courts have put them to bring their Writs of Privilege, but where it does appear upon Record, that they are Peers the Court is to allow and take notice of

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their priviledge, and there needs no such Writ. Now that the Parliament priviledge, and the priviledge of Peers (as to their persons) is the same, appears by the form of the Writ in the *Register fol. 287. Fitz. Herb. Nat. Brev. 247.* The Words of the Writ are these, That if such a one be Sued at the Suit of another, the Writ commands, that a Peer out of Parliament time should have the same priviledge with those summoned by the King to the Parliament; and I know not any difference that can be put between them, and it cannot be denied, that all Informations whatsoever, unless such as are for Breaches of the Peace, for which Surety of the Peace may be required, are under the Controul of the Parliament priviledge; so that upon these grounds, I do press that my Lords the Bishops may be discharged: If there be any Information against us, we are ready to enter our Appearance to answer it according to the course of the Court; but if the Information be for no other thing than what is contained in the Warrant of Commitment, then their Persons ought to be priviledged from Commitment.

Mr. *Pollexfen*. If your Lordship please to take it altogether, you will find it a case very well worth your consideration, it being the case of all the Peerage of England.

Mr. *Att. Gen.* My Lord, these Gentlemen have taken a great deal of Liberty, and spent much of your time in making long Arguments, and after all, truly I do not know where to have them, nor can understand what they would be at; it seems they agree that for Treason, Felony, and Breach of the Peace, a Peer may be Committed.

L. C. J. That is (say they) such a Breach of the Peace, as for which Surety of the Peace may be required.

Mr. *Att. Gen.* Then all the Learning they have been pleased to favour us with, is at an end, for if here be any thing charged upon the Bishops, for which Sureties of the Peace may be required, then this is a good Commitment.

L. C. J. That they must agree upon their own Arguments.

Mr. *Att. Gen.* Can then any Man in the World say, that a Libel does not require Sureties of the Peace? for we must now take it as it is here upon this Return. How my Lords the Bishops will clear themselves of it, is a Question for another time; but the Warrant says they were committed for Contriving, Framing, and Publishing a Seditious Libel against His Majesty, and his Government; is there a greater Misdemeanour? Or is there any thing on this side a capital Crime that is a greater Offence? Is there any thing that does so tread upon the Heels of a capital Offence, and comes so near the greatest of Crimes that can be committed against the Government? Not to enlarge at this time upon what the consequences of such things may be, is there a greater Breach of the Peace than such Seditious Practices? No doubt, any Man may be committed for it, and may be bound to find Sureties for his good Behaviour.

Sir *Robert Sawyer*. I say Sureties of the Peace, not of the good Behaviour.

Mr. *Soll. Gen.* Pray my Lord, would you consider where we are, we are going towards France, I think, or some farther Country; they have set us out to Sea, and I do not see after this rate, when we shall come to Land; certainly, these Gentlemen are mightily out of the way, and would fain have us so too; we are here upon a

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single

single Question, as this Case stands before your Lordship, upon the Return; here is a Libel, a Seditious Libel, said to be contrived, made and published against the King and his Government, by these Noble Lords the Prisoners; this is the Accusation; suppose this be true, (that is to be proved hereafter) (I hope they are innocent, and will prove themselves so) but suppose it to be true, that they have made a Seditious Libel against the King and His Government, will any Man say, that this is not done *Vi & Armis*? This is a Libel with a Witness; nay, two or three degrees more will carry it to High Treason, and all the Informations that were exhibited by Sir Robert Sawyer, when he was Attorney General, (and he exhibited a great many for Libels) constantly these Words were in, *Vi & Armis & contra Pacem*.

Bishop of Peterborough. Was it so in your own Case, Mr. Solicitor?

Mr. Sol. Gen. Yes, it was so in my Case, and you were one of them that Prosecuted me, for ought I know; or if you did not prosecute me you Preached against me; or if you did not, some of your Tribe did: But so, my Lord, it was in many other Cases, within time of Memory. Sir Robert Sawyer has past a Complement upon me, of my great Skill in Parliament matters; but truly there needs no great Skill in matters where the Law is so plain; a Peer they agree may be in Prison for Treason, Felony, or Breach of the Peace; but that Breach of the Peace (say they) is where the Law requires Sureties of the Peace; but is there any certainty where Sureties of the Peace shall be required, and where not? Then I would put this Case, These Lords have contrived and published a Seditious Libel against the King and His Government; and whether this be not such a Breach of the Peace, as will require Sureties of the Peace, is the Question before you: And it plainly appears to be so, in Sir Baptist Hick's Case, in *Hobbs*. If a Man write a private Letter, provoking another to Fight, although there be no Fighting, this is a Breach of the Peace; now a Letter can do no Wrong in that kind, but as it incites and stirs up to Fighting, which may occasion Blood-shed, and I think there cannot be a greater Breach of the Peace, than for a Man to come to the King's Face, and publish a Libel against Him, and yet according to their Doctrine, this Man shall go away, and you shall not take him up, but take a *Subpoena* against him, and wait for the delay of all the ordinary Process; and they tell you another thing, that a *Capias* does not lie upon an Information against the Person of a Peer, and that there is no precedent of any such thing, but I would pray them to remember the Case of my Lord *Lovelace*, about some three Years ago for breaking a Foot-man's Head. It seems, if a Man libels the King in his own presence, that is not so great a matter, as a little Correction to an insolent Foot-man; but there he was bound in a Recognizance to appear here in this Court, and accordingly he did appear, and was charged with an Information, and as to that precedent I do believe Sir Robert Sawyer and Mr. Finch won't contradict me; this was in the first Year of this King: There was likewise my Lord of *Pembroke's* Case, who went to a disorderly House, and there frightened some People, we moved the Court, and had an Attachment against him, for a Misdemeanour, and

he was glad to Compound the thing, or it had not ended so soon as it did; and yet if a Lord comes to the King's Person, and affronts Him to his very Face, will not an Attachment lie against him for it? Certainly it will. My Lord, we have gone out of the way too much already, and these Gentlemen will lead us farther, but we hope your Lordships will reduce us to the methods of the Law: Here is an Information which we desire may be read, if they have any thing to plead to it, their time for that will come after it is read; if they think they have been illegally imprison'd, it appears plainly upon this Return, who they were that did Commit them; here are a great many Noble Lords to Answer an Action of false Imprisonment, if these Lords think fit, and may have these Learned Gentlemen, that are very well able to advise them what they should do in it.

Sir Robert Sawyer. We pray your Lordships Judgment, whether the Cases put by Mr. Solicitor are like our Case.

Mr. Sol. Gen. They are as like, as Sir Robert Sawyer is to Mr. Attorney that was.

Sir Robert Sawyer. Those Cases are of apparent Breaches of the Peace, so likewise was my Lord of *Devonshire's* Case, but certainly that was not at all like this.

Mr. Finch. With your Lordships Favour I would add but one Word, and I would repeat nothing of what has been said; all that I shall say is this, There is a great deal of difference between an Actual Breach of the Peace, and that which in the bare Form of an Information is a Breach of the Peace, by Construction of Law, it being *contra pacem*: Suppose it be laid that a Man did *Vi & Armis* speak Words, will that make the Words a Breach of the Peace?

Mr. Sol. Gen. It must be *Vi & Armis*, and certainly is a Breach of the Peace.

Mr. Finch. If a Man write a Petition, are the Pen and Ink that he uses, the Arms?

Mr. Sol. Gen. My Lord, I hope Mr. Finch remembers what I heard him say in *Algernon Sidney's* Case *scribere est agere*.

Mr. Finch. I think it is so, Mr. Solicitor, but every Action is not a Breach of the Peace.

L. C. J. Well, let my Brothers deliver their Opinions, I will give you mine.

Mr. Just. Allyb. The single Question now is, Whether or no that which Mr. Solicitor was pleased to name as the Crime, and lay it to the charge of my Lords the Bishops, that is a Seditious Libel, be a Breach of the Peace: I do confess that there is little of Argument to be drawn from Forms of Indictments; and I shall put no great stress upon the Words *vi & armis*, where the Fact will not come near it, but if a Commitment may ensue, (as they seem to agree) wherever Surety of the Peace may be required, nothing seems more important to me, than that Surety of the Peace should be required, where there is any thing of Sedition in the Case; and wherever there is a Seditious Act, I cannot tell how to make any other Construction of it, but that it is an Actual Breach of the Peace, that is my Opinion.

Mr. Just. Powel. I am of the same opinion in this point too, as I was in the other point before, it was a matter of great consequence (I thought) upon the former point, but now it appears to me, to be of far greater consequence than it did at first; for here, all the Great, High, and Noble

ble Peers of *England* are concerned in it, as to their Privilege. Our Predecessours in this Court heretofore would not determine the Privileges of the Peers, but left them to themselves to make what Judgment they pleased of them: I think truly 'tis a thing of that weight, that it may be very fit for the Court to take time to consider of it, and I declare for my own part, I will not take upon me to deliver any Opinion in a matter of this Consequence, before I have consulted all the Books, that can give me any Light in the Case.

Mr. *Just. Allyn*. Brother *Powell*, I am not determining, limiting, or cramping the Privilege of Peers, but I am only considering whether or no a Seditious Libel be a Breach of the Peace; 'tis agreed to be on all hands a Breach of the Peace. Is there any thing that will require Sureties of the Peace to be given upon the doing of it? For there Sir *Robert Sawyer* has laid the Foundation of his distinction, and if that shall draw any Person under a Commitment, then, say I, in my Judgment, wherever there is a Seditious Libel, there is that which is an actual breach of the Peace; for I am sure, there is that, which is sufficient to require Sureties of the Peace; I controvert not the right of the Peers one way or other, but only declare my opinion, That this is a fact that comes within the Rule laid down by them, that what will require Sureties of the Peace, is a breach of the Peace.

Mr. *Just. Holloway*. God forbid that in a Case of this Nature, any one should take upon him here to say, that every Misdemeanour were a breach of the Peace, I say not so; but certainly there are some such Misdemeanours as are breaches of the Peace; and if here be such a Misdemeanour before us, then it is acknowledged that even in Parliament time, a privileged Person might be Committed for it: For in Treason, Felony, and breach of the Peace, Privilege does not hold. I will not take upon me (as my Brother said) to determine concerning the Privilege of the Peers; it is not of our Cognizance, nor have we any thing to do, either to enlarge or confine privilege, nor do we determine whether this be such a Libel as is charged in the Information, that will come in question another time, but certainly as this Case is, the Information ought to be read, and my Lords ought to appear and plead to it.

L. C. J. Certainly we are all of us here as tender of the privileges of the Peers, as any in the World can be, and as tender as we would be, and ought to be in trying any Man's right; it becomes us to do it with great respect and regard to my Lords the Bishops; and therefore I would be as careful (if that were the question before me) to consider very well, before I give my Opinion, as ever I was in my Life. But when I see there can come no mischief at all to the Privileges of the Peers, by what is agreed on all hands; I think I may very justly give my Opinion; for here is the Question, Whether the fact charged in the Warrant, be such a Misdemeanour as is a breach of the Peace, and the Words of the Warrant (which is now upon the Record) being such as have been recited, I cannot but think it is such a Misdemeanour as would have required Sureties of the Peace, and if Sureties were not given, a Commitment might follow, and therefore I think the Information must be read.

Mr. *Att. Gen.* We pray the Clerk may read it.

Clerk reads. *Middlesex, ss. Memorandum.* That Sir *Thomas Powys*, Knight, Attorney General of our Lord the King, who for our said Lord the King in this behalf Sues, comes in his own person here into the Court of our said Lord the King, before the King himself at *Westminster*, on Friday next, after the Morrow of the Holy Trinity in this Term, and for our said Lord the King, gives the Court here to understand, and be informed, that our said Sovereign Lord the King out of His signal Clemency —

Mr. *Soll. Gen.* Read it as it is in *Latin*.

Bishop of Peterborough. My Lord, we desire it may be read in *English*, for we don't understand *Law-Latin*.

Mr. *Sol. Gen.* No, my Lords the Bishops are very learned Men (we all know) pray read it in *Latin*.

Clerk reads. *Memozandum, Quod Thomas Powys, Miles, Attornatus Domini Regis nunc Generalis, qui pro eodem Domino Rege in hac parte sequitur, in propria Persona sua venit hic in Curia dicti Domini Regis coram ipso Rege apud Westmonasterium, Die Veneris proxime post crastinum Sanctæ Trinitatis, isto eodem Termino, & pro eodem Domino Rege, Dat Curia hic intelligi & informari, quod dictus Dominus Rex, nunc ex insigni Clementia & benigna Intentione suis erga Subditos suos Regni sui Angliæ per Regiam suam Prærogativam, quarto Die Aprilis Anno Regni dicti Domini Regis nunc Tertio, apud Westmonasterium in Comitatu Middlesexia, Declarationem suam Intitulatam, His Majestatis Gracious Declaration to all his Loving Subjects for Liberty of Conscience, gerentem Datum eisdem Die & Anno, Magno Sigillo suo Angliæ sigillatam publicavit; in qua quidem Declaratione continetur.*

JAMES R.

IT having pleased Almighty God, not only to bring Us to the Imperial Crowns of these Kingdoms through the greatest difficulties, but to preserve Us by a more than ordinary Providence upon the Throne of our Royal Ancestors, There is nothing now that We so earnestly desire as to Establish Our Government on such a Foundation as may make Our Subjects happy; and Unite them to Us, by Inclination as well as Duty, which We think can be done by no means so effectually, as by Granting to them the Free Exercise of their Religion for the time to come, and add that to the perfect enjoyment of their Property; which has never been in any case invaded by Us since our coming to the Crown, which being the two things Men value most, shall ever be preserved in these Kingdoms during Our Reign over them, as the truest methods of Our Peace, and Our Glory. We cannot but heartily wish, as it will easily be believed, that the People of Our Dominions were Members of the Catholick Church, yet We humbly thank Almighty God, it is, and hath long time been Our constant Sense and Opinion (which upon diverse occasions We have declared) that Conscience ought not to be constrained, nor People forced in matters of meer Religion. It has ever been directly contrary to Our Inclination, as We think it is to the Interest of Government which it destroys by spoiling Trade, depopulating Countries, and discouraging Strangers, and finally, that it never obtained the end for

for which it was employed. And in this we are the more Confirmed by the Reflections We have made upon the Conduct of the four last Reigns. For after all the frequent and pressing endeavours that were used in each of them, to reduce these Kingdoms to an exact Conformity in Religion, it is visible, the Success has not answered the design: And that the difficulty is invincible. We therefore, out of our Princely Care and Affection unto all our Loving Subjects, that they may live at ease and quiet, and for the increase of Trade, and encouragement to Strangers, have thought fit by Virtue of Our Royal Prerogative, to issue forth this Our Declaration of Indulgence, making no doubt of the Concurrence of Our two Houses of Parliament, when we shall think it convenient for them to meet. In the first place we do Declare, that we will Protect and Maintain Our Arch-bishops, Bishops, and Clergy, and all other Our Subjects of the Church of *England*, in the Free Exercise of their Religion as by Law Established, and in the quiet and full enjoyment of all their Possessions without any molestation or disturbance whatsoever. We do likewise Declare, that it is Our Royal Will and Pleasure, that from henceforth the execution of all and all manner of *Penal Laws* in matters Ecclesiastical, for not coming to Church, or not receiving the Sacrament, or for any other Non-conformity to the Religion Established, or for or by reason of the Exercise of Religion in any manner whatsoever, be immediately Suspended, and the further Execution of the said *Penal Laws* and every of them is hereby Suspended. And to the end, that by the Liberty hereby granted the Peace and Security of Our Government in the practice thereof, may not be endangered, We have thought fit, and do hereby streightly Charge and Command all Our Loving Subjects, that as We do freely give them leave to meet and serve God after their own way and manner, be it in Private Houses, or places purposely hired or built for that use, so that they take special care that nothing be preach'd or taught amongst them which may any ways tend to alienate the Hearts of Our People from Us or Our Government, and that their Meetings and Assemblies be Peaceably, Openly and Publickly held, and all Persons freely admitted to them; and that they do signifie and make known to some one or more of the next Justices of the Peace, what place or places they set apart for those uses: And that all Our Subjects may enjoy such their Religious Assemblies with greater Assurance and Protection, We have thought it requisite, and do hereby Command, that no Disturbance of any kind be made or given unto them, under pain of Our Displeasure, and to be further proceeded against with the uttermost Severity. And forasmuch as We are desirous to have the benefit of the Service of all our loving Subjects, which by the Law of Nature is inseparably annexed to, and inherent in Our Royal Person, and that none of Our Subjects may for the future be under any Discouragement or Disability (who are otherwise well inclined and fit to serve Us) by reason of some Oaths or Tests that have been usually administred on such Occasions, We do hereby further declare, That it is Our Royal Will and Pleasure, that the Oaths commonly called the Oaths of Supremacy and Allegiance, and also the several Tests and Declarations mentioned in

the Acts of Parliament made in the 25th and 30th Years of the Reign of Our late Royal Brother King *Charles* the Second, shall not at any time hereafter be required to be taken, declared, or subscribed by any Person or Persons whatsoever, who is or shall be employed in any Office or Place of Trust, either Civil or Military, under Us, or in Our Government. And We do further declare it to be Our Pleasure and Intention from time to time hereafter to grant Our Royal Dispen-sations under Our Great Seal to all Our loving Subjects so to be employed, who shall not take the said Oaths, or subscribe or declare the said Tests or Declarations in the above mentioned Acts, and every of them. And to the end that all our Loving Subjects may receive and enjoy the full benefit and advantage of Our Gracious Indulgence hereby intended, and may be acquitted and discharged from all Pains, Penalties, Forfeitures, and Disabilities by them or any of them incurred or forfeited, or which they shall or may at any time hereafter be liable to, for or by reason of their Nonconformity, or the Exercise of their Religion; and from all Suits, Troubles or Disturbances for the same, We do hereby give Our free and ample Pardon unto all Nonconformists, Recusants, and other Our Loving Subjects for all Crimes and Things by them committed or done contrary to the Penal Laws formerly made relating to Religion, and the Profession or Exercise thereof, hereby declaring that this Our Royal Pardon and Indemnity shall be as good and effectual to all Intents and Purposes, as if every individual Person had been therein particularly named, or had particular Pardons under Our Great Seal, which We do likewise declare shall from time to time be granted unto any Person or Persons desiring the same, willing and requiring Our Judges, Justices, and other Officers, to take notice of and obey Our Royal Will and Pleasure herein before declared. And although the Freedom and Assurance We have hereby given in relation to Religion and Property, might be sufficient to remove from the Minds of Our Loving Subjects all Fears and Jealousies in relation to either; Yet We have thought fit further to declare, That we will maintain them in all their Properties and Possessions, as well of Church and Abby-Lands, as in any other their Lands and Property whatsoever.

Et idem Attornatus dicti Domini Regis nunc Generalis pro eodem Domino Rege ulterius dat Curiae hic intelligi & informari, quod postea scilicet vicesimo septimo die Aprilis Anno Regni dicti Domini Regis nunc, &c. quarto, apud Westmonasterium praedictum in Comitatu Middlesexiae praedicto, idem Dominus Rex nunc ex eadem Clementia & benigna intentione suis erga subditos suos Regni sui Angliae, per Regiam suam Prerogativam, aliam Regalem suam Declarationem Intitulatam, His Majesties Gracious Declaration, gerentem datum eisdem die & anno ultimo mentionatis, magno sigillo suo Angliae similiter sigillatam, publicavit; in qua quidem Declaratione continetur,

James Rex.

OUR Conduct has been such in all times, as ought to have perswaded the World, that we are firm and constant to our Resolutions; yet that easie People may not be abused by the Malice of crafty wicked Men, we think fit to declare, that Our Intentions are not changed since the 4th of *April* 1687. when we issued out our Declaration for Liberty of Conscience, in the following Terms—

his

His Majesties Gracious Declaration to all his loving Subjects for Liberty of Conscience.

James Rex.

IT having pleased Almighty God, not only to bring Us to the Imperial Crowns of these Kingdoms through the greatest difficulties, but to preserve Us by a more than ordinary Providence upon the Throne of our Royal Ancestors, There is nothing now that We so earnestly desire as to Establish Our Government on such a Foundation as may make Our Subjects happy, and Unite them to Us, by Inclination as well as Duty, which We think can be done by no means so effectually, as by Granting to them the Free Exercise of their Religion for the time to come, and add that to the perfect enjoyment of their Property; which has never been in any case invaded by Us since our coming to the Crown, which being the two things Men value most, shall ever be preserved in these Kingdoms during Our Reign over them, as the truest methods of their Peace, and Our Glory. We cannot but heartily wish, as it will easily be believed, that the People of Our Dominions were Members of the Catholick Church, yet We humbly thank Almighty God, it is, and hath long time been Our constant Sense and Opinion (which upon diverse occasions We have declared) that Conscience ought not to be constrained, nor People forced in matters of meer Religion. It has ever been directly contrary to Our Inclination, as We think it is to the Interest of Government which it destroys by spoiling Trade, depopulating Countries, and discouraging Strangers, and finally, that it never obtained the end for which it was employed. And in this we are the more Confirmed by the Reflections We have made upon the Conduct of the four last Reigns. For after all the frequent and pressing endeavours that were used in each of them, to reduce these Kingdoms to an exact Conformity in Religion, it is visible, the Success has not answered the design: And that the difficulty is invincible. We therefore, out of our Princely Care and Affection unto all our Loving Subjects, that they may live at ease and quiet, and for the increase of Trade, and encouragement to Strangers, have thought fit by Virtue of Our Royal Prerogative, to issue forth this Our Declaration of Indulgence, making no doubt of the Concurrence of Our two Houses of Parliament, when we shall think it convenient for them to meet. In the first place we do Declare, that we will Protect and Maintain Our Arch-bishops, Bishops, and Clergy, and all other Our Subjects of the Church of England, in the Free Exercise of their Religion as by Law Established, and in the quiet and full enjoyment of all their Possessions without any molestation or disturbance whatsoever. We do likewise Declare, that it is Our Royal Will and Pleasure, that from henceforth the execution of all and all manner of *Penal Laws* in matters Ecclesiastical, for not coming to Church, or not receiving the Sacrament, or for any other Non-conformity to the Religion Established, or for or by reason of the Exercise of Religion in any manner whatsoever, be immediately Suspended, and the further Execution of the said *Penal Laws* and every of them is hereby Suspended. And to the end, that by the Liberty hereby granted the Peace and Security of Our Government in the practice thereof, may not be endangered, We have thought fit, and do

hereby streightly Charge and Command all Our Loving Subjects, that as We do freely give them leave to meet and serve God after their own way and manner, be it in Private Houses, or places purposely hired or built for that use, so that they take special care that nothing be preach'd or taught amongst them which may any ways tend to alienate the Hearts of Our People from Us or Our Government, and that their Meetings and Assemblies be Peaceably, Openly and Publickly held, and all Persons freely admitted to them; and that they do signifie and make known to some one or more of the next Justices of the Peace, what place or places they set apart for those uses: And that all Our Subjects may enjoy such their Religious Assemblies with greater Assurance and Protection, We have thought it requisite, and do hereby Command, that no Disturbance of any kind be made or given unto them, under pain of Our Displeasure, and to be further proceeded against with the uttermost Severity. And forasmuch as We are desirous to have the benefit of the Service of all our loving Subjects, which by the Law of Nature is inseparably annexed to, and inherent in Our Royal Person, and that none of Our Subjects may for the future be under any Discouragement or Disability (who are otherwise well inclined and fit to serve Us) by reason of some Oaths or Tests that have been usually administred on such Occasions, We do hereby further declare, That it is Our Royal Will and Pleasure, that the Oaths commonly called the Oaths of Supremacy and Allegiance, and also the several Tests and Declarations mentioned in the Acts of Parliament made in the 25th and 30th Years of the Reign of Our late Royal Brother King *Charles* the Second, shall not at any time hereafter be required to be taken, declared, or subscribed by any Person or Persons whatsoever, who is or shall be employed in any Office or Place of Trust, either Civil or Military, under Us, or in Our Government. And We do further declare it to be Our Pleasure and Intention from time to time hereafter to grant Our Royal Dispen-sations under Our Great Seal to all Our loving Subjects so to be employed, who shall not take the said Oaths, or subscribe or declare the said Tests or Declarations in the above mentioned Acts, and every of them. And to the end that all our Loving Subjects may receive and enjoy the full benefit and advantage of Our Gracious Indulgence hereby intended, and may be acquitted and discharged from all Pains, Penalties, Forfeitures, and Disabilities by them or any of them incurred or forfeited, or which they shall or may at any time hereafter be liable to, for or by reason of their Nonconformity, or the Exercise of their Religion, and from all Suits, Troubles or Disturbances for the same, We do hereby give Our free and ample Pardon unto all Nonconformists, Recusants, and other Our Loving Subjects for all Crimes and Things by them committed or done contrary to the Penal Laws formerly made relating to Religion, and the Profession or Exercise thereof, hereby declaring that this Our Royal Pardon and Indemnity shall be as good and effectual to all Intents and Purposes, as if every individual Person had been therein particularly named, or had particular Pardons under Our Great Seal, which We do likewise declare shall from time to time be granted unto any Person or Persons desiring the same, willing and requiring

requiring Our Judges, Justices, and other Officers, to take notice of and obey Our Royal Will and Pleasure herein before declared: And although the Freedom and Assurance We have hereby given in relation to Religion and Property, might be sufficient to remove from the Minds of Our Loving Subjects all Fears and Jealousies in relation to either; Yet We have thought fit further to declare, That We will maintain them in all their Properties and Possessions, as well of Church and Abby Lands, as in any other their Lands and Properties whatsoever.

Given at Our Court at Whitehall the 4th day of April, 1687. in the Third Year of Our Reign.

Ever since We granted this Indulgence, We have made it Our Principal Care to see it preserved without Distinction, as We are encouraged to do daily by Multitudes of Addressees, and many other Assurances We received from Our Subjects of all Perswasions, as Testimonies of their Satisfaction and Duty, the Effects of which We doubt not but the next Parliament will plainly shew, and that it will not be in vain that We have resolved to use Our uttermost Endeavours to establish Liberty of Conscience on such just and equal Foundations, as will render it unalterable, and secure to all People the free Exercise of their Religion for ever, by which future Ages may reap the benefit of what is so undoubtedly for the general good of the whole Kingdom. It is such a Security We desire, without the burden and constraint of Oaths and Tests, which have been unhappily made by some Governments, but could never support any; nor should Men be advanced by such means to Offices and Employments, which ought to be the Reward of Services, Fidelity and Merit. We must conclude, that not only good Christians will join in this, but whoever is concerned for the increase of the Wealth and Power of the Nation. It would perhaps prejudice some of our Neighbours, who might lose part of those vast Advantages they now enjoy, if Liberty of Conscience were settled in these Kingdoms, which are above all others most capable of Improvements, and of commanding the Trade of the World. In Pursuance of this great Work we have been forced to make many Changes both of Civil and Military Officers throughout Our Dominions, not thinking any ought to be employed in Our Service, who will not contribute towards the establishing the Peace and Greatness of their Country, which We most earnestly desire, as unbiassed Men may see by the whole Conduct of Our Government, and by the Condition of Our Fleet, and of Our Armies, which with good Management shall be constantly the same, and greater, if the Safety or Honour of the Nation require it. We recommend these Considerations to all Our Subjects, and that they will reflect on their present Ease and Happiness, how far above three Years, that it hath pleased God to permit Us to Reign over these Kingdoms, We have not appear'd to be that Prince Our Enemies would have made the World afraid of, Our chief Aim having been not to be the Oppressor, but the Father of Our People, of which We can give no better Evidence than by conjuring them to lay aside all private Animosities as well as groundless Jealousies, and to choose such Members of Parliament, as may do their part to finish what We have begun for the Advantage of the Monarchy over which Almighty God hath

placed Us, being resolved to call a Parliament, that shall meet in November next at farthest.

Quam quidem Regalem Declarationem dicti Domini Regis nunc ultimo mentionatam idem Dominus Rex nunc postea scilicet tricesimo die Aprilis Anno Regni sui quarto supra dicto, apud Westmonasterium prædictum in Comitatu Middlesexia prædicto, imprimi & per totam Angliam publicari causavit, & pro magis solenni demonstratione, notificatione, & manifestatione gratia suæ Regiæ benignitatis & benevolentia suæ ad omnes ligeos suos in eadem Declaratione ultimo mentionata specificatos, postea scilicet quarto die Maii Anno Regni sui quarto, apud Westmonasterium prædictum in Comitatu Middlesexia prædicto idem Dominus Rex debito modo ordinavit prout sequitur.

At the Court at Whitehall, the 4th of May, 1688. It is this Day ordered by His Majesty in Council, That His Majesty's late Gracious Declaration, bearing date the 27th of April last, be read at the usual time of Divine Service, upon the 20th and 27th of this Month in all Churches and Chappels within the Cities of London and Westminster, and Ten Miles thereabout; and upon the 3d and 10th of June next in all other Churches and Chappels throughout this Kingdom. And it is hereby further ordered, That the Right Reverend the Bishops cause the said Declaration to be sent and distributed throughout their several and respective Diocesses, to be read accordingly.

Et ulterius idem Attornatus dicti Domini Regis nunc Generalis pro eodem Domino Rege dat Curia hic intelligi & informari, quod post Confectionem prædicti ordinis scilicet, decimo octavo die Maii, Anno Regni dicti Domini Regis nunc quarto supradicti, apud Westmonasterium prædictum in Comitatu Middlesexia prædicto, Willielmus Archiepiscopus Cantuariensis de Lambeth in Comitatu Surria, Willielmus Episcopus Asaphensis de St. Asaph in Comitatu Flintia, Franciscus Episcopus Eliensis de Parochia Sancti Andreae Holborn in Comitatu Middlesexia, Johannes Episcopus Cicesteriensis de Cicestria in Comitatu Suffexia, Thomas Episcopus Bathonensis & Wellensis de Civitate Wells in Comitatu Somersetia, Thomas Episcopus Petriburgensis de Parochia sancti Andreae Holborne in Comitatu Middlesexia, & Jonathan Episcopus Bristolensis de Civitate Bristol, inter se consuluerunt & conspiraverunt, ad diminuendam Regiam Authoritatem, Regalem Prærogativam & Potestatem, & Regimen ejusdem Domini Regis nunc in præmissis, ac ad eundem Ordinem infringendum & eludendum; ac in prosecutione & executione conspirationis prædictæ, ipsi iidem Willielmus Archiepiscopus Cantuariensis, Willielmus Episcopus Asaphensis, Franciscus Episcopus Eliensis, Johannes Episcopus Cicesteriensis, Thomas Episcopus Bathonensis & Wellensis, Thomas Episcopus Petriburgensis, & Jonathan Episcopus Bristolensis dicto decimo octavo die Maii Anno regni dicti Domini Regis nunc quarto supradicti, vi & armis, &c. apud Westmonasterium prædictum in Comitatu Middlesexia prædicto, illicitè, malitiosè, seditiosè, & scandalosè, quoddam falsum, fictum, perniciosum, & seditiosum libellum in scriptis, de eodem Domino Rege & Regali Declaratione & Ordine prædictis (prætensu Petitionis) fabricaverunt, composuerunt & scripserunt, & fabricari componi & scribi causaverunt, & eundem falsum, fictum, malitiosum, perniciosum, & seditiosum libellum per ipsos prædictum Willielmum Archiepiscopum Cantuariensem, Willielmum Episcopum Asaphensem, Franciscum Episcopum Eliensem, Johannem Episcopum Cicesteriensem, Thomam Episcopum Bathonensem & Wellensem, Thomam Episcopum Petriburgensem, & Jonathanum

Jonathanum Episcopum Bristollensem manibus suis propriis respectivè subscriptum die, & anno, & loco ultimo menconatis in præsentia dicti Domini Regis nunc vi & armis, &c. publicaverunt, & publicari causaverunt; in quo quidem falso, ficto, malitioso, pernicioso & seditioso libello continetur—

The Humble Petition of *William* Archbishop of *Canterbury*, and of divers of the Suffragan Bishops of that Province (now present with him) in behalf of themselves and others of their absent Brethren, and of the Clergy of their respective Diocesses,

Humbly sheweth,

THAT the great Averseness they find in themselves to the distributing and publishing in all their Churches, Your Majesties late Declaration for Liberty of Conscience, proceedeth neither from any want of Duty and Obedience to Your Majesty; our Holy Mother the Church of *England* being both in her Principles and in her constant Practice unquestionably Loyal, and having, to her great Honour, been more than once publicly acknowledged to be so by Your Gracious Majesty; nor yet from any want of due Tenderneſs to Dissenters, in relation to whom they are willing to come to such a Temper as shall be thought fit when that matter shall be considered and settled in Parliament and Convocation. But among many other Considerations, from this especially, because that Declaration is founded upon such a dispensing Power, as hath been often declared illegal in Parliament, and particularly in the Years 1662. and 1672. and the beginning of Your Majesties Reign; and is a matter of so great Moment and Consequence to the whole Nation; both in Church and State, that your Petitioners cannot in Prudence, Honour or Conscience, so far make themselves Parties to it, as the Distribution of it all over the Nation, and the solemn Publication of it once and again, even in God's House, and in the time of his Divine Service, must amount to, in common and reasonable Construction.

—In contemptum dicti Domini Regis nunc, & Legum hujus regni Angliæ, manifestum, in malum exemplum omnium aliorum in tali casu delinquentium, ac contra pacem dicti Domini Regis nunc, Coronam & Dignitatem suas, &c. Unde idem Attornatus dicti Domini Regis nunc generalis pro eodem Domino Rege petit advisamentum Curie hic in præmissis, & debitum legis processum versus præatos *Willielmum Archiepiscopum Cantuariensem, Willielmum Episcopum Asaphensem, Franciscum Episcopum Eliensem, Johannem Episcopum Ciceſtrenſem, Thomam Episcopum Bathonensem & Wellensem, Thomam Episcopum Petriburgensem, & Jonathanum Episcopum Bristollensem fieri; ad respondendum dicto Domino Regi de & in præmissis, &c.*

T. Powys.

W. Williams.

Mr. Att. Gen. My Lord, we humbly pray, that according to the Rules of the Court in such Cases, my Lord Archbishop of *Canterbury*, and my Lords the Bishops may plead to the Information.

Mr. Soll. Gen. My Lords the Bishops are here in Custody in the Court, upon the highest Commitment that can be in this Kingdom, to wit, That of the King in Council; and we pray, that according to the course of the Court they may plead to the Information presently.

Vol. III.

L. C. J. What does his Grace and my Lords the Bishops say to it?

Mr. S. Pemberton. Will your Lordship give us leave who are of Council for his Grace my Lord of *Canterbury*, and the rest of my Lords the Bishops, to speak a word in this Matter?

L. C. J. Ay Brother, go on.

Mr. Serj. Pemb. That which we have to desire of your Lordship and the Court is this, We have now heard this Information read, and 'tis plain we could know nothing of this before, the Warrant of Commitment being only in general for a Libel; and this being a Case of the greatest Consequence, peradventure, that ever was in *Westminster-Hall*, (that I think I may boldly say, it is a Case of the greatest Consequence that ever was in this Court) and it being a matter of this Nature, that these Great and Noble Persons my Lords the Bishops are here taxed with, that is, For making a Seditious Libel, contained in such a Petition (as though it was a Libel to Petition the King) we do beg this of your Lordship, that (it being of this great Importance) to the end we may come prepared to say what we have against it, we may have an Imparlanec till the next Term.

Mr. Finch. Pray my Lord favour me with a Word on the same side, for my Lords the Bishops. Your Lordship sees now, how necessary the trouble we gave you before, in making our Objections against the reading of the Information was, and what the drift and aim of the King's Council was, in the desiring the Information to be read first; for now it is read, What is it that they desire of your Lordships? They desire that my Lord Archbishop, and my Lords the Bishops being in Custody, and brought here in Custody, they may be now so charged with this Information, as to plead presently: This my Lord we oppose, and with humble Submission we ought to have time to Imparle, and a Copy of the Information, that we may consider what we have to plead to it; for however we come here into Court, whether legally or not legally, yet ought we in the one and in the other Case, to have time to consider of our Defence. And, my Lord, till of later time this Practice which the King's Council now calls the Course of the Court, was never used, nor was any Man required to plead immediately; and my Lord, if the Practice of the Court has not been anciently so (as I do believe they will scarce shew it to be ancients than a few Years last past) then with humble Submission, though the Course of the Court have been so for some little time past, yet it is not in the power of the Court (as we humbly conceive) to make a Course in prejudice of all the Privileges that the King's Subjects are by the ancient Rules of Law intituled to; they cannot make a new Law in prejudice of any Right or Privilege which the Subject hath, and call it the Course of the Court: Now that this which we desire for my Lords the Bishops, is the Right and Privilege of the Subject, is most manifest; for there might be many Defences that a Man may have to make to an Accusation of this Nature, which it is impossible for him to know at the first hearing of an Information read, and yet which would be necessary for him to make use of, or at least it would be impossible for him to make use of in such a manner as the Law doth allow of and require. It may be the Pleas which he has to plead may be such as that he has not time to put

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into

into form; there may be Matters upon the hearing the Information read, that it would be necessary for him to give answer to, which he knew not of before, and therefore may neither have Materials ready, nor be capable of putting them (if he had them ready) into such Form as the Law requires. They tell you on the other side, that if a Man be brought into Court by legal Process, he may be charged with any Information whatsoever, that they are not tied to the Fact alledged in the Commitment, but finding the Party under a legal Imprisonment, they can exhibit an Information against him for any other Offence. Then, my Lord, would I fain know, which way any Man alive can be prepared to make his just and legal Defence, for he knows not his Accusation; for tho' he think it may be for that for which he was committed, yet it may prove otherwise, and then he can be no way provided with Materials for his Defence, but he must lose all Advantages which the Law gives him for his Defence. My Lord, if this be the course of latter times, yet you will not take that to be such a Law, as is binding to all future times; and we are sure the King's Council cannot shew, that this was the ancient Practice, for that was quite otherwise.

L. C. J. Mr. Finch, you were not here, I suppose when this Question came in debate in this Court lately, in the Case of a very great Person; 'twas urged very earnestly and very learnedly by one that stands by you; we upon that Debate asked Sir Samuel Astry, what the Course of the Court was, and he told us, that the Course of the Court (of his own Knowledge for all the time that he had sat as Clerk of the Crown in this Court) was, that when any one was brought in Custody, or upon a Recognizance, they were to plead presently.

Mr. Finch. Sir Samuel Astry has not been here so very long, as to make the Practice of his time the course of the Court.

L. C. J. But I will tell you what he said further, if you will hear me; he said, he had enquired of Mr. Waterhouse, whom we all know to have been an old Clerk in the Crown Office, and he told him, that that had been the practice all his time.

Mr. S. Pemb. My Lord, I hope the course of the Courts of Westminster-Hall shall not depend upon the Certificate of such a one as Mr. Waterhouse, who is a Man (we all know) is superannuated, and very defective in his Memory.

Mr. Just. Powell. Certainly what they desire for the Defendant is very reasonable, for I take the Point to be only this; whether a Man may be compelled, being in Custody, to plead to an Information presently.

Mr. Just. Allibone. Pray Brother Powell spare me a word in this Matter; Mr. Finch, I suppose you labour that, the Court will not deny you, that you may have time to plead according to the course of the Court: We are not making Courses for particular Facts, that by my consent we will never do; but if you say such a thing is not the course of the Court, and the King's Council affirm it is, how shall this be determined? and from whom can we take our Information to determine what is the course? I am sure there is none of us that are here now, can pretend to tell what the ancient course was, for my part I declare it I cannot; and I know no reason there should be any Novelty introduced

into the Court upon any ground or reason whatsoever, nor will I consent to any while I sit here. Therefore I desire to know what is the Ancient Course, and how we shall come to the knowledge of that Course, if not by the Certificate of those who have been Ancient Officers of the Court?

L. C. J. Nay, that is certain, the Court will bring in nothing new in any such Case as this.

Mr. Just. Allibone. If that hath not been the Ancient Course without exception, I am against it; I know no Reason my Lords the Bishops should have any thing new put upon them; on the other side, they must not expect to have the Ancient Course of the Court declined in their Case.

Mr. Pollif. Pray, my Lord, hear me a little in this matter; 'tis not my desire that any Law should be alter'd for any particular Case, and the Course of the Court I know is the Law of the Court; but I humbly crave leave to say, That I take the Ancient Course of the Court to be quite otherwise, than what the King's Council would have it; there may be particular things done now and then, perhaps in particular Cases, and upon particular Occasions, which will not make what is so done to be the Course of the Court, nor be a binding Rule to you. Now as to this matter, of time or no time, to plead to an Information, I remember the time very well, when I and some others that stood at the Bar, and wondred when we saw this practice coming in, and thought it a very hard and mischievous thing, for (in truth) the several Plots that have been, and the heats of men about those things, have brought in this Course; for certain I am, and I dare affirm there never was any such Course here before, neither upon Warrant from the Chief Justice, nor upon Recognizance, or any other Process, was a Man compelled to plead instantly, without having a *Capias* in the regular form after a Contempt for not appearing upon Summons: Truly, my Lord, we had no interest in the matter one way or other, to make us scruple it any otherwise than as we were concerned that the Law and Justice of the Nation should have its true and ancient Current. And this I can assure your Lordships, that here was both my Lord Chief Justice Saunders, and Mr. Serj. Holt and my self, who taking notice when this was first offered at, to make a man plead immediately without giving him time to consider what he should plead, could not but say among our selves, that it was an unreasonable thing; and we were inclined to speak to the Court to inform them of the Consequence of it, which needs must be very mischievous. Sir Samuel Astry, we know, came to be Clerk of the Crown in my Lord Scroggs's time; we know 'tis usual and customary for the Court to ask what is the Course of the Court in doubtful Cases, and to receive the Information from the Officers of the Court on both sides. If it be on the Plea side, from Mr. Aston, if on the Crown side, from Sir Samuel Astry, concerning things of Practice, but I did never think that what they reported was final and conclusive to the Court: But to make this matter clear, I humbly pray, that you would please to give order for the search of old Precedents, how the old Practice really hath been; every thing that has been done in hot times, is not to be made a standing Rule: If there do any such thing appear to have been done and practised antiently, truly, my Lord, I will submit, and say I am under a mighty mistake;

stake; but if this which is now urged for the Course of the Court, is nothing, but what the Zeal of the Times, and Heat of Persecutions hath introduced; surely that is not fit to be a constant Rule for the Court to go by; for every one knows, that the Zeal of one time may bring in that by surprize upon one Man, which when things are cool, or at another time will appear to be plain Injustice. We have indeed seen strange things of this kind done before, but I hope to God they are now at an end, and we shall never see any such thing done hereafter; and as for this particular Point, I think it is a wonderful thing in the Consequence of it, if the Law should be as they would have it: Here is a long Information just read over to a Man (but whether long or short, as to the main Point, 'tis the same) and you say the Course of the Court is, he must plead to it immediately; surely matters of Crime that require Punishment to be inflicted on men, are of as much consequence and concern, as any Civil matter whatsoever; and Men are to have their Rights in those matters preserved, as well as in other matters, which is all I press; for suppose a man has a special matter to plead, as particularly suppose it be the King's Pardon, I cannot give this in Evidence upon a Tryal after not guilty pleaded, then I ought to plead it; but what if I have it not ready? 'tis not telling the Court of it, without shewing of it, that will do; and it may be a man that is taken up, and brought hither in Custody, cannot have it ready to shew; but yet then by this Rule a man shall lose the benefit of his Plea, by being compelled to answer immediately: But they say, the Court will do right, I suppose they will; and my Lords the Bishops in this case I believe do not distrust, but that the Court will do right; but I never thought the Law was brought to that pass, that such things as these were left wholly in the discretion of the Court; certainly Imparances, time to plead, and just Preparations for a man's defence are things that the Law has settled, and not left in the discretion of the Court; and truly to me it seems all one utterly to take away a man's Defence, as to hinder him of the means to prepare for it. My Lord, here is an Information before you against these Noble Lords, it is a matter of great moment, and tho', I hope in God, there is no great cause for it, yet however since such Persons are concerned, and 'tis a matter of such great weight, I hope you will give us such an Imparance, as if we had this day appeared upon the ordinary Process, which is an Imparance until the next Term.

L. Ch. Just. There is a difference between this and that other Case, if my Lords the Bishops had appeared upon the Summons, they would have had an Imparance of Course; but when they are brought up hither in Custody, that mightily alters the Case, but that we may not be too hasty in a thing of this nature, let the Clerk of the Court be consulted with, that we may know what the true Course is.

Mr. Att. Gen. My Lord, we pray Sir Samuel Astry may be examined a little about it.

Mr. Just. Allynbone. Mr. Pollixfen, I believe the Court is unanimous in their Resolutions of making nothing new in this Case; but pray give me leave to tell you, this is not the first time that this Question has come to be agitated in this Court since I came hither. Now from whence can the Court take their measures to be rightly

informed what the Practice of the Court is, but from the Information of the Officers of the Court? who by their constant Employment, are most capable of knowing what the Course is. Now if you come to offer any thing that may be matter of doubt to the Court, concerning the Practice of the Court, you having known that this thing was controverted before (for so it has been) should have provided your self with something that must be a reasonable motive for us to doubt; for this has not been only once, but often moved; and our Officers have been consulted with concerning this Question, which took its rise from such Objections as you have made now: Now for you to tell us, That you desire that we would look into Presidents, is, methinks, pretty odd; if you had brought us any Precedents, it had been something: And withall I must tell you, that you must not reckon the favour of the Court in any particular Case, to be the standing Rules for the Practice and Course of the Court; but instead of bringing Precedents, you only offer your own Thoughts, and those would create no doubt in us, but what has been before satisfied upon Examination of the Officers of the Court.

Mr. Pollixfen. Pray Sir, will you give me leave to answer one Word.

Mr. Just. Powell. Truly I have not observed that ever this Point was started so, as to beget a Question since I came hither, but only in the Cases of the *Quo Warranto's*; and truly in that Case I thought it hard they should be denied time to plead, especially the Consequence being so fatal.

L. C. J. Yes; yes, Brother, it has been several times.

Mr. Just. Powell. Truly, my Lord, I have not observed it, nor do I remember it.

Sir Robert Sawyer. My Lord, I have always taken the distinction, as to these Matters, to be this—

Mr. Just. Powell. But, my Lord, if the ancient Course of the Court hath been to grant an Imparance, and a Copy of the Information before they plead, I see no reason why my Lords the Bishops should not have the benefit of that ancient Course; for if a Man that is Sued at Law for a Two penny Trespass, shall have that advantage as to receive a Declaration, and have time to plead what he can to it, why should not my Lords the Bishops in a matter of so great weight, have the same advantage too? But indeed, if the Course of the Court had been anciently otherwise, I can say nothing to it; for the Course of the Court is certainly the Law of the Court.

Mr. Just. Allynbone. Brother Powell, you say well, if they did produce any one Precedent to give us occasion to doubt in the matter.

Sir Robert Sawyer. Pray, good my Lord, will you give me leave—

Mr. Att. Gen. Why, Sir Robert Sawyer, will you never have done?

Mr. Sol. Gen. No, they are so zealous, and eager in this Case, that they wont permit either the Court, or any body else to speak a word but themselves.

Mr. Serj. Pemberton. Good Mr. Solicitor, give us leave to answer the Objection that the Court hath made to us; we would satisfy your Lordship where the Distinction really lieth, where there has been an Opportunity for the party to come in, as by Summons or Subpœna, or the

like, and he has slipped that opportunity, and so the King is delayed, in that Case they always used to put the Party upon Pleading presently, when he was taken up upon a *Capias*, and brought in Custody; but when there was never any *Subpœna* taken out (as the Case is here,) so that the Party never had an opportunity to come in and render himself, and appear to Answer it according to the due Course of Law, an Imparlance was never yet denied, nor time to Plead; and that is the Case here.

Sir Robert Sawyer. My Lord, Mr. Serjeant has given you the true distinction, where Process has gone out to summon any one to appear to an Information, and he hath failed to appear according to the Summons, and the Prosecutor for the King takes out a *Capias*, if he be brought in upon that *Capias*, the ancient Course has been so as they say: But for that other matter, where a Man comes in upon a Commitment at the first Instance, and an Information is put in just as this is, the same Morning and not before; if they can shew any one Precedent of this kind Fifteen Years ago, I would be contented to yield that they are in the right, but I am sure they are not able to do it: In Sir Mathew Hales's time when this was moved, it was refused; and he was clear of another Opinion.

Mr. Att. Gen. I hope now my Lord we shall be heard a little for the King, and I cannot forbear observing in the first Place somewhat that these Gentlemen have offered at, who are now inveighing against the heat of the Times, when a great part of that heat, we know who were the Inflamers of; but what is all this to the purpose? The Question is barely this, Whether when a Man is brought in Custody into this Court, and charged with an Information, he shall not by the course of the Court be compelled to plead presently.

Sir Robert Sawyer. To Indictments for Treason and Felony, he shall be compelled to Plead presently, but not to an Information for Misdemeanours.

Mr. Just. Powell. It seems to me very hard he should.

Mr. Att. Gen. Sir, there are many things that seem hard in Law, but yet when all is done, the Judges cannot alter the Law; 'tis a hard Case that that a Man is tryed for his Life for Treason or Felony cannot have a Copy of his Indictment, cannot have Council, cannot have his Witnesses sworn, but this has been long practiced, and the usage is grown to a Law, and from time to time it hath been so taken for Law, it cannot be altered without a new Law made, as it hath been heretofore, so it must be now, till a greater Authority alter it; and so, as to the Case here at present, if it were a new Case, and it was the first Instance, I must confess I think I should not press it, but if this be the constant practice of the Court, and if these Gentlemen that now oppose it, some of them Ministerially, some of them Judicially, have themselves Established this Practice, they have no reason to wonder, that we follow them in it; we do not blame them for what they do now, for Men when they are of Council may be permitted to argue for their Client contrary to their former Opinions, but if these things by their procurement have been done thus before, surely without Offence we may pray the like may be done now. 'Tis our duty on behalf of the King to desire that he may

have Right done him, as well as they on behalf of my Lords the Bishops, and for the usage to cite Precedents were endless, especially of late times, and these Gentlemen know them all very well, for they were some of them Parties to them themselves, and we can do no more, nor need, than to put them in mind of their own doings, whether it was so before their time or not, it concerns them to make out and retract their own Errors; but in our Observation, if ever this was pressed or insisted upon on the Kings behalf, this course has always been pursued.

Sir Robert Sawyer. For a Precedent my Lord there is the Case of my Lord Hollis, where there was given time after time.

Mr. Sol. Gen. That was only time to argue the Plea to the Jurisdiction of the Court.

Mr. Just. Powell. Mr. Solicitor, have you ever known it contested, and upon Debate so Ruled, in an Information for a Misdemeanour, as this Case is?

Mr. Sol. Gen. If you please to ask Sir Samuel Astry, he will inform you how the Course has been.

L. C. J. What say you, Sir Samuel Astry?

Sir Samuel Astry. My Lord, when I came into this Place, there was an Ancient Gentleman that had been long a Clerk in the Office.

L. C. J. How many Years is it since you came into this Office?

Sir Samuel Astry. About a dozen Years, I think, my Lord; and he sat in this place where Mr. Harcourt does now, he was always accounted a Loyal, Honest, and Intelligent Man, that is Mr. Waterhouse, who is now alive; and when I came into my Office, I took my Instructions in a great measure from him, and asked him, what the course of the Court was, in such Cases which I my self did not understand; for tho' I had been an Attorney Twenty Years, yet it was on the other side, the Civil side; and tho' I knew some things of my own knowledge, yet I did not so well know the whole practice of the Court, and particularly I asked him, what was the course of the Court in this Case that is now in Question, and he told me, that in all his time and Experience, if a Man appears upon a Recognizance, or was a Person in Custody, or appeared in *propria persona*, as a person Priviledged, he ought to plead at the first instance, and according to that practice, when Sir Robert Sawyer was Attorney General it was the constant practice, and I am sure he knows it is no new thing.

Sir Robert Sawyer. But upon what Informations, Sir Samuel Astry, were they Informations upon Misdemeanours?

Sir Sam. Astry. Yes, several.

Sir Rob. Sawyer. But was there no Process taken out first to call the Party in?

Sir Sam. Astry. Yes, where Process was never taken out.

Mr. Att. Gen. For how long time is that you speak of your own knowledge, Sir Samuel?

Sir Sam. Astry. About a dozen Years.

Mr. Serj. Pemberton. It was never done till very lately, but after the Party was in Contempt for not appearing.

Mr. Sol. Gen. I would ask you, Sir Samuel Astry, one Question: Was the usual Process of *Subpœna* first taken out? for Mr. Serjeant Pemberton says it was, do you find any Warrant for such a difference as that?

Mr. Serj.

Mr. Serj. Pemberton. Do you find any such Case as this is?

Mr. Sol. Gen. Nay, pray Mr. Serjeant, give us your favour, and let us ask our Questions according to your own Doctrine. How do you find the Practice to have been as to that distinction they have made?

Sir Sam. Astry. Sir, I would be very loath to enlarge the Precedents of the Crown Office further than the truth is; I tell you whence I took my Instructions, from Mr. Waterhouse, who was an Ancient Clerk in the Office, he has been in that Office Sixty Years, and the Instructions I took from him, were, that this was the Practice all his time, and it has been asserted all my time; it has been often contested, I confess, and Mr. Pollexfen has always opposed it, and moved against it, but it has been always ruled against him: I know it was against his Judgment, but the Court always over-ruled it.

Sir Rob. Sawyer. Sir Samuel Astry, can you give any one Precedent before you came into this Office?

Sir Sam. Astry. Sir, I can go no farther than this that I have told you, what Information I received from him.

Sir Robert Sawyer. What is all this but a Certificate from Mr. Waterhouse?

L. C. J. We can be informed no otherways than by Certificate from the old Clerks of the Office.

Mr. Serj. Pemberton. Alas, he is a Child, and not fit to do any thing.

Mr. Pollexfen. We all know Mr. Waterhouse very well, he is a very weak Man, and always was so, and there is no depending upon any thing that he says.

Mr. Sol. Gen. Pray, my Lord, will you hear us a little for the King.

The Bishop of Peterborough whispering with Sir Robert Sawyer, Mr. Solicitor said to him, My Lord, you had better look another way, and look towards the Court, for there your business lies.

L. C. J. Well Mr. Solicitor, What say you?

Mr. Sol. Gen. My Lord, it appears plainly, that the King is in possession of this Privilege, and has been so for these dozen Years, for so long the Justice of the Kingdom towards all the Subjects, hath run in all the instances of it in this Channel; and tho' it hath been contested as often as Mr. Pollexfen has been of Council for the Defendant, in such Cases it has always been ruled against him; he indeed has made his continual Claims (Sir Samuel Astry says) he has raised the Dust, and made a Hue and Cry, but it has always gone against him. And I would ask the rest of you Gentlemen that are of Council for my Lords the Bishops, (for some, or one of you I am sure, has been concerned in every Information that has been exhibited in this Court for this nine or ten Years last past, I would ask you) whether in any Information that you have been concerned in, if the Party being brought in by Process, insisted to have time and an Impar lance, it was ever granted him. I know you will not say, it ever was; why then should there be more done in this Case, than has been done in all other Cases this ten Years? Tis not sufficient to make Declarations against the unreasonableness of the Practice, for it is but what you have done yourselves, and insisted upon for Law; and all those Men that upon Informations have been

compelled to plead, have had Injury done them; or else these Lords will have no Injury by the Court's taking the same Course. It is true, my Lords, the Bishops are Peers, and here are Seven of them, and Seven Lords go a great way; they make a Committee, I think, in the House of Peers, and a mighty matter is made of it, that this is the Case of so many Lords: But will you alter the course of the Court, because Seven of my Lords the Bishops are concerned in it, and they make a mighty stir about the Reasonableness of the thing? How can it be believed that the Law will not give a Man time to make his Defence? They agree themselves; that if it were in the Case of Life and Death, they must plead presently; and doth not the same Reason hold? and may not an Argument be drawn *a fortiori*, in the Case of a Misdemeanour? If I am not to have time when I plead for my Life, there is less Reason I should have time to answer a Trespass: But, my Lord, 'tis not Reason that weighs in the Case, 'tis the course of the Court; which is the Law of the Court that we are contending for: and what is there in the Case that should require so much time for my Lords the Bishops to plead to it? It is charged in the Information, that these Noble Prelates did make a Libel which was produced by them, and published in the Kings presence, they can easily tell whether they have done this, or not done it: what can they plead, but the general Issue? They talk of special matter to be pleaded, but can they shew any more that they can say, than what any poor ordinary Country-man, if he were here to plead to an Information, could say? that is, whether he was Guilty or not Guilty. These Lords can tell whether it be true, that they did publish the Paper laid in the Information, and then your Lordship will tell them what will be the Consequences of that Publication in point of Law. We say all this was done at Westminster, there the Scene is laid, and it is not an Information for an old stale thing done a great while ago, but a thing that was done Yesterday, and a thing notorious enough, their contesting with the King about his Declaration of Indulgence. And as to what Mr. Finch has said, That this is a Novel Invention, and a Trick to rob a Man of his just Defence; sure he forgets who it is that taught us the Trick, if it be a Trick, we have learnt it from those that trick'd before us; and what is it that these Lords do desire? they would have an Impar lance till Michaelmas Term: does or can your Lordship think they ask that which is reasonable? to have six Months time to plead not Guilty to an Information for a Libel; and when so many Men have been denied it formerly upon the instigation of those very Gentlemen, that now press so very hard to have it granted; sure they must expect to be denied it too; and all this while these Lords lye under this Accusation, which is not so trivial a matter as some would make it, I believe my Lords the Bishops have a desire to be cleared, I suppose it is only their Council that desire to delay it, upon what ground I know not, I believe they themselves would be glad to remove the Imputation, which would be best done by a Tryal, and the sooner the better: If they have a mind to justify themselves, that is the readiest course for it, and they may do it presently, by Pleading Not Guilty; My Lord, I know I am in a great Auditory, and abundance of your
Lords.

Lordships time has been taken up already, I press it therefore for the sake of the King, and for the sake of my Lords the Bishops, we shall else have all hang in suspense, and hang in the Air for six Months longer, therefore let the matter be put upon a fair Issue, so as it may come to a speedy Determination; I am sure if these Lords be Innocent to Day, they will be Innocent to Morrow, and if it were my own Case, I would desire to have it Tryed as speedily as I could, and therefore I pray they may plead immediately.

Mr. J. Powell. Mr. Solicitor, what do you say to the Difference that was taken between a Person that was brought in Custody at the first instance where there is no contempt to the Process of the Court, and one that comes here by *Capias*, upon default of appearing at the Summons?

Mr. Finch. My Lord, If I apprehend them aright, they give us more than we did ask, for Mr. Solicitor has laid it down as a Rule, that if a Man is taken upon a *Capias* in a Mean Process, he shall have no Imparance.

Mr. Sol. Gen. No, you are greatly mistaken, Sir, and I pray don't lay down Rules for me.

Mr. Finch. If I am Sir, I beg your pardon, but this I am sure of, if a *Venire Fac* goes out, which is in the nature of a *Subpœna*, and the party appear to it, that being the first time he could come into Court, you cannot force him to plead to an Information, but he has an Imparance of Course.

Mr. J. Powell. Methinks it seems very reasonable, that this forcing a Man to plead presently should be only a punishment for a Contempt of the Court, and pray, were my Lords the Bishops in contempt to the Court when they came here to Day? Certainly they were not, for no Man is in contempt, but he that being served with Process, disobeys that Process, and if my Lords the Bishops had been served with a *Subpœna* and had not appeared, then there would have gone out a *Capias* to bring them in, and then they would have come in upon a Contempt, and then they would have come within the Rule.

Mr. Sol. Gen. If you have a mind to it, you may ask Sir Samuel Astry again.

Mr. Att. Gen. If they come in upon Bail, they ought to plead presently.

Mr. J. Allybone. Mr. Finch, I'll tell you what sticks with me, truly you could not but be aware that this would be required of you; for this very thing was in debate last Term, and you know what Rules the Officer said was the Course of the Court, why did you not therefore come prepared with some Presidents, to shew us what the course of the Court is?

Mr. Att. Gen. Truly my Lord, at this rate, we shall keep your Lordship here all this Afternoon, if these Gentlemen will not be satisfied with the Rule of the Court; and for an Answer to what Mr. Justice Powell says, if any Riot be committed in the Countrey, and the Parties are bound by Recognizance to appear here, that is no process of this Court, and so consequently there can be no contempt, and yet they must plead presently.

Mr. J. Powell. There is a particular reason for that, because they are bound by Recognizance, Sir Samuel Astry and others say, that if they come in by Recognizance they must plead presently.

Mr. Sol. Gen. But for the thing it self, (that the people that hear us may not imagine that this Court puts a hardship upon my Lords the Bishops, more than is done in other Cases) it is best to keep the same Rule as in all other Cases; for when all is done, when Justice goes with an equal Current, without any regard to one Person or other, then every body is safe, and all persons concerned do their Duty; so in this case, here be no Presidents produced, wherein it has been otherwise, then can no person complain but that things go in this Case, as they do in all other Cases; perhaps such a Case (as to the Fact of it) never hapned before, but for the Law of it, that is plain, and the same is in all other Cases; for that there may be an Information against my Lords the Bishops, as well as other People, if they make Libels, sure it is no doubt at all; and if an Information lies against them for it, they are under the same Rules as others are: but these Gentlemen talk of being surprized, and that this is the first time they have heard of this Information, but have we told any News in this Information? Was not all that is contained in it, notoriously enough known before? Was not the Kings first Declaration very well known? Was not his second Declaration very well known? Was not his Order of Council for Reading of the Declaration very well known? Is not your own Petition a thing very well known to your selves and all the World? Then these being the particular Facts, of which this Information is made up, and we only say you did this Fact, and we ask you, did you do it, or did you not? Can there be any great surprize in this? My Lord, I cannot see any thing that alters this from the common Case, but only their being Peers, and since this question has been heretofore under contest, these Gentlemen have had time enough to have prepared Precedents, to differ this from the common Rule, if they could; but since they cannot, we desire they may have the same Rule, that is in all other Cases, and then to be sure, all will go right.

L. C. J. Sir Samuel Astry, pray will you tell us, whether ever the Court used to grant an Imparance where a Person comes in in Custody; or did you ever know, when a Person comes in upon a Commitment, time was given him to Plead?

Mr. Serj. Pemberton. Have you ever known it disputed, and denied?

Sir Sam. Astry. My Lord, I have known that 'tis in the discretion of the Court to grant what time they please.

L. C. J. Is it the course of the Court to give an Imparance?

Sir Sam. Astry. No, 'tis the favour of the Court, and if the Defendants have at any time shewed a reasonable Cause, that they have a special Matter to plead, or any other cause allowed by the Court, the Court has sometimes Indulged them so far, as to give them time.

L. C. J. But how is the ordinary course, Sir Samuel Astry?

Mr. Just. Allybone. Ay, for as I said before, things done in particular Cases in favour, are not Precedents.

Sir Sam. Astry. I have told your Lordship the Course is this, that any Person that appears upon a Recognizance, or is taken up by your Lordships Warrant, or by a Warrant from a Justice

Justice of Peace, or any other way in Custody, or any Officer of the Court that is a privileged Person, and that must appear *in propria persona*, must plead presently; if the Court upon particular Reasons do not give him time; and this I received Information of, as the practice of the Court, from Mr. *Waterhouse*, who had been a Clerk in the Office sixty Years.

Mr. *Soll. Gen.* He said so before, but these Gentlemen will never be contented, unless they have a new Law made for them.

Mr. *Pollixfen.* My Lord, I would not unnecessarily trouble your Lordship; but truly this is a Case of great Concern. And first of all, I think we shall all agree, that what has been used for ten or twelve Years past will not make the course of the Court, and next I perceive they do not bring any one instance for any proceeding of this sort above ten or twelve Years old, but then (say they) on the other side, Why do not you bring Presidents, that it has gone otherwise heretofore? My Lord, that cannot be done, for it is a Negative on our side, that this which they desire is not the Course of the Court; but then (as it is impossible) to prove a Negative, so the Proofs should come on the other side, that this has been done: they ought to shew it, if there has been any such thing as a standing Rule, or else it shall be presumed an Innovation, as being contrary to all Reason; But my Lord, because they put it upon us, there is this Proof on our side, as much as a Negative can afford: In those Proceedings, that were in the great Case of the *Habeas Corpus*, there was an Information against *Elliot* and others, they had time given them to plead over and over, so that there is one Precedent: And as many of these Cases in former times as can be found, will shew that this was always the course; but pray (say they) produce us one instance, that ever there was a Man that came in upon a Recognizance, that had time to plead; truly my Lord, I cannot just now tell whether any such instance can be produced, but I verily believe there may be a great many, but I turn it upon them, and that with great Reason, with Submission to your Lordship, Shew me any Man (if you can) above a dozen Years ago, that had not time allowed him to plead; Ay but (say they) Mr. *Waterhouse* an ancient Clerk of the Crown Office, that has been there these sixty Years, hath certified that this hath been the practice of all his time: My Lord, we that have been Conversant in the business of this Court, did all very well know Mr. *Waterhouse* when he was here, and sat in Court in the place of Sir *Samuel Astry*.

Sir *S. Astry.* No, Sir, it was in Mr. *Harcourt's* place.

Mr. *Pollixfen.* Well, he executed a place here, and 'tis no matter whether he were Master of the Office or no; but I think we all knew him very well, he was a Man as lame in his Business as could be, for there are some Men that will never do business well, let them be never so long at it; and he was as weak in the practice of the Court, and every thing else, as 'tis possible for one that has been bred in an Office can be; and at this time he is grown so decrepit and superannuated, that you may as well depend upon the Certificate of an old Woman, as any thing that he shall say in such a Matter as this; he is now almost fourscore years of Age, and has lost that little Memory and Understanding

he had, but if his Certificate must be depended upon, because of his standing in the Office; pray my Lord, let him come hither, and do you ask him what he has to say in this Matter.

Mr. *Soll. Gen.* Aye, that is very well indeed.

Mr. *Pollixfen.* Good Mr. *Solicitor* spare us, certainly there needs not such great haste in this Matter, we are upon a business of very great Weight and Concernment, for you are now making a Law for the whole Kingdom in point of Practice, in Cases of this Nature. We do say indeed, that by the Reason of the Heat and Zeal of these last ten years, such a Usage has been introduced, but Sir *Samuel Astry* tells you, it was opposed, and I hope that neither I, nor the thing will be the worse thought of, because I opposed what I thought an unreasonable and new Invention; my Lord, I know in the Case of the City of *London*, we had time to plead a whole Vacation after an Imparllance, and were not at all hurried on, as the King's Council would do in this Case; my Lord, if they can produce any ancient Precedent for it, I will say no more, but there is no Case in Print in any of our Books that ever I read or can remember, that countenances such an Opinion; a Man by this means may lose his just Defence, and he has no Remedy, nor will it ever be in his Power to retrieve it, for he may be brought on a sudden into Court upon a Warrant, and when he is here he shall be charged with an Information, and presently he must plead not Guilty, because he has not time to prepare a Plea of any other Nature, let him have never so much other special Matter, or occasion for it; if you please to let this Matter be examined what the Precedents are, and what Age those Precedents are, then perhaps your Lordship will get some Satisfaction; but otherwise, if the bare Certificate of the Master of the Office is to be a Guide to the Court what is Law, and what is not, we shall be in a very uncertain Condition, especially when the Matter carries in the very face of it, a great deal of Unreasonableness and Injustice. They on the other side will argue that is not more unreasonable than the practice in the Case of Treason and Felony, where Persons are compelled to plead instantly. But under favour my Lord, there is no Comparison between this Case and that, though I know it was always thought a hardship and defect in our Law, that a person should be denied time to plead in Case of Life and Death, except he can shew some special Matter of Law that he has to plead, and then he has always time allowed him to put it into Form; and I could never think there was any Reason to be given for it, but because the common Defences of Felons would be little Shifts and Arts, which would destroy Proceedings, and make them tedious, and that would be an Encouragement to People to commit Felony; and beside there is a Trust which the Law reposes in the Court in Capital Cases, to take care that these Men should not suffer upon any little Tricks in Law; but if you come below Treason and Felony, the Law puts no such hardship upon the Defendant, nor reposes such a special Trust in the Court; but a Man may plead any thing he has to plead; and can any Man plead before he sees what he is to plead to? and shall the Law allow him Council to prepare his Plea, and not allow him time to consult with that Council about it? These are things

my Lord, that truly to me seem unreasonable : But as to the Practice and course of the Court, I pray your Lordship to give Order, that the Precedents may be searched, that you may know what the ancient Practice was.

Mr. Finch. Whether you will grant an Imparlance now or no, yet I hope however, you will think fit to give my Lords the Bishops time to plead.

L. C. J. But Mr. Finch, we have had a Certificate from Sir Samuel Astry, which truly weighs a great deal with me, he tells you the Practice has been so ever since he came here, and that Mr. Waterhouse told him, that it had been so all his time, which is sixty Years.

Mr. Pollixfen. My Lord, there are Persons here that will upon their Oaths declare, That Mr. Waterhouse has often told them the Practice was otherwise ; even in his time, and afterwards a long time before this new way of Proceeding came in.

Mr. Ince. My Lord, if I might have liberty to speak, I can say Mr. Waterhouse has told me.

L. C. J. Pray be quiet Mr. Ince.

Mr. Just. Allybone. But pray Mr. Pollixfen give me leave to mind you, how the Evidence stands against you, the Objections are, that this has been a Practice but for twelve years last past : if that be true, I think it goes a great way, for the Practice of twelve years is Precedent enough, *Frimâ Facie*, that such is the practice, for how shall we come to the Knowledge of the practice, but from our Officer Sir Samuel Astry, who has been here examined ? and he tells you, that upon his coming into the Office, when it could not be so doubtful as now (it seems) it is, he took Instructions from Mr. Waterhouse ; I allow you 'tis but his Certificate, but that must go a great way with the Court.

Sir Robert Sawyer. Such a practice as this has been always very rare in Informations for Misdemeanours ; and they bring you nothing of any Precedent older than Sir Samuel Astry's time.

Mr. Finch. Pray my Lord, give me leave to vary the Question, I do not now make it a Question, whether your Lordships should grant my Lords the Bishops an Imparlance, but whether you would think fit to look into the course of the Court before that time, that Sir Samuel Astry speaks of, and take time to consider, and search into Precedents.

Mr. Just. Allybone. Do you Mr. Finch give us any one Reason or Precedent, that may make us doubt, whether this be the course of the Court or no ? And you could not but be aware of this before, and therefore should have come prepared to make out your Objection.

Mr. Finch. Mr. Pollixfen and the rest of the Practicers in my Lord Hale's time will tell you, that the course was otherwise in his time ; Sir Samuel Astry indeed tells you, it has been so since his time ; but this was one of the Points (it seems) that he was ignorant of, which made him inquire of Mr. Waterhouse, so doubtful was this Practice.

Sir Samuel Astry. I was an Attender upon this Court before I came into this Office, but it was in another place on the other side of the Court ; and therefore was not concerned so much to know what was the course on this side, till I came into this Office.

Mr. Sol. Gen. These Gentlemen differ among themselves, one would have an Imparlance, the other only time to plead, I believe truly they

cannot tell well what they would have, I pray the Rules of the Court may be kept to.

Sir Sam. Astry. Here are two Clerks that sit by me, that have been a long time in the Office, Mr. Harcourt my Secondary, and the Clerk of the Rules ; I pray they may be asked their Knowledge of this matter.

Mr. Att. Gen. Certainly these Gentlemen think they have a Privilege above all other People, that they must not be subject to the same Rules as others are, we on our parts have taken all the Methods that we could to make this matter manifest, and what is it that these Gentlemen now propose ? They pray you to take time to consider, but have they used the right means of creating a jealousy or suspicion in the Court, that the course is otherwise, they can give no instance of it, and all they say is, 'tis a Negative, that this is not the course of the Court, but the Imparlance that they beg is in the Affirmative, surely that they can find proof of, if it be so : As for my Lord Hollis's Case, that is with us, and not against us ; let Mr. Pollixfen shew that ever any one of the Men that were brought into Court in Custody either had time to plead, or an Imparlance.

L. C. J. Sir Samuel Astry says he has given you his Opinion, and here are two other Clerks of the Office that he refers himself to, are you willing that they should be asked ?

Mr. S. Pemberton. Yes my Lord, with all our hearts.

L. C. J. Mr. Harcourt, How long have you been a Clerk in the Crown-Office ?

Mr. Harcourt. About seventeen or eighteen Years, my Lord.

L. C. J. How long have you known the practice of the Court in this matter, and what is it ?

Mr. Harcourt. I cannot charge my self so with Particulars from the time of my coming into the Office, but for these ten or twelve Years past (I remember) it has been as the King's Council pressed, and as Sir Samuel Astry has declared.

L. C. J. What say you, Mr. Sillyard, how long have you known the Crown Office ?

Mr. Sillyard. I have been a Clerk here about thirty Years.

L. C. J. Well, and how has the practice been all your time ?

Mr. Sillyard. I have not sat here as Clerk of the Rules but a little while, but since I have sat here, I have always observed it to be the Practice, that one that comes in Custody should plead immediately, it was a thing heretofore that did not so often happen, as it hath done here of late, therefore I cannot so well speak to it ; but it hath fallen out frequently within some Years last past, and that hath been the constant course.

Sir Samuel Astry. When you first came to be Attorney General, Sir Robert Sawyer, I am sure it was so.

Mr. Att. Gen. Pray let me ask you Mr. Sillyard, you say, you have known the Office thirty Years, when you first came to the Office, were Informations as frequent as they are now, and have been of late ?

Mr. Sol. Gen. It was so in the Case of Mr. Hampden, when you were Attorney General, Sir Robert Sawyer, he was forced to plead immediately to an Indictment, for a Crime that perhaps you will say was near upon Treason.

Sir Rob.

Sir Rob. Sawyer. Yes truly, it wanted but one Witness, that was all.

Mr. Sol. Gen. But yet the Indictment was only for a Misdemeanour, and there we struggled and debated the Matter, but were forced to give it over, because the course of the Court was against us, so it has been by the unquestionable Testimony of Sir Samuel Astry for these twelve Years last past, and in those twelve Years we have had many changes, perhaps there may have been twelve Chief Justices, and they have all affirmed it, and if I then make it out, that in all these Judges times that are within our Remembrance it has gone thus, then there are enough Precedents in the Matter.

Sir Rob. Sawyer. But my Lord, I desire to know, whether that were the ancient Course, Mr. Solicitor?

Mr. Sol. Gen. They that make the Objection ought to prove it; but I will name Sir Rob. Sawyer another Case, and that is the Case of Sir Samuel Barnardiston, which was the Case of a Libel too, he was forced to plead immediately, and it cost him 10000 l. Fine.

L. C. J. Well, Gentlemen, have you done on either side?

Mr. Serj. Pemberton. If your Lordship will please to give us time till to morrow Morning, we will come hither by Rule of Court, and bring you some Certificates and Affidavits, or else some Precedents that we hope will satisfy your Lordship in this Matter.

L. C. J. No Brother, we cannot do that, the Question is what the Course of the Court is, we have an account of that from Sir Samuel Astry, for twelve Years of his own Knowledge, and from Mr. Waterhouse by him for sixty Years; but for Mr. Waterhouse they except against him, and say he was a Person that was always lazy and did not so well understand his Business, and now is superannuated, that is said, but is but *gratis dictum*, perhaps it may be so, perhaps not; and they have offered to Examine Mr. Ince about some Opinion that he has had from this Mr. Waterhouse; it may be he may have asked him some Question that may lead to it, and he may have given some flight Answer, but then here are these two Persons Mr. Harcourt, and Mr. Sillyard, and the one has been a Clerk these sixteen or seventeen Years, and the other has known the Office thirty Years; though there were not heretofore so many Informations of this nature and kind as now of late, but still they say, that a Person that comes in upon a Commitment, or a Recognizance, shall never have any Imparllance.

Mr. Sol. Gen. Can they give any one Instance that has any the least shadow to the contrary?

Mr. Pollixfen. My Lord, if we had time, we hope we should be able to satisfy you in this Matter.

Mr. Sol. Gen. You have had time enough to prepare your selves for this Question, if you had thought you could do any good in it.

L. C. J. Would the course of the Court be otherwise to Morrow than it is to Day, we have taken all the Care we can to be satisfied in this Matter, and we will take care that the Lords the Bishops shall have all Justice done them, nay, they shall have all the Favour by my consent that can be shewn them, without doing wrong to my Master the King, but truly I cannot depart

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from the course of the Court in this Matter, if the King's Council press it.

Mr. Att. Gen. My Lord, we must pray your Judgment in it, and your Direction, that they may plead.

L. C. J. Truly I think they must Plead to the Information.

Mr. Att. Gen. Sir Samuel Astry, pray ask my Lords whether they be Guilty or Not Guilty.

Then his Grace the Lord Archbishop of Canterbury stood up, and offered a Paper to the Court.

Archbish. of Cant. My Lord, I tender here a short Plea, (a very short one,) on behalf of my self and my Brethren the other Defendants; and I humbly desire the Court will admit of this Plea.

L. C. J. If it please your Grace, it should have been in Parchment.

Mr. Sol. Gen. What is that my Lord offers to the Court?

L. C. J. We will see what it is presently, Mr. Solicitor.

Bish. of Peter. I pray, my Lord, that the Plea may be read.

Mr. Sol. Gen. But not received.

Mr. Att. Gen. No, we desire to know what it is first.

Sir Rob. Sawyer. Mr. Attorney, if they will plead, the Court sure is obliged to receive it.

L. C. J. If it is a Plea, your Grace will stand by it.

L. Archbish. of Cant. We will all stand by it, my Lord, it is subscribed by our Council, and we pray it may be admitted by the Court.

Mr. Serj. Pemberton. I hope the Court will not deny to receive a special Plea, if we offer one.

L. C. J. Brother, let us hear what it is?

Mr. Sol. Gen. Read it if you please, but not receive it.

Clerk Reads the Plea; which in English is thus:

The Bishops P L E A.

AND the aforesaid William Archbishop of Canterbury, William Bishop of St. Asaph, Francis Bishop of Ely, John Bishop of Chichester, Thomas Bishop of Bath and Wells, Thomas Bishop of Peterburgh, and Jonathan Bishop of Bristol, being present here in Court in their own Persons, pray Oyer of the Information aforesaid; and it is Read to them, which being Read and heard by them the said Archbishop, and Bishops: The said Archbishop and Bishops say, that they are Peers of this Kingdom of England, and Lords of Parliament, and each of them is one of the Peers of this Kingdom of England, and a Lord of the Parliament, and that they being (as before is manifest) Peers of this Kingdom of England, and Lords of Parliament, ought not to be compelled to answer instantly for the Misdemeanour aforesaid, mentioned in the said Information exhibited here against them in this Court; but they ought to be required to appear by due Process in Law issuing out of this Court here upon the Information aforesaid, and upon their Appearance to have a Copy of the said Information exhibited against them, and reasonable time to impart thereupon, and to advise with Council Learned in the Law, concerning their Defence in that behalf, before they be compelled to answer the said Information; Whereupon, for that the said Archbishop, and Bishops were Imprisoned, and by Writ of our Lord the King, of Habeas Corpus, directed to the Lieutenant of the Tower of London, are now brought here

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in Custody, without any Process upon the Information aforesaid issued against them, and without having any Copy of the said Information, or any time given them to imparl, or be advised; They pray Judgment, and the Priviledge of Peers of this Kingdom, in this Case to be allowed them; and that They the said Archbishop, and Bishops, may not be compelled instantly to answer the Information aforesaid, &c.

Rob. Sawyer.

Hen. Finch.

Hen. Pollixfen.

Mr. Att. Gen. My Lord, with your Lordship's favour, this, in an ordinary Person's Case, would perhaps be thought not fair dealing, or that which (it being in the Case of these Reverend Prelates) I shall not now name; to make all this Debate and Stir in a Point of this nature, to take the Judgement of the Court after three or four hours arguing, and when the Opinion of the Court has been delivered, then to put in a Plea to the Jurisdiction of the Court, —

Sir Rob. Sawyer, It is no such Plea.

Mr. Att. Gen. It is so in effect, but certainly it is such an Irregularity, and such an unfair way of Proceeding, as would not be endured in an ordinary Case, and I hope you will give so little countenance to it, as to reject it, and make them plead according to the usual course and way of proceedings; certainly a Plea of this nature, after so long an Argument, would be reckoned nothing but a trick.

Mr. Serj. Pemb. We hope the Court and you are not of one mind *Mr. Attorney* in this matter, we desire the Court to receive the Plea.

Mr. Att. Gen. With submission, the Court is not bound to receive Pleas, that are put in purely for delay, as this is; for the Judgment of the Court has been already given in the very matter of this Plea; and for rejecting a Plea, it is done every day, if a Man puts in a mere trifling dilatory Plea, the Court may reject it; Does this Plea contain any thing in it, but what has been argued and debated *pro & con* and settled by the Court already? If they will put in any Plea in chief they may, but such a Plea as this, I hope shall not have so much countenance, as to be receiv'd by the Court.

Mr. Pollixfen. Do you Demur to it, if you please *Mr. Attorney*, we will joyn in Demurrer with you.

Mr. Att. Gen. No, there will be no need of that.

Mr. Sol. Gen. Surely the Court will never give so much Countenance to it, as to receive it.

Mr. Finch. If you will please either to Reply or Demur, *Mr. Solicitor*, we are here to maintain the Plea.

Mr. Soll. Gen. If you were here you would say the same thing that we do; My Lord, this Plea is, That my Lords the Bishops are not bound to Plead instantly; so that 'tis not a Question, Whether they ought to Answer, or not to Answer, but whether they ought to Answer immediately, and what do they say more? They would have an Impar lance, and time to consult with their Council what they shall Plead, which is all but one and the same thing; and what is the reason they give for this? They induce it thus, These Noble Persons are Peers of the Realm, and so ought not to be compelled to Plead immediately; this, if I mistake not, is the sum of their Plea. Now pray my Lord, what sort of Plea is this? It is not a Plea to the Juris-

dition of the Court, tho it do in a sort decline the Justice of the Court? Is it a Plea in Abatement? No, it is not, for it is only to gain time, and do they now offer any thing more for themselves, than what was said by their Council before? Only, That we are Peers of the Realm, and that such is the Priviledge of Peers, that they ought to have an Impar lance, and time to Plead, and that they ought not to answer presently: My Lord, this Matter hath been long agitated in the Court already, your Lordship, and the Court have given your Judgments, and we know your Lordship, and the Court will not admit of Tricks to delay the Kings Causes, we all know the Term is a short Term, and what I said in the beginning upon this matter, I say again, it is the Interest, and for the Honour of my Lords the Bishops (if they understand their own Interest, and value their Honour) to have this Cause tryed as soon as may be; but this trifling and tricking is only for delay: For what issue can be taken upon this Plea? Certainly none; And if we should Demurr, what will be the end of that? But only to get time to slip over the Term. If there were any thing worth the considering in this Plea, and that had not been already debated and settled, then it might concern us to give some Answer to it; but we have spent three hours (by my Watch) in the Dispute, and the Matter having been over-ruled already, it is time to have an end of it; sure the Court will never be so treated by these Persons, that are of Council for my Lords the Bishops, for it cannot be thought that my Lords the Bishops do it of themselves; and whether the Court will be so served, we submit to your Lordship. Certainly you will not receive such a Plea as this, especially it being in Paper, you will never countenance such a Practice so far as to give these Lords time to trifle with the Court; if any such thing as a Plea be tender'd to the Court, it ought to be in Parchment, and if they would have an Impar lance, there ought to have been an entry of a *Petit Licentiam interloquendi* upon the Roll, but not such a Plea as this, for this in effect is no more than desiring an Impar lance, which if it be granted of course, upon such a Prayer entred upon the Roll, you take it of course; but if it be not of course, you cannot come in by way of Plea, it must be by suggestion upon the Roll, and a *Conceditur* entred, if this be admitted as a Precedent, every Man hereafter that comes in upon any Information, will take advantage of it, and plead such a Plea as this, and if you grant an Impar lance in this Case upon this Plea, you must grant an Impar lance in every Case; certainly the Law is not to be altered, the Methods of Proceedings ought to be the same in every Case: And I hope you will not make a particular Rule in the Case of my Lords the Bishops, without a special Reason for it.

Mr. Serj. Pemb. We put in this Plea, my Lord, and are ready to abide by it, and we say, that according to the course of the Court, it ought to be received.

Mr. Att. Gen. No, but good *Mr. Serjeant*, 'tis in the discretion of the Court, whether they will receive it or not, for the matter has been in debate already, and has receiv'd a determination, the Court has over-ruled them in this very Point already, and there is no more in this Plea, than was in the Argument before, and therefore it ought to be rejected as a frivolous Plea.

Mr. Soll. Gen. Here is a Plea offered in Writing, and

and in Paper, the Court sees what it is, and I hope you will give no countenance to it.

Mr. Pollexfen. I do hope my Lord, you will not judge this as a frivolous Plea, I think our Case is such, that you will not do that, if you think fit you may over-rule it, but I hope you will not refuse it.

Mr. Sol. Gen. The Court will certainly reject a frivolous Plea, and they may do it.

Mr. Pollexfen. But *Mr. Solicitor*, I hope the Court will consider of it, whether it be a frivolous Plea or not. It is true, there has been a Debate about the course of the Court, and there has been an Examination of the Clerk of the Office, and the Court has gone upon his Certificate, but yet still perhaps it may remain in doubt, and it being a Question of such a consequence as this, it may very well deserve the Court's Consideration; there never was a Judicial Settlement of it (that I know of yet) nor do I know any way of having it satisfactorily settled, but by the Judgment of the Court entered upon Record; here we offer a Plea that contains the matter in debate, and this Plea will appear upon Record, and if upon consideration of the Plea your Lordship shall think fit to over-rule it, and be of Opinion against the Plea, then will you by your Resolution in a Judicial way, settle the Question that has hitherto been in Controversy.

L. C. J. *Mr. Pollexfen*, I would ask you whether the Council have dealt ingenuously with the Court or no in this matter; after four Hours debate, and the Opinion of the Court delivered, to come and sum up all the Arguments in such a Plea as this, and so put us upon debating it over again.

Mr. Pollexfen. My Lord, certainly this has been done before, without Offence; after we had moved for a thing which was denied upon Motion, it is no such great disrespect to the Court (with submission) to put the same Matter into a Plea, for the Judicial Opinion of the Court.

Sir Robert Sawyer. That without all Question has been done a great many times.

Mr. Sol. Gen. How many times have you been accused of playing Tricks, *Sir Robert Sawyer*?

Sir Robert Sawyer. Not so many as you, *Mr. Solicitor*.

Mr. Sol. Gen. I don't ask it as if I questioned it, for I assure you I don't doubt it of your part at all.

L. C. J. Pray Gentlemen don't fall out with one another at the Bar, we have had time enough spent already.

Mr. Pollexfen. Truly, My Lord, I would not trick with the Court in any Case, nor on the other side would I be wanting to Advise and do for my Client, what I am able and lawfully may; we have laboured all we could to get time for my Lords the Bishops to Imparle to this Information, and we have been the more earnest in it, because it concerns us; who attend this Bar, to take what Care we can, that the Course of the Court may be observed; but as for this matter, we suppose this Practice of the Court is not in Law a good Practice; Now what way in the World has any Man to bring this so in question, as to have a Judicial Resolution of the Court about it, but by such a Plea? We take it, that it is usual and legal for us to have an Impar lance, and a Man would Imparle, but the Court upon

Motion refused to give him an Impar lance; Is it not (think you) very fit for the Party to have this Judicially entered upon Record? where all this Matter will appear, and the Party may be relieved by Writ of Error, if the Judgment of the Court should be wrong; but truly I cannot see how the Court can refuse the Plea, for if so be a Plea be pleaded, they have their liberty to Answer it on the other side by a Replication, or else to Demur, and the Judgment of the Court may be had upon it one way or other, but the Court will never go about to hinder any Man from pleading where he may plead by Law; here is a Plea put in, and the Court sure will take no notice what is the Matter of the Plea, till the other party have either replied or demurred; the same thing may happen in any other Plea that is pleaded, and the Party will be without Remedy upon a Writ of Error, because the Plea being rejected, there does nothing appear upon Record; truly for the Court to reject and refuse the Plea, would be as hard as the refusing of the Impar lance, and we know no way we have to help our selves.

Mr. Sol. Gen. You might have entered your Suggestion for an Impar lance upon the Roll, and then it would have appeared upon Record, and if the Court had unjustly denied it you, you would have had the benefit of that Suggestion elsewhere: Truly, My Lord, I think if any thing be tricking, this is, for it is plainly ill pleading.

Mr. Finch. Then pray demur to it.

Mr. Sol. Gen. No Sir, 'tis Fencing with the Court, and that the Court won't suffer, it is only to delay, and if we should demur, then there must be time for Arguing; and what is the Question after all, but whether you would be of the same Opinion to Morrow, that you are to Day?

Sir Rob. Sawyer. I would put *Mr. Solicitor* in mind of *Fitz Harris's* Case, which he knows very well, he put it in a Plea, and we for the King desired it might not be received, but the Court gave him time to put it into Form, and I was fain to joyn in Demurrer presently, and so may these Gentlemen do if they please.

Mr. Sol. Gen. Yes, *Sir Robert Sawyer*, I do know the Case of *Fitz Harris* very well, I was assigned of Council by the Court for him, we were four of us, and there was a Plea put in, but no such Plea as this, there was an Indictment of High Treason against him, in which Case it is agreed on all hands, that the party must answer presently, but because he suggested here at the Bar, (says he) I have Matter to plead to the Jurisdiction of the Court, and shewed what it was, I was Impeached before the Lords in Parliament for Treason, for the same Matter of which I am here Accused: The Court did give him time to put this into Form, and we were assigned his Council to draw it up for him, and accordingly we did put that Matter into a Plea, that we were here Indicted for one and the same Treason, for which we were Impeached in Parliament, and that that Impeachment was still depending, and so we rested in the Judgment of the Court, whether we should be put to Answer it here; this was a Plea that carried something of weight in it, and not such a trifling one as this. It is true, *Sir Robert Sawyer* who was then *Attorney General* did press the Court to over-rule it immediately, but it being a mat-

ter of some Importance, the Court would not do that, but had it argued solemnly by Council on both sides, and at last there was the Opinion of three Judges against one that the Plea was no good Plea. But what is that to such a trifling Plea as this?

Mr. *Att. Gen.* Pray my Lord favour me a few words about that Case of Mr. *Fitz Harris*, it is true, there was a Plea put in, and it is true also, that that which brought that Plea to be argued, was the Demurrer that was put in by Sir *Robert Sawyer*, who was so zealous and hasty in the matter, that because the Court did not presently over-rule the Plea, as he desired, he immediately Demurred, before the rest of the King's Council could offer at any thing about it; and thereupon it was put to the Judgment of the Court, and no doubt must be argued, and spoke to on both sides; but where Pleas are really in abuse of the Court, the Court never gives any Countenance to them: Nay, truly I have known another Course taken, I am unwilling to mention a Case that hapned much about that time too in this Court, because of that regard I have to my Lords the Bishops, but Sir *Robert Sawyer* remembers it very well, I am sure: it was the Case of one *Whitaker*, who for a thing like this, putting in a trifling Plea, not only had his Plea rejected, but something else was ordered, I could shew the Precedent, but that I am more tender than to press it in this Case, because there the Court order'd an Attachment to go against him, but I will put these Gentlemen in mind of another Case, and that is the Case of a Peer too, it is the Case of my Lord *Delamere*, which they cannot but remember, it being in the highest Case, a Case of Treason, when my Lord *Delamere* was Arraigned and to be Tryed for High Treason, he put in a Plea before my Lord *Chancellour*, who was then *High Steward*, and Sir *Robert Sawyer* who was then *Attorney General*, prayed the Lord *Steward* and the Peers to reject it, and the Court did reject it, (as we hope the Court will do this) and would never so far delay Justice as to admit of a Plea that carried no Colour in it, and there was no Demurrer put into the Plea, but it was absolutely refused: My Lord, in this Case we have had the Judgment of the Court already, and therefore we must now desire that this Plea may be rejected.

Mr. *Sol. Gen.* My Lord, we have now gone out of the way far enough already; it is time for us to return, and bring the Case into its due methods. We pray your Lordship to reject this Plea.

Sir *Robert Sawyer*. My Lord, we are in your Judgment, whether you will receive this Plea or not.

L. C. J. You shall have my Judgment presently; but my Brothers are to speak first.

Mr. *Just. Allybone*. Mr. *Pollexfen* makes it a Question, whether this Plea may be rejected or not, or whether it ought to be received, and the Court give their Judgment upon it.

Mr. *Just. Powell*. Truly I do not know whether the Court can reject this, as a frivolous Plea.

L. C. J. Surely we may and frequently do.

Mr. *Att. Gen.* You do it every day, 'tis a frequent Motion; if a frivolous Plea be put in, before it be entred upon Record as a Plea, the Court may refuse it, if they see cause.

Mr. *J. Allybone*. Truly if it may be, this appears to me a frivolous Plea.

Mr. *J. Powell*. I do not know how the Court can reject any Plea that the Party will put in, if he will stand by it, as they say they will here; and I cannot think this a frivolous Plea, it concerning the priviledge of Peers, and Lords of Parliament.

Mr. *J. Allybone*. Brother *Powell*, I would be as tender of the Priviledges of Parliament, and speak with as much respect of the Priviledges of the Peerage, as any body else; but for the matter of the Plea, truly it appears to me, that the Peers are named in it only for fashion sake, and it is frivolous.

Mr. *J. Powell*. The matter of the Plea, except only their being said to be Peers and Lords of Parliament, was spoke to before, but it was only *obiter*, and by way of motion; but now it may come before us for our Judicial Determination.

Mr. *J. Allybone*. Pray let the Plea be read again.

(Which was done.)

Mr. *Just. Allybone*. This Plea is no more but that which has been denied already upon solemn debate, and if it be in the power of the Court to reject any Plea, surely we ought to reject this. Indeed I know not what power we have to reject a Plea; but if we have power, this ought to be rejected.

Mr. *J. Powell*. I declare my Opinion, I am for receiving the Plea, and considering of it.

Mr. *J. Holloway*. I think as this case is, this Plea ought not to be received, but rejected, because 'tis no more than what has been denied already. I am not ashamed to say, That I should be very glad and ready to do all things that are consistent with my Duty, to shew respects to my Lords the Bishops, some of whom are my particular Friends; but I am upon my Oath, and must go according to the course of Law.

L. C. J. We have asked and informed our selves from the Bar, whether we may or can reject a Plea, and truly what they have said, hath satisfied me that we may, if the Plea be frivolous; and this being a Plea that contains no more than what has been over-ruled already, after hearing what could be said on both sides, I think the Court is not bound to receive the Plea, but may reject it, and my Lords the Bishops must plead over.

Mr. *Att. Gen.* We pray they may plead in chief.

Clerk. My Lord Archbishop of *Canterbury*, is your Grace guilty of the matter charged upon you in this Information, or not guilty?

A. B. C. Not Guilty.

Clerk. My Lord Bishop of *St. Asaph*, is your Lordship guilty of the matter charged upon you in this Information, or not guilty?

Bish. of *St. Asaph*. Not Guilty.

Clerk. My Lord Bishop of *Ely*, is your Lordship guilty of the matter charged upon you in this Information, or not guilty?

Bish. of *Ely*. Not Guilty.

Clerk. My Lord Bishop of *Chichester*, is your Lordship guilty of the matter charged upon you in this Information or not guilty?

Bish. of *Chichester*. Not Guilty.

Clerk. My Lord Bishop of *Bath and Wells*, is your Lordship guilty of the matter charged upon you in this Information, or not guilty?

Bish.

Bish. of *Bath and Wells*. Not guilty.

Clerk. My Lord Bishop of *Peterborough*, is your Lordship guilty of the matter charged upon you in this Information, or not guilty?

Bish. of *Peterborough*. Not guilty.

Clerk. My Lord Bishop of *Bristol*, is your Lordship guilty of the matter charged upon you in this Information, or not guilty?

Bish. of *Bristol*. Not Guilty.

Mr. *Att. Gen.* My Lord, I pray the Clerk may join Issue on the behalf of the King, that so we may come to Tryal; and we would have these Gentlemen take notice, that we intend to try this Cause on this day fortnight, and we pray liberty of the Court, that we may try it at Bar.

L. C. J. Are you not too hasty in that Motion, Mr. Attorney?

Mr. *Att. Gen.* My Lord, we should indeed make it the Motion of another day; but we do now tell them this *ex abundanti*, because my Lords the Bishops are now here, and will I suppose take notice that we do intend to move it another Day.

Mr. *Sol. Gen.* We now give them notice, that we intend to move.

Sir *Rob. Sawyer*. For that you need not trouble your selves; we are very desirous it should be tryed at Bar, and that as soon as you please.

Mr. *Att. Gen.* Well then you take notice it will be tryed this day fortnight.

L. C. J. Well, what shall we do with my Lords the Bishops?

Mr. *Att. Gen.* They are baylable, no question of it, my Lord, if they please.

L. C. J. Then, my Lords, we are ready to bail you, if you please.

Sir *Robert Sawyer*. We desire your Lordship would be pleased to take their own Recognizance.

L. C. J. What say you Mr. Attorney? I think that may do well enough.

Mr. *Att. Gen.* My Lord, with all my heart, we will do it.

L. C. J. In what Penalty shall we take it?

Mr. *Att. Gen.* A 1000 l. I think my Lord his Grace, and 500 l. apiece the rest.

Sir *Rob. Sawyer*. What necessity is there for so much?

Mr. *Att. Gen.* Look you, Sir *Robert Sawyer*, to shew you that we do insist upon nothing that shall look like hardship, what my Lords have been pleased to offer, concerning taking their own Recognizance, we agree to, and what Sums the Court pleases.

Mr. *Sol. Gen.* It is all one to us, we leave it wholly to the Court.

Sir *Robert Sawyer*. Only I have one thing more to beg of your Lordship on the behalf of my Lords the Bishops, that you will please to

order, that in the Return of the Jury there may be forty eight returned.

Mr. *Att. Gen.* I tell you what we will do, Sir *Samuel Astry* shall have the Freeholders Book, if you please, and shall return twenty four.

Sir *Robert Sawyer*. Eight and forty has been always the course, when the Jury is returned by Sir *Samuel Astry*.

Mr. *Sol. Gen.* My Lord, I pray the Officer may return the Jury, according as is usual in Cases of this nature.

Mr. *Att. Gen.* You do admit of a Tryal at Bar, Gentlemen?

Sir *Rob. Sawyer*. Yes, and try it when you will.

L. C. J. They say it shall be this day fortnight, and let there be a Jury according to the usual course.

Sir *Robert Sawyer*. We pray it may be in the presence of the Attorneys or Solicitors on both sides.

L. C. J. What is the usual course, Sir *Samuel Astry*? Do you use to return twenty four, or forty eight, and then strike out twelve a piece, which I perceive they desire for the Defendants?

Sir *Samuel Astry*. My Lord, the course is both ways, and then it may be, as your Lordship and the Court will please to order it.

L. C. J. Then take forty eight, that is the fairest.

Mr. *Att. Gen.* We agree to it; we desire nothing but a fair Jury.

Sir *Robert Sawyer*. Nor we neither, try it when you will.

L. C. J. Take a Recognizance of his Grace my Lord of *Canterbury* in 200 l. and the rest of my Lords in 100 l. a piece.

Mr. *Att. Gen.* What your Lordship pleases for that, we submit to it.

Clerk. My Lord of *Canterbury*, your Grace acknowledges to owe unto our Sovereign Lord the King, the Sum of 200 l. upon condition that your Grace shall appear in this Court on this day fortnight, and so from day to day, till you shall be discharged by the Court, and not to depart without leave of the Court. Is your Grace contented?

A. B. C. I do acknowledge it.

Clerk. My Lord Bishop of *St. Asaph*, you acknowledge to owe unto our Sovereign Lord the King, the Sum of 100 l. upon condition that your Lordship shall appear in this Court on this day fortnight, and so from day to day, untill you shall be discharged by the Court, and not to depart without leave of the Court. Is your Lordship contented?

Bishop of *Asaph*. I do acknowledge it.

The like Recognizances were taken of all the rest of the Bishops, and then the Court arose.

*De Termino Sanctæ Trinitatis, Anno Regni Jacobi
Secundi Regis, Quarto, In Banco Regis. Die Veneris,
vicesimo nono die Junii, 1688. in eod' Term'.*

(Being the Feast of St. P E T E R and St. P A U L.)

Dominus Rex versus Archiep. Cantuar. & al.

Clerk **C**Ryer, make Proclamation thrice.
Cryer, Oyez! Oyez! Oyez! Our
Sovereign Lord the King streightly
charges and commands every one to keep silence,
upon pain of Imprisonment.

Cl. of the Cr. Call the Defendants.

Cryer. William Lord Archbishop of Canter-
bury.

Archbish. Here.

Cryer. William Lord Bishop of St. Asaph.

Bish. of Asaph. Here.

(And so the rest of the Bishops were called,
and answered severally.)

Clerk. Gardez, vosres Challenges.

Swear Sir Roger Langley.

Cryer. Take the Book Sir Roger. You shall
well and truly try this Issue between our Sove-
reign Lord the King, and William Lord Arch-
bishop of Canterbury, and others, according to
your Evidence. So help you God.

The same Oath was administred to all the
Jury, whose Names follow, viz.

Sir Roger Langley, Bar.	William Avery, Esq;
Sir William Hill, Knt.	Thomas Austin, Esq;
Roger Jennings, Esq;	Nicholas Grice, Esq;
Thomas Harriot, Esq;	Michael Arnold, Esq;
Feoffery Nightringale, Esq;	Thomas Done, Esq;
William Wubbers, Esq;	Richard Shoreditch, Esq;

Clerk. You Gentlemen of the Jury who are
sworn, hearken to the Record; Sir Thomas
Powys, Knight, His Majesty's Attorney-General,
has exhibited an Information, which does set
forth as followeth.

Memorandum, That Sir Thomas Powys, Knt.
Attorney-General of our Lord the
King, who for our said Lord the King in this
behalf prosecutes, came here in his own Person
into the Court of our said Lord the King, be-
fore the King himself at Westminster, on Friday
next after the morrow of the Holy Trinity in this
Term; and on the behalf of our said Lord the
King, giveth the Court here to understand and
be informed, That our said Lord the King, out
of his signal Clemency, and gracious intention
towards his Subjects of his Kingdom of England,
by his Royal Prerogative, on the fourth day of
April, in the third Year of the Reign of our
said Lord the King, at Westminster in the County
of Middlesex, did publish his Royal Declaration,
entituled, *His Majesty's Gracious Declaration* to all
his Loving Subjects for Liberty of Conscience, bear-
ing date the same Day and Year, sealed with the
Great Seal of England; in which Declaration is
contained, *James R. prout in the first Declaration*
before recited.

And the said Attorney-General of our said
Lord the King, on behalf of our said Lord the
King, further giveth the Court here to under-
stand and be informed, That afterwards, to wit,
on the twenty seventh day of April, in the fourth
Year of the Reign of our said Lord the King,
at Westminster aforesaid, in the County of Mid-
dlesex aforesaid, our said Lord the King, out of
his like Clemency, and gracious intention to-
wards his Subjects of his Kingdom of England,
by his Royal Prerogative, did publish his other
Royal Declaration, entituled, *His Majesty's Gra-
cious Declaration*, bearing date the same day and
year last mentioned, sealed with his Great Seal
of England; in which Declaration is contained,
James R. Our Conduct has been such, &c. prout in
the second Declaration before recited.

Which said Royal Declaration of our said
Lord the King last mentioned, our said Lord the
King afterwards, to wit, on the thirtieth day of
April, in the fourth Year of his Reign aforesaid,
at Westminster aforesaid, in the County of Mid-
dlesex aforesaid, did cause to be printed and pub-
lished throughout all England; and for the more
solemn Declaring, Notification, and Manifesta-
tion of his Royal Grace, Favour, and Bounty
towards all his Liege-people, specified in the
Declaration last mentioned, afterwards, to wit,
on the fourth day of May, in the fourth year of
his Reign, at Westminster aforesaid, in the Coun-
ty of Middlesex aforesaid, our said Lord the
King in due manner did order as followeth:

At the Court at Whitehall the Fourth of
May, 1688.

By the King's most Excellent Majesty, and the
Lords of his Majesty's most Honourable Privy-
Council.

IT is this day Ordered by His Majesty in Council,
That His Majesties Gracious Declaration bearing
date the Twenty Seventh of April last, be read at the
usual time of Divine Service upon the Twentieth and
Twenty-Seventh of this Month, in all Churches and
Chappels within the Cities of London and Westmin-
ster, and Ten Miles thereabout: And upon the Third
and Tenth of June next in all other Churches and
Chappels throughout this Kingdom. And it is hereby
further Ordered, That the Right Reverend the Bishops
cause the said Declaration to be sent and distributed
throughout their several respective Diocesses, to be read
accordingly.

Wm. Bridgman.

And further, the said Attorney General of
our said Lord the King, on behalf of our said
Lord the King, giveth the Court here to under-
stand

stand and be informed; That after the making of the said Order, to wit, on the eighteenth day of May, in the fourth year of the Reign of our said Lord the King, at *Westminster* afore said, in the County of *Middlesex* afore said, *William* Archbishop of *Canterbury*, of *Lambeth* in the County of *Surry*; *William* Bishop of *St. Asaph*, of *St. Asaph* in the County of *Flynt*; *Francis* Bishop of *Ely*, of the Parish of *St. Andrew Holbourn* in the County of *Middlesex*; *John* Bishop of *Chichester*, of *Chichester* in the County of *Sussex*; *Thomas* Bishop of *Bath and Wells*, of the City of *Wells* in the County of *Somerset*; *Thomas* Bishop of *Peterburgh*, of the Parish of *St. Andrew Holbourn* in the County of *Middlesex*; and *Jonathan* Bishop of *Bristol*, of the City of *Bristol*, did consule and conspire among themselves to diminish the Regal Authority and Royal Prerogative, Power and Government of our said Lord the King in the premises, and to infringe and elude the said Order; and in prosecution and execution of the Conspiracy afore said, They the said *William* Archbishop of *Canterbury*, *William* Bishop of *St. Asaph*, *Francis* Bishop of *Ely*, *John* Bishop of *Chichester*, *Thomas* Bishop of *Bath and Wells*, *Thomas* Bishop of *Peterburgh*, and *Jonathan* Bishop of *Bristol*, on the said eighteenth day of May, in the fourth Year of the Reign of our said Lord the King afore said, with Force and Arms, &c. at *Westminster* afore said, in the County of *Middlesex* afore said, falsely, unlawfully, maliciously, seditiously, and scandalously, did frame, compose, and write, and caused to be framed, composed, and written, a certain false, feigned, malicious, pernicious, and seditious Libel in writing, concerning our said Lord the King, and his Royal Declaration and Order afore said, (under pretence of a Petition) and the same false, feigned, malicious, pernicious, and seditious Libel, by them the afore said *William* Archbishop of *Canterbury*, *William* Bishop of *St. Asaph*, *Francis* Bishop of *Ely*, *John* Bishop of *Chichester*, *Thomas* Bishop of *Bath and Wells*, *Thomas* Bishop of *Peterburgh*, and *Jonathan* Bishop of *Bristol*, with their own Hands respectively being subscribed, on the day and year and in the place last mentioned, in the presence of our said Lord the King, with Force and Arms, &c. did publish, and cause to be published; in which said false, feigned, malicious, pernicious and seditious Libel is contained, *The humble Petition, &c. prout before in the Petition, to these words* [reasonable construction,] in manifest contempt of our said Lord the King, and of the Laws of this Kingdom, to the evil example of all others in the like case offending, and against the Peace of our said Lord the King, his Crown and Dignity, &c. Whereupon the said Attorney General of our said Lord the King, on behalf of our said Lord the King, prays the Advice of the Court here in the premises, and due Process of Law to be made out against the afore said *William* Archbishop of *Canterbury*, *William* Bishop of *St. Asaph*, *Francis* Bishop of *Ely*, *John* Bishop of *Chichester*, *Thomas* Bishop of *Bath and Wells*, *Thomas* Bishop of *Peterburgh*, and *Jonathan* Bishop of *Bristol*, in this behalf, to answer our said Lord the King in and concerning the premises, &c.

T. Powys.

W. Williams.

To this Information the Defendants have pleaded *Not Guilty*, and for their Tryal have put themselves upon their Country, and His Majesty's Attorney General likewise, which Country you are: Your Charge is to enquire whether the

Defendants, or any of them, are guilty of the matter contained in this Information that hath been read unto you, or *Not Guilty*: If you find them, or any of them Guilty, you are to say so; and if you find them, or any of them not Guilty, you are to say so; and hear your Evidence. Cryer, make Proclamation.

Cryer. O yes! If any one will give Evidence on behalf of our Sovereign Lord the King against the Defendants of the matters whereof they are impeached, let them come forth, and they shall be heard.

Mr. Wright. May it please your Lordship, and you Gentlemen of the Jury, this is an Information exhibited by His Majesty's Attorney General against the most Reverend my Lord Archbishop of *Canterbury*, and six other Honourable and Noble Bishops in the Information mentioned. And the Information sets forth, That the King, out of his Clemency and benign intention towards his Subjects of this Kingdom, did put forth his Royal Declaration, bearing date the fourth day of April in the third year of his Reign, entituled, *His Majesty's Gracious Declaration to all his Loving Subjects for Liberty of Conscience*; and that afterwards, the twenty seventh of April, in the fourth year of his Reign, he published another Declaration, both which have been read to you; and for the further Manifestation and Notification of his Grace in the said Declaration, bearing date the twenty seventh of April last, His Majesty did order, That the said Declaration should be read on the twentieth and twenty seventh of the same Month in the Cities of *London* and *Westminster*, and ten miles about, and on the third and tenth of June throughout the whole Kingdom; and that the Right Reverend the Bishops should send the said Declaration to be distributed throughout their respective Diocesses, to be read accordingly. But that the said Archbishop and Bishops the eighteenth of May, in the said fourth Year of His said Majesty's Reign, having conspired and consulted among themselves to diminish the King's Power and Prerogative, did falsely, unlawfully, maliciously, and scandalously, make, compose and write, a false, scandalous, malicious and seditious Libel, under pretence of a Petition; which Libel they did publish in the presence of the said King; the Contents of which Libel you have likewise heard read. To this they have pleaded *not Guilty*: You, Gentlemen, are Judges of the Fact; if we prove this Fact, you are to find them Guilty.

Mr. Att. Gen. May it please your Lordship, and you Gentlemen of the Jury, you have heard this Information read by the Clerk, and it has been likewise opened to you at the Bar, but before we go to our Evidence, perhaps it may not be amiss for us, that are of Council for the King, now in the beginning of this Cause, to settle the Question right before you, as well to tell you what my Lords the Bishops are not prosecuted for, as what they are; First, I am to tell you, and I believe you cannot your selves but observe, that my Lords are not prosecuted as Bishops, nor much less are they prosecuted for any point or matter of Religion, but they are prosecuted as Subjects of this Kingdom, and only for a temporal Crime, as those that have injured and affronted the King to his very Face; for it is said to be done in his own Presence: In the next place, they are not prosecuted for any Nonfeasance, or not doing or omitting to do

do any thing, but as they are Actors, for censuring of His Majesty and his Government, and for giving their Opinion in Matters wholly relating to Law and Government; and I cannot omit here to take notice, that there is not any one thing which the Law is more jealous of, or does more carefully provide for the Prevention and Punishment of, than all Accusations and Arraignments of the Government; no Man is allowed to accuse even the most inferior Magistrate of any misbehaviour in his Office, unless it be in a legal course, though the Fact is true; no Man may say of a Justice of Peace to his Face, that he is unjust in his Office; no Man may come to a Judge, either by Word or Petition, you have given an unjust, or an ill Judgment, and I will not obey it, it is against the Rules and Law of the Kingdom, or the like; no Man may say of the great Men of the Nation, much less of the great Officers of the Kingdom, that they do act unreasonably or unjustly, or the like; least of all may any Man say any such thing of the King, for these matters tend to possess the People, that the Government is ill administered, and the Consequence of that is, to set them upon desiring a Reformation, and what that tends to, and will end in, we have all had a sad and too dear bought Experience; the last Age will abundantly satisfy us, whither such a thing does tend: Men are to take their proper Remedies for redress of any Grievances they lie under, and the Law has provided sufficiently for that: These things are so very well known to all Men of the Law, and indeed to all the People of England of any Understanding, that I need not, nor will not, stand any longer upon it, but come to the matter that is now before you Gentlemen, to be Tried. The Fact that we have laid, we must prove, rather to keep to the formality of a Tryal, than to pretend to inform you, or tell you what you do not know, it is publickly notorious to the whole World; but because we must go on in the regular methods of Law, we shall prove the Facts in the order they are laid in the Information. First, we take notice, that His Majesty, of his great Clemency and Goodness to his People, and out of his desire that all his Subjects might live easily under him (of which I think never Prince gave greater or more plain Evidence of his Intentions that way) the fourth of April, 1687. He did issue forth his Royal Declaration for Liberty of Conscience; this matter, without all question, was welcome to all his People that stood in need of it, and those that did not, could not but say, the thing in the nature of it was very Just, and Gracious; but presently it must be surmised, that the King was not in Earnest, and would not, nor could not make good his Promise; but to take away all Surmises, his Majesty was pleased by his Declaration of the twenty seventh of April last, not only to repeat his former Declaration, but likewise to renew his former Promises to his People, and to assure them that he still was, and yet is, of the same Opinion, that he had at first declared himself to be of; nay, we further shew you, that to the end that this thing might be known to all his People, even to the meanest Men, who it may be were not willing or able to buy the Declaration, and that the King himself might be under higher Obligations, if it were possible, than his own Word, he was desirous it should be repeated in the Churches, and

read in that Sacred Place, that all his People might hear what he had promised, and given his own Sacred Word for; and he himself might be under that Solemn Tye and Obligation to keep his Word, by remembering that his Promises had, by his own Command, been Published in the time of Divine Service, in the House of God; and thereupon was the Order of Council made, that has been likewise read to you, which does direct, that it should be read in all the Churches and Chappels in the Kingdom; and you have heard, and we shall prove, what a return His Majesty has had for this Grace and Kindness of his; you'll find when we come to read that which they call a Petition, all their Thanks his Majesty had for his Favour and Goodness to his People, 'tis only hard Words, and a heavy Accusation, such as a private Person would be little able to bear, I will not aggravate the matter, but only say thus much, that his Majesty, who was always a Prince of as great Clemency as ever this Kingdom had, and who was represented for all that, as a Prince of the greatest Cruelty before his Accession to the Crown, by his Enemies, is now accused by his Friends for this Effect of his Mercy; My Lord, and Gentlemen of the Jury, His Majesty resented this ill usage so far, that he has ordered and thought fit to have a publick Vindication of his Honour in this matter, by this Tryal; and we shall go on to our Proofs, and we do not doubt but you will do his Majesty (as you do all other Persons) Right.

Mr. Sol. Gen. My Lord, we will go on to prove the Parts of this Information, and we will proceed according to the Method which Mr. Attorney has opened, and which is pursuant to the order of the Facts laid in the Information. Give us the first Declaration under the Great Seal, the Declaration of the 4th of April, 1687.

The Declaration was delivered into the Court.

Mr. Sol. Gen. Read the Date of it first.

Clerk Reads. *Given at our Court at Whitehall, the 4th day of April, 1687, and in the third Year of our Reign.*

Mr. Sol. Gen. Read the Title of it, Sir.

Clerk. It is Entituled, *His Majesties Gracious Declaration to all his Loving Subjects for Liberty of Conscience.*

Sir Robert Sawyer. Is it under Seal? Is the Great Seal to it?

Mr. Sol. Gen. Give it down to Sir Robert Sawyer, that he may see it, for I would have every thing as clear as possible. — Sir Robert Sawyer, will you have it Read?

Sir Rob. Sawyer. No, we would save as much of the time of the Court, as may be.

Mr. Sol. Gen. Then pray put in the Second Declaration of the 27th of April last.

Clerk Reads. *Given at our Court at Whitehall, the 27th day of April, 1688, in the fourth Year of our Reign, and it is Entituled, His Majesties Gracious Declaration.*

Sir Robert Sawyer. Is that under the Great Seal too?

Clerk. Yes it is.

Mr. Sol. Gen. Deliver that down likewise, that they may see it.

Sir Robert Sawyer. We are satisfied, you need not read it.

Mr. Sol. Gen. Then where is the Order of Council for the Reading of it?

Mr.

Mr. Att. Gen. Swear Sir John Nicholas.—There he is.

Sir John Nicholas Sworn.

L. C. J. Come Mr. Attorney, what do you ask Sir John Nicholas?

Mr. Sol. Gen. Hand the Order to Sir John Nicholas.—Is that the Order of Council, Sir John?

Sir John Nicholas. The Book, Sir, is not in my Custody — there is the Register that keeps it, he has it here to produce.

Mr. Sol. Gen. Swear Mr. Gantlett.

Mr. Gantlett Sworn.

Mr. Sol. Gen. Is that the Council Book?

Mr. Gantlett. Yes, this is the Council Book.

Mr. Sol. Gen. Then turn to the Order of the fourth of May, the King's Order of Council, for the Reading the Declaration.

Mr. Gantlett. There it is, Sir.

The Book delivered into Court.

Mr. Sol. Gen. Read it I pray.

Clerk Reads. At the Court at Whitehall, the fourth of May, 1688. — and so reads the Order of Council.

Mr. Sol. Gen. My Lord, we have one thing that is mentioned in the Information, that this Declaration was Printed; if that be denied, we will call Henry Hills, His Majesties Printer, because we would prove all our Information as it is laid.

L. C. J. You must do so, Mr Solicitor, you must prove the whole Declaration.

Mr. Sol. Gen. Cryer, call Henry Hills.

He was called, but did not presently appear.

Mr. Sol. Gen. Call Mr. Bridgeman — though these Declarations prove themselves, we have them here Printed — but Swear Mr. Bridgeman.

Mr. Bridgeman Sworn.

Mr. Sol. Gen. Shew Mr. Bridgeman the two Declarations.

L. C. J. What do you ask him?

Mr. Sol. Gen. We ask you, Sir, if the two Declarations were Printed.

Mr. Bridgeman. What Declarations do you mean, Mr. Solicitor?

Mr. Sol. Gen. You know what Declarations I mean well enough, but we'll ask you particularly; you know the Declaration that was made the 4th of April, in the third year of the King. — was it Printed?

Mr. Bridgeman. Yes, it was Printed by the King's Order.

Mr. Sol. Gen. Was that of the 27th of April, in the 4th Year of the King Printed?

Mr. Bridgeman. Yes, they were both Printed by the King's Order.

Mr. Att. Gen. Then the next thing in course, is the Bishops Paper.

Sir Rob. Sawyer. Mr. Bridgeman, pray let me ask you one Question; Did you ever compare the Print with that under Seal?

Mr. Bridgeman. I did not compare them Sir Robert Sawyer.

Mr. Sol. Gen. He does Swear they were Printed by the King's Order.

Sir Robert Sawyer. Good Mr. Solicitor give me leave to ask him a Question — Can you Swear then that they are the same?

Mr. Bridgeman. I was not asked that Question, Sir.

Mr. Sol. Gen. Come then Mr. Bridgeman, I'll ask you — Do you believe they are the same?

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Sir Robert Sawyer. Is that an Answer to my Question?

Mr. Sol. Gen. We must ask him Questions as well as you, Sir Robert — what say you? Do you believe it to be the same?

L. C. J. You hear Mr. Solicitor's Question, answer it Mr. Bridgeman.

Mr. Bridgeman. Yes my Lord, I do believe it.

L. C. J. Well, that's enough.

Mr. Att. Gen. If there were occasion, we have them here compared, and they are the same.

Sir Robert Sawyer. With Submission, my Lord, in all these Cases, if they will prove any Fact that is laid in an Information, they must prove it by those that know it of their own Knowledge.

— Do you know it to be the same?

Mr. Sol. Gen. That's very well, Sir.

Sir Robert Sawyer. Ay, so it is, Mr. Solicitor, It is a wonderful thing, my Lord, that we cannot be permitted to ask a Question. — Do you know it to be the same; Mr. Bridgeman, I ask you again?

Mr. Bridgeman. I have not compared them I tell you, Sir Robert Sawyer.

Sir Rob. Sawyer. Then that is no Proof.

L. C. J. Would you have a Man Swear above his Belief, he tells you he believes it is the same.

Sir Robert Sawyer. Is that Proof of an Information?

L. C. J. Well, you'll have your time to make your Objections by and by.

Mr. Att. Gen. Then Swear Sir John Nicholas.

Sir John Nicholas. I am Sworn already.

Mr. Att. Gen. I see you have a Paper in your Hand, Sir John Nicholas, pray who had you that Paper from?

Sir John Nicholas. I will give you an Account of it, as well as I can.

Mr. Pollexfen. Before they go to another thing, my Lord, we think they have failed in their Proof of their Information, about the Printing this Declaration.

Mr. Att. Gen. Where is Mr. Hills?

Mr. Just. Allyb. They have laid, That it was printed by the King's Order; and it is such a matter, Mr. Solicitor, as you may clear, if you will, sure.

Mr. Sol. Gen. There is Mr. Hills, now I see him.

L. C. J. I was going to give Order that you should send to the Printing-house for him.

Mr. Just. Allyb. They may put this matter out of doubt too, if they will, on the other side; for I see they have a Copy in Print, and there's the Original, they may compare them if they please.

Mr. Sol. Gen. I am very glad to hear such a strong Objection.

Sir Robert Sawyer. We would clear the way for you, Mr. Solicitor.

Mr. Sol. Gen. No, you put Straws in our way; we shall be able enough to clear it without your help. Swear Mr. Hills and young Mr. Graham here.

Hills and Graham sworn.

Mr. Sol. Gen. Mr. Graham, did you compare any of these Printed Declarations with the Original?

Graham. Yes, I did compare some of them, and did make Amendments as I went along.

E e e e

Mr.

Mr. Sol. Gen. Shew one that you have compar'd with the Original.

Mr. Att. Gen. Hills is here himself, we'll ask him. Are you sworn, Sir?

Cryer. He is sworn.

Mr. Att. Gen. Pray were the King's Declarations for Liberty of Conscience printed both of them?

Hills. Ay, an't please you, Sir.

Mr. Att. Gen. You printed them, I think.

Hills. Yes, I did print them.

Sir Robert Sawyer. *Mr. Hills*, you say they were printed: Upon your Oath, after they were printed, did you examine them with the Original under Seal?

Hills. They were examined before they were printed.

Sir Robert Sawyer. Did you examine them?

Hills. I did not, here's one that did.

Mr. Sol. Gen. Who is that?

Hills. It is *Mr. Williams* here.

Mr. Sol. Gen. Swear him.

Williams sworn.

Mr. Sol. Gen. Do you hear, *Williams*? Do you know that the King's Declaration for Liberty of Conscience, two of them, one of the 4th of April, and the other of the 27th of April, were printed?

Williams. Yes, my Lord.

Mr. Sol. Gen. Did you examine them after they were printed, by the Copy they were printed by?

Williams. Yes, I did.

Mr. Sol. Gen. Where had you the Copy; who had you it from?

Williams. I had it from *Mr. Hills*.

Sir Robert Sawyer. *Mr. Williams*, did you examine them with the Original under the Great Seal?

Williams. The First Declaration I did.

Sir Robert Sawyer. The Second Declaration is the main.

Williams. The Second was Compos'd by the First.

Sir Robert Sawyer. Why, is there no more in Second Declaration than there was in the First?

Williams. Yes, there is, Sir.

Sir Robert Sawyer. Did you examine That with the Original under the Great Seal?

Williams. No, I did not.

Mr. Sol. Gen. Can any one tell who did examine it under the Great Seal?

Mr. Finch. Pray what did you examine it by, *Mr. Williams*?

Williams. By a Copy that I receiv'd from *Mr. Hills*.

Mr. Att. Gen. Then we will go on; and we desire *Sir John Nicholas* to give an account where he had that Paper that he has in his hand.

Mr. Finch. My Lord, it does not appear that the Copy that was printed is the true Copy of the Declaration.

Mr. Att. Gen. He says he had it from *Mr. Hills*.

Mr. Finch. Pray, *Mr. Hills*, what did you examine that Copy by, which you gave to *Mr. Williams*?

Hills. I had the Copy from *Mr. Bridgeman*.

Mr. Finch. Did you examine it with the Original under the Great Seal?

Hills. I did not examine it, I had it from *Mr. Bridgeman*.

Mr. Finch. What, was it under Seal?

Mr. Bridgeman. It was the Original signed by the King.

Mr. Finch. But I ask you, was it under Seal?

Mr. Bridgeman. Not under the Great Seal it was not, it was the very Declaration the King signed.

Sir Robert Sawyer. But it ought to be compared with the Original, or it is no good proof that it is the same.

Mr. Sol. Gen. *Sir Robert Sawyer*, you understand Collation better sure, you should be asham'd of such a weak Objection as this.

Williams. We never bring our Proof to the Great Seal.

Sir Robert Sawyer. But if you will have it Proof at Law, you must have it compared with the Original.

Mr. Sol. Gen. Do you think there is any great stress to be laid upon that? we only say it was printed.

Sir Robert Sawyer. But you have made it part of your Information, and therefore you must prove it.

L. C. J. I think there's proof enough of that; there need no such nicety.

Mr. Pollixfen. Well, my Lord, we must submit, let them go on, we won't stand upon this.

Mr. Att. Gen. Then pray let me go on. Where had you that Paper, *Sir John Nicholas*?

Sir John Nicholas. I had this Paper from the King's Hand.

L. C. J. Put it in.

Mr. Sol. Gen. Who had you it from, do you say?

Sir J. Nich. From the King.

Mr. Sol. Gen. About what time had you it from the King, Sir?

Sir J. Nich. I had it twice from the King.

Mr. Sol. Gen. When was the first time, Sir?

Sir J. Nich. The first time was in Council the 8th of this Month.

Mr. Sol. Gen. What became of it afterwards?

Sir J. Nich. The King had it from me the 12th, and the 13th I had it from the King again.

Mr. Sol. Gen. Pray deliver it this way into the Court: We will now go on, and prove the Bishops hands to it. This is the Paper upon which we bring this Information; Gentlemen, it is all the Hand-writing of my Lord Archbishop, and signed by Him and the rest of the Bishops.

Mr. Att. Gen. I suppose my Lords the Bishops will not put us to prove it, they will own their Hands.

L. C. J. Yes, *Mr. Attorney*, their Council will put you to prove it; I perceive your best way is to ask nothing of them.

Mr. Att. Gen. My Lord, we will desire nothing of them, we will go on to our Proofs. Call *Sir Thomas Exton*, *Sir Richard Raynes*, *Mr. Brooks*, *Mr. Recorder*, and *Mr. William Middleton*.

Sir Thomas Exton appeared, and was sworn.

L. C. J. What do you ask *Sir Thomas Exton*?

Mr. Att. Gen. Pray convey that Paper to *Sir Thomas Exton*.

Mr. Sol. Gen. Shew that Paper to *Sir Thomas Exton*. — *Sir Thomas*, I would ask you one Question: Do you know the Hand-writing of my Lord Archbishop of Canterbury?

Sir Thomas Exton. I'll give your Lordship what account I can.

Mr. Sol. Gen. Pray, Sir, answer my Question; Do you know his Hand-writing?

Sir

Sir Tho. Exton. never saw him write five times in my life.

Mr. Sol. Gen. But I ask you, upon your Oath, do you believe that to be his Hand-writing?

Sir Tho. Exton. I do believe this may be of his Hand-writing.

Mr. Sol. Gen. Do you believe all the Body of it to be of his Hand-writing, or only part of it?

Sir Tho. Exton. I must believe it to be so, for I have seen some of his Hand-writing, and this is very like it.

Mr. Sol. Gen. What say you to the Name? do you believe it to be his Hand-writing?

Sir Tho. Exton. Yes, I do.

Mr. Sol. Gen. Do you know any of the rest of the Names that are upon that Paper?

Sir Tho. Exton. No, I do not.

L. C. Just. Do you for the Defendants ask Sir Tho. Exton any Question?

Sir Rob. Sawyer. No, my Lord.

Mr. Att. Gen. Then call Sir Richard Raynes.

Sir Tho. Exton. My Lord, Sir Richard Raynes has been sick this month, and has not been at the Commons.

Mr. Sol. Gen. We have no need of him. Call Mr. Brooks.

Mr. Brooks sworn.

Mr. Att. Gen. Pray shew Mr. Brooks that Paper.

Mr. Sol. Gen. Mr. Brooks, I ask you this Question, Do you know my Lord Archbishop's Hand-writing?

Mr. Brooks. Yes, my Lord.

Mr. Att. Gen. Pray look upon that Paper; do you take that to be my Lord Archbishop's Hand?

Mr. Brooks. Yes, my Lord, I do believe it to be my Lord Archbishop's Hand.

Mr. Att. Gen. What say you to the whole Body of the Paper?

Mr. Brooks. I do believe it to be his Hand.

Mr. Att. Gen. What do you say to his Name there?

Mr. Brooks. I do believe this Name is his Hand-writing.

Mr. Sol. Gen. Call Mr. William Middleton.

Mr. Att. Gen. Pray Mr. Brooks don't go away, but look upon the Names of the Bishop of St. Asaph, and my Lord of Ely.

Mr. Sol. Gen. Do you know my Lord Bishop of St. Asaph's Hand-writing?

Mr. Brooks. I have seen my Lord Archbishop of Canterbury and the Bishop of St. Asaph's Hand-writing, and I do believe this is his hand.

Mr. Sol. Gen. Look you upon the Name of my Lord of Ely; do you know his Hand-writing?

Mr. Brooks. My Lord, I am not so well acquainted with my Lord of Ely's Writing.

Mr. Sol. Gen. But have you seen his Writing?

Mr. Brooks. Yes, I have.

Mr. Sol. Gen. Is that his Writing do you think?

Mr. Brooks. It is like it.

Mr. Sol. Gen. Do you believe it to be his Hand?

Mr. Brooks. Truly I do believe it.

Sir Geo. Treby. Did you ever see him write?

Mr. Brooks. No, Sir.

Mr. Sol. Gen. But he has seen his Writing.

Sir Geo. Treby. How do you know that it was his Hand-writing that you saw?

Mr. Brooks. Because he own'd it.

L. C. Just. How do you know it, do you say?

Mr. Brooks. I know it, I say, because I have seen a Letter that he writ to another person, which he afterwards own'd.

L. C. Just. What did he own, Mr. Brooks?

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Mr. Brooks. That he wrote a Letter to another person, which I saw.

Sir Geo. Treby. To whom, Sir?

Sir Rob. Sawyer. Have you the Letter here Sir?

Mr. Brooks. No, Sir, the Letter was writ to my Lord Bishop of Oxford.

Sir Geo. Treby. Can you tell what was in that Letter?

Mr. Att. Gen. What is, that to this Question? You ask him, how he knows his Hand-writing; and, says he, I did not see him write, but I have seen a Letter of his to the Lord Bishop of Oxford.

L. C. Just. And he does say, my Lord of Ely own'd it to be his Hand that is there.

Mr. Sol. Gen. No, my Lord, that's a mistake, he own'd a Letter that he had writ to the Bishop of Oxford to be his Hand-writing, and by comparison of this with that (says he) I take this to be his Hand-writing.

Mr. Brooks. That is my meaning, my Lord.

Mr. Sol. Gen. Pray speak out, and tell us what are the reasons that makes you say you believe this to be the Bishop of Ely's Writing?

Mr. Brooks. Because it resembles a Letter that I have by me of his writing to the Bishop of Oxford.

Mr. Sol. Gen. And you say he own'd that Letter to be his?

Mr. Brooks. My Lord Bishop of Oxford did answer it, and I waited upon the Bishop of Ely with the Answer; and he did own it.

Sir Geo. Treby. How did he own it, Sir?

Mr. Brooks. I had some Communication with my Lord of Ely about the substance of that Letter, and therefore I apprehended he own'd it.

Mr. Just. Powell. That's a strange Inference, Mr. Solicitor, to prove a man's Hand.

Mr. Att. Gen. We have more Evidence; but let this go as far as it can.

Mr. Serj. Pemberton. Certainly, my Lord, you will never suffer such a Witness as this.

L. C. Just. Brother Pemberton, I suppose they can prove it otherwise, or else this is not Evidence.

Mr. Just. Powell. So they had need, for it is a strange Inference of Mr. Solicitor, that this is a Proof of my Lord of Ely's Hand-writing.

Mr. Just. Holloway. The Bishop of Oxon was dead before any of this matter came in agitation.

Mr. Sol. Gen. My Lord, we will bring other Proofs.--Call Mr. Cherwood and Mr. Smith.

Mr. Cherwood and Mr. Smith sworn.

Mr. Sol. Gen. Mr. Cherwood, we would know of you if you know my Lord Bishop of Ely's Hand-writing?

Mr. Cherwood. I never saw him write.

Mr. Sol. Gen. That's not an Answer to my Question: Do you know his Hand-writing?

Mr. Cherwood. I do not certainly know it.

Mr. Sol. Gen. Have you seen any of it?

Mr. Cherwood. I have seen my Lord of Ely's Writing, that has been said to be his.

L. C. Just. But surely you had better take a Witness that has seen him write.

Mr. Just. Powell. I think 'tis hardly possible for a man to prove his Hand, that has not seen him write.

L. C. J. I think 'tis better proof indeed, to bring some that has seen him write.

Mr. Cherwood. My Lord, 'tis a long time since I saw my Lord of Ely's Writing.

E e e e e 2

L. C. J.

L. C. J. Pray bring some other Proof, if you have it.

Bp. of Peterburgh. My Lord, we are here as Criminals before your Lordship, and we are prosecuted with great Zeal: I beg your Lordship that you will not be of Council against us, to direct 'em what Evidence they shall give.

L. C. Just. My Lord of *Peterburgh*, I hope I have not behaved my self any otherwise hitherto than as becomes me: I was saying this (and I think I said it for your Lordships advantage) That this was not sufficient Proof; and I think, if your Lordship observed what I said, it was for you, and not against you.

Bp. of Peterb. It was to direct them against us, how they should give Evidence.

Mr. Serj Pemberton. Pray, my Lord of *Peterburgh*, sit down, you'll have no wrong done you.

Sir Rob. Sawyer. We that are of Council will take care of that; and pray, my Lord, will you please to pass it by.

L. C. Just. We are not used to be so serv'd, and I will not be used so.

Mr. Sol. Gen. If your Lordship pleases to pass that by, for what your Lordship said was in favour of my Lords the Bishops, but I see they do not take it so.

Mr. Att. Gen. Pray, *Mr. Chetwood*, do you look upon the Name of my Lord of *Ely*; do you believe that to be his Hand-writing?

Mr. Chetwood. I do believe it is.

Sir Rob. Sawyer. That's very well, when he says he never saw him write.

Mr. Just. Powell. What is the reason of that belief of his, I would feign know?

Mr. Chetwood. I have formerly seen his Hand, I think it was his; but I never saw my Lord of *Ely* write his Hand.

Sir Rob. Sawyer. Then the Question is, Whether this be Evidence?

Mr. Finch. How do you know that that which you saw formerly was my Lord of *Ely's* Hand?

Mr. Chetwood. I have no such Certainty, as positively to swear that that was his Hand.

Mr. Sol. Gen. We will go on to other Proofs; and if we want better Evidence at the end, we will argue with them.

Mr. Chetwood. I am not certain that what I saw was my Lord of *Ely's* Hand-writing, because I never saw him write.

Mr. Sol. Gen. You do very well to shew your good affection.

Mr. Att. Gen. *Mr. Smith*, I would ask you this Question, Do you know my Lord of *Ely's* Hand-writing?

Mr. Smith. I have seen it often.

Mr. Att. Gen. Look upon the Name of my Lord of *Ely* in that Paper; Do you believe it to be my Lord's Hand-writing, or no?

Mr. Smith. I did not see him write it, Sir; I cannot tell whether it is or no.

L. C. Just. Did you ever see his Name?

Mr. Smith. Yes, but it was a great while ago, and here are but seven Letters, and I cannot judge by that: I was better acquainted with his Hand writing heretofore.

Mr. Sol. Gen. Pray, Sir, answer me; Do you believe it to be his writing, or do you not?

Mr. Smith. I believe it may, for I did not see him write it.

Mr. Sol. Gen. But my Question is, Do you believe it, or do you not?

Mr. Smith. I say, I was better acquainted with it heretofore than I am now.

Mr. Sol. Gen. But pray answer my Question: Do you believe that to be my Lord of *Ely's* Hand-writing, or do you not?

Mr. Smith. I believe it may, Sir.

Sir Rob. Sawyer. Why do you believe it?

Mr. Smith. I have no other reason to believe it, but because I have seen something like it.

Mr. Just. Powell. How long ago is it since you saw him write?

Mr. Smith. I have not seen him write, so as to take notice of it, for some years: I could better judge of it when he writ his Name *Turner*, than now it is *Ely*, because there was more Letters to judge by.

Mr. Middleton sworn.

L. C. Just. Here's *Mr. Middleton*; what do you call him for?

Mr. Sol. Gen. To prove many of their Hands.

Mr. Att. Gen. Pray shew him that Paper.

Mr. Sol. Gen. First, *Mr. Middleton*, do you know my Lord Archbishop's Hand-writing?

Mr. Middleton. I have seen his Grace's Hand-writing.

Mr. Sol. Gen. Do you believe it to be his?

Mr. Middleton. It is very like it.

Mr. Sol. Gen. But do you believe it, or do you not?

Mr. Middleton. I do believe it.

Mr. Sol. Gen. Do you know my Lord Bishop of *St. Asaph's* Hand-writing?

Mr. Middleton. I never saw it as I know of.

Mr. Sol. Gen. What do you say to my Lord of *Ely's* his Name is next.

Mr. Middleton. It is like his Lordship's hand.

Mr. Sol. Gen. Do you believe it, or do you not?

Mr. Middleton. It is like it, that's all I can say.

Mr. Sol. Gen. Cannot you tell whether you believe it, or not believe it?

Mr. Middleton. I do believe it is his hand.

Mr. Sol. Gen. Did you ever see him write? for I would clear this matter beyond exception.

Mr. Middleton. I have seen his Lordship write, but I never stood by him so near as to see him make his Letters.

Mr. Sol. Gen. Is that his Hand-writing?

Mr. Middleton. It is like it, I believe it is his.

Mr. Sol. Gen. You did not guide his Hand I believe. Do you know my Lord of *Chichester's* Hand writing?

Mr. Middleton. Sir, I am acquainted with none of their Hands but with my Lord of *Canterbury's* and my Lord of *Ely's*.

Mr. Sol. Gen. Do you know my Lord of *Peterburgh's* Hand-writing?

Mr. Middleton. I had my Lord of *Peterburgh's* Writing two years ago for some money, but I cannot say this is his.

Mr. Sol. Gen. Do you believe it to be his?

Mr. Middleton. I never took notice of it so much, as to say, I believe it to be like it, I never saw it but once.

Mr. Sol. Gen. Do you know any other of the Names there? What say you to the Bishop of *Brissol's* Name?

Mr. Middleton. I saw once my Lord of *Bristol's* Hand writing.

Mr. Sol. Gen. What say you to that Writing there?

Mr. Middleton. It is like it.

Mr. Sol. Gen. Do you believe it to be his or no?

Mr.

Mr. Middleton. Truly, that I cannot say, for I never saw it but once.

L. C. J. You never saw him write, did you?

Mr. Middleton. No, my Lord, I never did.

Mr. Sol. Gen. Then we will call *Sir Thomas Pinfold* is there, swear him.

Sir Thomas Pinfold sworn.

Mr. Sol. Gen. *Sir Thomas Pinfold*, do you know my Lord Bishop of *Peterburgh's* hand-writing?

Sir Thomas Pinfold. Truly, not very well, I never saw but one Letter from him in my Life; shew me his Hand, and I will tell you—Which was done.

Mr. Sol. Gen. Well Sir, what say you to it?

Sir Tho. Pinfold. Then upon my Oath I say, I cannot well tell upon my own Knowledge that it is his Hand.

Mr. Sol. Gen. I ask you, do you believe it to be his Hand?

Sir Tho. Pinfold. Sir, upon the Oath that I have taken I will answer you, that upon this account, that I have heard there was a Paper delivered by my Lords the Bishops to the King, and this Paper that you offer me, I suppose to be the same, upon that Score I do believe it, but upon any other Score I cannot tell what to say.

Mr. Sol. Gen. I ask you upon your Oath, Sir, do you believe it is his Hand writing or no?

Sir Tho. Pinfold. Sir, I have answered you already, that upon my own Knowledge I cannot say it is his Hand writing; but because I have heard of such a Paper, I do believe it may be his.

L. C. J. Did you ever see my Lord Bishop write?

Sir Tho. Pinfold. I have been in his Chamber several times when he has been writing, but I had more Manners than to look upon what he writ.

L. C. J. Did you never see him write his Name?

Sir Tho. Pinfold. I do not know that I ever saw him write his Name, but I have seen him writing I say, and so my Lord Bishop may have seen me writing, but I believe he does not know my Hand.

Mr. Sol. Gen. You have seen him write you say.

Sir Tho. Pinfold. I tell you, Mr. Solicitor, I have been in his Chamber when he has been writing, but I had more Manners than to look over him.

Mr. J. Powell. Then you did never see any of that writing?

Sir Tho. Pinfold. I cannot say I did, my Lord.

Mr. Att. Gen. Pray did you never see any of his writing but that Letter you speak of?

Sir Tho. Pinfold. No, not that I remember.

Mr. J. Powell. Mr. Solicitor, you must call other Witnesses, for this does not prove any thing.

Mr. Att. Gen. We will go on——Swear

Mr. Clavel.

Mr. Clavel sworn.

Mr. Sol. Gen. Do you know my Lord Bishop of *Peterburgh's* Hand writing or no?

Mr. Clavel. I have seen it many times.

Mr. Att. Gen. Do you know it when you see it?

Mr. Clavel. I believe I do, Sir.

Mr. Sol. Gen. Pray look upon that Paper, and

upon your Oath tell us, do you believe that Name to be his writing or no?

Mr. Clavel. I do believe it is, my Lord.

Mr. Att. Gen. Pray look upon the rest of the Hands there, do you know any of the other Names?

Mr. Clavel. No, I do not.

Mr. Att. Gen. Have you ever seen any of their Writing?

Mr. Sol. Gen. It is probable I may have seen some, but do not now remember it.

Mr. Sol. Gen. I think you are a Bookseller, *Mr. Clavel*?

Mr. Clavel. Yes, I am so, Sir.

Mr. Sol. Gen. I suppose you have had some Dealings with them in the way of your Trade. Did you never see any of their Writing?

Mr. Clavel. I have seen the Names of some of them, but it is so long since that I cannot remember.

L. C. J. Did you ever see my Lord of *Peterborough* Write?

Mr. Clavel. I cannot tell whether I ever saw him Write his Name or no; but I have had several Letters from my Lord of *Peterborough*.

Mr. Sol. Gen. Is that his Hand-writing?

Mr. Clavel. I cannot say it is, I believe it is.

Mr. Sol. Gen. You have had Letters from him you say?

Mr. Clavel. Yes, and it seems to be like his Hand.

Mr. Pollixfen. But you never saw him Write his Hand you say?

Mr. Clavel. I cannot say I ever did.

Mr. Sol. Gen. These Letters that you have received from my Lord of *Peterborough*, did he own them? Do you think they were Counterfeit, or of his own Hand-writing?

Mr. Clavel. I suppose he has owned them, Sir.

Mr. J. Powell. But you must answer directly, Sir, did he own them?

Mr. Sol. Gen. What did those Letters concern? were they about Books, or what?

Mr. Clavel. They were sometimes about one business, sometimes about another.

Mr. Sol. Gen. Was the subject matter of any of these Letters about Money; and was it paid you? Did you receive, or did you give any account of it?

Mr. Clavel. They were about several Businesses.

L. C. J. Look you, *Mr. Clavel*, you must give us as particular account as you can.

Mr. Sol. Gen. Pray, Sir, upon those Letters were the things done that those Letters required?

Mr. Clavel. Yes, they were.

Mr. Sol. Gen. Did you do your part?

Mr. Clavel. Yes, I did.

Mr. Sol. Gen. Now I would ask you, Do you believe that Name of my Lord Bishop of *Peterborough* to be the Hand-writing of my Lord Bishop?

Mr. Clavel. I believe it is.

Mr. J. Powell. Do you know that those Letters that you say you received from my Lord, were of my Lords own Hand-writing, Do you Swear that?

Mr. Clavel. My Lord, I cannot Swear that.

Mr. Finch. Do you know whether the Letters that you received, as you say, were written by my Lord himself, or by his Secretary?

Mr.

Mr. Clavel. I have received Letters from him, and his Secretary too.

Sir G. Treby. But were you present with him when he writ any Letters with his own Hand?

Mr. Sol. Gen. You do not mean a Letter to your self sure, Sir George?

Sir G. Treby. No, Sir, I say any Letters.

Mr. Clavel. I have been present with my Lord often, but I cannot say I have seen my Lord write.

L. C. J. He has here told you, he has had several Letters of my Lords own Hand, and from his Secretary too.

Mr. J. Powel. He has said it, but you see he says he never saw him write.

Mr. Sol. Gen. We have given Evidence against my Lord Arch-bishop, Lord Bishop of Ely, St. Asaph, Peterborough, and Bristol.

Mr. J. Powel. Certainly Mr. Solicitor you mistake — But go on —

Mr. Sol. Gen. We have given Evidence I say against them, Sir, but whether it be sufficient Evidence, we shall Argue by and by. — Call Mr. Hooper and Mr. Chetwood again.

Mr. Chetwood appeared.

Mr. Sol. Gen. Do you know the Hand-writing of my Lord Bishop of Bath and Wells?

Mr. Chetwood. I have seen it Twice or Thrice, but it is a considerable time since I did see it.

Mr. Sol. Gen. Do you believe that is his Hand-writing?

Mr. Chetwood. I never saw him write his Name in my Life.

Mr. Sol. Gen. Pray look upon the Name, and tell us what you believe of it?

Mr. Chetwood. I believe it may, but I do not certainly know it to be his Hand, I rather believe it is my Lord Bishop of Bath and Wells his Hand, than I believe that other to be my Lord of Peterboroughs.

Sir G. Treby. Do you believe that to be my Lord of Peterborough's Hand or no?

Mr. Chetwood. I say, I rather believe that this is the Bishop of Bath and Wells his Writing, than that which is above it or below it, to be their Writing; but truly I do not distinctly know my Lord Bishop of Bath and Wells his Hand.

Mr. Sol. Gen. Call Mr. Hooper.

L. C. J. You are very lame in this matter.

Mr. Sol. Gen. The Witnesses are unwilling, and we must find out the Truth as well as we can.

Mr. Hooper did not appear.

Mr. Sol. Gen. Call Mr. James and Mr. Powell.

Mr. James appeared and was Sworn.

Mr. Sol. Gen. Do you know my Lord Bishop of Bristol's Writing, Mr. James?

Mr. James. Yes, I believe I do, but I am not so certain, because my Lord writes several times several Hands.

Mr. Sol. Gen. Shew him the Paper: Is that my Lord of Bristol's Hand?

Mr. James. I cannot say it is or no.

Mr. Sol. Gen. What do you believe?

Mr. James. It looks like his Hand, and that's all I can say.

Mr. Sol. Gen. But pray hearken, and Answer to what I ask you; you are prepared for one Question it may be, and I shall ask you another: Upon your Oath, do you believe it to be the Hand-writing of my Lord of Bristol?

Mr. James. Upon my Oath, I can only say it looks like it, that's all.

L. C. J. Did you ever see him write?

Mr. James. Yes, my Lord, I have seen his Hand-writing several times, and it is like his Hand-writing, that is all I can say.

Mr. Sol. Gen. Sir, remember you are upon your Oath, and answer my Question.

Mr. James. Upon my Oath, I know no more than that, Sir William Williams.

Mr. Sol. Gen. I ask you Sir, whether you believe it to be his Hand or not?

Mr. James. My Lord, it looks like his Hand, and it may be his Hand.

Mr. Att. Gen. But you do think and believe one way or other: What do you believe?

Mr. James. It may be his Hand, for what I know, and it may not.

Mr. Sol. Gen. It may be your Hand.

Mr. James. No, Sir, it cannot be mine, I am sure.

Mr. Sol. Gen. What do you believe?

Mr. James. I believe it may be his Hand, or it may not be his Hand, that is all I can say.

L. C. J. Come, Sir, you must Answer fairly, Do you believe it to be his Hand, or do you not?

Mr. James. Yes, I do believe it.

Mr. Att. Gen. You are very hard to believe methinks.

Mr. James. No, I am not.

Mr. Sol. Gen. You do very well now, Mr. James; when you do well, we'll commend you.

Mr. Att. Gen. Call Mr. Nathaniel Powell.

Mr. Powell was Sworn.

Mr. Sol. Gen. Pray, Sir, let's know what's your Name?

Mr. Powell. My Name is Nathaniel Powell.

Mr. Sol. Gen. Pray do you know the Hand-writing of my Lord Bishop of Chichester?

Mr. Powell. I have not seen the Paper, Sir.

Mr. Sol. Gen. Do you know his Hand writing?

Mr. Powell. Yes, I believe I do.

Mr. Sol. Gen. Look upon that Name of his.

Mr. Powell. I did not see my Lord write that.

Mr. Sol. Gen. Who says you did: no Body asks that of you; how you Answer! Pray Sir, remember your Oath, and Answer seriously, Do you believe it to be his Writing or no?

Mr. Powell. I believe it is like my Lords Hand-writing, but I never did see him write it.

Mr. Sol. Gen. No Body says you did.

Mr. Powell. Therefore I cannot Swear positively it is his Hand.

Mr. Sol. Gen. We do not ask that neither.

Mr. Powell. I cannot tell whether it be his Hand or no.

L. C. J. Sir, you must Answer the Question directly, and seriously: Do you believe it, or do you not believe it?

Mr. Powell. I cannot tell what to believe in the Case.

Mr. Sol. Gen. Then I ask you another Question, upon your Oath, Do you believe it is not his Hand?

Mr. Powell. I cannot say that neither.

Mr. Sol. Gen. Once again, I ask you, upon your Oath, Do you believe it to be his Hand? I ask you plainly, and let Mankind Judge of you.

Mr. Powell. I tell you, Sir, I cannot tell what to believe.

Mr.

Mr. Sol. Gen. My Lord, if these things be endured, there will be an end of all Testimony, if Witnesses do not answer fairly to the Questions that are asked them.

Mr. J. Powell. Truly to me, for a Man to Swear his Belief in such a matter, is an extraordinary thing.

Mr. Sol. Gen. He is obliged to answer Questions, when they are fairly put to him.

Mr. Pollixfen. I think that is a hard Question, not to be Answered.

Mr. Sol. Gen. Make your Exceptions to the Evidence if you please.

L. C. J. First, he says, He knows his Hand; then he says, He has seen him write; and then he says, He did not see him write this; but he shuffles, he won't answer whether he believes it or not.

Mr. Pollixfen. The Question is, Whether belief in any case be Evidence?

Mr. Sol. Gen. If they have a mind to a Bill of Exceptions upon that point, let them Seal their Bill, and we'll Argue it with them when they will; in the mean time, we'll go on, and that which we now pray, my Lord, is, That this Paper may be read.

Mr. Att. Gen. We have given sufficient Evidence sure to have it Read, therefore we desire it may be Read.

Mr. Serj. Lewinz. My Lord, before this Paper be Read, we hope you will let us be heard to it: we think that what they desire (to have this Paper Read) ought not to be: for what is all the proof that they have given of this Paper? they have a proof by Comparison of Hands, which in a Criminal Case ought not to be received: and besides, my Lord, what is that Comparison of Hands, that they have offered? Some persons come here and say, they cannot tell whether it be their Hands, they believe it may or may not, for ought they know; How shall we Convict any Man upon such a Testimony as this? can we have our Remedy against him for Perjury, for saying, He believes it to be our Hand? therefore here is not any Evidence to Charge us. For first, It is only a Comparison of Hands; And secondly, That Comparison is proved in such an uncertain manner: Some of them tell you; They do not know what to believe; another tells you, I believe 'tis rather such a Lord's Hand, than the others are such a Lord's Hands, I believe 'tis rather his Hand than that above it, or that below it; what sort of proof is all this? Therefore we pray it may not be read, till they prove it better.

Mr. Serj. Pemberton. Pray, my Lord, spare me a word or two in this matter for Evidence sake, there is a great deal of reason we should take Exceptions to the Evidence that has been given: for truly I think I never heard such a sort of Evidence given before; It is a Case of as great Concernment as ever was in *Westminster-Hall*; and for them to come to prove Hands only by those that saw Letters, but never saw the persons Write; this I hope will not amount to so much as a Comparison of Hands. Your Lordship knows, that in every petty Cause, where it depends upon the Comparison of Hands, they use to bring some of the Parties Hand-writing, which may be Sworn to, to be the Parties own Hand, and then it is to be compared in Court with what is endeavoured to be proved, and upon comparing them together in Court, the Jury

may look upon it, and see if it be right; and never was there any such a thing as this admitted in any poor petty Cause, that is but of the value of Forty Shillings. And therefore as to this Evidence, First, We say Comparison of Hands ought not to be given at all in the Cases of Criminals; And I believe it was never heard of that it should. In the next place, if it be admitted to be Evidence, yet it is not such an Evidence, as that by Comparison of Hands the Jury can take notice of it; for in such manner of proofs by Comparison of Hands, the usage is, That the Witness is first asked, concerning the Writing he produces, Did you see this Writ by the Defendant, whose Hand they would prove? If he answers yes, I did, then should the Jury upon Comparison of what the Witness swears to, with the Paper that is to be proved judge whether those Hands be so like as to induce them to believe, that the same person Writ both; and not that the Witness should say, I had a Letter from such a person, and that is like the Hand of that Letter, therefore I believe it to be his Hand: My Lord, I hope this shall never be admitted for Evidence in this Court.

L. C. J. I do take it, that the Witness himself is Judge of the Comparison; for if he does know the Parties Hand, and a Paper be offered him to prove the Parties Hand, he is to compare it in his own mind.

Mr. Serj. Pemberton. It never was admitted to be so, that I know of; my Lord, or ever Read of.

Mr. Sol. Gen. You may remember several Cases about that, particularly *Sidney's Case*.

Mr. Pollixfen. Pray, my Lord hear me a little as to that: it is a Point of very great moment, whether in the Case of a Misdemeanour either in an Indictment or Information, it be good Evidence to offer Comparison of Hands; and that this Court did adjudge quite contrary upon an Indictment of Forgery against my Lady Carr, appears in *Sydesin's Reports*; they went to prove her Letters Written by her to Cox, the Court rejected it, and gave their judgement here, That it was no Evidence; and that for this Reason, Because of the evil consequences of it. For said they, It is an easie matter for any Man's Hand to be Counterfeited; that they sure will agree, for frequent daily experience shews how easily that may be done: is it not easie then to cut any Man down in the World, by proving it like his Hand? and proving that likeness by comparing it with something that he hath formerly seen? this strikes mighty deep; the honestest Man in the World and the most Innocent may be destroyed, and yet no fault to be found in the Jury or in the Judges; if the Law were so, it would be an unreasonable Law. Next, my Lord, for the Case of *Sidney*, that was a Case of Treason. Now in the Case of Treason there is always other Evidence brought; and this Evidence comes in but as a Collateral Evidence, to strengthen the other; but in this Case it is the single Evidence, for ought that appears, for there is nothing more (for ought I can see) in the Case, but whether this were their Hands, and proved only by what another believes: Now shall any be condemned by anothers belief without proof? surely, my Lord, that was never Evidence yet to Convict any one; so that their proof fails in both Points; For first, it ought to be considered whether Comparison of Hands be Evidence in a Case

of Misdemeanour; And next if it be Evidence; whether you will take it, that the belief of a Man that brings nothing to compare with it, or never saw the Party Write, but has received Letters, and says, This is like it, and therefore he believes it to be his Hand, be good Evidence as a Comparison of Hands.

Mr. *Serj. Pemberton*. My Lord, they are pleased to mention —

Mr. *Sol. Gen.* Mr. *Serj.* you have been heard already, and you are not to reply upon us; or if you would, we must be heard first.

Mr. *Serj. Pemberton*. I would only speak to that Case of *Sidney*: my Lord, that Case differs from this *to* *Carlo*, the Writing was found in his possession, in his Study; there was the proof that nailed him.

Mr. *Sol. Gen.* You shall see how we'll apply it by and by.

Mr. *Att. Gen.* Pray, my Lord, favour me a word in this matter: that there is stronger and weaker Evidence no Man doubts; but that which these Gentlemen say, that in this Case there is no Evidence, must needs be a mistake: if they mean, that it is not so strong an Evidence as is possible to be given, I agree with them, it is not: For if we had brought three or four Men that had seen them Write this very Paper, and put their Names to it, that had been a stronger Evidence than this, that we have given; but whether we do not give such a sort of Evidence as may induce the Jury to believe, that this is their Paper, and their Hands to it, we submit: they say, This is such a method as never was taken; but I admire that that should be said by Men of their Experience and Knowledge in the Law; for is there any thing more usual, or any other course taken for the proof of Hands, than for a Witness to say, He knows the Hand of the Party very well, for he has often seen his Hand-writing, or received Letters from him? and if you shew him the thing that you would prove to be his Hand, and he says, I do believe this to be his Hand, for this reason, because I have had other things of his Writing: Certainly in the Experience of any Man that has practised, this is an Evidence that is given every day, and allowed for Evidence. For the Case of Mr. *Sidney*, which your Lordship has heard mentioned, it is certainly very apposite to this purpose; it is insisted upon and pretended, That that was Evidence, because it was found in his Study: but without all doubt, that would not be the reason: for may not a Book of another Man's Writing be found in my Study? and he insisted upon it in his own Defence: but the Answer was, That it should be left as the Question, Whether the Jury would believe it upon the Evidence that was given, of its being his own Hand-writing: And so in this Case, though it be not so strong Evidence, as if we had brought those that had seen them Write it; yet Evidence it is, and whether it be sufficient to satisfy the Jury, may be a Question; but no Question, it is good Evidence in Law.

Mr. *Sol. Gen.* It is a wonderful thing, they say, That such Evidence should be offered: but truly, my Lord, it is a much stranger thing to hear Mr. *Serj. Pemberton* say, It was never done before; and then to make that Remark to your Lordship upon the Case of *Sidney*, which I'll put to your Lordship and the Court as a Case, and let him contradict me if he can; and then we shall see how far it goes. *Sidney* was indicted for High Treason; and the Treason insisted upon was,

A Writing supposed to be his, it being found in his Study; the Question was, Whether it was his Hand-writing or no? there was no positive Evidence that it was his Hand-writing; there was no Evidence produc'd, that prov'd it to be his Hand-writing; for there was no one that Swore, that they saw him Write it; there was nothing proved, but the similitude of Hands. Ay, but says Mr. *Serj. Pemberton*, It was found in his Study: will Mr. *Serj. Pemberton* be content, that all the Libels that are found in his Study, shall, for that reason, be adjudged to be Libels, to be his Hand-writing, and he to be a Libeller for them? I think he will make a severe Declamation against that, and he would have very good reason for it: Certainly that which was Evidence in one Man's Case, will be Evidence in another. God forbid there should be any such distinction in Law; and therefore I conclude that this is good Evidence.

Mr. *Serj. Pemberton*. The Court went upon this, That it was found in his Study, and compared with Letters and Bills of Exchange produced in Court; which were Sworn to be of his Hand-writing.

Mr. *Sol. Gen.* My Lord, I was by all the time; for I was ordered to attend him in the Tower; and therefore I can tell what passed as well as any Body. My Lord, they proved no more as to that Libel, but only by Comparison of Hands; they had no other proof in that Case, but by comparing the Hand-writing; and that was insisted upon to be a mighty fallible thing: That which they would have for us to compare, Paper with Paper, it is true, would make the proof somewhat stronger, if we could, in such a Case as this, be able to produce such Evidence: but I appeal to your Lordship, and shall leave it to the Jury, to consider which is better Evidence; these Men, that have been produced, that have been Conversant with these Lords, and acquainted with their Hand-writing, and who (as your Lordship sees) are not willing Men to give Evidence, they avoid it as much as they can; and they Swear it all to be the Hand-writing of the Archbishop of *Canterbury*, as they believe; which is as far as any Man can Swear. One says the whole Body of the Paper is my Lord of *Canterbury's* Hand, and he knows it very well; so that we are not upon a single Name, but a whole Paper that contains many Lines; and this is as much as can be proved by any one, that did not see the thing Written. Then, my Lord, for the rest of the Company, the Evidence is not so strong against every one of them, as it is against my Lord Archbishop; but is strong enough certainly to Convict them of what we accuse them of: and pray, my Lord, what was the Objection in *Sidney's* Case, but what has been mentioned here? That any Man's Hand might be Counterfeited. I remember in that Case, there was one Mr. *Wharton*, a young Gentleman, then in the Court, that undertook to the Court, That he would Counterfeit that Hand presently; and he that was to Swear the Comparison, should not know, which was the one, and which was the other; which certainly was a stronger Case than this. And I see some of the Gentlemen that are now standing at the Bar, who pressed this matter very hard against Mr. *Sidney*, and Mr. *Sidney* lost his Life upon that Comparison of Hands; though Mr. *Wharton* did Testifie how easie a matter it was to have a Man's Hand Counterfeited; and we all know was a Man of Value and Quality;

so there is a President for Mr. *Serj. Pemberton*, that never heard of this Law before. They say the proving of Similitude of Hands is no Evidence, unless you prove the actual Writing; what a Condition then will *England* be in, when Witnesses are dead? Is it not the most common Practice that can be, to produce Witnesses to prove such Men are dead, whose Names are set as Witnesses to Deeds; and they swear, They believe it to be the Hand writing of those Witnesses? Can there be any greater Evidence of such a Case, unless it be the Confession of the Party himself? My Lord, we are now only upon reading this Paper. We have been heard, and they have been heard; now we pray the Paper may be read.

Mr. Recorder. We pray it may be read.

Mr. Serj. Lewin. If your Lordship please—

Mr. Sol. Gen. We are not to be replied upon, *Mr. Serjeant.*

L. C. J. You have spoke Brother *Lewin*, and you have spoke Brother *Pemberton*, and I would willingly hear you what you have to say; but we must not have vying and revying, for then we shall have no end.

Mr. Serj. Lewin. I would offer your Lordship some new matter which has not been touched upon yet; why it is not to be read.

L. C. J. What's that Brother?

Mr. Serj. Lewin. All the proof that has been given whatsoever it amounts to, has been only of its being Written, but no proof has been given of its being Written in the County of *Middlesex*, where the Information is laid, and the matter is local.

Mr. Sol. Gen. First read it, and then make your Objection.

Mr. Recorder. My Lord, as to the Evidence that has been given, I would only put your Lordship in mind of one Case; and that was the Case of Sir *Samuel Barnardiston*: and the great Evidence there, was the proof of its being his Hand writing; and that being proved, was sufficient to convict him of a Libel: for they could not believe Sir *Samuel Barnardiston* was guilty of making Libels, unless they were proved to be his Hand writing.

Sir Rob. Sawyer. He owned them to be his Hand writing.

L. C. J. If you do expect my Opinion in it, whether this be good Evidence, and whether this Paper be proved or no; I am ready to give it.

Mr. Finch. My Lord, I desire to be heard before the Opinion of the Court be given.

Mr. Sol. Gen. If there be not proof enough to induce the Jury to believe this is their Paper; yet sure there is enough to read it.

Sir Rob. Sawyer. My Lord, we have not been heard to this yet.

Mr. Sol. Gen. Why, is this fit to be suffered?

L. C. J. *Mr. Solicitor* I am always willing to hear *Mr. Finch*.

Mr. Sol. Gen. But I hope your Lordship, and the Court, are not to be Complimented into an unusual thing.

Mr. Serj. Pemberton. It is not a Complement, but Right and Justice.

Mr. Sol. Gen. Certainly it is Right and Justice, that there should be some Limits put to Men's speaking, that we may know when to have an end.

Sir Rob. Sawyer. *Mr. Solicitor* does mistake

the Right my Lord, for we desire to be heard to this Point; as not having spoke to it yet.

Mr. Sol. Gen. Pray, Sir, let me make my Objection to your being heard: for I believe you and I have been chid several times, for speaking over and over the same thing.

Sir Rob. Sawyer. This that we now offer, is not to the same Point, that we have spoken to already.

Mr. Sol. Gen. We are now speaking to the reading of the Paper, and you have spoken to it already.

Sir Rob. Sawyer. If the Court will please to hear us, we have that to offer against the reading of the Paper, which has not been offered yet.

L. C. J. *Sir Rob. Sawyer*, I take it, it is in the Breast of the Court to hear when they will, and as much as they will, and whom they will; for if three or four have been heard of a side to speak what they will, the Court may very well depend upon the Learning of those three or four, that they say what can be said upon the Point, and that's enough; but if six or seven desire to be heard over and over to the same thing, certainly the Court may stop at three or four, if they will.

Sir Rob. Sawyer. This is a new Objection that none of us have been heard to yet.

Mr. Finch. My Lord, that which I offer is not contrary to the Rules of Law, nor contrary to the Practice of the Court; nor was I going any way to invade that Privilege which *Mr. Solicitor* claims of making Objections, and not receiving an Answer.

Mr. Sol. Gen. What a fine Declamation you have now made! I never claimed any such right; but I oppose your being heard over and over to the same thing.

Mr. Att. Gen. Pray, my Lord, let's come to some issue in this matter.

L. C. J. I will hear you; but I would not have you introduce it with a Reflection upon the King's Council.

Mr. Sol. Gen. My Lord, if you impose that upon him, you stop his Mouth; for some Men cannot speak without Reflection.

L. C. J. On the other side, pray *Mr. Solicitor*, give us leave to hear fairly what they have to say; for I perceive he cannot offer to speak, but you presently stop his Mouth.

Mr. Finch. My Lord, that which I was going to say, is another matter than any thing that has been yet offered: We say, that this Paper ought not to be read; for that they are obliged by Law to prove their Information; and consequently, having laid a particular place where the thing was done, in the Information, they ought to prove that this was done in that place. The Evidence that they have given, is of my Lords the Bishops writing this Paper; and they have laid it to be done in *Middlesex*: and this, with Submission to your Lordship, is local; and they must prove it to be written in *Middlesex*, where they have laid it, or else they fail in their Proof. This is another Objection, which as yet hath not been spoken to: That if there be a Proof of their Hand writing, yet there is no Proof where that Hand was written; and therefore they are not yet got so far, as to have it read against my Lords.

Mr. Att. Gen. For that Point, my Lord, we say, This would have been as properly said after the Paper had been read, when they come to

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make Objections against our Proof, by way of Defence: and with Submission, it had been more proper then, than it is now: For what are we now doing? My Lord, we are proving that such a Paper was subscribed by my Lords the Bishops; and Sir *John Nicholas* gives you an account, that he had it from His Majesty at the Council: and that certainly is in the County of *Middlesex*; and it will concern you to prove that it was written elsewhere.

Mr. Serj. Pemberton. That's very well Mr. Attorney; sure you do not think as you speak.

Mr. Att. Gen. Here is a Paper composed and written by you, that Sir *John Nicholas* says he had from His Majesty: how he came by it, I suppose you will tell us by and by: this is your Hand writing, that I think we have proved sufficiently; this is found in the County of *Middlesex*: and you come and tell us, that we must prove that it was written in the County of *Middlesex*; and it is taken to be written where it was found, unless you prove the contrary.

Mr. Serj. Pemberton. That's pretty Doctrine indeed, and very new.

Mr. Sol. Gen. My Lord, here's an Objection made too timely: we are now upon reading of this Paper: and the Question is, Whether it shall be read or not be read. Surely we have given Evidence enough to induce the Court to read it: and it is another Question, that will come time enough afterwards; where it was written?

L. C. J. Truly, I do not think it was proper for you to stand upon the Place where it was written as yet.

Mr. Serj. Levinz. When we are upon an Information of a Fact in *Middlesex*, will you hear them give Evidence of a Fact in *Yorkshire*?

Mr. Sol. Gen. We are not to be driven by these Gentlemen; we are to be directed by the Court.

L. C. J. I think truly it is yet too early to make this Objection.

Mr. Serj. Pemberton. Surely, my Lord, this is our time to oppose the reading of it, as not proved.

Mr. J. Powell. Mr. Solicitor, I think you have not sufficiently proved this Paper to be subscribed by my Lords the Bishops.

Mr. Sol. Gen. Not to read it, Sir?

Mr. J. Powell. No, not to read it, it is too slender a Proof for such a Case: I grant you, in Civil Actions a slender proof is sufficient, to make out a Man's Hand, by a Letter to a Tradesman, or a Correspondent, or the like; but in criminal Causes (such as this) if such a Proof be allowed, where is the safety of your Life or any Man's Life here.

Mr. Sol. Gen. We tell you a Case where it was allowed; and that is Mr. *Sidney's* Case; a Case of Treason, and printed by Authority: We tell you nothing, but what was done t'other day.

L. C. J. I tell you what I say to it; I think truly there is proof enough to have it read: and I am not ashamed nor afraid to say it; for I know I speak with the Law: say what you will of criminal Cases, and the danger of Peoples Lives; there were more danger to the Government, if such proof were not allowed to be good.

Mr. J. Powell. I think there is no danger to the Government at all, in requiring good proof against Offenders.

L. C. J. Here's my Lord Archbishop and the Bishop of *St. Asaph* and my Lord of *Ely*, their

Hands are proved; it is proved to be my Lord Archbishop's writing by Mr. *Brookes*, and he proves my Lord of *Ely's* Hand by Comparison, and so my Lord of *St. Asaph's*. Now Brother *Pemberton*, there's an answer to your Objection; it being proved that it is all my Lord Archbishop's Hand: then they come and say, we'll prove the Hands of the others by Comparison: and for that they bring you Witnesses that say, They have received Letters from them, and seen their Hand writing several times: and comparing what they have seen with this very Paper; says the Witness, I do believe it to be his Hand. Can there be a greater Evidence or a fuller?

Mr. Serj. Pemberton. Admit it be a full Evidence again my Lord Archbishop: What's that to the rest? There's no Evidence against them.

Mr. J. Allybone. Brother *Pemberton*, as to the Objection you make of comparing of Hands; it is an Objection indeed, I do agree: but then consider the inconvenience which you and Mr. *Pollifsen* do so much insist upon: If a Man should be accused by Comparison of Hands, Where is he? He is in a lamentable Case; for his Hand may be so Counterfeited, that he himself may not be able to distinguish it. But then you do not consider where you are on the other side: that may be an Objection in matters of Fact, that will have very little weight, if compared and set altogether. For on the other side, where shall the Government be, if I will make Libels, and traduce the Government with Prudence and Discretion, and all the secrecy imaginable? I'll write my Libel by my self, prove it as you can; that's a fatal blot to the Government; and therefore the Case is not the same; nor is your Doctrine to pass for current here; because every Case depends upon its own Fact. If I take upon me to swear I know your Hand, the Inducements are to my self, how I came to know it, so as to swear it: Knowledge depends on Circumstances; I swear that I know you, but yet I may be under a mistake, for I can have my knowledge of you no other way but from the visibility of you, and another Man may be so like you, that there is a possibility of my being mistaken; but certainly, that is Evidence, good Evidence: Now here are several Gentlemen that swear as to my Lord Archbishop's Hand-writing; I do agree, as to some of the others, that the Evidence is not so strong; for what that Man said, that he did believe it was rather such a Lord's Hand, than that which went before, or that which came after, it is of no weight at all, and so some of the others; but it is positively proved against my Lord Archbishop and one or two more; so that that's enough to induce the reading of this writing.

Mr. Just. Holloway. Good my Lord, let me give my opinion.

L. C. Just. Ay, with all my heart, Brother.

Mr. Just. Holloway. My Lord, I think as this Case is, there ought to be a more strong proof, for certainly the proof ought to be stronger and more certain in Criminal matters than in Civil matters; in Civil matters, we do go upon slight proof, such as the comparison of Hands, for proving a Dead, or a Witnesses Name, and a very small proof will induce us to read it; but in Criminal matters we ought to be more strict, and require positive and substantial proof, that is fitting for us to have in such a Case, and without better proof, I think it ought not to be read.

L. C. J.

L. C. Just. You must go on to some other proof, *Mr. Solicitor*, for the Court is divided in their Opinions about this proof.

Mr. Sol. Gen. Then, my Lord, we will come to the Confessions of my Lords the Bishops, and I hope that will be believed by all Mankind.

Mr. Att. Gen. Truly, my Lord, we did forbear that Evidence, and would not have proceeded this way, if we had had fair play on the other side.

Sir Rob. Sawyer. Mr. Attorney, give us leave to defend our Clients all the ways we can; I think we do nothing but what is fair; the Court you see is divided, therefore we did not without reason insist upon it.

L. C. Just. You must go on as you can, for they will put you upon it.

Mr. Att. Gen. Swear *Mr. Blathwayt*.

Mr. Blathwayt Sworn.

Mr. Sol. Gen. Pray hand the writing to him.

The writing shown to him.

Mr. Soll. Gen. Have you seen that Writing formerly Sir?

Mr. Blathwayt. Yes, Sir.

Mr. Soll. Gen. What did you hear my Lord Arch-Bishop say about that Paper?

Mr. Att. Gen. And the rest of my Lords the Bishops.

Mr. Sol. Gen. First we'll ask as to my Lord Arch-Bishop; did he own it to be his Hand writing?

Mr. Blathwayt. My Lord, I believe this to be the Paper that my Lord Arch-bishop did own to be subscribed by him.

Mr. Soll. Gen. When was it owned by him?

Mr. Blathwayt. On the Council day, the Eighth of this Month.

Mr. Soll. Gen. Where was it owned, because we would obviate that Objection of the County?

Mr. Blathwayt. It was at the Council Table at *Whitehall*.

Mr. Soll. Gen. What say you to the Bishop of *St. Asaph*? Did he own it?

Mr. Blathwayt. Yes; All my Lords the Bishops did own it?

Mr. Soll. Gen. Name them particularly; what say you of the Bishop of *Ely*?

Mr. Blathwayt. In the same manner, my Lord.

Mr. Soll. Gen. The Bishop of *Chichester*?

Mr. Blathwayt. In the same manner.

Mr. Soll. Gen. The Bishop of *Bath and Wells*?

Mr. Blathwayt. Yes, my Lord.

Mr. Sol. Gen. The Bishop of *Peterborough*?

Mr. Blathwayt. Yes, my Lord.

Mr. Soll. Gen. And the Bishop of *Bristol*?

Mr. Blathwayt. Yes, my Lord.

Mr. Soll. Gen. So; We have proved they all owned it.

Mr. Just. Holloway. Could not this have been done at first, and saved all this trouble?

Sir Robert Sawyer. Have you done with *Mr. Blathwayt*, Mr. Attorney, that we may ask him some questions?

Mr. Att. Gen. Ask him what you will.

Mr. Ser. Pemb. Pray, *Mr. Blathwayt*, upon what occasion did they own it, you are sworn to tell the whole truth; pray tell all your Knowledge, and the whole Confession that they made.

Mr. Blathwayt. My Lord, I am called here by a *Subpena* to answer on behalf of the King; my Lord, I am ready to do my duty, and I beg of your Lordship that you would please to tell me

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what is my duty; for whatsoever I shall answer, I shall speak the truth in.

Mr. Ser. Pemb. There is nothing desired, but that you would speak the truth.

Mr. Blathwayt. My Lord I am easily guided by your Lordship what I ought to answer to.

L. C. Just. What is it you ask him, Brother *Pemberton*?

Mr. S. Pemb. We desire *Mr. Blathwayt* to tell the whole discourse that passed at the Council, when he says my Lords the Bishops owned this Paper.

Mr. Soll. Gen. That's a very pretty thing indeed.

L. C. Just. Look you, *Mr. Blathwayt*, you must answer them what they ask you, unless it be an insnaring Question, and that the Court will take care of.

Mr. Blathwayt. If your Lordship please to ask me any Question, I shall readily answer it.

L. C. Just. You must answer them.

Mr. S. Pemb. We ask you upon what occasion they came to own their Hands? What discourse was made to them, and what they answered?

Mr. Blathwayt. My Lord, I beg your Lordship's directions.

L. C. Just. Come, tell it, Sir.

Mr. Blathwayt. My Lord, the occasion was this: This Paper was read in Council, and I had the honour to read it before the King, and it having been read before his Grace the Arch-Bishop, and my Lords the Bishops, they were asked whether they did own that Paper, and my Lord, they did own it.

Sir Rob. Sawyer. *Mr. Blathwayt*, was that the first time that my Lords the Bishops came in?

Mr. Blathwayt. Sir, I was not asked that Question.

L. C. Just. What would you have, Sir *Robert Sawyer*?

Sir Rob. Sawyer. We would have an account what passed at the Council.

L. C. Just. Would you have all the Discourse betwixt the Council and my Lords the Bishops?

Mr. Ser. Pemb. All that relates to their Accusation, my Lord, their whole Confession, and what was said to them.

Mr. Att. Gen. Do you think, Mr. Serjeant, that when we call a Witness, you are at liberty to examine him to every impertinent thing?

Mr. Sol. Gen. My Lord, we desire they may only ask reasonable and proper Questions.

Mr. S. Pemb. Mr. Solicitor he is sworn to answer and tell the whole truth, and that's all we ask of him.

Sir Rob. Sawyer. Sir, I will ask you a plain Question upon your Oath, did not my Lord Arch Bishop, and the rest of my Lords the Bishops, at first refuse to own it; or to answer whether it were their Hands or not?

Mr. Soll. Gen. That is not a fair Question Sir *Robert Sawyer*; 'tis a leading Question.

Mr. Ser. Pemb. Then I ask you in short, what did they refuse? I am sure that is a fair Question, for God forbid that any should hinder the King's Evidence from telling truth.

Sir Rob. Sawyer. And God forbid that half Evidence should condemn any man.

L. C. Just. God forbid the Truth should be concealed any way.

Mr. Ser. Pemb. Pray, Sir, when they were first asked, whether that was their Hands or not, what answer did they give?

Mr. Blathwayt. Sir, I have beg'd the favour

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of my Lords the Judges to tell me what I am to answer, and what Questions are proper for me to answer to.

L. C. J. You must answer any Questions that are not enflaming Questions.

Sir Rob. Sawyer. Mr. *Blathwayt*, you are upon your Oath to testify the Truth.

Mr. Blathwayt. Sir, I am not acquainted with the Methods of Law, I desire my Lords the Judges would instruct me.

Mr. Just. Allybone. Answer to the Question that they ask you.

L. C. J. We observe what they ask you; we'll take care that they ask you nothing but what they should.

Mr. Blathwayt. I desire the Question may be repeated.

Mr. Serj. Pemb. When they were first asked if it were their Hands, what answer did they give the King?

Mr. Blathwayt. His Grace the Archbishop, and my Lords the Bishops, at first did not immediately answer whether the Paper were theirs or no.

Mr. Serj. Pemb. What did they say?

Mr. Blathwayt. They said they did humbly hope, if they were put to answer, no advantage should be taken against them.

Mr. Serj. Pemb. What did they say farther at that time concerning His Majesties Pleasure?

Mr. Sol. Gen. That's a leading Question, *Mr. Serj. Pemberton*; you cannot leave your way of leading Witnesses.

Mr. Serj. Pemb. It is a very strange thing; if we ask a Question that's general, that's excepted to; if we ask any Question in particular, then they find fault with us, that it is a leading Question; so that we can never ask a Question that will please them. Pray *Mr. Blathwayt*, what did they say concerning the King's Pleasure, whether they would answer if the King commanded them?

Mr. S. Trinder. How can it be material what they said?

L. C. J. It is material that it should be asked, and that it should be answered.

Mr. S. Levins. You are to tell the whole Truth, Sir. Pray tell us what did my Lords the Bishops say about submitting to the King's Pleasure?

Mr. Sol. Gen. What is that to the purpose?

Mr. Pollifsen. Mr. Solicitor, his Oath is to tell the Truth, and the whole Truth, and therefore he must answer my Question.

Mr. S. Pemb. You are mighty loth Mr. Solicitor, to let us hear the Truth; I would not willingly lead him in any thing, and I cannot see that this is any leading Question, unless his Oath be against Law, which says he is to tell the whole Truth.

Mr. Att. Gen. My Lord, I do beg your Lordship's favour of a Word in this thing: It is certain, if they ask any thing that shall take off the Evidence that was first given, that it is not true, I cannot oppose it; but if they ask Questions only to enflame, and to possess people with foolish Notions, and strange Conceits, that is not to the Fact that we are now trying—

Sir Rob. Sawyer. 'Tis only to have the Truth out that we do it.

Mr. Serj. Pemb. There is no body here that will be enflamed, Mr. Attorney; I have asked a fair Question, the Court has ruled it so.

Mr. Blathwayt. I shall readily answer any Question that the Court thinks fit.

Mr. Serj. Pemberton. Sir, by the Oath you have taken you are to tell the whole Truth.

L. C. J. Is he to tell you all that was done at the Council Board that Day?

Mr. Serj. Pemb. No, my Lord; only what passed there about my Lords the Bishops Confession, the whole of that matter.

Mr. Blathwayt. There has been so much said between the asking of the Question and this time, that I desire it may be repeated, that I may know what to answer to.

Mr. Serj. Pemberton. I ask you in short, Sir, What did my Lords the Bishops say at the time of their appearing in Council concerning the King's Pleasure, whether they should answer or not?

Mr. Blathwayt. The first time my Lords the Bishops came into the Council, they were asked the Question whether they did own that Paper; they did immediately answer, They humbly hoped, as they stood there Criminals, His Majesty would not take advantage against them, but however they would obey His Majesties Command.

Sir Rob. Sawyer. Were they commanded to withdraw?

Mr. Blathwayt. Yes, thereupon they were commanded to withdraw, which they did.

Mr. Serj. Pemb. When they came in again what Questions were asked them?

Mr. Blathwayt. They came in several times, more than twice, I have reason to remark this, that they did so; do you mean the second time, Sir?

Mr. Serj. Pemb. Yes, Sir.

Mr. Blathwayt. The second time they seemed unwilling to own the Paper.

Sir Robert Sawyer. And what did they do the third time?

Mr. Serj. Pemb. But first let us know what more was done the second time.

Sir George Treby. How was that unwillingness of theirs overcome?

Mr. Serj. Pemb. When they express their unwillingness what did they say farther?

Mr. Blathwayt. If I remember right, they said as they did the first time, they humbly hoped His Majesty would not take advantage against them.

Mr. Serj. Pemb. Then what did they say the third time?

Sir Robert Sawyer. Pray, were they asked whether they published it?

Mr. Blathwayt. As to the publishing it, it was laid before them, and I think they were asked the Question whether they published it?

Sir Robert Sawyer. And what answer did they make?

Mr. Blathwayt. I remember his Grace, and my Lords the Bishops, did not own they had published it, but they denied it.

Sir George Treby. After they discovered their unwillingness the second time, what followed next?

Mr. Blathwayt. They did withdraw after the second Attendance.

Mr. S. Levins. But what was said to them? Was that all that was said to them the second time?

Mr. Blathwayt. I have said two things already, that they were unwilling to answer, and that they denied the publishing.

L. C. J. This is a strange usage of a Witness, to put him to tell every thing that was said.

Mr. Serj. Pemberton. I would ask you this Question, Sir. When they came in the second time, whether they did desire to know if it were His Majesties Command that they should own it?

L. C. J. That I must not permit you to ask, Brother, that is to lead the Witness.

Mr. Serj. Pemb. My Lord, he will not answer general Questions; I have asked him all along general Questions, and I cannot yet get an answer from him to them.

Mr. Blathwayt. I am ready to answer any Questions that the Court thinks I should answer; I am not backward to answer according to my duty.

L. C. J. Let one of you ask a Question at a time, and not chop in one upon another.

Mr. Sol. Gen. In all the Tryals that ever I have been in, in all the Cases of Criminals, the King's Witnesses used to be treated with respect, and not to be fallen upon in this manner.

L. C. J. He shall be sure to have all respect paid him.

Mr. Sol. Gen. He is in Office under the King.

Mr. Serj. Pemb. I do not think Mr. Blathwayt does believe I would shew him any disrespect, more than he would shew me.

Mr. Att. Gen. I beg one word, my Lord.

L. C. J. Mr. Attorney, What do you say?

Mr. Att. Gen. My Lord, I say I do oppose the asking of this Question, not but that every Man has a right to cross-examine a Witness, but if they ask such a Question, let them tell us what use they would make of it.

L. C. J. Mr. Attorney General, for that matter—

Mr. Serj. Pemb. My Lord, if you please I'll give Mr. Attorney an answer.

L. C. J. Brother Pemberton, I was speaking to Mr. Attorney, and pray hear me, I will not ask you what use you'll make of the Question you ask, but do you ask fair and regular Questions, and I'll take care you shall have an answer to them.

Mr. Serj. Pemb. I will deal plainly with the Court, and tell you what Use we intend to make of our Question; if they answered under a Promise from His Majesty, that it should not be given in Evidence against them, I hope they shall not take advantage of it.

Mr. Sol. Gen. I say that is a very unmannerly Question, but however it shall be answered.

Mr. Serj. Pemb. Why so, Mr. Solicitor?

Mr. Sol. Gen. My Lord, it is to put something upon the King which I dare hardly name.

L. C. J. We do not know what Answer will be made to it yet, but it does look like an odd kind of Question.

Mr. Sol. Gen. If men will be so pressing, I, for the King, desire the Question may be entered.

Sir Robert Sawyer. What do you mean, Mr. Solicitor?

Mr. Sol. Gen. I know very well what I mean, Sir; I desire the Question may be recorded in Court.

Mr. Serj. Pemb. Record what you will, I am not afraid of you, Mr. Solicitor.

Mr. Sol. Gen. Are you afraid of the Law?

Mr. Serj. Pemb. No, nor of you neither.

L. C. J. Pray be quiet, Gentlemen.

Mr. Att. Gen. Pray, Mr. Blathwayt, answer

whether there was any promise made to my Lords the Bishops from the King.

Mr. Blathwayt. My Lord, I take the Question to be, whether the King was pleased to make my Lords the Bishops any promise of not taking advantage of what answer they made.

Mr. Att. Gen. That is the Question.

Mr. Blathwayt. As that Question is stated there was no such made.

L. C. J. Look you, he tells you there was no such promise made; there is an Answer to your Question, Brother.

Mr. Serj. Levinz. We made no such Question; but the Question I would ask is this,—

Mr. Sol. Gen. For the Satisfaction of the Court repeat what you said just now, Mr. Blathwayt.

Mr. Blathwayt. I take the Question to be, whether the King made any promise to my Lords the Bishops, that no advantage should be taken of what they said, and I say the King made no such promise.

Mr. Serj. Pemb. We did not ask you the Question, but we only told you what use we would have made of another Question.

Mr. Pollixfen. Mr. Blathwayt, I see you can very well distinguish what Questions are to be answered; I ask you in short upon your Oath, when they were first called in, what was said to them, and what was answered by them?

L. C. J. Here has been a great deal of wrangling, but this is a fair Question, and may reduce us to order again; tell us over again from the beginning what passed when my Noble Lords the Bishops came in the first, second and third time, when they were examined about this Paper?

Mr. Blathwayt. My Lord, I shall comply with your Lordship's Directions; I apprehend I am to answer together concerning the first, second, and third comings in of my Lords the Bishops into the Council. The first time, (as I said before,) my Lords the Bishops were unwilling to own the Paper, and did say they humbly hoped His Majesty would not take advantage against them, but that they were ready to obey his Command. The second time they were called in they did repeat it again, that they hoped His Majesty would not take advantage against them; after that there was mention made of the Paper being published, I remember my Lords the Bishops said they had not published it.—

Sir Rob. Sawyer. Is that all?

Mr. Sol. Gen. You have no mind to hear all, I think.

L. C. J. How do you expect to be answered your Questions, if you interrupt them? Go on, Mr. Blathwayt.

Mr. Blathwayt. Sir, I said last, that they having prayed the King that no advantage might be taken against them for what they should say, there was mention made of the Paper its being published, and my Lords the Bishops did say they had not published it; and his Grace my Lord Archbishop said it was written with his own Hand, and that he had not made use of his Clerk.

Sir Rob. Sawyer. Is that all you can remember that passed at that time?

Mr. Blathwayt. This is the substance of what I remember.

L. C. J. Was this the third time?

Mr. Blathwayt. No; that was the second time, my Lord.

Mr. Pollixfen. If there be not some order in this Evidence, my Lord, we shall not be able to observe any thing upon it.—Pray what was done afterwards?

Mr. Blathwayt. My Lord Chancellour, upon their coming in, did require them to answer whether they did own that Paper or not; my Lords the Bishops did own the Paper.

Mr. Pollixfen. Do you remember in what words or expressions (as near as you can) they did own it?

Mr. Sol. Gen. Is this a practice to be endured?

Mr. Finch. Why, he may apprehend and take that to be an owning of it which was not.

Mr. Sol. Gen. Has not he sworn the manner of it, and almost the very words?

Mr. Serj. Levinz. We desire nothing of him but that he will tell us what words they said when they owned it.

Mr. Blathwayt. It was the third time that they came in, that they owned it.

Mr. Serj. Pemberton. Why, what did they say?

Mr. Blathwayt. My Lord Chancellour required them to answer, whether they owned the Paper or no.

Mr. Serj. Pemberton. What did they say then?

Mr. Blathwayt. As near as I can remember, His Grace and my Lords the Bishops did own the Paper.

Mr. Serj. Pemberton. What words did they own it in? tell the manner of it.

Mr. Sol. Gen. What's this to the purpose?

Mr. Finch. Mr. Blathwayt, Did you take notes of what passed there?

Mr. Blathwayt. I answer, Sir, I did not take notes, for I attended the King at his Elbow, and did not take notes; Mr. Finch, you know the manner of the Council in such cases very well.

Mr. Att. Gen. Then we ask you for the King, because they shall not enflame People by such an expression, In what words did they own it, if you can remember?

Mr. Blathwayt. Sir, I have declared my memory as well as I can; when the other Clerks come to be examined, if they can tell any more, let them.

Mr. Sol. Gen. But we will have no Discourse to enflame the World; Did the King promise or declare that no advantage should be taken of their confession?

L. C. Just. I would ask him that question, What was the manner that my Lord Chancellour expressed himself in to them, when they came in the third time?

Mr. Blathwayt. As soon as my Lord Chancellor had required them to declare whether they owned that Paper, as well as I remember, His

Holding it forth to the Court. Grace took the Paper in his hand, and it was handed over, or shewed,

ed, to my Lords the Bishops, and they owned and declared so, just as if they should lay it before the Court, just so: I do not recollect my self of all the circumstances that passed, I only can tell you the substance.

Mr. Sol. Gen. He does not remember what they said particularly.

Mr. Att. Gen. Mr. Solicitor, I know well enough what they mean by the question; I know they would fain possess the World with a belief that there was such a promise made them, and yet they are prosecuted notwithstanding that promise; therefore I do ask you, Mr. Blath-

wayt, and for the King's Honour I must ask it. Did the King make any Promise or Declaration, that no advantage should be taken, or use made of it?

Mr. Blathwayt. The King did not make any Promise or Declaration that no advantage should be taken, or use made of it.

Mr. Sol. Gen. He only put them upon it, whether they did own it or not.

Mr. Att. Gen. I ask you upon your Oath Did my Lord Archbishop own it to be his Hand-writing?

Mr. Blathwayt. Yes he did, and said he writ it with his own Hand, and would not let his Clerk write it.

Mr. Att. Gen. Did he own the whole to be his Hand-writing, or not?

Mr. Blathwayt. Yes, he did.

Mr. Att. Gen. Did every one of the Bishops own their names subscribed to it?

Mr. Blathwayt. Yes.

Mr. Sol. Gen. Then, my Lord, we pray now that it may be read.

L. C. Just. I suppose now they will be content it should be read.

Mr. Finch. If your Lordship please to favour me one word, I think it cannot yet be read, and my Objection is this:—

L. C. Just. I thought you had made all your Objections before, as to the reading of it.

Mr. Finch. Pray, my Lord, spare us: Here are two parts of this Information; the one is for consulting and conspiring to diminish the King's Royal Prerogative, and for that end they did make and write a seditious Libel; the other part is, that they did publish this seditious Libel; We are hitherto upon the first part, the making and writing of it; both parts are local; until they have proved the making and writing of it to have been in *Middlesex*, it is not Evidence upon this Information.

Mr. Sol. Gen. We have proved it written and published in *Middlesex*.

Mr. Serj. Pemb. The contrivance and writing of a Libel is in itself penal, and they may be punished for it, if they be found guilty. Now if they could give an undeniable Evidence concerning the publishing of it, that is nothing to this point; but if they should not give such Evidence, or any Evidence at all of the publication, yet if it be proved that it was written and contrived by them, they would be guilty for so much, if it be a Libel, and this we say is local as well as all the rest: and therefore we insist upon it, that the writing and contriving must as well be proved to be in *Middlesex*, as the publication, for all is local.

L. C. Just. There is no publishing yet proved.

Mr. Serj. Levinz. It is true, my Lord, here is nothing of a Publication yet, (with your Lordship's favour,) for their Answer to His Majesty in Council was, that they did not publish it; all that is said yet, is, that they owned the Paper to be their hands: My Lord, does the owning of that own that it was written in the County of *Middlesex*? or that it was contrived or made there? No surely, upon this Evidence the place is clearly at large: My Lord, this might have been done in the County of *Surrey*, or *Somerset*, or any other County: Their Information is, that they did consult and contrive to diminish the King's Prerogative at *Westminster* in the County of *Middlesex*, and there they did write,

write, and cause to be written, this Libel, and there they did publish it; suppose it should be granted that it is proved that this is the Archbishop's Hand-writing, and these are their Names to it, is there any one Evidence that any thing of this was done in *Middlesex*? and, my Lord, that is the thing they are to prove.

Mr. *Sommers*. If your Lordship please, all matters of Crime are so local, that if it be not proved to be done in the County where it is laid, the Party accused is as innocent, as if he never had done the thing; and, with submission, it is the very point of the Information; that it be proved they are guilty of the Fact in the place where it is laid to be done.

L. C. *Just*. This is the same thing over and over again; but I am content to hear you, Mr. *Sommers*, at any time; I have told you my opinion about reading of the Paper already, if you'll have it again you may.

Mr. *Pollixfen*. Pray good my Lord, spare us before it be read.

Mr. *Just. Holloway*. Mr. *Pollixfen*, you have not yet had the Directions of the Court for the reading of it.

Mr. *Att. Gen*. My Lord when this Paper is read, which we pray it may be, we will answer their Objections, but at present we say, they are out of time.

Mr. *Pollixfen*. Good Lord, what a strange thing is this! We object against the reading of it, and you'll answer us after it is read.

Mr. *Sol. Gen*. Certainly, my Lord, we have done enough to prove that this is a Paper owned by them in the County of *Middlesex*, and we pray it may be read.

L. C. *Just*. Truly I am of the same mind I was before, that it is too soon to make the Objection, and that the Paper ought to be read.

Mr. *Sol. Gen*. We submit to your Rule.

Mr. *Pollixfen*. If it be the Will of the Court, I have nothing to say.

Mr. *Just. Powell*. My Lord, The Contrivance and Publication are both matters of Fact, and upon Issue joined the Jurors are Judges of the Fact, as it is laid in the Information; but how can they be Judges of a matter of Fact done in another County? and it must be presumed, in favour of Innocence; not to be done in this County, but in another, except they prove it.

Mr. *Att. Gen*. We are not yet ripe for arguing that point.

Mr. *Sol. Gen*. We are speaking only to the Court now for the reading of this Paper, and the Jury are not Judges of that, whether the Paper ought to be read or no; that is merely a matter of Law, and under the direction of the Court; and therefore I pray, since it is now in your Lordship's Judgment, whether that Paper should be read, that you would please to order it to be read.

L. C. *Just*. I can only give you my own opinion, let my Brothers give theirs.

Mr. *Just. Holloway*. There is no body against the reading of it, my Lord; I suppose my Brother *Powell* is not against its being read.

Mr. *Just. Powell*. But they say the King's Council must make it out first, that the writing of it, and the conspiring about it was in the County of *Middlesex* or there can be no Judgment, so much as to read it.

Mr. *Pollixfen*. My Lord, If the Objection be saved to us, we shall not so much oppose the

reading it, only we would not be surprized in point of time.

Mr. *Just. Powell*. Nay, if they consent to the reading, we have no reason to hinder it.

L. C. *J*. Brother, I believe they know well enough what they have to say for their Clients; let the Paper be read.

Clerk reads. *The Humble Petition of William Archbishop of Canterbury* —

Sir *Robert Sawyer*. Read the whole Petition; Pray, my Lord, that the whole may be read. Read the Top first, Sir; to whom it was directed.

L. C. *J*. Read the whole.

Clerk reads.

To the King's Most Excellent Majesty.

The Humble Petition of William Archbishop of Canterbury, and of divers of the Suffragan Bishops of that Province, now present with him, in behalf of themselves and others of their absent Brethren, and of the Clergy of their respective Dioceses.

Humbly sheweth:

THAT the great averseness they find in themselves to the distributing and publishing in all their Churches your Majesties late Declaration for Liberty of Conscience; proceedeth neither from any want of Duty and Obedience to your Majesty, (our holy Mother, the Church of *England*, being both in her Principles and in her constant practice unquestionably loyal; and having (to her great Honour) been more than once publicly acknowledged to be so by your Gracious Majesty,) nor yet from any want of due tenderness to Dissenters, in relation to whom they are willing to come to such a Temper as shall be thought fit, when that matter shall be considered and settled in Parliament and Convocation; but amongst many other considerations, from this especially, because that Declaration is founded upon such a Dispensing Power, as hath been often declared illegal in Parliament, and particularly in the Years 1662, and 1672, and in the beginning of your Majesties Reign; and is a matter of so great moment and consequence to the whole Nation, both in Church and State; that your Petitioners cannot in Prudence, Honour, or Conscience, so far make themselves parties to it, as the Distribution of it all over the Nation, and the solemn Publication of it once and again, even in God's House, and in the time of his Divine Service, must amount to, in common and reasonable Construction:

Your Petitioners therefore most humbly and earnestly beseech your Majesty, that You will be graciously pleased not to insist upon their Distributing and Reading your Majesties said Declaration:

And Your Petitioners (as in duty bound) shall ever pray, &c.

Mr. *Att. Gen*. My Lord, we shall leave our Evidence here, and hear what they can object to it.

Mr. *Finch*. Have you no farther Evidence, Mr. Attorney?

Mr. *Att. Gen*. We leave it here for the present.

Mr. *Sol. Gen*. The Gentlemen of the Jury desire to see the Petition.

L. C. *J*. Shew it them.

(*The Petition was shewn to the Jury.*)

Mr.

Mr. Finch. But will you give no farther Evidence, Mr. Attorney?

Mr. Att. Gen. I tell you we'll leave it here, till we see what you say to it.

Mr. Finch. There is nothing that we should say any thing to.

Mr. Att. Gen. Make your Advantage of it; if it be nothing, we can have nothing.

L. C. J. What say you for the Defendants, Gentlemen?

Mr. Finch. My Lord, in short, we say that hitherto they have totally failed, for they have not proved any Fact done by us in *Middlesex*, nor have they proved any Publication at all.

Sir Robert Sawyer. They have given no Evidence of any thing.

L. C. J. Pray Gentlemen speak One at once, and then we shall understand the better what we hear.

Sir Robert Sawyer. My Lord, We say, they have given no Evidence of the Conspiring, Writing, or publishing in *Middlesex*; Nay, as to the Publication, there is none at all proved.

Mr. Finch. Here is no proof of any Publication, nor of the writing or making in *Middlesex*; so that there is no proof at all against my Lords, the Bishops.

L. C. J. You heard what Mr. Blathwayt said, they owned it in *Middlesex*.

Mr. Finch. That is not a Publication sure, or any Evidence where it was done.

Mr. Serj. Levinz. Suppose, my Lord, that I own in *Middlesex*, that I robb'd a man in *Yorkshire*, will that make me guilty in *Middlesex*?

Mr. Att. Gen. But if you had stole a Horse in *Yorkshire*, and had that Horse in *Middlesex*, and owned it, I doubt it would go hard with you in *Middlesex*?

Mr. Sol. Gen. Mr. Serjeant thinks he has put a very home Comparison, but we shall shew how little significant it is by and by.

Mr. Serj. Levinz. My Lord, in the first place we insist upon it; here is no proof in this Case at all, as to the doing of any Fact at all in the County of *Middlesex*; in the next place, this Information and Petition do not agree; for they have brought an Information, and set forth, That my Lords the Bishops under pretence of a Petition did make a Libel, and they have set forth no Petition at all, all the Petitionary part is omitted: If I will take part of a Man's Words, and not the whole, and make a Libel of that part, certainly that is very disingenuous and injurious; For that part that I omit may alter the Sense of the whole. They here ought to set forth the Petition, with the Direction to the King, and the Prayer at the end, whereby it will appear what the whole is, and what was desired by their Petition. But, my Lord, to make this matter a little more clear, whatsoever they say of its being my Lord Archbishop's Hand, we shall prove that if it were so, it could not be done in *Middlesex*; for we shall prove that my Lord of *Canterbury* hath not been in *Middlesex* for three or four Months before.

Sir Robert Sawyer. Pray let the Information be read, then you will see the variance.

Mr. Att. Gen. There is not the latter part (we acknowledge) in the Information.

Mr. Sol. Gen. There may be, and is, a *sic Continetur*, and there is no Objection in that at all.

L. C. J. It is *sic Continetur*, and that's—

Sir Rob. Sawyer. The truth of it is, this Information has made a very deformed thing of it,

has left it neither Head nor Tail; they style it a Petition, but it is without any Direction to any body, and without any Prayer for any thing; and without those two it cannot be told what it is.

Mr. J. Allybone. Sir Rob. Sawyer, if I mistake not, it is said only under pretence of a Petition.

Sir Robert Sawyer. There may be more in the Paper, than in the Information, and if all were in, one part might explain another.

Mr. Sol. Gen. So there may be more; and I wonder to hear that Objection from Sir Rob Sawyer, who has exhibited so many Informations for Libels in pieces taken out of Books.

Mr. Recorder. All that we alledge in the Information is contained in the Paper, and that's enough for our purpose; we are not bound to recite the whole.

L. Ch. J. Indeed I think it is no material Objection at all.

Mr. Serj. Pemberton. Truly I think it is very material in this Case; here's a Petition that is preferred to his Majesty; take the whole Petition together, and, say they, it is a reasonable Petition; chop off the Direction and the Prayer, and then here's nothing but the body of a Petition, without beginning or ending; or if a Man will say any thing concerning the King, and do it by way of Petition to himself, that will alter the Case mightily, from a Paper spread about, that should contain only the body of a Petition, and nothing else.

Sir Robert Sawyer. Pray read that part of the Information.

Mr. Pollixfen. If so be there be an Information, and that Information charges a man with a pretended Petition, and the Evidence comes and proves a Petition both top and bottom, that is not the Petition in the Information; for that lacking the proper parts of a Petition, is called a pretended Petition, but that which is proved, is proved is a real one.

Mr. Serj. Baldock. My Lord, there is nothing in this Objection, as this Record hath it.

Mr. Att. Gen. Pray, my Lord, give us leave to state it on our side, as they have done on theirs, and it will be the better understood upon the reading: I hope it is not come to that pass that they would have it, sure these Gentlemen have not forgot altogether the practice that has been so frequent in this Court; if there be an Information for a Libel, is there any thing more frequent, than only to recite the material part? Sure they may say in such a Libel is contained so and so, without setting forth the whole Book.

Mr. Sol. Gen. How many Tryals have we had here, wherein there has been only a Clause taken out of a Book? as particularly, *Baxter's Bible*, and *Johnson's Book*, and all by vertue of a *sic continetur*.

Mr. Finch. That comes not up to our Objection here.

Mr. J. Powell. Let us hear the Record read, and then we can judge of it.

Sir Rob. Sawyer. We pray, Sir, the Information may be read.

Mr. Att. Gen. We are here upon all Occasions chopp'd in upon, and I do not know how they come to take this Liberty; I am sure other people had it not in former times, when these Gentlemen stood where we do; as soon as ever we offer to speak, presently there are two or three upon us.

L. C. J.

L. C. J. Let me hear them, Mr. Attorney, make their Objection, and let the Record be read, and that will answer that Objection.

Mr. Att. Gen. My Lord, as for that other thing, they come and tell us, we have set forth a Petition, we say no such thing; in the Information we say, you composed a certain Libel *pretensu Petitionis*, in which are contained such and such things; and now I pray let it be read.

Mr. Sol. Gen. Pray, my Lord, hear me a little first; Take the Information as we have laid it, and I believe there are twenty Presidents that I could give you in an instant of late days practice; so was the Information against Mr. Baxter, so was the Information against Mr. Johnson, so was the Information against Doctor Eades, and so was the Information against Sir Samuel Barnardiston. They are all in this form, *sic continetur*; so that as for that matter, we are well enough. But here's another thing (say they,) You do not set out the Petition; we say, it is a Libel, and it is not the Name we rely on, but there is such a Libel, so we in our Information call it; if it be not a Libel, then are they very innocent; and whether it be or no, is now in Judgment before your Lordship; but if it be as we say, then it is not the speaking ill things in the body of a Petition, and then giving it a good Title, and concluding it with a good Prayer at the end of it; 'tis not, I say, any of these that will sweeten this Crime, nor alter, nor alleviate it at all; if there be that which is Seditious and Libellous in the Body of it, call the Paper what you will, and smooth it with a Preamble, or a Conclusion, that will not make it any thing less a Libel; these things are plain and manifest: We say there is such a thing done, a Libel made, *pretensu Petitionis*, do you call it what you will; but we say, these and these things are a Libel upon the King and the Government: We have proved our Case, we have proved there was such a Paper under their Hands, we have proved it was owned in *Middlesex*, and then we are in your Judgment, whether this be not Evidence sufficient to convict the Defendants.

L. C. J. But they do make an Objection about the Writing and Contriving of it, that it is not proved to be in *Middlesex*.

Mr. Serj. Trinder. My Lord, our Information does not go with a continued Clause, that they framed a Libel, *ut sequitur in hæc verba*, but we only say, they made a Libel *pretensu Petitionis*, and then we say, *In quo quidem Libello continetur*, so and so; we do not tie our selves up to a particular Recital of all that's in the Paper.

L. C. J. Read the Record.

Clerk Reads.

Ipsi iidem Willielmus Archiepiscopus Cantuariensis, (and the rest) dicto decimo octavo die Maii, Anno Regni dicti Domini Regis nunc quarto supradicto vi & armis, &c. apud Westmonasterium prædictum in Comitatu Middlesexie prædicto illicite malitiose seditiose & scandalose quoddam falsum fictum pernitiosum & seditiosum Libellum in scriptis de eodem Domino Rege & Regali Declaratione & Ordine predictis pretendu Petitionis fabricaverunt composuerunt & scripserunt & fabricari componi & scribi causaverunt, & eundem falsum fictum malitiosum pernitiosum & seditiosum Libellum per ipsos prædictos Willielmum Archiepiscopum Cantuariensem, (and the rest) manibus suis propriis respectivè subscriptum die anno & loco ultimo mentionatis in præsentia dicti Domini Regis nunc vi & armis, &c. publicaverunt & publicari causaverunt; In quo

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quidem falso ficto malitioso pernitioso & seditioso Libello continetur The humble Petition of, &c.—

Mr. Serj. Levinz. It is quite another thing; that which is produced from that which is in the Information, by this leaving out a part; for here is the Prayer omitted, and the Direction.

Mr. Sol. Gen. Then, my Lord, I think there is nothing in the Case, but this mighty Objection of the County; and, says Mr. Serj. Levinz, if my Country-man Confesses in this County, that he stole a Horse in *Yorkshire*, you shall not try him in *London*, but in *Yorkshire*, because by his own Confession the Fact is in another County.

Mr. Serj. Levinz. I did not put the Case so.

Mr. Sol. Gen. But take the Fact of the Case as it is here; my Lord, the Bishops come in *Middlesex* and own this Paper, my Lord Archbishop owns it to be his Writing, and the rest of the Bishops own their Hands; if they had done as Mr. Serjeant's *Yorkshire*-man did, and said, we own we did this, but it was in the County of *York*, then it would have been like the Case that these Gentlemen put; but here we are in a plain Case of another nature; my Lord Archbishop comes here in *Middlesex*, and owns that he writ the Paper, the other Bishops they signed it; now it does lie certainly in their knowledge where this was done, and they should have declared then; but they have owned it as their Paper, and the signing and writing of it, which is enough for us.

Mr. Finch. I own this to be my Paper, therefore I writ it in the County of *Middlesex*; Is that a Consequence? I am very glad they are no better at their Inferences.

Mr. Sol. Gen. They have owned the thing in *Middlesex*, that we insist upon, and they have not owned it with any qualifications; if they had said, it was done in another County, then you must have taken it to be as they said it; then if they do not distinguish the place of the Fact, your Lordship can only take it to be where they owned it, it would be supposed to be done in that place, for when they owned the Fact, it will be supposed, if they do not say where it was done, that it was done where they own'd it, because the King can't tell where it was done; but the Evidence comes out of their own mouths, they may give satisfaction where it was done, for they know it; and till that be done, the Supposition is against them, that it was done in the place where they owned it; and that is a plain Case, wheresoever a man is to speak of his own Fact. Indeed if I publish the Writing of another person which is Libellous; then there must be a particular proof of the place, because it is not my own Fact; but if those Lords publish a Libel that they make themselves, it is their own knowledge, and in their own power to tell where it was done, because it is their own Act and Deed: it is true, if my Lords had published a Paper that was contrived by some of their Council, it had been some Excuse, and they must have only suffered for that Publication in the place where it was done; but they are here for Writing this they have owned in this County, and therefore it lies upon them to prove it done elsewhere. There is another Objection, my Lord, made; That here is no Evidence of a Publication; my Lord, I take it to be a Publication in it self; Is it possible for a man to write a Libel? to set his Name? and part with it? and it coming to the hands of the King, that this is not a Publication? It is not

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their

their saying, we did not publish it, that will excuse them; for can there be a greater Publication in it self than this, when men have set their Hands to it, and owned their Names? what makes the Fact in this Case? If a Deed be denied to be *factum* of such a one, what is the proof of it, but setting the Hand and Seal, and the Delivery? There is owning the Paper, and setting their Hands is a Publication in it self, and therefore they cannot make any such Objection. My Lord, if there were occasion, we have Authorities enough to this purpose, and we will give them scope enough if they will argue this matter; and if they have any Evidence, we desire to hear what they can say to it.

Mr. Att. Gen. As for this matter of Fact, my Lord, if I take it right, they do not Controvert the Publishing, but (say they) pray make it out, where it was written or composed; I confess this would be a business worth the while, for all persons that act in this manner, and are concerned in making of Libels, to understand for their advantage. No man doubts in the matter of Treason, but it is local; then put the Case a man is found in *Middlesex* with a treasonable Paper in his Pocket, I do not make a Comparison, as if this was such a Paper, I hope I am not so understood, but I only put it as a Case, and that the Law is so, is beyond all Controversie; then the man is indicted here in *Middlesex*, for framing and composing such a Treasonable Libel, and he comes to be tryed, and (says he) Pray prove where I made and composed it, for though you found it in my Pocket, in the County of *Middlesex*, yet I might do it in the County of *York*; and upon my word, this had been a very good Defence for Mr. Sidney, who was indicted, convicted, and attainted, for making a Treasonable Paper which was found in his Study; might not he have put the same Objection? might not Mr. Sidney have said (it was great pity he did not understand it) pray prove where I did it, for I did it elsewhere than in this County. —

Mr. Sol. Gen. He did say it, I remember.

Mr. Att. Gen. Truly, my Lord, I would not hear any Answer given to this, for it would make the King in a very woful Case: Here is a Paper that is found in the County of *Middlesex*, and this is there owned by you to be written and subscribed by you; pray do you prove it, that it was written elsewhere.

Mr. Serj. Pemberton. My Lord, we will do it, we will be governed by Mr. Attorney for once.

Mr. Serj. Lewinz. We will prove that my Lord Archbishop was not in *Middlesex*, in seven Months before; and truly I think Mr. Attorney's Case of a Paper found about a Man, or in his Custody, will not come up to our Case; for was this Paper found about us, surely that is not pretended.

Mr. Serj. Pemb. Your Lordship sees by the very frame of the Petition, that this Petition which they call a Libel, was made after the King's Order concerning reading this Declaration: Now we shall prove that my Lord Archbishop, whose Hand-writing they prove this to be, was not out from *Lambeth House* in two Months before, nor till he was before the Council.

Sir Robert Sawyer. Which was long after that time when it was made.

Mr. Serj. Pemb. So that this cannot be written in the County of *Middlesex*.

Call Francis Nichols.

Mr. Nicholls was sworn.

Sir Rob. Sawyer. Do you remember the 18th of May last?

Mr. Nicholls. Yes, Sir.

Sir Rob. Sawyer. Pray how was it with my Lord Archbishop of *Canterbury* at that time, and before that, did he go abroad?

Mr. Nicholls. My Lord, I am very sure that my Lord his Grace of *Canterbury*, whom I have served in his Bed-Chamber this seven Years, never stirred out of the Gate of *Lambeth House* since *Michaelmas* last.

Sir Rob. Sawyer. Till when, Mr. Nicholls?

Mr. Nicholls. Not till the time he was summoned before the Council.

Mr. Serj. Pemb. Now I hope we have given them a full proof that it could not be in *Middlesex*.

Call Thomas Smith.

Mr. Smith was not examined.

Mr. Finch. Truly, my Lord, I think that what we have proved or what Proof we further offer of my Lord of *Canterbury's* not being in *Middlesex* for so long a time, is *ex abundanti*, and we need it not; for with humble submission, in point of Law, it is incumbent upon them that are to prove the Charge in the Information, to prove where it was done; because, the Locality of it is part of the thing, they ought to prove it; in it's nature it is local, there is a Place assigned in the Information, and unless they prove it was done in the Place that they have laid, they have not proved the Charge in the Information. Now, my Lord, they have not made Proof of that, and for proof of Publication, I think they have offered none to your Lordship, they never did call it so yet, and truly I never did hear or know that the owning of their Hands at the Council-Table was a Publication of a Libel; it is owning the Writing, but it is not an owning where the Writing was made; but where it was written, and where it was made, is of necessity to be proved; before the Charge upon a Record, in a Court of Justice, can be said to be made out, it is a Local Charge, and in Justice, the locality must be proved, or the Information fails; my Lord, they have offered no Proof to it, and they have not yet gone to the second part of the Information, for as to the Publication of it, there is not a tittle of Proof offered, but only the owning of their Hands upon their Examination at the Council, and no Man did ever yet think that the answering a Question, and owning a Paper at the Council-Table, upon a Question put by the King himself, was a Publication of a Libel.

Mr. Serj. Baldock. Pray, my Lord, hear me a Word to that; Though the thing be never so local, yet there must be some place where a thing that was done, was done: Then if nothing else appears, but what was done in *Westminster*, in the County of *Middlesex*, unless they shew the contrary, that must be the very place where it was done.

Mr. Solicitor General. Here is a great deal of Prevarication in this matter, and I would observe to your Lordship how they do use the Court ill in it; pray, my Lord, What is it we are upon? we are proving that these seven Lords, the Bishops signed this Paper; and I think we have proved it sufficiently out of their own Mouths: But (say they) it was not signed in the County of *Middlesex*, but in the County of *Surry*. All this is but Imagination, and they would have the Court

Court to imagine it too ; For how do they prove it ? They would have your Lordship and the Jury believe, That it was signed elsewhere, because my Lord Archbishop has not been out of his House in some Months before ; it is all but Inference, and Argument, and Imagination. But still Gentlemen, do you answer what I objected to you ? Does it not lie in their Power to shew where it was signed ? Here are six more, besides the Archbishop, where was it signed by them ? Here are six of the Bishops, that it does not appear where they signed it ; but they confess at *White-Hall*, in *Middlesex*, that they did set their Hands—

Mr. Serj. *Levinz*. Ay, they did so, and what then ?

Mr. *Sol. Gen*. Ay, and ay too ; if they did so, the Presumption and Common Intendment upon such Evidence is, That it was done in the Place where it was owned ; and the rather, for that Reason that I said before, That it lies in their Knowledge, and therefore it is incumbent upon them to prove, That it was not in the County of *Middlesex* : So that this Objection I take rather to be an Invention of the Council than the Truth of the Fact, because they that can make this out, do not. And as to what they say of my Lord Archbishop, That he has not been out of Doors for so long, who can prove such a thing ? Certainly my Lord was able to come, for any thing that appears ; he has been here twice, and he was able to come to the Council-Board : But when all is done, my Lord Archbishop is certainly able to put this matter out of doubt, for he may easily prove it, if the Fact be so, and that will satisfy the Court and every Body, That it was signed by him at *Lambeth* ; if he designs to deal sincerely with your Lordship and the Court, and the Jury ; but certainly it is not to be proved by a Circumstance, such a one as this is, but he ought to give your Lordship and the Jury Satisfaction about this Fact : He ought to say, 'Tis true, I did sign it, but it was at *Lambeth-House* ; that indeed would be a downright Stroke to us : But to go upon a Supposition, That because my Lord Archbishop was not out of his House for so long together, therefore they are all not Guilty, is a very hard and foreign Inference. My Lord, there's another Matter that they insist upon ; and that is about the Publication, that is as plain as any thing can be, that here is a full Proof of a Publication, for if the Paper be Libellous, where-ever that Paper is, that is a Publishing, where-ever the Paper travels, how far soever it goes, it is a Publication of it by these Persons that signed it : I believe no body thinks that this should fly into the King's hand, but some body brought it to him ; and certainly, my Lord, if your Opinion should be, that this Paper is Libellous, then where-ever it is, it is a Publishing, which is our offence ; where-ever it is found, it is a Publication ; for there is the mistake of these Gentlemen, they fancy, that unless there was a Publick Delivery of this Paper abroad, nothing can be a Publication ; but I rely upon it, they setting their Names to it, made it their Paper ; and where-ever it was afterwards found, that did follow the Paper where-ever it went, and was a Publication of it ; it was in their Power, being their own Contrivance ; it was made and formed by themselves, and no body will believe, when it was their own Hands that they put to it, that any body else

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could have any power over it ; for ought appears, no body else was at work about it, and when there were so many Learned Prelates that had signed such a Paper, no one can believe they would let it go out of their Hands, but by their Consent and Direction : Is not this a Proof of the Publishing ? Do they give your Lordships any Evidence that they had stifled this Paper ? If they had so done, they had said something, but will any body believe that this thing was done in vain ? Can any body assign a Reason why so solemn a thing as this should be done to no end and purpose ? Why a Paper should be framed that rails at the King's two Declarations ? Why a Paper that gives Reasons why they could not read it in their Churches, and signed with such Solemnity by all these Noble Lords, we submit this to you in point of Law, and the Law is plain in it, that if this Paper be Libellous, and it is found in the County of *Middlesex*, there is a Publication of that Libel. I shall mention to your Lordship that Case of *Williams*, which is reported in the second Part of *Roll's Reports*, Mr. *Finch* made use of it in the Case of *Sidney* ; it was the great Case relied upon, and that guided and governed that Case (as I apprehend) from the Verdict and Judgment that was given in it. This Case was 15 *Jacobi*. It seems *Williams* was a Barrister of the *Inner Temple*, and it seems being an high Catholick for Opinion and Judgment, he was expelled the House, and he being so expelled (being a sort of a *Vertuoso*) wrote a Book called *Balam's Ass*, and therein he makes use of the Prophet *Daniel*, and he makes Application of it according to his own particular fancy. He writes there, That this World was near at an end ; and he said, Those ill days were come that that Prophecy spoke of, and because of the Impurity of Prince, and Priest, and People, and other things that hapned, those were the worst of days, and therefore the last ; and that certainly we had the worst Prince that ever was in the World, when he wrote this Book, what does he do ? He was a little more close than my Lords the Bishops, and pins it up, or seals it up, and it was brought to the King ; and what is this more than the Case before your Lordship ? They indeed say, I do this by way of Advice to the King ; so, said he, I do this by way of Advice to the King, for God forbid that any of this should happen to the King, and so what he does was by way of Advice, and he prayed God to avert it from him ; here was as good a Prayer as there is in this Paper ; and there was a good design, he made use of the Prophet *Daniel*, and applied his words. Well, what was done upon it ? This was never published ; for the Question was before the Court, whether this Sealing of it up, and not delivering it to any other body were a Publication, the Court was of Opinion, that the very Writing of it was a Publication ; they did not value the delivery of it to the Prince, but it was proved he Writ it, and that made it Treason. My Lord, we have Cases enough in my Lord *Hobart* for this Matter, Sir *Baptist Hick's Case*, and my Lady *Hatton's Case*, there was only a Letter sealed up and delivered to the Party.

L. C. J. You need not trouble your self about that Mr. Solicitor.

Mr. *Sol. Gen*. If the Case then be thus, I take it, it will turn upon this Fact ; they have given your Lordship no Proof where this Paper was Signed by them ; here are seven Persons that

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had

had a hand in it, and here is only one Person whom they have insisted upon to be infirm, and kept his House for a great while together. We say the Publishing follows the Libel wherever it goes; the Libel is in the County of *Middlesex*, they have confessed it in the County of *Middlesex*, and they did not distinguish when it was done. Then if they will not distinguish upon the Evidence, no Man ought to distinguish, but ought to presume it was done in that place where they owned it.

Mr. *Att. Gen.* I did not apprehend we were got so far, that they opposed us in the Publication.

Sir *Robert Sawyer.* Yes we did, for you have given no Evidence of it.

Mr. *Att. Gen.* Surely, my Lord, for that we have given a sufficient Evidence, and they have given some Proof of it, as to my Lord Archbishop; that because he had not been from *Lambeth*, therefore he did not publish, nor could cause it to be published; for your Lordship sees by this Information, they are not only to answer the *Publicavit*, but also the *Publicari causavit*; for do you doubt, Gentlemen, of the Law in this Case, that if I compose a Libel in *Surrey*, for Example, and send a Person over into *Middlesex*, I am not Guilty of the Publishing?

Sir *Rob. Sawyer.* That is not your Case, Mr. Attorney.

Mr. *Finch.* That were clear if it were so, but it is not so.

Mr. *Att. Gen.* My Lord Archbishop's Case signifies nothing, if we shew it was published in *Middlesex*, and you give no Evidence to the contrary but it might be there; and I am sure as to the rest of my Lords the Bishops, there is no Evidence at all given. Here is a Petition that we say is a Libel, they it may be will make that a Question; this is delivered to the King's own Hand in the County of *Middlesex*, and there are as many Cases as any one Man can name, that this amounts to a Publication by the Party; for if I send a Letter by the Post sealed, that no body can see but the Party himself, and he that writ it, it is adjudged over and over again, it is a Libel.

Mr. *Just. Powel.* That you need not labour, Mr. Attorney, for that's the Case of *Williams of Essex*; but how do you apply it to the Case now before us?

Mr. *Att. Gen.* That's an Answer to their Objection as to the Publication.

Mr. *Just. Powel.* But what say you to the first part, you have not proved that it was written in *Middlesex*.

Mr. *Att. Gen.* There is the Case of *Barrow* and *Lewellin* in *Hobart*, and likewise the Case of Sir *Baptist Hicks*, which is reported both in *Hobart* and in *Popham*; and in *Popham*, towards the end of the Case, there is a remarkable Passage. Says that Case, If it should not be punishable at the Suit of the King, there would be no Remedy; for the Party cannot bring an Action, because he can be no Witness for himself, and it is only known betwixt them two; but a Witness for the King he may be, to prove his own Receipt of the Letter, and the Party's Hand.

Mr. *Just. Powel.* You need not labour that Point, I'll tell you, Mr. Attorney; for the Law is very clear in that Point, I think, if you bring it home to your Case.

Mr. *Att. Gen.* Then here's the Case in short, my Lord; That my Lords the Bishops have caused to be made and written this Petition, they are made Parties to it by setting their Names, and this is a continued Act; whatsoever is written there is my Lord Archbishop's Writing, wherever it goes, as I'll put a Case that's very well known. If I take away Goods from a Man in the County of *Cumberland*, and I am found with them in the County of *Middlesex*, it is a continued Act, and makes all but one Felony, and I shall be tried here in *Middlesex* for it; If a Man write a thing in one County, and it is sent and dispersed in another County, that still continues to be his Fact, though it may be the first part was not in the same County with the other; but suppose all this while that part should not affect my Lord of *Canterbury*, the causing it to be published does.

Mr. *J. Powel.* Do you think, Mr. Attorney, that writing in one County is such a continued Act, that he may be said to write it in another County?

Mr. *Att. Gen.* Sir I take it, where there is a complicated Crime of Writing and Publishing a Libel, and the beginning of it is in one County, and the carrying it on is in another, that is a continued Act, and may be tried in either County.

L. C. J. It is all one Act of Libelling (as they say.)

Mr. *J. Holloway.* In Cases of Felony 'tis so, taking in one County, and being found with the Goods in another, it is Felony in either County.

Mr. *Just. Powel.* But in that Case they are two Felonies; for it is Robbery in the one County, and but bare Felony in the other.

Mr. *Sol. Gen.* Suppose that my Lords the Bishops signed this Paper in another County, and my Lord Archbishop consents to have it sent into *Middlesex*, is not this a causing it to be published in another County?

Mr. *J. Powel.* Yes, it may be, if you prove his Consent.

Mr. *Sol. Gen.* Then suppose further, which may very well consist with my Lord Archbishop's Evidence of his not being out of *Lambeth* in so long time, the rest of the Bishops might sign it in *Middlesex*, or it may be in that Place; and then they carry it by my Lords consent over hither, into this County, is not this a causing it to be published? the Delivery with his Consent certainly is a Proof of that, for our Information goes two ways, for Making, Contriving, Writing and Publishing, that's one: And then, for causing it to be Made, Contrived and Published, that's the other: And if I prove that he caused it to be published, he may be found Guilty as to that part, and not Guilty as to the other; for the Information is not so entire, but that the King has his choice, if the Archbishop had not signed it, or written it, but had caused it to be published, he may be found guilty of so much: But if he be Guilty of any one of these things, it is enough; and if he be Guilty of none of the other things laid in the Information; yet if he be Guilty of causing it to be published, by his consenting that the rest of the Bishops should do it, that will be enough to maintain this Information. Then, my Lord, is there any Evidence brought against what we have proved, That he did not consent?

Mr. *Just. Powel.* But where was this Consent of his given, Mr. Solicitor?

Mr.

Mr. Sol. Gen. Pray, good Sir, give me your Favour, I think I am in a plain Case.

Mr. Serj. Pemb. So you are truly.

Mr. Sol. Gen. Why, good Sir, you ought to make out the Locality, if you'll take advantage of it.

Mr. Serj. Pemb. That's very well indeed, this is the first time I ever heard that Doctrine.

Mr. Sol. Gen. I cannot help that, but certainly the Law is plain, we have proved there was such a Fact as this was done; and they do not go about to prove that it was done elsewhere than where we have laid it; for if they did, their Witnesses would be cross-examined by us; and then we know what would become of them, then the Truth of the matter would come out: Therefore I would make all this *constare*. The Archbishop might be at *Lambeth*, and yet Guilty in *Middlesex*, by his Concurrence with what was done in *Middlesex*: And I say, my Lord, this is natural, upon the Evidence that has been given, because when they were interrogated at the Council, and confessed the Paper to be theirs, they made no such Explanation of their Confession, of which they can make any Advantage in their Defence. Here has been no Body produced that proves any thing to be done out of *Middlesex*; so that still if he's Guilty of the Fact proved, he must be Guilty in *Middlesex*.

Mr. Serj. Baldock. And it does not appear, in this Case, but that my Lord Archbishop might write the same thing in *Middlesex*, tho' he was at *Lambeth* so long as the Witness speaks of.

Mr. Just. Powell. How do you make out that, Brother?

Mr. Serj. Baldock. He might do it when he came over to the Council.

Sir Rob. Sawyer. He must do it after it was presented.

Mr. S. Baldock. Might he not be so long here on this side the Water, as to make such a short thing as this, before it was delivered? half a quarter of an Hour would have done it.

L. C. J. That's a thing not to be presumed, Brother, especially since he is proved not to have been in *Middlesex* for so long together.

Sir Rob. Sawyer. Mr. Serjeant is mightily mistaken, for it is not pretended, That it was delivered at the time when the Archbishop, and my Lords the Bishops, were before the Council.

Mr. Recorder. Either the Making and Contriving, or the Publishing of this Libel will do upon this Information; for they shall be taken to be one continued complicated Act; and then the Party may be tried in either of the Counties, as the King will; as in the Case of Treason, it has been over and over again adjudged: That if a Man does one Act of Treason in one County, and afterwards goes into another County, and does another Act of Treason, the Jury of either of the Counties may enquire of the Fact done in the other. If they then should take those two as several Acts, they were several Offences, and they may be found Guilty of the one and acquitted of the other; but if they are taken as one continued Act, they are but one Offence, and the Jury of either County may try it. If then, in this Case, the Jury of this County may take notice of the Publication, which was here, as certainly they may, if they will agree, as the Law certainly is; That the Writing of a Letter will be a sufficient Publication, if the matter be Libellous. And there are multitudes of Prece-

dents for that; and that the bare setting of a Man's Hand has been adjudged to be a Publication: Then give me leave, my Lord, to bring it to a similar Case; Suppose a Man write a scandalous Letter from *London*, to a Judge or Magistrate in *Exeter*; and sends it by the Post, and the Letter is received from the Post at *Exeter*, and there opened; would any Man make a Question whether the Gentleman that sent the Letter may not be indicted and prosecuted for a Libel at *Exeter*, where the Libel was received?

Mr. J. Powell. There's no question of that, Mr. Recorder; that comes not home to the Fact in our Case, undoubtedly in the Case that you put, the Law is as you said, but it is far different from this Case.

L. C. J. There's no Body opposes the Publication, but the framing of it where it was made.

Mr. Recorder. Supposing then the Party were at *Exeter*; and he were interrogated before the Magistrate, Whether that were his Hand or no? and he should own it to be his Hand; can any body doubt whether his owning that to be his Hand, would be a sufficient Evidence to prove a Publication?

Mr. Just. Powell. But is that any Evidence where it was written? Or if it be not proved that it was received at *Exeter*, would that be a Proof of a Publication at *Exeter*?

L. C. J. They do not deny the Publication.

Sir Rob. Sawyer. We do deny that there was any Publication; and they have proved no place where it was made.

Mr. Sol. Gen. My Lord, we are not for turning my Lords the Bishops out of the way of Proof, that is usual in such Cases; let them take it if they will, That this was contrived and made in *Surrey*. But can they publish it in *Middlesex*, without committing an Offence? and that is it we stand upon: We are not for laying a greater Load upon my Lords the Bishops than our Proof will answer.

Sir Rob. Sawyer. We thank you for your Complement, Mr. Solicitor.

Mr. Sol. Gen. Is this a fair way, of interrupting us when we are speaking? Durst any one have served you so when you were in the King's Service? We would make our Duty as easie as we can to my Lords the Bishops; and it may be easier than other Men would have made it. But my Lord, let it be a doubtful Case, that we cannot tell which County it was made and contrived in, if it were made and contrived in another County; yet when they brought it into *Middlesex*, there was a Publication in *Middlesex*; and if my Lord of *Canterbury* consented to it, and if he caused it to be published, how can any Body ever get him off from that causing of it to be published? Here is a Paper that must be supposed to be my Lord Archbishops Paper: Now either the World must look upon it to be an Imposture put upon my Lords the Bishops, or a real Paper made by them. If it were an Imposture and an Affront put upon the Bishops, they ought to make it out for their own Vindication, and to prove themselves Innocent: If they do that, they do well, and they ought to have Satisfaction made them by those that have so highly injured them; and the King cannot be better pleased, I am sure, than to find them so: But if Men will look one way and act another, they must expect to be dealt with accordingly. Will any Man that has heard this Evidence, and sees that these Gentlemen will not go

go the right way to work to prove their own Innocence, believe them to be not Guilty? 'Tis plain they contrived it and signed it; for can any one imagine that they set their Hands to a Paper that was not formed and contrived by themselves? then let it go, That this was done in another County, and we cannot punish the Writing of it in this County; yet still they are Guilty of causing it to be published in this County, and for that we may punish them here: We will be content with having that found that we have proved, which certainly is an Offence.

Sir Rob. Sawyer. We oppose that, Sir.

Mr. Sol. Gen. You oppose it, I know you'll oppose common Sense, we don't speak to you, we speak to the Court; we are content with what is plain, and do not desire to insist upon any strained Construction; we say this is Natural Evidence for us; If this thing be a Libel, as we say it is, then the causing it to be published, is an Offence: The Publication we say was here in *Middlesex*, and of that there is a clear Evidence, because it was found there, and came from the King's Hand, to whom it was directed, and it could not come to the King's Hand out of their Custody, without their Consent: This (we say) is a clear Evidence of causing it to be published let the rest go as it will, because we will take the easiest part of the Case, and not go upon Strains.

Mr. Serj. Trinder. The greatest Question is, I think, now come to the Publishing.

L. C. J. The Court is of Opinion, that its coming to the King is a publishing.

Mr. J. Powel. Ay, my Lord, if it be proved to be done by them.

Mr. Serj. Pemb. Before the Court deliver their Opinion, we desire to be heard.

L. C. J. Brother, you shall be heard in good time, but let them make an end on the other side, and when the King's Council have done, we'll hear you.

Mr. Serj. Trinder. My Lord, upon the Question of Publishing, it has been insisted upon, and the Court seems to be very much of the same Opinion; That the Writing of it is a Publishing: That it is without Controversie, if the Writing of it fell out to be in *Middlesex*, where the Information is laid; but that they would not have to be so by Argument, because the Archbishop had kept in at *Lambeth* so long. But suppose, that it were so as they would have it; that is only as to the Archbishop, he being the Writer of it, but yet notwithstanding that, the other six might subscribe it in *Middlesex*, taking it, that there is such a Face in their Argument as they would have it.

Mr. Sol. Gen. We will lay no greater load on the other six than we do upon my Lord Archbishop, and we say they are all Guilty of the Publication in *Middlesex*.

Mr. Serj. Trinder. Pray, Sir, spare me; this Paper was in the Archbishops Custody and Power, he taking of it himself; and regularly it could not have come out of his Custody, in common Supposition, but it must come with his Consent. It was afterwards in the Power of the other six, they had it to subscribe; where the Subscription was *non constat*, they it may be can prove it themselves, but I will only deduce this Argument; That if it after comes into *Middlesex*, it must be taken by presumption to be subscribed by them there and published, it must taken by Presumption so to be.

L. C. J. No Brother, we ought not to do any thing by Presumption here.

Mr. J. Powel. No, no, by no means, we must not go upon Presumptions but Proofs.

L. C. J. I will not presume it to be made in *Middlesex*.

Mr. Serj. Trinder. But it is proved to be published in *Middlesex*.

Sir Rob. Sawyer. My Lord, with Submission, there is no Evidence of the Publication.

Mr. Att. Gen. That the Court is to judge of.

Sir Rob. Sawyer. Pray, good my Lord, what Instance of a Publication have they given?

Mr. Sol. Gen. The Court has heard the Evidence, we leave it there.

Sir Rob. Sawyer. Was it their owning and acknowledging it was their Hands, when the King asked them the Question at the Council-Table? Surely the King's Council won't pretend that was a Publication, when it was done at the King's Command; it was certainly the King that published it then, and not my Lords the Bishops.

Mr. Att. Gen. Well said.

Sir Rob. Sawyer. Don't you remember that, when Mr. Blathwayt said the King gave it to be read, and it was shewed to the Bishops?

L. C. J. I remember what Evidence Mr. Blathwayt gave of the Passages at the Council-Board very well; and I know what Mr. Attorney did press about the King's promising to take no advantage.

Mr. Att. Gen. My Lord, Mr. Attorney is on the other side, he did not press it.

L. C. J. Sir Robert Sawyer (I mean), I beg both your Pardons, Gentlemen, I think I have done Injury to you both.

Sir Rob. Sawyer. My Lord, we say there is no Evidence at all, that ever this was sent to the King by the Archbishop, or any of my Lords the Bishops: And as for the Cases that they have put, they might have put five hundred Cases; and all nothing to the purpose.

Mr. Sol. Gen. So they might, and done just as others had done before them.

Sir Rob. Sawyer. And so are these; for here is the Question, We are in a Case, where the Publication is that which makes it a Crime: Now I would have them (if they can) put me any such Case, and then apply it to this; in *Williams's* Case, the Question is quite otherwise, and so in any Case of Treason it must be; where-ever there is an Overt Act proved, it is the Treasonable Intention, and the ill Mind of the Traytor that is the Crime, and the Treason (the Overt Act) is only to be the Evidence of it: In that Case of *Williams*, with Submission, my Lord, the Publication was not at all necessary, but the very secretest Act that could be done by him (if it were an Act) is an evidence of the Mind, and so the sending of the Book to the King himself, though no body else did see it, was an Evidence of the Crime of Treason, yet it could not be called a Publication. But in the other Case of Sir Baptist Hicks, which was in the *Star-Chamber*, about sending a Letter of Challenge, it was plainly resolved that it was no Publication of the Letter, and that was not the ground of the Judgment given against him there, that it was the Publication of a Libel, but the very Fact was a particular Offence; for (said the Court there) if you will send a Letter to a private Man, and that is a Letter that will provoke him to break the

the Peace, that is an Offence punishable in the *Star-Chamber*; but that is not the Reason which was alledged, because no Action will lie for want of Proof, but quite the contrary; because they may produce the Porter or Party that brought it, and prove it that it came from this Man's Hands; and I do not question but that in the King's Bench at this Day, if a Man will write a Letter privately to provoke another Man to fight, there will lie an Information, but not for a Libel; for there it will be necessary for to make an Offence, that there may be a Publication; for that is the very form of the Crime, and upon that ground were all those Judgments against Libels in the *Star-Chamber*. My Lord, I agree to write a Letter to the King of another Person, or to make a Petition to the King concerning another Person, as of my Lord Chancellor, or the Judges, or the like, to complain to the King of them scandalously, with provoking and reviling Language, that is a Publication; and so if I write a Letter to one Man of another; if there be Scandal in a Letter, that is a Publication of a Libel; and that is the difference that has been always taken, where it is essential to make it a Libel, that there be a Publication, such a Publication must be proved, and the delivery of a Letter to a Man that concerns himself, is no Publication, but in this case they have not so much as proved that it was delivered to the King.

Mr. Serj. Pemb. My Lord, with your Lordship's leave, I take it, that they have given no manner of Evidence of a Publication; to say, the writing and subscribing of their Names to a Paper, is a Publication of that Paper, is such a Doctrine truly as I never heard before; supposing this Paper had lain in my Study, subscribed by me, but never went further; would this have been a Publication? They never said any such thing. As to *Algernoon Sidney's Case*, there was no colour for it, that it should a Publication; but it was an Overt Act of Treason to compose such a Book; They have proved by our Confession here, that we have subscribed this Paper, they would take it now; that therefore it must be presumed we sent this to the King, and so surmise us into an Information for making and publishing a Libel, which we sent to the King; but they do not prove it at all: My Lord, there are a thousand ways that it might come into *Middlesex*, and perhaps come to the King's Hands too, without our Knowledge of Delivery; and sure you will not presume these Noble Persons without Evidence to be guilty of such an Offence as this is suggested to be; so that, my Lord, and Gentlemen of the Jury, 'tis impossible for you to find this a Publication in *Middlesex*; and for the other thing, (the writing this Paper) they that would make it an Offence, must prove where it was done.

Mr. Serj. Levinz. My Lord, The Answer that I shall give to what has been said on the other side, is very short; the Cases that have been cited are all Law, but not one tittle to this purpose: In Sir *Baptist Hicks's Case*, and *Williams's Case*, it was proved they all sent them to the Places whither they were directed; but is there a tittle of Proof that these Bishops sent it here? In all those Cases, they must send it either by a Porter or a Carrier, and they send it as their own Act, and when it comes there, by their sending, that is sufficient Proof of their Act in the place whither it is sent: And for *Sidney's Case*, there

was Treason in the very Libel and Book that he made; and he was not indicted for publishing, but for Treason in the place where it was found, because it was found in his Possession: But was this ever in my Lord Archbishop's Possession in *Middlesex*, or the rest of the Bishops, and were they publishing of it? if it had, then it had been their Act clearly: But that is the thing wherein they are defective, that they do not prove that my Lords the Bishops sent or brought it here; but upon the Question asked them by the King, they acknowledged it to be their Hands: So that my Lord there is no proof of any Fact done here, but an Acknowledgement of a Fact done, no Body knows where, upon the King's Question here in *Middlesex*; Is that any Proof of this Information?

Mr. Finch. Pray, my Lord, spare me a Word on the same side, let us see what the Evidence is. The Evidence is this, That the King brought the Paper to the Council-Table, and the Bishops owned their Hands to it: This is the Effect of the Evidence, and all that is to prove the Forming and Making a Libel in *Middlesex*, and the Publication of that Libel. And what is therefore inferred from thence? Why, having proved that the King brought the Paper to the Council-Table, and the Bishops owned their Hands: Therefore, First the Bishops made this Libel in *Middlesex*. Secondly, they brought it to the Council-Table, and published it at the Council-Table, or else there is no proof at all: For here is nothing of Evidence given of any Fact, but because they acknowledged it, therefore they made it, therefore they gave it to the King in *Middlesex*: This were good Evidence if they had had the Help of a Supposition to make it good; but they want that, nor must any such thing be admitted; but I think they are such gross false Consequences, that I doubt not you'll be of Opinion, Here's no proof of a Publication in *Middlesex*, and then there is no proof at all against my Lords the Bishops.

Mr. Pollixfen. I must confess I hear them say two Acts prove a Publication in this Case; the one is, the Writing of the Libel, and the Subscribing. If so, then I think upon the Evidence that has been given, the Court must needs be satisfied, that the Writing of it was in *Surrey*: The next is, their owning their Hands; for there is no Act done that appears, or any Evidence against them of any Act done, from the time of the Writing, to the time that they were asked, is this your Hand? Surely no Man would ever think this to be a Publication, where one is asked by Authority, whether such a Paper be his Hand, and he acknowledges it in Answer to that Question; to turn this to be a Crime, I think it can never be done, nor never was before. Then there is nothing in the Case, that they can hold to for Evidence, and Proof against my Lords the Bishops, but the Writing; and that is apparent to have been in *Surrey*, or otherwise they must hold that the Answer to the King's Question, this is my Hand, is a Publication. But truly, my Lord, I think neither of these will do: But my Lord, to me this is a great Evidence in itself against the Proof of a Publication, the Care and Wariness that has been used, that there should be nothing at all of this Matter known, from the time that it was written, to the time that they came to be examined and summoned to appear as Offenders. My Lord, the Nature of Libels is to publish

publish and proclaim Scandal and Defamation, or else it loses its End, and consequently its Name: This, as it stands upon their Evidence, is a monstrous Proof for my Lords the Bishops, against the King's Council; for it seems, 'tis a very private Matter, so cautiously and warily carried, that there is not any Evidence of the Fact, but only the Names of the Persons that writ it, till they come to be examined by the greatest Authority, Is this your Hand? and then they own it so to be; how can this be taken to be a Publication? and it will be a thing of wonderful Consequence, if an Answer to a Question put by Authority, should amount to a Crime, as it would in this Case; that would be as if Authority that should be employed to do Right, would be turned to do the greatest Wrong; for it is the Duty of all Men to answer when examined by a lawful Authority, and it would never be offered at sure in any other Case: If a Man comes before a Magistrate, and confesses any thing, that indeed is Evidence, but is not a Crime; for there is a great deal of difference between Evidence and the Crime; but that this should be both an Evidence and a Crime too, is, I think, a very strange Construction; and for the other part (the writing of it) I suppose the Court is satisfied that it was in another County.

Sir Geo. Treby. I desire your Lordship to spare me a Word, which I think has not been observed by the Council that have spoke before. The Question that remains, is, Whether my Lords the Bishops did Publish this Paper? This is a matter of Fact that lies upon the Prosecutors to prove. Now I think they are so far from having proved that the Bishops did publish it, that on the contrary, they have proved that their Lordships did not Publish it. The Evidence they have offered for this matter is a Confession. This Confession is testified by Mr. Blathwayt, and he says the Bishops were ask'd at the Council whether they did subscribe and publish this paper, and that their answer was that they did *subscribe* but not *publish* it.

Now a Confession must be taken together, and must be admitted to be *intirely* true by them that produce it; they shall never be allowed to take out and use one *piece*, and wave the rest.

Why then by this Evidence of Confession, taken as it ought, it appears that the Bishops (though they did subscribe) did not *publish* the paper. So that, I say, the King's Council have hereby plainly proved that the Bishops did not publish this paper, and yet this is the only Evidence upon which they would infer that they *did* publish it.

Mr. Att. Gen. Look you, it does lie upon you Gentlemen to prove it was done elsewhere than in *Middlesex*.

Mr. Finch. Sure Mr. Attorney is in jest.

Mr. Att. Gen. No, I am in good earnest, all the proof that we have given has been in *Middlesex*, and you can best tell whether you did it in *Middlesex* or no.

Mr. Finch. My Lord, we have done as to this Objection; for we say they have not proved their Case.

L. C. J. Mr. Finch you may observe (and I am sure you do observe as well as any body in all Cases,) but I say you may observe that they are off of every thing but causing it to be published; now that does lie upon the King's Council to prove, that my Lords the Bishops did cause it to

be published, for their owning their Hands does not amount to a Publication.

Mr. Serj. Pemb. My Lord, We are upon this point with them, whether here be any Evidence of a Publication at all.

Mr. J. Powell. Pray let us clear this first; for if there be no Publication, there can be no causing of it to be published.

Mr. Att. Gen. My Lord, if you think fit, we shall go on and reserve this point till afterwards.

Mr. Sol. Gen. They may make Objections, if they think fit.

L. C. J. So they may, and they say if these Objections are with us, we need go no farther.

Mr. Serj. Pemb. But, my Lord, if they be not with us, we have a reserve to give a farther Answer to it, and to offer Evidence against the Evidence they have offered.

Mr. Sol. Gen. With all our Hearts, give in Evidence what you can.

Mr. Att. Gen. Then pray my Lord let us go on to answer this Objection.

L. C. J. Pray do Mr. Attorney.

Mr. Att. Gen. My Lord and Gentlemen of the Jury, I would first observe how far we have gone. That there was such a paper written is clear beyond all Question, and written by my Lord Archbishop of *Canterbury*, and that it was signed by the rest of the Bishops, but not in the County of *Middlesex*, and that this paper was published is agreed on all hands.

Mr. Jus. Holloway. No, they do not agree that.

Mr. Att. Gen. Do I say it was published by them? but there was such a Paper published.

Mr. Serj. Pemb. No, we say it was never published at all.

L. C. J. Pray Brother *Pemberton* be quiet, if Mr. Attorney in opening does say any thing that he ought not to say, I will correct him, as I would do any body that does not open things right as they are proved, but pray don't you that are at the Bar interrupt one another, it is unbecoming Men of your Profession to be chopping in and snapping at one another——Go on Mr. Attorney.

Mr. Att. Gen. I say, that the Paper is proved to be written and signed by my Lords the Bishops, that I take for granted, and that the Paper so signed and written is now published to the World, is also evident; but the Question is who it was done by, or who caused it to be done, we are reduced to that Question: Now, first, it is agreed on all hands, that if I send a Letter to a private Man containing Scandalous things in it, though there is no proof more, but that it was sent sealed, and received by the party, in that Case it was a fault punishable in the Star-Chamber, as a Crime; but now that this was received by the King, and written by them, there is no room for doubt; for you hear it was produced by the King at the Council-Board, and they asked upon it, if it were their Hands? that the King did receive it, there is no room for question, or that they did write it; but the question is, from whom the King had it? I am sure they must shew that some body else did it; and unless they do show that, I hope there is no manner of question, but it came from them, and they did it; though no Man Living knew any thing of this matter, but whom they thought fit to communicate it to; yet still they putting the King upon the

the necessity of shewing this Power in order to his obtaining satisfaction for it, or else he must remain under the indignity without reparation, it ought to be put upon them to clear the Fact; for if he does not produce it, then must the King put up the highest injury and affront, that perhaps a Man can give the King to his face, by delivering a Libel into his own hands; and if he does produce it, then say they, that is not our publication, we prove it to be your writing and signing, and we prove it to come from the hand of the King against whom it was composed, for we say it is a Libel against his Majesty, his Government and Prerogative; if then, all those cases that have been cited be Law, then sure there never was a stronger case in the World than this; and I hope the Law goes a little farther in the case of the King, than it does in the case of a private Man; no Man must think by policy to give private wounds to the Government, and disparage the Administration of it, and then when he is called in question about it, says he, pray prove that I published it, or else you shall not punish me for it, we prove you framed it and writ it and signed it, and we prove it came to the King's hand, of whom it was composed, must we produce two Witnesses of the delivery of it to the King? Surely there will be no need of any thing of that.

Mr. Sol. Gen. My Lord, we have reduced it now to a very narrow question, for (as Mr. Attorney has said) my Lord, there is no doubt but that my Lords the Bishops are the Authors of this Paper, there is no doubt but they signed it, and there is no doubt but that their signing of it, though it were at Lambeth (as they say) is a publishing of it, but however this is plain and manifest, that this Paper was published, and that this was published in *Middlesex*, this is as plain too; now then there is nothing left but this question, whether my Lords the Bishops who framed the thing, who wrote the thing, who signed the thing, were not the occasion or cause of its publication, or privy or consenting to it; my Lord, I will reduce it to a very plain point; for we are upon a rational question, before a rational Court, and a rational Jury, whether these Lords did all of them in the County of *Surry*, consent to the publishing of this Paper in *Middlesex*; for it is published in *Middlesex*, (that we see,) and if they are guilty of that part of the Information, of causing it to be published, now what do they say to it, say they, it is agreed that it is published in *Middlesex*, but it is not proved to be published by us.

L. C. J. No, they do not say so, they agree it was in *Middlesex*, but not published.

Mr. J. Powel. Mr. Solicitor, they do agree it was in *Middlesex*, but not published to be sure, nor by them.

L. C. J. Mr. Solicitor, I'll tell you what they stand upon, they say you ought to prove it to be delivered to the King by the Bishops, or some body employed by them; for upon that went the Resolution that was in *Williams's* case, that he sent it to the King; but here is no body that proves that it was delivered to the King in this case, so that how it came to the King *Non constat*.

Mr. Sol. Gen. There will be the question between us, whether this be not a publication.

Sir Robert Sawyer. Pray Mr. Solicitor prove your Case before you argue it.

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L. C. J. First settle what the case is, before you argue it.

Mr. Sol Gen. My Lord, I'll put you the case, here does appear in *Middlesex* a Paper that is a Libel in it self, and this Libel is proved to be written and formed by these persons, this Libel coming into *Middlesex*, the question is, whether they are privy to it, I say in point of presumption, it must come from them.

L. C. J. I cannot suppose it, I cannot presume any thing.

Mr. Sol Gen. My Lord, I speak of that which is a common presumption, a natural presumption, what we commonly call a violent presumption, which is a legal presumption, and has always been allowed for Evidence; now whether there be not such a presumption in our Case, as to induce your Lordship and the Jury to believe that it cannot be otherwise, or at least to put the labour upon them, to shew how it came out of their Studies, and how it came to the King's hands, for it is in their power to shew the truth of this matter, how it was, if they do not, the presumption will lie upon them; that the Paper came to the King, that is plain enough, and its coming to the King's hands, is a plain proof of a publication in *Middlesex*, and who should bring it to the King, but these Gentlemen in whole power it was? there is no Man undertakes to say, he lost it, then what else is to be believed, but that it came from them, I speak of common supposition and belief, they may very well shew it if it were not so; all that we can say in it, is, here is a Paper in *Middlesex*, this you agreed was once your Paper, and in your power, pray shew what became of it, it lies upon you to clear this doubt.

Mr. Recorder. My Lord, there is but this question in the case, the question is not, whether the owning it be a publication, but whether here be any Evidence that they did deliver it to the King; now if they did deliver it to the King, that will be agreed to me to be a publication.

Mr. Just. Holloway. No doubt of it, if you can prove it.

Mr. Recorder. Pray Sir spare me, that they did it you have this Evidence; first, that they were the Authours of this Paper by their own Confession, that this was in the County of *Middlesex*, and that when they were asked concerning it, they owned it to be their hand Writing; now whether you can in the least question after all this, their delivering of it to the King, or that it came to the King's hands without their knowledge or consent, is that which lies before your Lordship for your Judgment.

L. C. Just. I will ask my Brothers their Opinion, but I must deal truly with you, I think it is not Evidence against my Lords the Bishops.

Mr. Just. Holloway. Truly I think you have failed in your Information, you have not proved any thing against my Lords the Bishops in the County of *Middlesex*, and therefore the Jury must find them not guilty.

Mr. Att. Gen. I'll put you but one case my Lord, a Man has an opportunity secretly to deliver a Libel into the King's hands, when no Body is by, and so there can be no proof of the delivery.

Mr. Just. Powel. 'Tis a dangerous thing Mr. Attorney on the other side, to convict People of Crimes without proof.

H h h h h

Mr.

Mr. Att. Gen. But shall a Man be permitted thus to affront the King, and there be no way to punish it?

L. C. Just. Yes, there will sure, but it will be a very strange thing if we should go and presume that these Lords did it, when there is no sort of Evidence of it; 'tis that which I do assure you I cannot do, we must proceed according to Evidence and forms and methods of Law, they may think what they will of me, but I always declare my mind according to my Conscience.

Mr. S. Trinder. But as to that other point whether their owning of it be a publication, has not been particularly spoke to.

L. C. Just. Mr. Attorney, and Mr. Solicitor, if there were enough to raise doubt in the Court, so as to leave it to the Jury, I would sum up the Evidence.

Mr. Sol. Gen. My Lord, we know it is with the Court, these Lords insisted upon it, that it was a great while in their hands, but it seems as far as our Evidence has gone hitherto, their Confession went no farther than that it was their Paper, and we must not extend their Confession further than it was; but I think we shall offer a fair Evidence that they did deliver it in the County of *Middlesex*.

L. C. Just. Indeed, indeed, you ought to have gone to this, Mr. Solicitor, before the Court gave their Opinions.

Mr. Sol. Gen. Pray call Mr. Blathwayt again.

Mr. Blathwayt called.

L. C. Just. Mr. Solicitor, unless you are sure that Mr. Blathwayt is a Witness to the publication, 'tis but spending the Courts time to no purpose to call him.

Mr. Sol. Gen. We are sure of nothing, my Lord, but we must make use of our Witnesses, according to our Instructions in our Briefs.

Then Mr. Blathwayt appeared.

Mr. Att. Gen. Mr. Blathwayt you were sworn before.

Mr. Blathwayt. Yes, Sir.

Mr. Att. Gen. You were present when this Paper or Petition was delivered by the King, at the Council-Board.

Mr. Blathwayt. Yes, I was so Sir.

Mr. Att. Gen. Do you remember any thing of the Bishops acknowledging their delivery of it to the King?

Mr. Sol. Gen. Mr. Blathwayt I would ask you, was there any mention of discourse with my Lords the Bishops, how that Paper came into the King's hands, was there any mention of what it was done for, upon the account of Religion or how?

Mr. Blathwayt. I don't remember any thing of that Mr. Solicitor, at which there was a great Laughter.

L. C. Just. Pray let us have no laughing, it is not decent, can't all this be done quietly without noise? pray Mr. Blathwayt let me ask you, do you remember there was any discourse how that writing came into the King's hands?

Mr. Blathwayt. I received it from the King's hands, and I know it was presented to him by my Lords the Bishops.

L. C. Just. How do you know it was presented to the King?

Mr. Blathwayt. I heard the King say so several times.

Mr. Sol. Gen. Pray mind my question Sir, first I ask you who produced the Paper at the Council-Table?

Mr. Blathwayt. The King.

Mr. Sol. Gen. What said the Bishops when that Paper was shewed them?

Mr. Blathwayt. Then (as I remember) they were asked, whether that was the Paper that they delivered to the King?

Mr. Sol. Gen. Then what said the Bishops?

Mr. Blathwayt. They at first scrupled to answer, and they said it might be made use of to their prejudice if they owned it.

Mr. Att. Gen. Pray Mr. Blathwayt consider again, was that the question put to my Lords the Bishops, whether that was the Paper that was presented by them to the King?

Mr. Blathwayt. I do think, to the best of my remembrance, that my Lord Chancellor did ask them to that purpose, I cannot speak to the very words.

Mr. Sol. Gen. And upon this, what answer did they make?

Mr. Blathwayt. My Lords the Bishops scrupled to answer the first and second time (as I told you before) but they did own it was the Petition that they presented to the King, to the best of my remembrance.

Mr. Sol. Gen. Did the Archbishop do any thing to own it?

Mr. Blathwayt. Yes, both my Lord Archbishop of Canterbury and the rest of the Bishops did own all the same thing.

Mr. Sol. Gen. Was this done at Whitehall?

Mr. Blathwayt. Yes, at the Council-Table.

L. C. Just. Pray recollect your self, and consider what you say, did they own that that was the Paper they delivered to the King?

Mr. Serj. Pemb. Pray my Lord give us leave to ask a question to clear this matter, was the question put to them, Whether it was the Paper that they delivered, or whether it were their hands that were to it?

Mr. Blathwayt. My Lord, I do not exactly recollect the words.

L. C. Just. But pray tell us, if you can, what the question was?

Mr. Blathwayt. My Lord, I do not remember the very words, but I think if Mr. Serjeant Pemberton be pleased to repeat his question, I shall give him a satisfactory answer, as well as I can.

Mr. Serj. Pemb. Sir, that which I ask you is this, Whether the question that was put to my Lords the Bishops at that time was, Whether this was the Paper that they deliver'd to the King, or whether those were their Hands that were to it?

Mr. Blathwayt. My Lord, I did always think that it was a plain Case, that that was the Paper that they deliver'd to the King; and my Lords the Bishops did never deny but that they gave it to the King, and I had it from the King's hands.

L. C. Just. But we must know from you (if you can tell us) what the question was that was put to my Lords the Bishops, were they asked, Whether those were their hands that were to that paper, or was it Whether they delivered that paper to the King?

Mr. Blathwayt. As to the first part, that they owned 'twas their hands, that I am sure of; but as to the other, I do not remember what the words were.

At which there was a great Shout.

Mr. Att. Gen. Pray Mr. Blathwayt recollect your self, you say the King produced it.

Mr. Blathwayt. Yes Sir.

Mr. Att. Gen. Do you remember that the King

King asked them any question upon the producing of it?

Mr. *Blathwait*. My Lord Chancellour asked them, if those were not their Hands to the Petition.

Mr. *Sol. Gen.* Was there any other matter in discourse, whether that was the paper that was delivered by them to the King?

Mr. *Blathwait*. I cannot so positively say, what were the words that my Lord Chancellor used.

Mr. *S. Levinz*. Pray do not twist a man so, Mr. Solicitor.

Mr. *Sol. Gen.* And you are not to untwist a man neither, Mr. Serjeant.

Mr. *Att. Gen.* Do you remember that the King said any thing of the paper being delivered to him?

Mr. *Blathwait*. The King has said it several times, I believe I have heard him say it ten times at least.

Mr. *Att. Gen.* Did he say it at that time?

Mr. *Blathwait*. I cannot positively say that he did, Sir.

Mr. *S. Pemberton*. He cannot answer it, why will you press it?

Mr. *Blathwait*. My Lord, here is the Clerk of the Council that was then in waiting, he took minutes, and perhaps can remember more than I.

Mr. *Sol. Gen.* Here they cry he cannot answer it, as if they could tell what he can answer better than himself; pray Mr. *Bridgman*, was there any question to this purpose either from my Lord Chancellor, or from the King, whether that was the Paper that was presented by my Lords the Bishops, or delivered to the King, for I see you are very nice as to words, and you do very well; but was there not a question to that purpose?

Mr. *Bridgman*. Sir, I do not remember, for I speak to the best of my remembrance in all this matter; I say, I do not remember that that question was asked in those very words, but I do remember something was said to that purpose, but by whom I cannot particularly say.

Sir *Robert Sawyer*. To what purpose?

Mr. *Sol. Gen.* It is very strange that they won't let the Witness speak, but are continually interrupting him.

Sir *Robert Sawyer*. Mr. Solicitor, no body interrupts him.

L. C. J. Why do not I behave my self between you all as I ought to do? pray, Sir *Robert Sawyer*, sit down, you cannot be contented when the man does you no harm.

Mr. *Sol. Gen.* Pray consider, did my Lords the Bishops say any thing, or was there any discourse concerning the Paper, whether it was delivered to the King or no?

Mr. *Bridgman*. Mr. Solicitor, I have told you as near as I can what I do remember; I know not by whom it was said, but that question or to that purpose was asked, whether that was the Petition they delivered, but I do not remember whether the question was directly asked or answered, there was something about it, and several passages there were; but whether spoken by my Lord Chancellor or who, I cannot remember.

Mr. *Sol. Gen.* You say there was that which sufficiently denoted a question to that purpose, and they said nothing against it.

Mr. *Bridgman*. No, there was no denial of it.

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Mr. *Sol. Gen.* I see you do not remember the particular, nor do we desire it of you.

Mr. *Bridgman*. They did not deny it nor confess it.

Mr. *Sol. Gen.* Then in your apprehension did they own that they delivered that Paper to the King?

L. C. J. You must not ask that Mr. Solicitor, it is not a fair question to ask him what he apprehended.

Mr. *Sol. Gen.* He said it before himself.

L. C. J. But his apprehensions are no Evidence, and it is a sort of a leading question which we must not allow of.

Mr. *Sol. Gen.* Then if your Lordship do not it like, I will not ask it, but I will ask him another question.

L. C. J. Ay, ten if you will, so they be fair ones.

Mr. *Sol. Gen.* Was it upon the first or second time of their being examined?

Mr. *Bridgman*. I cannot tell, it was not the first time, all of it, I believe; for at the first time my Lords the Bishops made some scruple of answering or owning any thing, and whatsoever they owned, they said, they hoped it should not be made use of to their prejudice; I remember no reply that was made, nor any thing farther, only my Lord Chancellor said, they were not to capitulate with their Prince; but they were required to answer the questions that were asked them.

Mr. *Sol. Gen.* What were those questions?

Mr. *Bridgman*. I have told you already as well as I can remember.

Mr. *Sol. Gen.* But did you take it upon the main that they owned the delivery of that paper to the King?

Mr. *Just. Powel*. Mr. Solicitor, you have been told you are to ask no such questions.

Sir *Robert Sawyer*. Nor never was there such wire-drawing of a Witness in this World before.

L. C. J. Pray sit still, Sir *Robert Sawyer*, you are not to teach us what we are to do, Mr. Solicitor must ask questions that are proper for him and not such as these; but the Court must correct him and not you.

Mr. *Sol. Gen.* Mr. *Bridgman* is very cautious, and he is to be commended for it, but we would get the truth out of him, if we could; pray Sir, if you can remember, recollect your self, whether by any question to that purpose, it was believed that they did own the delivery of the Paper to the King.

Mr. *Bridgman*. I told you, Mr. Solicitor, as to that at first, that I do not remember the very words of the question, but I believe there was no body doubted that that was not the Paper.

Mr. *Sol. Gen.* You speak well in your way, but these Gentlemen are very unwilling you should tell your opinion.

L. C. J. His opinion is no Evidence, therefore you must not ask any such questions, Mr. Solicitor.

Mr. *Bridgman*. As soon as the Petition was delivered, within a few hours after, I saw it, the King shewed it to several people, and he said, it was the Petition the Bishops had delivered, he took it into his own custody, and afterwards commanded me to write a Copy of it, and there was no Copy made of it but that one, but notwithstanding that, I do remember I did see a Copy of the Petition, within a day

day or two after it was presented, about the Town.

Mr. Sol. Gen. Pray how many days was this before the discourse in Council upon their Examination?

Mr. Bridgman. How many days was what, Sir?

Mr. Sol. Gen. When the King gave the Paper to be copied.

Mr. Bridgman. It was upon the Sunday.

Mr. Sol. Gen. But you say (as you believe) it was in a few hours after the Paper was delivered to the King, that you did see it?

Mr. J. Powel. But what makes him say that this was delivered to the King, but only hear-say?

L. C. J. Pray Mr. Solicitor, will you produce that which is Evidence, and not spend our time in that which is not.

Mr. Sol. Gen. My Lord, I would make no more of it than it is.

Mr. Serj. Levinz. 'Tis a shameful thing to offer such things in a Court of Justice.

Mr. Serj. Pemberton. 'Tis a practice that ought not to be endured.

L. C. J. Pray Brothers be quiet, or I'll turn him loose upon you again, if you'll not be quiet; what is the matter? cannot you let us alone? we shall do every body right: come, to shorten this matter, I ask you but this one question, and that may satisfy any one that has common honesty about him; do you remember whether or no they were asked, if that was the Petition that they delivered to the King?

Mr. Bridgman. My Lord, I have answered that question as directly as I can, I do not positively remember that that was the question.

L. C. J. Mr. Solicitor General, you must be satisfied, when proper questions are fairly answered, and therefore pray be quiet.

Mr. Att. Gen. However we pray we may ask the Clerks of the Council, it may be they may remember more—Sir John Nicholas you were at the Council-Table that day my Lords the Bishops were examined about this Paper.

Sir John Nicholas. Yes, Sir, I was.

Mr. Att. Gen. Pray did you observe that the King produced the Petition?

Sir John Nicholas. No indeed, I did not see it.

Mr. Att. Gen. Did you observe any thing that passed there in discourse?

Mr. Sol. Gen. Did you observe any questions that were asked the Bishops, either by the King or by my Lord Chancellor?

Sir John Nicholas. I think my Lord Chancellor did ask them, if that was their hands to the Petition, and they owned it.

Mr. Sol. Gen. Do you remember whether they owned, that they delivered that Paper to the King?

L. C. J. I'll ask you, Sir John Nicholas, did my Lord Chancellor ask them this question, is this the Petition you delivered to the King?

Sir John Nicholas. I do not remember that.

Then there was a great shout.

Mr. Sol. Gen. Here's wonderful great rejoicing that truth cannot prevail.

Mr. S. Pemberton. No, Mr. Solicitor, Truth does prevail.

Mr. Sol. Gen. You are all very glad that Truth is stifled, Mr. Serjeant.

Mr. S. Trinder. Pray Sir John Nicholas, let me ask you one question, was there any discourse about delivering that Petition to the King?

Sir John Nicholas. Indeed I do not remember it.

Mr. Sol. Gen. There is Mr. Pepy's, we'll examine him.

Mr. Pepy's sworn.

L. C. J. Come I'll ask the questions, were you bye at the Council-Board when my Lords the Bishops were committed?

Mr. Pepy's. Yes, I was.

L. C. J. What were the questions that were asked either by the King or by my Lord Chancellor?

Mr. Pepy's. My Lord, I would remember as well as I could, the very words, and the very words of the question were (I think) my Lords, do you own this Paper? I do not remember any thing was spoken about the delivering, but I believe it was understood by every body at the Table, that that was the Paper that they had delivered.

L. C. J. Well, have you done now? But to satisfy you I'll ask this question, was this question asked, my Lords was this the Paper you delivered to the King?

Mr. Pepy's. No, my Lord.

Mr. Att. Gen. Pray Sir, do you remember whether the King himself asked the question?

Mr. Pepy's. You mean I suppose Mr. Attorney that these were the words, or something that imported their delivering it to the King.

Mr. Att. Gen. Yes, Sir.

Mr. Pepy's. Truly I remember nothing of that.

Mr. Sol. Gen. Did you observe any discourse concerning their delivery of it to the King?

Mr. Pepy's. Indeed Mr. Solicitor I do not.

Mr. Att. Gen. Swear Mr. Musgrave.

Mr. Musgrave Sworn.

L. C. J. You hear the question Sir, what say you to it?

Mr. Musgrave. My Lord, I will give as short an account of it as I can, the first time after his Majesty had produced the Petition and it was read at the Board, his Grace my Lord Archbishop of Canterbury and the other six Reverend Lords the Bishops were called in, and it was asked of them, if they owned that, or if it was their hands, my Lord Archbishop in the name of the rest, did decline answering, upon the account that they were there as Criminals, and were not obliged to say any thing to their own prejudice, or that might hurt them hereafter; but if his Majesty would command them, and if he would promise that no advantage should be made of whatsoever they confessed, then they would answer the question; his Majesty made no answer to that, but only said he would do nothing but what was according to Law, whereupon the Bishops were ordered to withdraw, and being called in a second time the Petition was shewn to them, and they were asked if they did own it, or if it was their hands, and I think my Lord Archbishop did say then, we will rely upon your Majesty, or some such general thing was said, and then they did all own it that it was their hands, I cannot say the Petition was read to them.

Mr. Just. Powel. Mr. Blathwait (as I remember) said it was the third time.

Mr. Musgrave. It was the second time (to the best of my remembrance)

L. C. J.

L. C. J. Pray Sir, was there any question to this purpose? is this the Paper you delivered to the King?

Mr. Musgrave. I do not remember that ever any such direct question was asked.

Mr. J. Allybone. But (as my Brother *Pemberton* did very well before distinguish) there is a great deal of difference between the owning the subscription of a Paper, and between the owning of that Paper, *Mr. Pepy's* did say that they did own the Paper, and upon my Word that will look very much like a Publication.

Mr. Musgrave. I remember, my Lord, there was at the same time a question asked, because several Copies had gone about the Town, whether they had published it, and my Lord Archbishop did say, he had been so cautious that he had not admitted his own Secretary, but writ it all himself, and the rest of the Bishops did say, they did not publish it, nor never gave any Copies of it.

Mr. Att. Gen. My Lord (I confess) now it is to be left to the Jury upon this point, whether there not being a positive Witness that was by when the thing was done, yet upon this Evidence the Jury can't find any otherwise, than that the thing was done; truly I think we must leave it as a strong case for the King, I could have wished indeed for the satisfaction of every body, that the proof would have come up to that, but we must make it as strong for the King upon the Evidence given as it will bear; now my Lord, take all this whole matter together, here is a Paper composed, framed, and written by seven learned Men, and this must be written by such Persons, sure for some purpose; it is directed as a Petition to the King, and this Petition did come to the hands of the King, (for the King produces it in Council,) and my Lord Archbishop and the rest of the Bishops owned their hands to it, then the question is, my Lord, whether or no there be any room for any body living to doubt in this case that this was not delivered by my Lords the Bishops to the King, though it be not a conclusive Evidence of a positive Fact, yet unless they shew something on the other side, that may give way for a supposition to the contrary, that it came out of their hands by surprise, or that any body else delivered it to the King without their knowledge or consent; here must needs be a very violent presumption, that they did do it; and when nothing of that is said on their side, can any Jury upon their Consciences say that it was not published by them? and it being found in *Middlesex*, though it might be written and composed in *Surrey*, yet surely we have given a convincing Evidence that either they published it or caused it to be published in *Middlesex*.

Pray call *Mr. Grayham*.

Cryer. He is gone out of the Hall.

Mr. Sol. Gen. My Lord, there is in Law a presumption that is Evidence, though there be no positive proof.

Sir Robert Sawyer. But not in an Information for a Libel.

Mr. Sol. Gen. This is a meer question of Fact, there is no difficulty in the Law of it at all, for it is plain, if these Lords or any of them did consent and agree to the publishing of this Paper in *Middlesex*, they are guilty of this Information, and whether they are guilty or not guilty, we do rely upon the Circumstances proved, which are violent; First, that they were the Men that contrived and set their hands to it, and so were

the Authors of it is undeniable; for they have owned it. Men of their learning and parts never did any such thing in vain; and then that they were concerned in the publishing of it in *Middlesex*, we offer for proof that which was said by *Mr. Pepy's* and *Mr. Blathwait*, who though they do not come directly and expressly to the formal words of such a question, yet they tell you, especially *Mr. Blathwait*, that they did apprehend it, and it was the Collection of all their thoughts, and they took it for granted, as a thing that every body was satisfied in, that they did deliver that Paper to the King. I must confess and agree there is no proof of the delivery of it by my Lords the Bishops to the King, but we know very well, that it is no wonder, when a Paper is Libellous, that Men should use all the skill they can to publish it with impunity, and this is a thing that was done after some time of Premeditation and serious Consultation; for it was some days after the Order for reading the Declaration was published, that this was framed and delivered, and it concerned them to be wary, (as it seems they have been) but take this altogether, my Lord, the Paper being found in the King's Hands, it is in these Persons Power, and it lies upon them to make it out plain, what became of this Paper, which once lay in their own Hands and Custody; they can give an Account of it, they can give Light unto it: If they do not, I shall submit to the Jury, whether this is not sufficient Evidence to Convict them, especially when being examined, they did not make that their Excuse, they never said, this Paper indeed we signed, but we did not intend to publish it, we intended to stifle it; that had been some excuse: But for them to say now, they did not present it to the King, I must submit to the Jury, whether they will believe upon this Evidence, that these Lords the Bishops did present it, or cause it to be presented to the King, then they are guilty of this Matter: And I leave it to them and their Consciences, what they will think upon the whole.

Mr. Recorder. My Lord, if your Lordship please—

L. C. J. What, again? Well, go on Sir *Bartholomew Shore*, if we must have a Speech—

Mr. Recorder. Nay, my Lord, I would not trespass upon your Lordship

L. C. J. Gentlemen of the Jury, here is an Information against my Lords the Bishops; I think I need not trouble my self to open all of it, because I see you are Men of Understanding, Men of great Diligence, and have taken Notes your selves some of you; therefore, I say, only something of the Proof that is required in such a Case, and of the manner of the Proof that has been given in this Case, and then tell you my Opinion in Point of Law. Here is an Information brought by *Mr. Attorney General* on behalf of the King, against these Reverend Fathers of the Church, the Archbishop and the rest; and it is for publishing a Seditious Libel, under the pretence of a Petition, in which are contained the words that are seen. Gentlemen, the Information is long, it tells you, That the King, out of his Gracious Clemency to all his Loving Subjects, and for other Considerations, had thought fit to publish a Declaration of Indulgence, that all his Loving Subjects might have Liberty of Conscience, upon the 4th of April, in the 3d Year of his Reign; and that this was set forth by the

the King; and that the King of his farther Grace, about the 27th of April then next following—

Mr. Finch. I humbly beg your Lordships Favour.

L. C. J. What say you, Mr. Finch?

Mr. Finch. I ask your Pardon for breaking in upon you when you are directing the Jury: I know I should not do it, but I hope you will not be angry with me for it.

L. C. J. If I thought you did any Service to your Client, I should willingly hearken to you.

Mr. Finch. That which I humbly offer to your Lordship, is only to remember your Lordship where we were.

L. C. J. Go on, Sir.

Mr. Finch. I would only say this, my Lord, the Question is, Whether this be Evidence, or no?

L. C. J. I am sorry, Mr. Finch, you have that Opinion of me, as to think I should not leave it fairly to the Jury.

Mr. Finch. I only speak it, my Lord, because if it be Evidence, we have other Matters to offer in Answer to that Evidence, and in our own Defence.

L. C. J. If you have more to offer, why did you conclude here, and let me begin to direct the Jury? but since you say you have other Matter to offer, we will hear it.

Mr. S. Pemberton. My Lord, we submit to your Lordships direction.

L. C. J. No, no, you do not, you say you have further Matter to offer.

Mr. Pollixfen. My Lord, we shall rest it here.

L. C. J. No, no, I will hear Mr. Finch; Go on, my Lords the Bishops shall not say of me, I would not hear their Council; I have been already told of being Council against them, and they shall never say that I would not hear their Council for them.

Mr. S. Levinz. My Lord, we beseech your Lordship go on with your Directions; for all that Mr. Finch said, was only that this was not sufficient Evidence.

L. C. J. No, Brother, he says you have a great deal more to offer, and I will not refuse to hear him; the Court will think there was something more than ordinary, therefore I will hear him, such a Learned Man as he shall not be refused to be heard by me, I'll assure you; Why don't you go on Mr. Finch?

Mr. Finch. My Lord, I beg your pardon for interrupting you; but all that I was going to say, would have amounted to no more than this, that there being no Evidence against us, we must of course be acquitted.

Mr. Just. Holloway. My Lord did intend to have said as much as that I dare say.

L. C. J. Well, Gentlemen of the Jury, we have had Interruption enough—

Mr. Sol. Gen. My Lord, I must beg your Pardon for interrupting you now; and I am very glad these Gentlemen have given us this Occasion, because we shall now be able to clear this Point. There is a Fatality in some Causes, my Lord, and so there is in this, we must beg your Patience for a very little while; for we have notice that a Person of very great Quality is coming, that will make it appear, that they made their Addresses to him, that they might deliver it to the King.

L. C. J. Well—You see what comes of the Interruption, Gentlemen, now we must stay—

—Then there was a Pause for near half an hour.

Mr. Att. Gen. Pray, my Lord, put the Case that a Man writes a Libel in one County, and it is found in another, is not he answerable, unless he can shew something that may satisfy the Jury how it came there?

Mr. Sol. Gen. Ought he not to give an account what became of it?

L. C. J. No: look you Mr. Attorney, you must look to your Information, and then you will find the Case that you put, does not come up to it; It is for Writing, Composing and Publishing, and causing to be published, and all this is laid in *Middlesex*; Now you have proved none of all these things to be done in the County.

Mr. Att. Gen. They did in *Middlesex* confess it was theirs.

L. C. J. Ay, but the owning their Hands is not a publication in *Middlesex*, and so I should have told the Jury.

Mr. Finch. I beg your Lordship's pardon for interrupting you.

Mr. Att. Gen. But, my Lord, does it not put the Proof upon them, to prove how it came out of their Hands into the King's Hands?

L. C. J. No, the Proof lies on your part.

Mr. Pollixfen. Pray, my Lord, give us your favour to dismiss us and the Jury.

Mr. Sol. Gen. My Lord, our Witnesses will be here presently.

Mr. Att. Gen. Sure, my Lord, the Presumption is on our side.

Mr. J. Powel. No, the Presumption is against you, for my Lord Archbishop lived in *Surry*; and it is proved was not out of *Lambeth-House* since *Michaelmas*, till he came before the Council.

Mr. S. Pemberton. Pray, good my Lord, we stand mightily uneasy here, and so do the Jury, pray dismiss us.

L. C. J. I cannot help it, it is your own Fault.

—Then there was another great Pause.

L. C. J. Sir *Bartho. Shore*, now we have time to hear your Speech, if you will.

Mr. Pollixfen. My Lord, there is no Body come, nor I believe will come.

Mr. Sol. Gen. Yes, he will come presently, we have had a Messenger from him.

[Call Mr. Graham.]

Cryer. He is gone, and said he would come presently.

Mr. Sol. Gen. My Lord, he will bring our Witnesses with him.

—Then there was another Pause.

Mr. S. Pemb. My Lord, this is very unusual to stay thus for Evidence.

L. C. J. It is so; but I am sure you ought not to have any Favour—Mr. Solicitor, Are you assured that you shall have this Witness that you speak of?

Mr. Sol. Gen. Yes, my Lord, he will be here presently.

L. C. J. We have staid a great while already, and therefore it is fit that we should have some Oath made that he is coming.

Mr. Sol. Gen. The Cryer tells you, that Mr. Graham did acquaint him, that he would return presently.

L. C. J. Give him the Book.

Mr. Sol. Gen. Let your Left-hand give your Right-hand the Oath.

The Cryer sworn.

L. C. Just. By the Oath that you have taken, did Mr. *Graham* tell you, there was any further Witness coming in this Case?

Cryer. Yes, my Lord, he did; he went out of the Hall, and returned when your Lordship was directing the Jury, and he asked me what the Court were upon? and I told him you were directing the Jury, and then he said my Lord *Sunderland* was a coming, but he would go and prevent him; and afterwards he returned and finding your Lordship did not go on to direct the Jury, he said he would go again for my Lord *Sunderland*, whom he had sent away, and he is now gone for him, and he said he would bring him with him presently.

L. C. Just. Well then, we must stay till the Evidence for the King comes, for now there is Oath made that he is coming.

— And after a considerable pause the Lord President came.

Mr. Att. Gen. My Lord, we must pray that my Lord President may be sworn in this Case, on behalf of the King.

The Lord President sworn.

Mr. Att. Gen. My Lord, with your Lordship's favour, I would ask my Lord President a Question; Your Lordship remembers where we left this Cause; we have brought it to this Point, That this Petition came to the King's Hands, that it is a Petition written by my Lord Archbishop, and subscribed by the rest of my Lords the Bishops, but there is a Difficulty made, whether this Petition thus prepared and written was by them delivered to the King, and whether my Lords the Bishops were concerned in the doing of it, and were privy or Parties to the Delivery: Now that which I would ask your Lordship my Lord President, is, Whether they did make their Application to your Lordship to speak to the King.

Mr. Sol. Gen. Did they make their Application to your Lordship upon any account whatsoever?

L. President. My Lord, my Lord Bishop of *St. Asaph*, and my Lord Bishop of *Chichester* came to my Office, and told me, they came in the Names of my Lord Arch-bishop of *Canterbury*, and four others of their Brethren and themselves, with a Petition which they desired to deliver to his Majesty, and they did come to me to know which was the best way of doing it, and whether the King would give them leave to do it or not? they would have had me read their Petition, but I refused it, and said; I thought it did not at all belong to me, but I would let the King know their desire, and bring them an Answer immediately, what his pleasure was in it; which I did, I acquainted the King, and he commanded me to let my Lords the Bishops know, they might come when they pleased, and I went back and told them so, upon which they went and fetch'd the rest of the Bishops, and when they came, immediately they went into the Bed-Chamber, and into another Room where the King was: this is that I know of the matter.

Mr. Sol. Gen. About what time was this, pray, my Lord?

L. President. I believe there could not be much time between my coming from the King, and their fetching their Brethren, and going in to the King.

Mr. Sol. Gen. They were with the King that day.

L. President. Yes, they were.

Mr. Sol. Gen. Was this before they appeared in Council?

L. President. Yes, it was several days before.

Mr. Sol. Gen. Then I think now, my Lord, the matter is very plain.

Mr. Just. Allibone. Did they acquaint your Lordship that their business was to deliver a Petition to the King?

L. President. Yes, they did.

Mr. Sol. Gen. And they would have had my Lord read it (he says.)

Mr. Att. Gen. And this was the same day that they did go in to the King.

L. President. The very same day, and I think the same hour, for it could not be much longer.

L. Ch. Just. Now it is upon you truly, it will be presumed to be the same unless that you prove that you delivered another—Pray, my Lord, did you look into the Petition?

L. President. No, I refused it, I thought it did not concern me.

Mr. Just. Powel. Did you see them deliver it to the King, my Lord?

L. President. I was not in the Room when it was delivered.

Mr. Just. Powel. They did open their Petition to your Lordship, did they?

L. President. They offered me to read it, but I did refuse.

L. C. Just. Will you ask my Lord President any Question, you that are for the Defendants?

Sir Rob. Sawyer. No, my Lord.

Mr. Sol. Gen. Then my Lord, we must beg one thing for the sake of the Jury, if your Lordship can turn your self a little this way, and deliver the Evidence you have given over again that they may hear it.

L. President. My Lord, I will repeat it as near as I can, I think I shall not vary the Sense: The Bishops of *St. Asaph* and *Chichester* came to my Office, I do not know just the day when, but it was to let me know, that they came in the Name of the Arch-bishop and four other of their Brethren—Is it necessary I should name them?

L. C. Just. Do it, my Lord, if you can.

L. President. They were the Bishops of *Ely*, *Bath* and *Wells*, *Bristol*, and *Peterborough*; they came to let me know, in the Name of the Arch-bishop, those four and themselves, that they had a Petition to deliver to the King, if he would give them leave; and desired to know of me which was the best way to do it. I told them I would know the King's Pleasure, and bring them word again: they offered me their Petition to read, but I did not think it fit for me to do it, and therefore I refused and would not read it, but I went immediately to the King, and acquainted his Majesty with it, and he commanded me to let them know they might come when they would, which I immediately did, they said they would go and speak with some of their Brethren that were not far off; in the mean time I gave order that they should be admitted when they came, and they did in a little time return, and went first into the Bed-Chamber, and then into the Room where the King was.

Mr. Sol. Gen. And this was before they came and appeared at the Council.

L. President. Yes it was.

Mr.

Mr. Pollixfen. Your Lordship did not read any thing of the Petition?

L. President. No, Sir, I did not, I refused it.

Mr. Pollixfen. Nor does your Lordship know what Petition they did deliver to the King?

L. President. I did not know any thing of it from them then.

L. C. J. Now you may make your Observations upon this two hours hence; now we shall hear what Mr. Finch had further to offer, I suppose.

Then my Lord President went away.

Mr. Sol. Gen. I think now it is very plain.

L. C. J. Truly, I must needs tell you, there was a great Presumption before, but there is a greater now, and I think I shall leave it with some effect to the Jury, I cannot see but that here is enough to put the Proof upon you: they came to the Lord President, and asked him how they might deliver a Petition to the King, he told them he would go see what the King said to it; they would have had him read their Petition, but he refused it; he comes and tells them the King said they might come when they would; then those two that came to my Lord President went and gathered up the other four (the Archbishop indeed was not there) but they six came, and my Lord President gave Direction they should be let in, and they did go into the Room where the King was; now this, with the King's producing the Paper, and their owning it at the Council, is such a Proof to me, as I think will be Evidence to the Jury of the Publication.

Mr. Pollixfen. Then my Lord thus far they only can go, the Archbishop was not there, and so there is no Evidence against him.

Mr. Sol. Gen. As to the Writing, we have given Proof against him, for it is all his Hand.

Mr. Pollixfen. That still is in another County, and there is nothing proved to be done by my Lord Archbishop in *Middlesex*; and next, for the other six Lords, my Lord President does not say that this is the Petition that they said they had to deliver to the King; nor did he see them deliver any thing to the King, but that is left still doubtful, and under your Judgment, so that it stands upon Presumption, not upon Proof, that this is the same, and left under Consideration.

Mr. Att. Gen. Then we will leave it fairly to the Jury upon this Fact.

Mr. Pollixfen. If so, then we desire to be heard in our Defence.

Sir Rob. Sawyer. May it please your Lordship, and you Gentlemen of the Jury, you have heard this Charge which Mr. Attorney has been pleased to make against my Lords the Bishops, and that is this, That they did conspire to diminish the Royal Authority, and Regal Prerogative, Power, and Government of the King, and to avoid the Order of Council, and in prosecution of this, they did falsely, maliciously and seditiously make a Libel against the King, under pretence of a Petition, and did publish the same in the King's Presence.

This, Gentlemen, is a very heinous and heavy Charge; but you see how short their Evidence is; The Evidence they bring forth is only, that my Lords the Bishops presented the Paper to the King in the most private and humble manner they could, that which they have been so many hours a proving, and which they cry up to be as strong an Evidence as ever was given, proves it to be the farthest from Sedition in the doing of

it that can be; and you see what it is, it is a Petition to be relieved against an Order of Council, which they conceive they were aggrieved by, they indeed do not deal fairly with the Court nor with us, in that they do not set it forth that it was a Petition.

L. C. J. That was over-ruled before.

Sir Rob. Sawyer. I do not insist upon it now, so much an Exception to the Information, as I do to the Evidence; they set this forth to be a scandalous matter; but it only contains their Reasons, whereby they would satisfy His Majesty why they cannot comply in a Concurrence with His Majesty's Pleasure; and therefore they humbly beseech the King, and beg and request him (as the words of it are) that His Majesty would be pleased not to insist upon their distributing and reading of this Declaration; so the Petitioners on behalf of themselves, and the whole Clergy of *England*, beg of the King that he would please not to insist upon it.

Gentlemen, you may observe it, that there is nothing in this Petition that contains any thing of Sedition in it, and it would be strange this Petition should be *Felo de se*, and by one part of it destroy the other, it is laid indeed in the Information, that it was with intent and purpose to diminish the King's Royal Authority, but I appeal to your Lordship, the Court, and the Jury, whether there be any one word in it, that any way touches the King's Prerogative, or any tittle of Evidence that has been given to make good the Charge; It is an Excuse barely for their non-Compliance with the King's Order, and a begging of the King with all Humility and Submission, that he would be pleased not to insist upon the reading of His Majesty's Declaration upon these grounds, because the Dispensing Power upon which it was founded, had been several times in Parliament declared to be against Law, and because it was a Case of that Consequence that they could not in Prudence, Honour or Conscience concur in it.

My Lord; Mr. Attorney has been pleased to charge in this Information, that this is a false, malicious and seditious Libel: both the falsity of it, and that it was malicious and seditious are all Matters of Fact, which with Submission they have offered to the Jury no proof of, and I make no question but easily to demonstrate the quite contrary.

For my Lord, I think it can be no question, but that any Subject that is Comanded by the King to do a Thing which he conceives to be against Law, and against his Conscience, may humbly apply himself to the King, and tell him the Reason why he does not that thing he is commanded to do, why he cannot concur with His Majesty in such a Command.

My Lord, that which Mr. Attorney did insist upon in the beginning of this Day (and he pretended to cite some Cases for it) was, that in this Case, my Lords the Bishops, were not sued as Bishops, nor prosecuted for their Religion: truly, my Lord, I do not know what they are sued for else; the Information is against them as Bishops, it is for an Act they did as Bishops, and no otherwise; and for an Act they did and do conceive they lawfully might do with relation to their Ecclesiastical Polity, and the Government of their People as Bishops.

The next thing that Mr. Attorney offered was, That it was not for a Non-feasance, but for a Feasance;

Feasance; it is true, my Lord, it is for a Feasance in making of the Petition, but it was to excuse a Non-feasance, the not reading according to the Order, and this sure was lawful for all the Bishops as Subjects to do; and I shall shew it was certainly the duty of my Lords the Bishops, or any Peer of this Realm to do the same in a like Case. It was likewise said, they were prosecuted here for affronting the Government, and intermeddling with Matters of State; but I beg your Lordship and the Jury to consider, whether there is one tittle of this mentioned in the Petition, or any Evidence given of it; the Petition does not meddle with any thing of any Matter of State, but refers to an Ecclesiastical Matter, to be executed by the Clergy, and to a Matter that has relation to Ecclesiastical Causes; so that they were not Busybodies, or such as meddled in Matters that did not relate to them, but that which was properly within their Sphere and Jurisdiction.

But after all, there is no Evidence, nor any sort of Evidence that is given by Mr. Attorney, that will maintain the least tittle of this Charge; and how he comes to leave it upon this sort of Evidence I cannot tell, all that it amounts to is, That my Lords the Bishops being grieved in this manner, made this Petition to the King in the most private and respectful manner; and for him to load it with such horrid black Epithets, that it was done libellously, maliciously, and scandalously, and to oppose the King and Government, 'tis very hard, 'tis a Case of a very extraordinary Nature, and I believe my Lords the Bishops cannot but conceive a great deal of trouble, that they should lie under so heavy a Charge, and that Mr. Attorney should draw so severe an Information against them, when he has so little Proof to make it out.

My Lord, by what we have to say to it, we hope we shall give your Lordship and the Jury Satisfaction, that we have done but our Duties, supposing here has been a sufficient Evidence of the Fact given, which we leave to your Lordship and the Jury.

My Lord, we say in short, That this Petition is no more than what any Man if he be Comanded to do any thing, might humbly do it, and not be guilty of any Crime: And, my Lord, as to the matter of our Defence, it will consist of these Heads;

First, We shall Consider the Matter of this Petition.

Secondly, The Manner of the delivering it, according as they have given Evidence here; and,

Thirdly, The Persons that have delivered this Petition. And we hope to make it appear, beyond all Question, that the Matter contained in this Petition, is neither false nor contrary to Law, but agreeable to all the Laws of the Land in all Times. We shall likewise shew you (though that appear sufficiently to you already) that the Manner of delivering it was so far from being Seditious, that it was in the most secret and private manner, and with the greatest Humility and Duty imaginable. And then as to the Persons, we shall shew you that they are not such as Mr. Attorney says, who meddle with Matters of State, that are out of their Sphere, but they are Persons concerned, and concerned in Interest in the Case, to make this humble Application to the King. And when we have proved

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all this Matter, you will see how strangely we are blackned with Titles and Epithets which we no ways deserve, and of which, God be thanked, there is no Proof.

For, my Lord; for the Matter of the Petition, we shall consider two things.

The First is, The Prayer, which is this, They humbly beg and desire of the King, on behalf of themselves and the rest of the Clergy, that he would not insist upon the Reading and Publishing of this Declaration.

Surely, my Lord, there is nothing of Falsity in this, nor any thing that is contrary to Law, or unlawful for any Man that is pressed to any thing, especially, by an Order of Council; and this is nothing but a Petition against an Order of Council, and if there be an Order that commands my Lords the Bishops, to do a thing that seems grievous to them, surely they may beg of the King that he would not insist upon it.

And for this Matter, they were so well satisfied about it, and so far from thinking that it was any part of a Libel, that they left it out of the Information, and so have made a deformed and absurd Story of it, without Head or Tail, a Petition directed to no Body, and for nothing, it being without both Title and Prayer; so that this is plain, it was lawful to Petition.

Then, my Lord, the next thing is, the Reasons which my Lords the Bishops come to acquaint the King with, why, in Honour and Conscience, they cannot comply with, and give obedience to this Order; and the Reasons, my Lord, are two.

The first Reason that is assigned, is, the several Declarations that have been in Parliament, (several of which are mentioned) that such a Power to dispense with the Law, is against Law; and that it could not be done but by an Act of Parliament, for that is the meaning of the word *Illegal*, that has no other Signification, but unlawful; the same word in point of Signification with the word *Illicite*, which they have used in their Information, a thing that cannot be done by Law; and this they are pleased to tell the King, not as declaring their own Judgments, but what has been declared in Parliament; though if they had done the former, they being Peers of the Realm, and Bishops of the Church, are bound to understand the Laws, especially when (as I shall come to shew you) they are made Guardians of these Laws; and if any thing go amiss, and contrary to these Laws; they ought to inform the King of it.

My Lord, the next thing is, Because it is a Thing of so great moment, and the Consequences that will arise from their publishing of this Declaration, and that too, my Lord, (for the latter I shall begin first with) there can be no Question about, or any pretence that this is libellous or false, for certainly it is a Case of the greatest Consequence to the whole Nation that ever was, therefore it cannot be false or libellous to say so.

My Lord, I would not mention this, for I am loth to touch upon things of this Nature, had not the Information it self made it the very *Gist* of the Charge; for the Information (if there be any thing in it) says, that it was to diminish the King's Prerogative and Regal Power in publishing that Declaration.

Now, my Lord, what the Consequence of this would be, and what my Lords the Bishops meant by saying, It was a Cause of great Moment, will appear, by considering that which is

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the main Clause in the Declaration, at which my Lords the Bishops scrupled, which is the main Stumbling block to my Lords, and has been to many honest Men besides, and that is this.

' We do likewise declare, It is our Royal Will and Pleasure, that from hence forth the Execution of all and all manner of Penal Laws, in Matters Ecclesiastical, for not coming to Church, or not receiving the Sacrament, or for any other Nonconformity to the Religion Established; or for or by Reason of the Exercise of Religion in any manner whatsoever, be immediately suspended; and the further Execution of the said Penal Laws, and every of them, is hereby suspended.

Here the Lord Chief Justice speaking said;

L. C. Just. I must not suffer this, they intend to dispute the King's Power of suspending Laws.

Mr. Just. Powell. My Lord, they must necessarily fall upon that Point; for if the King hath no such Power, (as clearly he hath not in my Judgment) the natural Consequence will be, that this Petition is no diminution of the King's Regal Power, and so not seditious or libellous.

L. C. Just. Brother, I know you are full of that Doctrine; but however, my Lords the Bishops shall have no occasion to say, that I deny to hear their Council. Brother, you shall have your Will for once, I will hear them, let them talk till they are weary.

Mr. Just. Powell. I desire no greater liberty to be granted them than what in Justice the Court ought to grant, that is, to hear them in defence of their Clients.

under this Clause; and thus all our Laws for keeping the Sabbath, and which distinguish us from Heathens, will be suspended too.

Now, my Lord, this Clause either is of some legal Effect and Signification, or it is not. If Mr. Attorney, or the King's Council, do say it is of no Effect in Law, then there is no harm done, then this Petition does no ways impeach the King's Prerogative. in saying, it has been declared in Parliament, according, as the King's Council do agree the Law to be.

But my Lord, if it have any Effect in Law, and these Laws are suspended by virtue of this Clause in the Declaration, then certainly, my Lord, it is of the most dismal Consequence that can be thought of, and it behoved my Lords, who are the Fathers of the Church, humbly to represent it to the King.

For, my Lord, by this Declaration, and particularly by that Clause in it, not only the Laws of our Reformation, but all the Laws for the preservation of the Christian Religion in general are suspended, and become of no force; if there be such an Effect in Law wrought by this Declaration as is pretended, (that is) that the Obligation of Obedience to them ceaseth, the Reason of it is plain, the words cannot admit of such a Quibble as to pretend, that the Execution of the Law is not the suspending of the Law, and that the suspending the Execution of the Law, is not a suspending of the Law; for we all know the Execution of every Law, in its primary Intent, is Obedience to it, that of the Penalty comes in by way of Punishment and Recompence for their Disobedience.

Now, my Lord, if this Declaration does discharge the King's Subjects from their Obedience to, and the Obligation from those Laws: then pray, my Lord, where are we? Then all the Laws of the Reformation are suspended, and the Laws of Christianity it self, by those latter words, [or for, or by reason of Religion in any manner whatsoever] so that it is not confined to the Christian Religion, but all other Religions are permitted

My Lord, this is such an Inconvenience as (I think) I need name no more; and it is a very natural Consequence from that Clause of the Declaration, it discharges at once all Ministers and Clergymen from performing their Duty in reading the Service of the Church, it discharges their Hearers from attending upon that Service. When a Law is suspended, the Obligation thereof is taken away; and those that before thought themselves bound to obey, now conclude they are not so obliged; and what a mischief that will be to the Church, which is under the Care of my Lords the Bishops, your Lordship will easily apprehend.

These things, my Lord, I only mention, to shew the great and evil Consequences that apparently follow upon such a Declaration, which made my Lords the Bishops decline obeying the Order, and put them under a necessity of applying thus to the King, to acquaint him with the Reasons why they could not comply with his Commands, to read this Declaration to the People, because the Consequences thereof were so great, it tending naturally to lead the People into so great an Error, as to believe those Laws were not in force, when in Truth and Reality they are still in force, and continue to oblige them.

And that being the second Reason in this Petition, I come next to consider it, to wit, that the Parliament had often declared this pretended Power to be Illegal, and for that we shall read the several Records in Parliament mentioned in their Petition, and produce several ancient Records of former Parliaments that prove this Point; and particularly in the Time of Richard the Second, concerning the Statute of *Provisors*, where there were particular Dispensations for that Statute, the King was enabled to do it by Act of Parliament, and could not do it without.

L. C. J. Pray, Sir Robert Sawyer, go to your Proofs, and reserve your Arguments till afterwards.

Sir Rob. Sawyer. My Lord, I do but shortly mention these things; so that, my Lord, as to the Matter of this Petition, we shall shew you, that it is true and agreeable to the Laws of the Land.

Then, my Lord, as to the manner of delivering it, I need say no more, but that it is plain from their Evidence, that it was in the most private and humble manner. And, as my Lord President said, Leave was asked of the King, for them to be admitted to present it: Leave was given, and accordingly they did it.

We come then, my Lord, to the third thing, the Persons, these noble Lords; and we shall shew, they are not Busybodies, but in this Matter have done their Duty, and medled with their own Affairs. That, my Lord, will appear,

First, By the general Care that is reposed in them by the Law of the Land: They are frequently in our Books, called the King's Spiritual Judges; they are intrusted with the Care of Souls, and the Superintendency over all the Clergy is their principal Care.

But, besides this, my Lord, there is another special Care put upon them, by the express Words of an Act of Parliament; for, over and above the general Care of the Church, by virtue of their Offices as Bishops, the Act of 1 *Eliz. cap. 2.* makes them special Guardians of the Law of Uniformity, and of that other Law in His late Majesty's Reign; where all the Clauses of that Statute

Statute of 1 Eliz. are revived, and made applicable to the present State of the Church of England: Now in that Statute of 1 Eliz. there is this Clause.

And for the due Execution hereof, the Queen's Most Excellent Majesty, the Lords Spiritual and Temporal, and all the Commons in this present Parliament assembled, do, in God's Name, earnestly require and charge all the Archbishops, and Bishops, and other Ordinaries, that they do endeavour themselves, to the utmost of their Knowledges, that the due and true Execution hereof may be had throughout their Diocesses and Charges, as they will answer before God, for such Evils and Plagues, wherewith Almighty God may justly punish his People, for neglecting this good and wholesome Law.

This is the Charge that lies upon the Bishops, to take care of the Execution of that Law; and I shall pray by and by, that it may be read to the Jury.

Mr. Sol. Gen. That is very well, indeed! To what purpose?

Sir Rob. Sawyer. So that, my Lord, by this Law it is plain, that my Lords the Bishops, upon pain of bringing upon themselves the Imprecation of this Act of Parliament, are obliged to see it executed; and then, my Lord, when any thing comes under their Knowledge, especially if they are to be Actors in it, that has such a tendency to destroy the very Foundations of the Church, as the Suspension of all the Laws that related to the Church must do, it concerns them that have no other Remedy, to address the King, by Petition, about it.

For that, Mr. Attorney, my Lord, has agreed, That if a proper Remedy be pursued in a proper Court, for a Grievance complained of, though there may be many hard Words that else would be scandalous, yet, being in a regular Course, they are no Scandal. And so it is said in *Lake's Case*, in my Lord Hobart.

My Lord, we must appeal to the King, or we can appeal to no body, to be relieved against an Order of Council, with which we are aggrieved; and it is our Duty so to do, according to the Care that the Law hath placed in us.

Besides, my Lord, the Bishops were commanded by this Order, to do an Act relating to their Ecclesiastical Function, to distribute it to be read by their Clergy: And how could they in Conscience do it, when they thought part of the Declaration was not according to Law?

Pray, my Lord, What has been the reason of His Majesty's consulting of his Judges? And if His Majesty, or any the great Officers, by his Command, are about to do any thing that is contrary to Law, was it ever yet an Offence to tell the King so? I always look'd upon it as the Duty of an Officer or Magistrate, to tell the King what is Law, and what is not Law.

In *Cavendish's Case*, in the Queen's time, there was an Office granted of the Return of the Writs of *Superfedeas* in the Court of *Common-Pleas*; and he comes to the Court, and desires to be put into the Possession of the Office: The Court told him, They could do nothing in it, but he must bring his Affize. He applies to the Queen, and she sends, under the Privy Seal, a Command to sequester the Profits, and to take Security to answer the Profits, as the Judgment of the Law should go: But the Judges there return an Answer, That it was against Law, and they could not do it. Then there comes a second Letter, reciting the former, and commanding their Obedience: The Judges returned for Answer, They were upon their Oaths, and were sworn to keep the Laws, and would not do it.

My Lord, The like was done in the time of my Lord Hobart: We have it reported in *Anderson*, in a Case where a Prohibition had gone; There came a Message from Court, that a Consultation should be granted; and that was a Matter wherein there were various Opinions, whether it was *Ex Necessitate*, or Discretionary, but there they return'd, That it was against Law; for any such Message to be sent.

Now here, my Lord; is a Case full as strong: My Lords the Bishops were commanded to do an Act, which they conceived to be against Law, and they declined it, and tell the King the reason; and they have done it in the most humble manner that could be, by way of Petition. If they had done (as the Civil Law terms it) *Rescribere* generally, that had been lawful; but here they have done it in a more respectful manner, by an humble Petition: If they had said the Law was otherwise, that sure had been no Fault; but they do not so much as that; but they only say, it was so declared in Parliament; and they declare it with all Humility and Dutifulness. So that, my Lord, if we consider the Persons of the Defendants, they have not acted as Busybodies; and therefore, as this Case is; when we have given our Evidence, here will be an answer to all the Implications of Law, that are contained in this Information: For they would have this Petition work by Implication of Law, to make a Libel of it; but by what I have said, it will appear, there was nothing of Sedition, nothing of Malice; nothing of Scandal in it; nothing of the Salt, and Vinegar, and Pepper; that they have put into the Case: We shall prove the Matters that I have open'd for our Defence; and then, I dare say, your Lordship and the Jury will be of Opinion, we have done nothing but our Duty.

Mr. Finch. May it please your Lordship, and you, Gentlemen of the Jury, This Information sets forth (as you may observe upon opening it) that the King having, by his Royal Prerogative, set forth his Declarations that have been read, and made an Order of Council for the reading the said Declarations in the Churches; and that the Archbishop and Bishops should severally send them into their Diocesses, to be read; my Lords the Bishops, that are the Defendants, did consult and conspire together to diminish the Kingly Authority, and Royal Prerogative of the King, and his Power and Government in his Regal Prerogative, in setting forth his Declaration; and that, in prosecution of that Conspiracy, they did contrive (as it was laid in the Information) a malicious, seditious, false, and feigned Libel, under pretence of a Petition, and so set forth the Petition; and that they published the Petition in the presence of the King.

To this Charge in the Information, *not Guilty* being pleaded, the Evidence that hath been given for the King, I know hath been observed by the Court and the Jury, and I know will be taken into Consideration, how far it does come up to the Proof of the Delivery of this Petition by my Lords the Bishops; for all that was said till my Lord President was pleas'd to come, was no Evidence of any Delivery at all; and my Lord President's Evidence is, that they were going to deliver a Petition; but whether they did deliver it, or did it not, or what they did deliver, he does not know. This is all the Evidence that has been given for the King.

But supposing now, my Lord, that there were room to presume that they had delivered this Petition

tition set forth in the Information, let us consider what the Question is between the King and my Lords the Bishops: The Question is, Whether they are guilty of Contriving to diminish the King's Regal Authority, and Royal Prerogative, in his Power and Government, in setting forth this Declaration? Whether they are guilty of the making and presenting a malicious, seditious and scandalous Libel; and whether they have published it, as it is said in the Information, in the King's Presence?

So that the Question is not now reduced to this, Whether this Paper, that is set forth in the Information, was delivered to the King by my Lords the Bishops; but whether they have made a malicious and scandalous Libel, with an Intent to diminish the King's Royal Prerogative, and Kingly Authority? And then, if you Gentlemen, should think that there is Evidence given sufficient to prove that my Lords the Bishops have delivered to the King that Paper which is set forth in the Information; yet, unless they have delivered a false, malicious, seditious and scandalous Libel; unless they have published it, to stir up Sedition in the Kingdom; and unless they have contrived this by Conspiracy, to diminish the King's Royal Prerogative and Authority, and that Power that is said to be in the King, my Lords the Bishops are not guilty of this Accusation.

There are in this Declaration several Clauses, which, upon reading of the Information (I am sure) cannot but have been observed by you, Gentlemen of the Jury; and one special Clause hath been by the Council already opened to you, and I shall not enlarge upon it.

My Lord, This Petition that is thus delivered to the King, if it be a Libel, a scandalous and seditious Libel (as the Information calls it) it must be so, either for the Matter of the Petition, or for the Persons that deliver'd the Petition, or for the manner of their presenting and delivering it: But neither for the Matter, nor for the Persons, nor for the manner of presenting it, is there any Endeavour to diminish the King's Royal Prerogative, nor to stir up Sedition, nor Reflection upon the King's Royal and Kingly Authority.

The Petition does humbly set forth to His Majesty, that there having been such a Declaration, and such an Order of Council, they did humbly represent to His Majesty, that they were not averse to any thing commanded them in that Order, in respect to the just and due Obedience that they owed to the King, nor in respect of their want of a due Tenderneſs to those Persons to whom the King had been pleased to shew his Tenderneſs; but the Declaration being founded upon a Power of Dispensing, which had been declared illegal in Parliament several times, and particularly in the Years 1662, 72, and 85. they did humbly beseech His Majesty (they not being able to comply with his Command in that matter) that he would not insist upon it.

Now, my Lord, Where is the Contrivance to diminish the King's Regal Authority, and Royal Prerogative?

This is a Declaration founded upon a Power of Dispensing, which undertakes to suspend all Laws Ecclesiastical whatsoever; for not coming to Church, or not Receiving the Sacrament, or any other Nonconformity to the Religion established, or for or by reason of the Exercise of Religion in any manner whatsoever; ordering

that the Execution of all those Laws be immediately suspended, and they are thereby declared to be suspended; as if the King had a Power to suspend all the Laws relating to his establish'd Religion, and all the Laws that were made for the Security of our Reformation. These are all suspended by His Majesty's Declaration (as it is said) in the Information, by virtue of his Royal Prerogative, and Power so to do.

Now, my Lord, I have always taken it, with Submission, that a Power to abrogate Laws, is as much a part of the Legislature, as a Power to make Laws: A Power to lay Laws asleep, and to suspend Laws, is equal to a Power of Abrogating them; for they are no longer in Being, as Laws, while they are so laid asleep, or suspended: And to abrogate all at once, or to do it time after time, is the same thing; and both are equally parts of the Legislature.

My Lord, In all the Education that I have had, in all the small Knowledge of the Laws that I could attain to, I could never yet hear of, or learn, that the Constitution of the Government in England was otherwise than thus, That the whole Legislative Power is in the King, Lords and Commons; the King and his two Houses of Parliament. But then, If this Declaration be founded upon a part of the Legislature, which must be by all Men acknowledged, not to reside in the King alone, but in the King, Lords and Commons, it cannot be a legal and true Power, or Prerogative.

This, my Lord, has been attempted, but in the last King's time; it never was pretended till then; and in that first Attempt, it was so far from being acknowledged, that it was taken notice of in Parliament, and declared against: So it was in the Years 1662. and 1672.

In the Year—62. where there was but the least Umbrage given of such a Dispensing Power; although the King had declared, in his Speech to the Parliament, that he wished he had such a Power, which his Declaration before seemed to assume; the Parliament was so jealous of this, that they immediately made their Application to His Majesty, by an Address against the Declaration; and they give Reasons against it, in their Address: One, in particular, was, *That the King could not dispense with those Laws, without an Act of Parliament.*

There was another Attempt in 1672. and then, after his Majesty had, in his Speech, mentioned his Declaration to them, the Parliament there again, particularly the House of Commons, did humbly address to His Majesty; setting forth, that this could not be done by Law, without an Act of Parliament: And your Lordship, by and by, upon reading the Record, will be satisfied what was the Event of all this. His Majesty himself was so far pleased to concur with them in that Opinion, that he cancell'd his Declaration, tore off the Seal, and caused it to be made known to the House of Lords, by the Lord Chancellor, who, by His Majesty's Command, satisfied the House of it, that His Majesty had broken the Seal, and cancell'd the Declaration; with this further Declaration, which is enter'd in the Records of the House, *That it should never be drawn into Example, or Consequence.*

My Lord, The Matter standing thus, in respect to the King's Prerogative, and the Declarations that had been made in Parliament; consider next, I beseech you, how far my Lords the Bishops

Bishops were concerned in this Question, humbly to make their Application to the King.

My Lords the Bishops lying under a Command to publish this Declaration, it was their Duty, as Peers of the Realm, and Bishops of the Church of *England*, humbly to apply themselves to His Majesty, to make known their Reasons, why they could not obey that Command; and they do it with all Submission, and all Humility, representing to His Majesty what had been declared in Parliament; and it having been so declared, they could not comply with his Order; as apprehending that this Declaration was founded upon that which the Parliament declared to be illegal; and so his Majesty's Command to publish this Declaration, would not warrant them so to do. This they did, as Peers; and this they had a Right to do as Bishops; humbly to advise the King.

For, suppose, my Lord, (which is not to be supposed in every Case, nor do I suppose it in this; but suppose that there might be a King of *England* that should be misled;) (I do not suppose that to be the Case now, I say, but I know it hath been the Case formerly) that the King should be environed with Counsellors, that had given him evil Advice; it hath been objected as a Crime against such evil Counsellors, that they would not permit and suffer the Great Men of the Kingdom to offer the King their Advice. How often do we say in *Westminster-Hall*, That the King is deceived in his Grant? There is scarce a Day in the Term, but it is said in one Court, or other; but it was never yet thought an Offence to say so: And what more is there in this Case?

My Lord, if the King was mis-informed, or under a Misapprehension of the Law, my Lords; as they are Peers, and as they are Bishops, are concerned in it; and if they humbly apply themselves to the King, and offer him their Advice, where is the Crime?

My Lord; these noble Lords, the Defendants; had more than an ordinary Call to this; for besides the Duty of their Office, and the Care of the Church, that was incumbent on them as Bishops, they were here to become Actors; for they were, by that Order of Council, commanded themselves to publish it; and to distribute it to the several Ministers in their several Diocesses, with their Commands to read it: Therefore they had more than ordinary Reason to concern themselves in the Matter.

Next, we are to consider, my Lord, in what manner this was done; They make their Application to the King, by an humble Petition, with all the Decency and Respect that could be shewn; asking leave, first, to approach his Person; and having leave, they offer'd my Lord President the Matter of their Petition, that nothing might seem hard, or disrespectful, or as if they intended any thing that was unfit to be avowed. When they had taken all this Care in their Approach, and begging leave for it, they come secretly to the King, in private, when he was all alone, and there they humbly present this Petition to His Majesty. Now, how this can be called the Publication of a malicious and seditious Libel, when it was but the Presenting of a Petition to the King alone: And how it can be said to be with an Intent to stir up Sedition in the People against His Majesty, and to alienate the Hearts of his People from him, when

it was in this private manner delivered to him himself only, truly, I cannot apprehend.

My Lord, I hope nothing of this can be thought an Offence: If the Jury should think that there has been Evidence sufficient given, to prove that my Lords the Bishops did deliver this Paper to the King, yet that is not enough to make them guilty of this Information, unless this Paper be likewise found to be in Diminution of the King's Royal Prerogative, and Regal Authority, in dispensing with, and suspending of all Laws, without Act of Parliament: Unless it be found to be a Libel against the King, to tell him, That in Parliament it was so and so declared: And unless the presenting this by way of Petition (which is the Right of all People that apprehend themselves aggrieved, to approach His Majesty by Petition) be a Libelling of the King: And unless this humble Petition, in this manner presented to the King in private, may be said to be a malicious and seditious Libel, with an Intent to stir up the People to Sedition: Unless all this can be found, there is no Man living can ever find my Lords the Bishops guilty upon this Information. Therefore, my Lord, we will go on, and make out this Matter that we have opened to your Lordship, if Mr. Attorney, and Mr. Solicitor think fit to argue the Points that we have opened.

Mr. *Pollifsen*. Pray, my Lord, spare me a Word on the same Side. For the first Point, it is a Point of Law, whether the Matter contained in this Petition be a Libel. The King's Council pretend it is so, because it says, the Declaration is founded upon a Power the Parliament has declared to be illegal. But we say, that whatsoever the King is pleased to say in any Declaration of his, it is not the King's saying of it, that makes it to be Law. Now we say, This Declaration under the Great Seal, is not agreeable to the Laws of the Land; and that for this Reason, Because it does, at one Blow; set aside all the Law we have in *England*.

My Lord, if this be denied, we must a little debate this matter; for they are almost all Penal Laws; not only those before the Reformation, but since; upon which the whole Government, both in Church and State, does in a great measure depend.

Especially, my Lord, in Matters of Religion, they are all Penal Laws: For, by the Act of Uniformity, which my Lords the Bishops are sworn to observe, and adjured by an express Clause in the Act; No Man is to preach, unless he be Episcopally ordained; no Man is to preach without a Licence. If all this be set aside, I confess, then it will go very far into the whole Ecclesiastical Government. If this be denied, we are ready to argue that too.

L C. J. They are to do so still.

Mr. *Pollifsen*. My Lord, I am sure the Consequence is otherwise, if this Declaration signify any thing. And if it be the Will of the King, my Lord, the Will of the King is, what the Law is. If so be the King's Will be not consonant to the Law, it is not obliging.

My Lord, The Cases that we have had of Dispensations, are all so many strong Authorities, against a general, or particular Abrogation. My Lord, that is a Matter of Law, which if it fall out to be any way doubtful, it will be fit to have it debated and settled.

If they will say, that the Penal Laws in Matters Ecclesiastical can be abrogated, or nulled, or made void *pro tempore*, or for Life, without the meeting of the King and People in Parliament; I must confess, they say a great thing, as it is a Point of great Concern; but I think, that will not be said: And all that has been ever said in any Case, touching Dispensations, proves quite the contrary, and asserts what I affirm. For, Why should any Man go about to argue, that the King may dispence with this or that particular Law, if at once he can dispence with all the Law, by an undoubted Prerogative? This is a Point of Law, which we insist upon, and are ready to argue with them; but we will go on with the rest of those things that we have offer'd: And first, we will read the Act of Uniformity, made 1 Eliz. that Clause of it, where they are so strictly charged to see the Execution of that Law.

This Act, my Lord, by the Act of Uniformity, made in the Beginning of the late King's Reign, is revived, with all the Clauses in it, relating to this Matter. If then this be a Duty incumbent upon them, and their Oaths require it of them; and if they find, that the Pleasure of the King, in his Declaration, is that which is not consonant to this Law, what can they do?

Can any thing be more humble, or done with a more Christian Mind, than by way of Petition, to inform the King in the Matter? For I never thought it, nor hath it ever (sure) been thought by any body else, to be a Crime to petition the King: For the King may be mistaken in the Law, so our Books say; and we, every Day, in *Westminster Hall*, argue against the King's Grants, and say, He is deceived in his Grants. It is the great Benefit and Liberty, which the King gives to his Subjects, to argue the Legality, or Illegality of his Grants.

My Lord, When all this is done, to make this to be a Libel, by putting in the Words, Malicious, Seditious, Scandalous, and with an Intent to raise Sedition, would be pretty hard.—My Lord, We pray, that Clause of the Statute may be read.

Mr. Sol. Gen. What for?

Mr. Pollifsen. It is a general Law, and therefore the Court will take notice of it; and we pray, the Jury may hear it read.

Mr. Sol. Gen. I agree it to be as Mr. Pollifsen has opened; and I agree it to be as Sir Robert Sawyer has opened it.

Mr. S. Pemberton. My Lord, We shall put it upon a short Point. My Lords the Bishops are here accused of a Crime, of a very heinous nature as can be; they are here branded and stigmatized by this Information, as if they were seditious Libellers; when, my Lord, it will, in truth, fall out, that they have done no more than their Duty; their Duty to God, their Duty to the King, and their Duty to the Church.

For, in this Case, that which we humbly offer to your Lordship (and insist upon it, as very plain) is this; That the Kings of England have no power to suspend, or dispense with the Laws and Statutes of the Kingdom, that establish Religion: That is it, which we stand upon for our Defence. And we say, That such a Dispensing Power with Laws and Statutes, is a thing that strikes at the very Foundation of all the Rights, Liberties and Properties of the King's Subjects whatsoever. If the King may suspend the Laws of the Land, which concern our Religion, I am

sure there is no other Law, but he may suspend. And if the King may suspend all the Laws of the Kingdom, what a Condition are all the Subjects in, for their Lives, Liberties and Properties? All at Mercy.

My Lord, The King's Legal Prerogatives are as much for the Advantage of his Subjects as of himself; and no Man goes about to speak against them: But, under pretence of Legal Prerogatives, to extend the Power of the King, to support a Prerogative that tends to the Destruction of all his Subjects, their Religion, and Liberties; in that, I think, they do the King no Service, who go about to do it.

But now we say, with your Lordship's Favour, that these Laws are the great Bulwark of the Reformed Religion; they are, in truth, that which fence the Religion and Church of England, and we have no other Human Fence besides. They were made upon a Foresight of the Mischief that had, and might come, by false Religions in this Kingdom; and they were intended to defend the Nation against them, and to keep them out; particularly, to keep out the *Romish* Religion (which is the very worst of all Religions) from prevailing among us; and that is the very Design of the Act for the Tests, which is intituled, *An Act to prevent Dangers that may happen from Popish Recusants*.

My Lord, If this Declaration should take effect, what would be the End of it? All Religions are let in, let them be what they will; *Ranters*, *Quakers*, and the like; nay, even the *Roman Catholick* Religion (as they call it;) which was intended, by these Acts of Parliament, and by the Act of Uniformity, and several other Acts, to be kept out of this Nation, as a Religion no way tolerable, nor to be endured here.

If this Declaration take effect, that Religion will stand upon the same Terms with the Protestant Religion. Suspend those Laws, and that *Romish* Religion, that was intended to be prohibited, and so much Care was taken, and so many Statutes made, to prohibit it, will come in; and all this Care, and all those Statutes go for nothing. This one Declaration sets them all out of doors; and then that Religion stands upon equal Terms with the established Religion.

My Lord, we say this farther, that my Lords the Bishops have the Care of the Church, by their very Function, and Offices; and are bound to take care; to keep out all those false Religions that are prohibited, and designed to be kept out by the Law. My Lords the Bishops finding this Declaration founded upon a meer pretended Power, that had been continually opposed, and rejected in Parliament, could not comply with the King's Command to read it.

My Lord, Such a Power to dispence with, or suspend the Laws of a Nation, cannot, with any shadow of Reason, be. It is not long since, that such a Power was ever pretended to by any, but such as have the Legislative too; for it is plain, that such a Power must, at least be equal to the Power that made the Laws. To dispence with a Law, must argue a Power greater, or, at least, as great as that which made the Law.

My Lord, It has been often said in our Books, That where the King's Subjects are concerned in Interest, the King cannot suspend, or dispense with a particular Law. But, my Lord, how can the King's Subjects be more concern'd in

in Interest, than when their Religion lies at stake? It has been resolved, upon the Statute of *Symony*, that where the Statute has disabled the Party to take, there the King could not enable him, against that Act of Parliament: And shall it be said, that by his Dispensation, he shall enable one to hold an Office, who is disabled by the Test-Act?

My Lord, We say, The Course of our Law allows no such Dispensation, as the Declaration pretends to. And he that is but meanly read in our Law, must needs understand this, That the Kings of *England* cannot suspend our Laws; for that would be, to set aside the Law of the Kingdom: And then we might be clearly without any Laws, if the King should please to suspend them!

'Tis true, we say, the last King *Charles* was prevailed upon, by Mis-information to make a Dispensation, somewhat of the nature of this, though not so full an one; for that dispensed only with some few Ceremonies, and things of that nature: But the House of Commons (this taking Air) in 1662. represent this to the King, by a Petition. And what is it that they do represent? That he, by his Dispensation, has undertaken to do that, which nothing but an Act of Parliament can do; that is, the dispensing with Penal Laws; which is only to be done by Act of Parliament. And thereupon it was thought fit, upon the King's Account, to bring in an Act for it, in some Cases.

My Lord, the King did then, in his Speech to the Parliament (which we use, as a great Argument against this Dispensing Power) say this, 'That, considering the Circumstances of the Nation, he could wish with all his Heart, that he had such a Power, to dispense with some Laws, in some Particulars. And thereupon, there was a Bill, in order to an Act of Parliament, brought in, giving the King a Power to dispense; but, my Lord, with a great many Qualifications. Which shews plainly, that it was taken by the Parliament, that he had no Power to dispense with the Laws, of himself.

My Lord, Afterwards, in 1672. the King was prevailed upon again, to grant another Dispensation, somewhat larger.

L. C. Just. Brother *Pemberton*, I would not interrupt you, but we have heard of this over and over again already.

Mr. S. Pemberton. Then, since your Lordship is satisfied of these things (as I presume you are) else I should have gone on, I have done my Lord.

Mr. S. Levinz. But, my Lord, we shall go a little higher than that, and shew, that it has been taken all along, as the ancient Law of *England*, that such Dispensations ought to be by the King and the Parliament, and not by the King alone.

Mr. Sol. Gen. My Lord, if you will admit every one of the Council to speech it, before they give their Evidence, when shall we come to an End of this Cause? We shall be here till Midnight.

L. C. Just. They have no Mind to have an End of the Cause, for they kept it three Hours longer than they need to have done.

Mr. S. Pemberton. My Lord, This Case does require a great deal of Patience.

L. C. Just. It does so, Brother; and the Court has had a great deal of Patience: but we must not sit here only to hear Speeches.

Mr. Att. Gen. Now, after all their Speeches, of two Hours long, let them read any thing, if they have it.

Sir Rob. Sawyer. We will begin with the Record of *Richard the Second* — Call *William Fisher*.

William Fisher, Clerk to Mr. Ince, sworn.

L. C. Just. What do you ask him?

Sir Rob. Sawyer. Shew him that Copy of the Record.

The Record was then shewn him.

L. C. Just. Where had you those, Sir?

Mr. Fisher. Among the Records in the *Tower*.

L. C. Just. Are they true Copies?

Mr. Fisher. Yes, my Lord.

L. C. Just. Did you examine them by the Record?

Mr. Fisher. Yes, my Lord.

Sir Rob. Sawyer. Then hand them in; put them in.

Clerk reads: Ex Rotulo Parliamenti de Anno Regni Regis Richardi Secundi XV. N. 1. —

My Lord, It is written in *French*, and I shall make but a bad Reading of it.

Sir Sam. Astry. Where is the Man that examin'd it? — Do you understand *French*?

Mr. Fisher. Yes, my Lord.

Sir Rob. Sawyer. The Record is in another Hand than this; they may easily read it.

Mr. Sol. Gen. Who copy'd this Paper?

Mr. Fisher. I did examine it.

Mr. Sol. Gen. What did you examine it with?

Mr. Fisher. I look'd upon that Copy, and *Mr. Halstead* read the Record.

L. C. Just. Young Man, read out.

Fisher reads. Vendredy Lende maine del Almes qu'estoit le premier jour —

Mr. Sol. Gen. Pray, tell us what it is you would have read?

Mr. S. Levinz. I'll tell you what it is, *Mr. Solicitor*: 'Tis the Dispensation with the Statute of Provisors: And the Act of Parliament does give the King a Power to dispense, till such a time.

Mr. Sol. Gen. Don't you think the King's Prerogative is affirmed by many Acts of Parliament?

Mr. S. Levinz. If the King could dispense without an Act of Parliament, what need was there for the making of it?

Mr. Sol. Gen. *Mr. Serjeant*, We are not to argue with you about that yet.

L. C. Just. Read it in *English*, for the Jury to understand it.

Mr. Fisher. My Lord, I cannot undertake to read it so readily in *English*.

Mr. J. Powell. Why don't you produce the Records that are mentioned in the Petition, those in King *Charles* the Second's time?

Mr. S. Levinz. We will produce our Records in Order of Time, as they are.

Sir Sam. Astry. There is the Clerk of the Records of the *Tower*, *Mr. Halstead*, will read it very well in *French* or *English*.

Then *Mr. Halstead* was sworn to interpret the Records into *English*, according to the best of his Skill and Knowledge; but not reading very readily — a true Copy of the Record in *English* follows, out of the Rolls of Parliament, in the 15th Year of King *Richard the Second*, *Numero Primo*.

*F*riday, the Morrow of *All Souls*, which was the first Day of this Parliament, holden at *Westminster*, in the fifteenth Year of the Reign

Reign of our Lord, King *Richard the Second*, after the Conquest, the Reverend Father in God, the Archbishop of *York*, Primate and Chancellor of *England*, by the King's Commandment, being present in Parliament, pronounced and declared, very nobly and wisely, the Cause of the Summons of this Parliament: And said, First, That the King would, that holy Church principally, and afterwards the Lords Spiritual and Temporal, and also the Cities and Burroughs, should have and enjoy their Liberties and Franchises, as well as they had them, and enjoyed them, in the Time of his Noble Progenitors, Kings of *England*; and also, in his own Time. And afterwards said, The Summons of this Parliament was principally for three Occasions: The first Occasion was, To ordain how the Peace and Quiet of the Land, which have heretofore been greatly blemished and disturbed, as well by Detraction and Maintenance, as otherwise, might be better holden and kept, and the Laws better executed, and the King's Commands better obeyed. The second Occasion was, To ordain and see how the Price of Wools, which is, beyond measure, lessened and impaired, might be better amended and inhaunced. And also, That in case the War should begin again, at the End of the present Truce, to wit, at the *Assumption of our Lady* next coming, to ordain and see, how and whereby the said War may be maintained at the least Charge of the People. And the third Occasion was, touching the Statutes of Provisors, To ordain and see how our Holy Father might have that which to him belongs; and the King, that which belongs to him, and to his Crown; according unto that, *Render unto Cæsar the things that are Cæsar's, and unto God the things which are God's.*

Then the other Record of *Richard the Second* was read as follows, out of the Rolls of Parliament, the fifteenth Year of King *Richard the Second* (N. 8.)

Be it remembred, touching the Statute of Provisors, That the Commons, for the great Confidence which they have in the Person of our Lord the King, and in his most excellent Knowledge, and in the great Tenderneſs which he hath for his Crown, and the Rights thereof; and also, in the noble and high Discretions of the Lords, have assented, in full Parliament, that our said Lord the King, by Advice and Assent of the said Lords, may make such Sufferance, touching the said Statute, as shall seem to him reasonable and profitable, until the next Parliament, so as the said Statute be not repealed in no Article thereof: And that all those who have any Benefices by force of the said Statute, before this present Parliament; and also, That all those, to whom any Aid, Tranquillity, or Advantage is accrued, by virtue of the said Statute of the Benefices of Holy Church (of which they were heretofore in Possession) as well by Presentation, or Collation of our Lord the King, as of the Ordinaries, or Religious Persons whatsoever, or by any other manner or way whatsoever; may freely have and enjoy them, and peaceably continue their Possession thereof, without being ousted thereof, or any ways challenged, hindred, molested, disquieted, or grieved hereafter, by any Provisors, or others, against the Form and Effect of the Statute aforesaid, by reason of the said

Sufferance in any time to come. And moreover, That the said Commons may disagree at the next Parliament, to this Sufferance, and fully resort to the said Statute, if it shall seem good to them to do it: With Protestation, That this Assent, which is a Novelty; and has not been done before this time, be not drawn into Example or Consequence for Time to come. And they prayed our Lord the King, that the Protestation might be entred of Record, in the Roll of the Parliament: And the King granted, and commanded to do it.

Mr. S. Levinz. Now, my Lord, we will go on.—This was in *Richard the Second's* Time: And a Power is given by the Commons, to the King, with the Assent of the Lords, to dispense, but only to the next Parliament; with a Power reserved to the Commons; and to disagree to it, and retract that Consent of theirs the next Parliament.

Sir Geo. Treby. The Statute of Provisors was and is a Penal Law, and concerning Ecclesiastical Matters too; viz. The Collating and Presenting to Archbishopricks, Bishopricks, Benefices, and Dignities of the Church: And in this Record, now read, the Parliament give the King a limited Power, and for a short Time, to dispense with that Statute. But, to obviate all Pretence of such a Power's being inherent in the Crown, as a Prerogative, they declare, (1) That it was a Novelty; that is as much as to say, That the King had no such Power before. (2) That it should not be drawn into Example; that is to say, That he should have no such Power for the future.

Mr. S. Levinz. Now we will go on to the Records mentioned in the Petition; those in the last King's Time, in 1662, and 1672; and that in this King's Time, in 1685.—Where is the Journal of the House of Lords?

Mr. Walker sworn.

L. C. J. Is that the Book of the House of Lords?

Mr. Walker. It is the Journal of the House of Lords.

L. C. J. Is it kept by you?

Mr. Walker. Yes, my Lord.

L. C. J. Where is it kept?

Mr. Walker. In the usual place, here in Westminster.

Mr. Sol. Gen. What is that?

Mr. S. Levinz. It is the Journal of the House of Lords.—But, my Lord, there is one thing that is mentioned in the last Record that is read, which is worth your Lordship's, and the Jury's Observation; That it is declared a Novelty, and a Protestation, that it should not be drawn into Precedent for the future.

L. C. J. That has been observed, Brother: Let us hear your Record read.

Clerk reads. — *Die Mercurii 18. die Februarii, 1662.*

His Majesty was present this Day, sitting in the Regal Crown and Robes, the Peers being likewise in their Robes: The King gave Order to the Gentleman Usher of the Black Rod, to signify to the House of Commons his Pleasure, that they presently come up, and attend His Majesty, with their Speaker; who being present, His Majesty made this Speech following.

My Lords, and Gentlemen;

I Am very glad to meet you here again, having thought the Time long since we parted, and often wished you had been together,

'ther, to help me in some Occasions which have fallen out: I need not repeat them unto you, you have all had the Noise of them in your several Countries; and, God be thanked, they were but Noise, without any worse Effects.

'To cure the Distempers, and compose the differing Minds that are yet amongst us, I set forth my Declaration of the 26th of December. In which you may see, I am willing to set Bounds to the Hopes of some, and to the Fears of others; of which, when you shall have examined well the Grounds, I doubt not but I shall have your Concurrence therein. The truth is, I am in my Nature, an Enemy to all Severity for Religion and Conscience, how mistaken soever it be, when it extends to Capital and Sanguinary Punishments; which I am told, were began in Popish Times. Therefore, when I say this, I hope I shall not need to warn any here, not to infer from thence, that I mean to favour Popery. I must confess to you, there are many of that Profession, who, having served my Father, and my self very well, may fairly hope for some part in that Indulgence, I would willingly afford to others who dissent from us. But let me explain my self, lest some mistake me herein, as I heard they did in my Declaration: I am far from meaning by this, a Toleration, or Qualifying them thereby to hold any Offices or Places of Trust in the Government. Nay, further, I desire some Laws may be made, to hinder the Growth and Progress of their Doctrine.

'I hope you have all so good an Opinion of my Zeal for the Protestant Religion, as I need not tell you, I will not yield to any therein, not to the Bishops themselves; nor in my liking the Uniformity of it, as it is now established; which being the Standard of our Religion, must be kept pure, and uncorrupted, free from all other Mixtures. *And yet, if the Dissenters will demean themselves peaceably and modestly under the Government, I could heartily wish, I had such a Power of Indulgence to use upon Occasion*—

Sir Geo. Treby. Pray Sir, read that out distinctly.

Clerk reads.—'I could heartily wish I had such a Power of Indulgence to use upon Occasion, as might not needlessly force them out of the Kingdom; or, staying here, give them Cause to conspire against the Peace of it.

My Lords, and Gentlemen:

'It would look like Flattering in me, to tell you, in what degree I am confident of your Wisdom and Affection in all things that relate to the Greatness and Prosperity of the Kingdom. If you consider well what is best for us all, I dare say, we shall not disagree. I have no more to say to you at present, but, once again, to bid you heartily welcome.

Mr. Finch. The next thing we shall shew you is, that after the King had made this Speech, and wished he had such a Power of Indulgence to use upon Occasion, there was a Bill in the House of Lords brought in, to enable the King to dispense with several Laws: We shall shew you the Journal, where it was read and committed; but further than that it went not.

L. C. J. What use do you make of this, Mr. Finch?

Sir Rob. Sawyer. You may easily apprehend the Use we shall make of it. (The King, in his Speech, says, *He wished he had such a Power*;) the

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House of Lords thought he had not; and therefore they order'd a Bill to be brought in, to enable him.—Read the Journal of the Lords, of the 13th of March, 1662.

Clerk reads.

Die Veneris XIII. die Martii, 1662.

'After some Debate, whether the House should be put into a Grand Committee, for the further Debate of the Bill concerning His Majesty's Power in Ecclesiastical Affairs, it was put to the Question; (*viz.*)

'As many of your Lordships as would have this House adjourned, and put into a Committee, to consider of the said Bill, say, *Content*; others, *Not Content*.

'Passed in the Affirmative.

'And then the Lord Chamberlain of the Household was directed to take the Chair, as formerly; which he did accordingly.

'And after Debate, the House was resumed, after the Grand Committee had appointed a Sub-Committee, touching the said Bill.

Sir Rob. Sawyer. This is all in the Journal of the House of Lords, about this Matter.— We will now shew you the Bill it self.

Clerk reads. '*An Act concerning His Majesty's Power in Ecclesiastical Affairs.*

WHEREAS divers of His Majesty's Subjects, through Error of Judgment, and misguided Consciences (whereunto the Licentiousness of these late unhappy Times have much contributed) do not conform themselves to the Order of Divine Worship and Service established by Law; and although His Majesty and both Houses of Parliament are fully satisfied, that those Scruples of Conscience, from whence this Nonconformity ariseth, are ill grounded; and that the Government of the Church, with the Service thereof (as now established) is the best that is any where extant, and most effectual to the Preservation of the Protestant Religion: Yet hoping that Clemency and Indulgence may, in time, wear out those Prejudices, and reduce the Dissenters to the Unity of the Church; and considering that this Indulgence, how necessary soever, cannot be dispensed by any certain Rule, but must vary, according to the Circumstances of Time, and the Temper and Principles of those, to whom it is to be granted; and His Majesty being the best Judge, when, and to whom this Indulgence is to be dispensed, or as may be most consistent with the publick Peace, and without just Cause of Offence to others; and to the end His Majesty may be enabled to exercise it with universal Satisfaction, Be it Enacted by the King's Most Excellent Majesty, by Advice, and with the Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority thereof, That the King's Majesty may, by Letters Patents under the Great Seal, or by such other Ways as to His Majesty shall seem meet, *dispense with one Act, or Law, made the last Session of this present Parliament (intituled, An Act for the Uniformity of Publick Prayers, and Administration of the Sacraments, and other Rites and Ceremonies; and for Establishing the Form of Making, and Ordaining, and Consecrating Bishops, Priests and Deacons in the Church of England)* and with any other Laws or Statutes concerning the same; or requiring Oaths, or Subscriptions; or which do enjoin

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Conformity to the Order, Discipline and Worship established in this Church, and the Penalties in the said Laws imposed, or any of them: And may grant Licences to such of His Majesty's Subjects of the Protestant Religion, of whose inoffensive and peaceable Disposition His Majesty shall be perswaded, to enjoy and use the Exercise of their Religion and Worship, though differing from the publick Rule; (the said Laws and Statutes, or any Disabilities, Incapacities, or Penalties, in them, or any of them contained, or any Matter or Thing to the contrary thereof notwithstanding.)

Provided always, and be it Enacted, That no such Indulgence, License, or Dispensation hereby to be granted, shall extend, or be construed to extend to the Tolerating, or Permitting the Use or Exercise of the Popish, or Roman Catholick Religion in this Kingdom; nor to enable any Person or Persons, to hold or exercise any Place or Office of publick Trust within this Kingdom, who, at the Beginning of this present Parliament, were, by the Laws and Statutes of this Realm, disabled thereunto; nor to exempt any Person or Persons from such Penalties, as are by Law to be inflicted upon such as shall publish or preach any thing to the Depravation, or Derogation of the Book of Common Prayer, or the Government, Order and Ceremonies of the Church established by Law.

Provided also, and be it Enacted, That no such Licence or Dispensation shall extend to make any Priest or Minister capable of any Ecclesiastical Living or Benefice, with Cure, who shall not, before the Archbishop of the Province, or Bishop of the Diocess where he lives, makes such subscription to the Articles of Religion, as is enjoined by the Statute of the 13th of Elizabeth, made for Reformation of Disorders in the Church. Nor shall extend, or be construed to extend to dispense with the Book of Common Prayer: But that the said Book shall be constantly read in all the Cathedral and Collegiate Churches, and in all the Parish Churches, and publick Chappels.

Sir Rob. Sawyer. Here your Lordship sees what the Lords did in this Matter.—We shall now shew you, out of the Commons Journal, what they did, concerning this Speech of the King—Shew the Journal of the 25th of February, 1662.

Mr. Jodrell sworn.

L.C. 7. Did you examine that, Mr. Jodrell?

Mr. Jodrell. It is the Original Book.

The Book delivered into the Court.

Clerk reads. *Die Mercurii XXV. die Februarii, 15 Car. II. Resolved,* that it be presented.—

Sir Rob. Sawyer. You must begin above—The House then took into Debate—

Clerk reads. 'The House then took into Debate the Matter touching Indulgence to Dissenters, from the Act of Uniformity.

The Question being put, that the Present Debate be adjourned till to Morrow Morning.

The House was divided.

The Yeas went out.

Sir John Goodrick, } Tellers for the Noes;
and } with the Noes, 161.

Sir William Lowther, }
Sir Richard Temple, } Tellers for the Yeas;
and } with the Yeas, 119.

Sir John Talbot, }
And so it passed in the Negative.

Resolved, &c.

'That it be presented to the King's Majesty, as the humble Advice of this House, That no Indulgence be granted to the Dissenters, from the Act of Uniformity.—

Mr. Sol. Gen. Does your Lordship think it to Evidence?

L.C. 7. Let them read it, Mr. Solicitor, that we may hear what it is.

Clerk reads on.

'Ordered that a Committee be appointed to collect and bring in the Reasons of this House for this Vote, upon the present Debate; to be presented to his Majesty, and that the nominating of the Committee be adjourned till to morrow Morning.

Sir Rob. Sawyer. That's all

Mr. Sol. Gen. Pray, if there be any thing more, read on; you shall not parcel out a Record, and take, and leave what you will.

Mr. Finch. Did not you parcel out our Petition?

Mr. Sol. Gen. Read on, if there be any thing about this matter.

Clerk. That is all.

Sir Rob. Sawyer. Turn to the 27th of February, 1662.

Clerk reads. *Veneris xxvii. Februarii xv. Car. II.*

'Sir Heneage Finch reports from the Committee appointed to collect and bring in the Reasons of the House for their Vote of Advice to the King's Majesty; and in the close of those Reasons to add, That the House will assist His Majesty with their Lives and Fortunes, and to present an Address to His Majesty for that purpose; the several Reasons and Address agreed by the Committee in writing, he read in his place, and did bring up, and deliver the same in at the Clerk's Table.

'The First Paragraph was read, and upon the Question agreed to.

'The Second Paragraph was read, and upon the Question agreed to.

'The Third was read, and upon the Question agreed to.

Sir Rob. Sawyer. Go over that, and go to the Address it self.

Clerk reads. 'May it please your most Excellent Majesty:

'We your Majesty's most Dutiful and Loyal Subjects, the Knights, Citizens and Burgeses of the House of Commons, in Parliament assembled, having with all Fidelity and Obedience considered of the several matters comprised in your Majesty's late Gracious Declaration of the 26th of December last, and your most Gracious Speech at the beginning of this present Session, Do in the first place for our selves, and in the Names of all the Commons of England, render unto your Sacred Majesty the Tribute of our most hearty Thanks for that infinite Grace and Goodness wherewith your Majesty hath been pleased to publish your Royal Intention of adhering to your Act of Indemnity and Oblivion by a constant and religious observance of it; and our Hearts are further enlarged in these returns of Thanksgiving, when we consider your Majesty's most Princely and Heroick Profession of relying upon the Affections of your People, and the abhorring all sorts of Military and Arbitrary Rule: but above all, we can never enough remember to the honour of your Majesty's Piety, and our own unspeakable Comfort, those solemn and most endearing Invitations of your Majesty's Subjects,

jects, to prepare Laws to be presented to your Majesty against the growth and increase of Popery; and withal, to provide more Laws against Licentiousness and Impiety, at the same time declaring your own Resolutions for maintaining the Act of Uniformity: and it becomes us always to acknowledge and admire your Majesty's Wisdom in this your Declaration, whereby your Majesty is pleased to resolve, not only by sumptuary Laws, but by your own Royal Example of Frugality, to restrain that excess in men's Expences, which is grown so general, and so exorbitant, and to direct our endeavours to find out fit and proper Laws for advancement of Trade and Commerce.

After all this, we most humbly beseech your Majesty to believe; *That it is with extream unwillingness and reluctancy of heart that we are brought to differ from any thing which your Majesty hath thought fit to purpose*; and though we do no ways doubt but that the unreasonable distempers of mens Spirits, and the many Mutinies and Conspiracies which were carried on during the late intervals of Parliament, did reasonably incline your Majesty to endeavour by your Declaration to give some allay to those ill humours, till the Parliament assembled, and the hopes of an Indulgence, if the Parliament should consent to it, especially seeing the Pretenders to this Indulgence did seem to make some title to it by virtue of your Majesty's Declaration from *Bredab*; Nevertheless, we your Majesty's most Dutiful and Loyal Subjects, who are now returned to serve in Parliament from those several parts and places of your Kingdom, for which we are chosen, Do humbly offer it to your Majesty's great Wisdom, that it is in no sort adviseable that there be any Indulgence to such Persons who presume to dissent from the Act of Uniformity, and Religion established (for these Reasons.)

We have considered the nature of your Majesty's Declaration from *Bredab*, and are humbly of Opinion, That your Majesty ought not to be pressed any further.

Because it is not a Promise in it self, but only a gracious Declaration of your Majesty's Intentions to do what in you lay, and what a Parliament should advise your Majesty to do, and no such Advice was ever given, or thought fit to be offered; nor could it be otherwise understood, because there were Laws of Uniformity then in being, which could not be dispensed with but by Act of Parliament.

Sir Rob. Sawyer. This is all that we read this for; your Lordship and the Jury see what is here declared by the Parliament, That the Act of Uniformity could not be dispensed with, without an Act of Parliament.

Next, my Lord, we shall shew you what was done in the Year 1672.——Read the King's Speech the 5th of February, 1672.

The Journals of the Lords House were delivered in.

Clerk reads. *Die Mercurii, 5 Febr. 1672.*

My Lords and Gentlemen,

I am glad to see you here this day. I would have called you sooner together, but that I was willing to ease you and the Country, till there were an absolute necessity.

Since you were last here, I have been forced to a most important, necessary and expensive War, and I make no doubt but you will give me suitable and effectual assistance to go through

with it; I refer you to my Declaration for the Causes, and indeed the necessity of this War; and shall now only tell you, That I might have digested the Indignities to my own Person, rather than have brought it to this Extremity, if the Interest as well as the Honour of the whole Kingdom had not been at Stake; and if I had omitted this Conjunction, perhaps I had not again ever met with the like advantage.

You will find that the last Supply that you gave me, did not answer Expectation for the ends you gave it, the Payment of my Debts; therefore I must in the next place recommend them again to your special Care.

Some few days before I declared the War, I put forth my Declaration for Indulgence to Dissenters, and have hitherto found a good effect of it, by securing my Peace at home, when I had War abroad; There is one part in it, that has been subject to Misconstructions, which is that concerning the Papists, as if more liberty was granted to them than to other Recusants, when 'tis plain there is less; for the others have publick Places allowed them, and I never intended that they should have any, but only have the freedom of their Religion in their own Houses, without any concurrence of others; and I could not grant them less than this, when I had extended so much more Grace to others, most of them having been loyal, and in the Service of me and the King my Father: And in the whole course of this Indulgence I do not intend that it shall any way prejudice the Church, but I will support its Rights, and It in its full power.

Having said this, I shall take it very ill to receive Contradiction in what I have done; and I will deal plainly with you, I am resolved to stick to my Declaration.

There is one Jealousie more which is maliciously spread abroad, and yet so weak and frivolous, that I once thought it not of moment enough to mention; but it may have gotten some ground with some well minded People, and that is, That the Forces which I have raised in this War were designed to controul Law and Property; I wish I had had more Forces the last Summer, the want of them then, convinces me, I must raise more against this next Spring; and I do not doubt but you will consider the charge of them in your Supplies.

I will conclude with this assurance to you, That I will preserve the true Reformed Protestant Religion, and the Church, as it is now Established in this Kingdom, and that no Man's Property or Liberty shall ever be invaded. I leave the rest to the Chancellor.

Mr. S. Pemb. Now go to the Journal of the Commons of the 14th of February, 1672.

The Journal put in

Clerk reads. *Veneris xiiij. die Februarii, 1672.*

Mr. Powle Reports from the Committee appointed to prepare, and draw up a Petition and Address to His Majesty, The said Petition and Address, which he read in his place, and afterwards delivered the same in at the Clerks Table, and the same being again twice read, is as followeth, (viz.)

Most Gracious Sovereign,

We your Majesties most Loyal and Faithful Subjects, the Commons Assembled in Parliament, do in the first place, as in all Duty bound, return your Majesty our most humble and hear-

ty Thanks, for the many Gracious Promises and Assurances which your Majesty has several times during this Present Parliament given to us, That your Majesty would Secure and Maintain unto us the true Reformed Protestant Religion, our Liberties and Properties, which most gracious Assurances your Majesty out of your great Goodness has been pleased to renew unto us, more particularly, at the Opening of this present Session of Parliament.

And further, we crave leave humbly to represent, That we have with all Duty and Expedition, taken into our Consideration, the several parts of your Majesties last Speech to us; and withal, the Declaration therein mentioned, for Indulgence to Dissenters dated the 15th of March last: And we find our selves bound in Duty to inform your Majesty, That Penal Statutes in Matters Ecclesiastical, cannot be Suspended but by Act of Parliament.

We therefore, the Knights, Citizens and Burgeses of your Majesties House of Commons, do most humbly beseech your Majesty, That the said Laws may have their free Course, untill it shall be otherwise provided for by Act of Parliament. And that your Majesty would graciously be pleased to give such Directions herein, that no Apprehensions or Jealousies may remain in the Hearts of your Majesties good and faithful Subjects.

Resolved, &c.

That this House doth agree with the Committee in the Petition and Address by them drawn up, to be presented to his Majesty.

Sir Rob. Sawyer. Now turn to the 24th of February, 1672. in the same Book.

Clerk Reads. *Lunæ 24th of February, 1672.*

Mr. Secretary Coventry Reports and Presents in Writing from his Majesty, his Answer to the humble Petition and Address of this House, which was thrice read, and the Matter debated, and is as followeth, (viz.)

CHARLES R.

HIS Majesty hath received an Address from you, and he hath seriously considered of it, and returns you this Answer, That he is very much troubled, that that Declaration which he put out for ends so necessary, for the quiet of his Kingdom, and especially in that Conjunction, should have proved the Cause of disquiet in his House of Commons, and give occasion to the questioning of his Power in Ecclesiasticks, which he finds not done in the Reigns of any of his Ancestors: He is sure he never had thoughts of using it otherwise than as it hath been intrusted in him, to the Peace and Establishment of the Church of England, and the ease of all his Subjects in general. Neither does he pretend to the Right of Suspending any Laws, wherein the Properties, Rights or Liberties of any of his Subjects are concerned, nor to alter any thing in the established Doctrine or Discipline of the Church of England. But his only design in this, was to take off the Penalties the Statutes inflicted upon Dissenters, which he believes when well considered of, you yourselves would not wish executed according to the Rigour and Letter of the Law; neither hath he done this with any thought of avoiding, or precluding the Advice of his Parliament; and if any Bill shall be offered, which shall appear more proper to attain the aforesaid

Ends, and secure the Peace of the Church and Kingdom, when tendred in due manner to him, he will shew how readily he will Concur in all ways that shall appear good for the Kingdom

Sir Rob. Sawyer. Turn to the 26th of February, 1672.

Clerk reads. *Die Mercurii xxvj. Februarii, 1672.*

Mr. Powle Reports from the Committee, appointed to consider of an Answer to return to his Majesties last Message, upon the debate of the House, an Answer agreed by the Committee, and drawn up, and put into Writing, which he read in his place, and then delivered the same in at the Clerks Table, where it was twice read, and is as followeth, (viz.)

Most Gracious Sovereign,

WE your Majesties most Humble and Loyal Subjects, the Knights, Citizens and Burgeses in this present Parliament Assembled, do render to your most Sacred Majesty, our most dutiful Thanks, for that to our unspeakable Comfort, your Majesty has been pleased so often to reiterate unto us those gracious Promises and Assurances of maintaining the Religion now Established, and the Liberties and Properties of your People; and we do not in the least Measure doubt but that your Majesty had the same gracious Intention in giving Satisfaction to your Subjects, by your Answer to our last Petition and Address; Yet upon a serious Consideration thereof, We find that the said Answer is not sufficient to clear the Apprehensions that may justly remain in the minds of your People, by your Majesties having claimed a Power to suspend Penal Statutes in Matters Ecclesiastical, and which your Majesty does still seem to assert in the said Answer, to be intrusted in the Crown, and never questioned in the Reigns of any of your Ancestors. Wherein we humbly conceive your Majesty has been very much misinformed: Since no such Power ever was claimed or exercised by any of your Majesties Predecessors; and if it should be admitted, might tend to the interrupting the free Course of the Laws, and altering the Legislative Power, which hath always been acknowledged to reside in your two Houses of Parliament.

We therefore with an unanimous Consent become again most humble Suiters unto your Sacred Majesty, That you would be pleased to give us a full and satisfactory Answer to our said Petition and Address, and that your Majesty would take such effectual order, that the Proceedings in this Matter may not for the future be drawn into Consequence or Example.

The Answer to his Majesties Message, was again read by Paragraphs, and the several Paragraphs to the last, were upon the question severally agreed.

The last Paragraph being read, and the Question being put, that the Word unanimous should stand in the Paragraph.

The House divided.—The Noes go out.

Tellers,

Lord St. John } for the Yeas, 180.

Mr. Vaughan }

Sir Richard Temple } for the Noes, 77.

Sir Philip Howard }

And so it was resolved in the Affirmative.

The Question being put to agree to the Paragraph, it was resolved in the Affirmative.

That

Resolved, &c.

That the whole Address be agreed to, as it was brought in by the Committee.

Sir Rob. Sawyer. Now turn to the Lords Journal, and there your Lordship will see, that the King does Communicate this Address to the Lords, and desires their Advice.

Read the 1st of March, 1672.

Clerk reads, *Die Sabbati primo die Martii*, 1672.

His Majesty this Day made a short Speech, as follows.

My Lords,

You know, that at the Opening of this Session, I spoke here to your Satisfaction; it has notwithstanding, begotten a greater disquiet in the House of Commons, than I could have imagined.

I received an Address from them, which I looked not for, and I made them an Answer that ought to have contented them; but on the contrary, they have made me a Reply of such a nature, that I cannot think fit to proceed any further in this Matter without your Advice.

I have commanded the Chancellor to acquaint you with all the Transactions, wherein you will find both me and your selves highly concerned: I am sensible for what relates to me, and I assure you my Lords, I am not less so for the Priviledg, and the Honour of this House.

Afterwards the Lord Chancellor read the several Papers and Addresses of the House of Commons, and his Majesties Answer thereunto, and opened his Majesties proceedings upon them.

The Address of the House of Commons was read.

Sir Robert Sawyer. Pass over that, you have read it already.

Clerk reads. The next, his Majesties Answer to the Address of the House of Commons, was read as follows,—

Sir Robert Sawyer. That hath been read too.

Clerk reads. Then was read the Reply of the House of Commons to his Majesties Answer, as followeth,—

Mr. Finch. You have read that likewise.

Clerk reads. Upon this it is ordered, that the Lord Treasurer, Duke of Buckingham, Earl of Bridgewater, Earl of Northampton, Earl of Bristol, Earl of Berks, Earl of Bullingbrook, and the Earl of Anglesey, do forthwith withdraw and consider what humble Thanks is fit to be given to his Majesty for his great Favour in communicating this Business to this House, and report the same. And accordingly, the said Lords Committees did withdraw themselves for that purpose.

The Lords being returned, the Duke of Buckingham reported what the Committee had prepared to present to his Majesty by way of Thanks, which was read as followeth.

We the Lords Spiritual and Temporal in Parliament assembled, do unanimously present to your Sacred Majesty, Our most humble Thanks, for having been pleased to Communicate to us, what has passed between your Majesty and the House of Commons, whereby you have graciously offered us the means of shewing our Duty to your Majesty, and of asserting the Ancient Just Rights and Priviledges of the House of Peers.

The Question being put, whether to agree with the Committee.

It was resolved in the Affirmative.

Ordered that his Majesty be desired, that his Speech, and the Papers read this day, may be entered into the Journal Book of this House.

The Lord Treasurer, the Duke of Buckingham, and the Lord Chamberlain, are appointed to attend his Majesty presently, to know his pleasure, what time and place, this whole House shall wait upon him, to present the humble Thanks of this House, for his great Favour shewed this day.

Ordered, that upon Monday morning next, this House will debate the whole Matter of his Majesties Speech, and these Papers; and to consider the Points of Priviledge, and what else may arise thereupon.

The Lords that were appointed to attend his Majesty, return with this Answer.

That his Majesty has appointed this Afternoon at five of the Clock, for this House to wait upon him in the Banqueting-house at Whitehall.

Ordered, that all the Judges now in Town, shall attend this House on Monday morning next.

Sir Robert Sawyer. The 3^d of March, 1672. is the next.

Clerk reads, *Die Lunæ 3. die Martii*, 1672.

The Lord Chancellor reported; That the whole House on Saturday last, waited upon his Majesty at Whitehall, and presented the humble Address of this House, and his Majesty was pleased to return this Answer.

My Lords,

I take this Address of yours very kindly; I will always be very affectionate to you, and expect you should stand by me, as I will always by you.

Then the House took into Consideration the whole Matter of his Majesties Speech on Saturday, and the three Papers which his Majesty acquainted this House withal, and all the said Papers in their order were read, and after a long debate, the Question being put,

Whether this House shall in the first place enter into Consideration of giving Advice to his Majesty?

It was resolved in the Affirmative.

It is ordered, that this Business shall be taken into Consideration to morrow Morning, at nine of the Clock, the first Business.

Ordered that the Judges now in Town, shall attend to morrow Morning.

Sir Robert Sawyer. The 4th of March, 1672.

Clerk reads, Next, The House took into Consideration the Advice to be given to his Majesty concerning the Addresses made to him from the House of Commons.

The Addresses of the House of Commons, and his Majesties Answer were read, and after a long debate, the Question being put, Whether the King's Answer to the House of Commons in referring the Points now controverted to a Parliamentary way by Bill, is good and gracious, that being a proper and natural Course for Satisfaction therein.

It was resolved in the Affirmative.

Sir Robert Sawyer. The 8th of March, 1672.

Clerk reads, *Die Sabbati 8. die Martii*, 1672.

His Majesty in his Royal Throne, adorned with his Crown and Regal Ornaments, commanded the Gentleman Usher of the Black

Red,

' Rod, to give notice to the House of Commons, that they attend his Majesty presently.

' The Commons being come with their Speaker, his Majesty made this short Speech, following.

My Lords and Gentlemen,

' Yesterday you presented me an Address, as the best means for the satisfying and composing the Minds of my Subjects, to which I freely and readily agreed, and I shall take care to see it performed accordingly.

' I hope on the other side, you Gentlemen of the House of Commons will do your part; for I must put you in mind; it is near five Weeks since I demanded a Supply, and what you Voted unanimously upon it, did both give Life to my Affairs at Home, and dishearten mine Enemies abroad; but the seeming delay it hath met withal since, hath made them to take new Courage; and they are now preparing for this next Summer a greater Fleet, (as they say) than ever they have had yet, so that if the Supply be not very speedily dispatcht, it will be altogether ineffectual, and the Safety Honour and Interest of England, must of necessity be exposed. Pray lay this to heart, and let not the Fears and Jealousies of some draw an inevitable Ruin upon us all.

My Lords and Gentlemen,

' If there be any Scruple remaining with you, concerning the Suspension of Penal Laws, I here faithfully Promise you, That what has been done in that particular, shall not for the future be drawn either into Consequence or Example. And as I daily expect from you a Bill for my Supply, so I assure you, I shall as willingly pass any other you shall offer me that may tend to the giving you satisfaction in all your just Grievances.

' Next, my Lord Chancellor reported, That both Houses waited upon the King yesterday, and presented him with the Address against the growth of Popery, and his Majesty hath been pleased to return this Answer.

My Lords and Gentlemen,

' I do heartily agree with you in your Address, and shall give speedy Order to have it put in Execution; there is one part to which I believe it is not your Intention that it should extend; for I can scarce say, those are in my pay, that are presently to be employed abroad; but as for all other parts, I shall take care it shall be done as you desire.

' After which the Lord Chancellor said, he had somewhat more to impart to the House by the King's Command, which was,

That his Majesty last night, having spoken with several Members of both Houses, found some dissatisfaction remaining concerning his Answer to their Address in the particular of the Officers to be employed abroad, of which number he had five or six that were of the best Officers of France and Flanders, and being his own Subjects, he had been very solicitous to get; but if that bred any umbrage, the King commanded him to let them know, that he resolves to give both his Houses full satisfaction to their desires.

There was another particular that the Lord Chancellor said he thought fit to acquaint them with, which, though it was by his Majesties leave, yet it was not by his Command; however he thought it his duty to acquaint the House with it, (Mr. Secretary Coventry intending to acquaint the House of Commons with the same) That his Majesty had

the last night, in pursuance of what he then intended, and declared this morning concerning the suspension of Penal Laws not being for the future drawn either into Consequence or Example, caused the Original Declaration, under the Great Seal, to be cancelled in his presence whereof himself and several other Lords of the Council were Witnesses.

Sir Robert Sawyer. Turn to the 10th of March, 1672.

Clerk reads. ' Die Lunæ decimo die Martii, 1672.

' Ordered, That what my Lord Chancellor said on Saturday last concerning his Majesty's causing the vacating his Indulgence under the Great Seal of England, shall be entred into the Journal Book of this House as on Saturday last.

Sir Robert Sawyer. We shall now come to that which pass in the Parliament in 1685. — Read the 9th of November, 1685.

' The Journal of the Lords, 1685. put in.

Clerk Reads. ' His Majesty being on his Royal Throne adorned with his Regal Robes and Crown (the Lords being in their Robes also) commanded the Gentleman Usher to give notice to the House of Commons that they immediately attend his Majesty; who being come, his Majesty made the following Speech.

My Lords and Gentlemen,

' After the Storm that seemed to be coming upon us when we parted last, I am glad to meet you all again in so great peace and quietness; God Almighty be praised, by whose blessing that Rebellion was suppressed; but when I reflect what an inconsiderable number of men began it, and how long they carried it on without any opposition, I hope every body will be convinced that the Militia, which hath hitherto been so much depended upon, is not sufficient for such Occasions, and that there is nothing but a good force of well disciplined Troops in constant pay that can defend us from such as either at home or abroad are disposed to disturb us.

' And in truth, my concern for the peace and quiet of my Subjects, as well as for the safety of the Government, made me think it necessary to increase the number to the proportion I have done; this I owed as well to the honour as to the security of the Nation, whose Reputation was so infinitely exposed unto all our Neighbours, by having lain open to this late wretched Attempt; that it is not to be repaired without keeping such a Body of Men on foot, that none may ever have the thoughts again of finding us so miserably unprovided.

' It is for the support of this great Charge, which is now more than double to what it was, that I ask your assistance in giving me a Supply answerable to the Expence it brings along with it; And I cannot doubt, but what I have begun so much for the honour and defence of the Government, will be continued by you with all the cheerfulness and readiness that is requisite for a Work of so great importance.

' Let no man take Exceptions that there are some Officers in the Army not qualified according to the late Tests for their Employments: The Gentlemen, I must tell you, are most of them well known to me, and having formerly served with me on several Occasions, and always approved the Loyalty of their Principles by their Practices, I think them fit now to be employed under me; and will deal plainly with you, that after

after having had the benefit of their Services in such time of need and danger, I will neither expose them to disgrace, nor my self to the want of them, if there should be another Rebellion to make them necessary to me.

I am afraid some men may be so wicked to hope and expect that a difference may happen between you and me upon this Occasion; but when you consider what advantages have risen to us in a few months by the good understanding we have hitherto had, what wonderful effects it has already produced in the change of the whole scene of Affairs abroad, so much more to the honour of the Nation, and the figure it ought to make in the World, and that nothing can hinder a further progress in this way, to all our satisfactions, but Fears and Jealousies amongst our selves: I will not apprehend that such a misfortune can befall us as a Division, or but a Coldness between me and you; nor that any thing can shake you in your Steadiness and Loyalty to me, who, by God's blessing, will ever make you all returns of kindness and protection, with a Resolution to venture even my own Life in the defence of the true Interest of this Kingdom.

Sir Rob. Sawyer. Turn to the Commons Journal the 16th of November, 1685.

The Journal of the House of the Commons put in.

Clerk reads. *Die Lunæ xvi. die Novemb. 1685.*

Most Gracious Sovereign:

We your Majesty's most Loyal and Faithful Subjects, the Commons in Parliament assembled, do in the first place (as in duty bound) return your Majesty our most humble and hearty thanks for your great care and conduct in the suppression of the late Rebellion, which threatened the overthrow of this Government both in Church and State, and the uttermost extirpation of our Religion by Law established, which is most dear unto us, and which your Majesty has been pleased to give us repeated assurances you will always defend and support, which with all grateful hearts we shall ever acknowledge.

We further crave leave to acquaint your Majesty, That we have with all duty and readiness taken into our consideration your Majesty's gracious Speech to us; and as to that part of it relating to the Officers in the Army not qualified for their Employment according to an Act of Parliament made in the 25th year of the Reign of your Majesty's Royal Brother of blessed Memory, Intituled, An Act for preventing danger that may happen by Popish Recusants: We do out of our bounden duty humbly represent unto your Majesty, That those Officers cannot by Law be capable of their Employments, and that the Incapacities they bring upon themselves thereby, can no ways be taken off but by Act of Parliament.

Therefore out of the great deference and duty we owe unto your Majesty (who has been graciously pleased to take notice of their Services to you) we are preparing a Bill to pass both Houses for your Royal Assent, to indemnify them from the Penalties they have now incurred; and because the continuance of them in their Employments may be taken to be dispensing with that Law without Act of Parliament, the consequence of which is of the greatest concern to the Rights of all your Majesty's Dutiful and Loyal Subjects, and to all the Laws made for the security of their Religion;

We therefore, the Knights, Citizens and Burgesses of your Majesty's House of Commons, do most humbly beseech your Majesty, that you would be graciously pleased to give such directions therein, that no Apprehensions or Jealousies may remain in the hearts of your Majesty's good and faithful Subjects.

Mr. Pollifsen. My Lord, We pray that these half dozen lines of the Statute 1 Eliz. may be read.

A Statute-book was then produced by Mr. Ince. L. C. J. We will have it read out of our own Book. Which was delivered into Court.

Clerk reads. This is 1 Eliz. cap. 2. An Act for Uniformity of Religion, &c. Whereabout is it?

Mr. Ince. 'Tis the 15th Paragraph, [at these words] — And for the due execution, &c.

Clerk Reads. And for due Execution hereof, the Queens most Excellent Majesty, the Lords Spiritual and Temporal in this Parliament Assembled, do in Gods Name earnestly Require and Charge all the Archbishops and Bishops, and other Ordinaries, that they shall endeavour themselves to the utmost of their knowledge, that the due and true Execution hereof may be had throughout their Diocesses and Charges, as they will answer before God for such Evils and Plagues, wherewith Almighty God may justly punish his People for neglecting this good and wholesome Law.

Mr. Serj. Levinz. Now, my Lord, if your Lordship pleases, the Charge is a Charge for a Libel, and there are two things to be Considered.

First, Whether the Bishops did deliver this Paper to the King? But that we leave upon the Evidence that has been given; only we say, there has been no direct proof of that.

In the next place, Supposing they did deliver this Petition to the King, Whether this be a Libel upon the Matter of it, the manner of delivering it, or the Persons that did it?

And with submission, my Lord, this cannot be a Libel, although it be true, that they did so deliver it.

First, my Lord, there is a little dissingenuity offered to my Lords the Bishops, in only setting forth part and not the whole, in only reciting the Body and not the Prayer.

But, my Lord, with your Lordships favour, taking the Petitionary part, and adding it to the other, it quite alters the Nature of the thing, for it may be, a Complaint without seeking redress might be an ill matter; but here taking the whole together, it appears to be a Complaint of a Grievance, and a desire to be eased of it.

With your Lordships favour, the Subjects have a right to Petition the King in all their Grievances, so say all our Books of Law, and so says the Statute of the Thirteenth of the late King; They may Petition, and come and deliver their Petition under the number of ten, as heretofore they might have done, (says the Statute) so that they all times have had a right so to do, and indeed if they had not, it were the most lamentable thing in the World, that Men must have Grievances upon them, and yet they not to be admitted to seek Relief in an humble way.

Now, my Lord, this is a Petition setting forth a Grievance, and praying his Majesty to give Relief. And what is this Grievance? It is that Command of his, by that Order made upon my Lords the Bishops, to distribute the Declaration, and cause it to be read in the Churches: And

pray

pray, my Lord, let us consider, what the Effects and Consequences of that Distribution and Reading is; It is to tell the People, that they need not submit to the *Act of Uniformity*, nor to any Act of Parliament made about Ecclesiastical Matters, for they are suspended and dispensed with; this my Lords the Bishops must do, if they obey this Order; but your Lordship sees, if they do it, they lie under an *Anathema* by the Statute of 1 *Elizabeth*. for there they are under a Curse if they do not look to the preservation and observation of that Act; But this Command to Distribute and Read the Declaration, whereby all these Laws are dispensed with, is to let the People know, they will not do what the Act requires of them.

Now, with your Lordships favour, my Lords the Bishops lying under this pressure, the weight of which was very grievous upon them, they by Petition apply to the King to be eased of it, which they might do, as Subjects; besides, my Lord, they are Peers of the Realm, and were most of them sitting as such, in the last Parliament, where (as you have heard) it was declared, such a Dispensation could not be, and then in what a Case should they have been, if they should have distributed this Declaration, which was so contrary to their own Actings in Parliament? What could they have answered for themselves; had they thus contributed to this Declaration? when they had themselves before declared, that the King could not dispense.

And that this was no new thing, for it had been so declared in a Parliament before, in two Sessions of it, in the late King's Reign, within a very little time one of another; and such a Parliament that were so liberal in their Aids to the Crown, that a Man would not think they should go about to deprive the Crown of any of its Rights; it was a Parliament that did do as great services for the Crown as ever any did, and therefore there is no reason to suspect, that if the King had had such a power, they would have appeared so earnest against it.

But, my Lord, if your Lordship pleases, these are not the beginnings of this matter, for we have shewed you from the Fifteenth of *Richard the Second*, that there was a power granted by the Parliament to the King to dispense with a particular Act of Parliament, which argues, that it could not be without an Act of Parliament: And in 1662. 'tis said expressly, that they could not be dispensed with, but by an Act of Parliament: 'Tis said so again in 1672; the King was then pleased to assume to himself such a power, as is pretended to in this Declaration; yet, upon Information from his Houses of Parliament, the King declared himself satisfied that he had no such power, Cancelled his Declaration, and promised, that it should not be drawn into Consequence or Example. And so the Commons by their Protestation said in *Richard the Second's* time, That it was a Novelty, and should not be drawn into Consequence or Example.

Now, my Lord, if your Lordship pleases, if this matter that was Commanded the Bishops to do, were something which the Law did not allow of, surely then, my Lords the Bishops had all the Reason in the World to apply themselves to the King, in an humble manner to acquaint him, why they could not obey his Commands; and to seek relief against that, which lay so heavy upon them.

Truly, my Lord, Mr. Attorney was very right in the opening of the Cause at first, that is, That the Government ought not to receive affronts, no, nor the Inferiour Officers are not to be affronted, a Justice of the Peace, so low a Man in Office, is not. For a Man to say to a Justice of Peace, when he is executing his Office, that he does not do right, is a great Crime, and Mr. Attorney said Right in it; But suppose a Justice of Peace were making of a Warrant to a Constable, to do something that was not Legal for him to do, if the Constable should Petition this Justice of the Peace, and therein set forth, Sir, you are about to command me to do a thing, which, I conceive, is not Legal, surely that would not be a Crime that he was to be punished for, for he does but seek relief, and shew his Grievance in a proper way, and the distress he is under.

My Lord, this is the Bishops Case with submission, they are under a distress, being Commanded to do a thing which they take not to be Legal, and they, with all humility by way of Petition, acquaint the King with this Distress of theirs, and pray him, that he will please to give Relief.

My Lord, there is no Law, but is either an Act of Parliament, or the Common Law, for an Act of Parliament there is none for such a power, all that we have of it in Parliamentary Proceedings, is against it; and for the Common Law, (so far as I have read it) I never did meet with any thing of such a Nature, as a Grant or Dispensation that pretended to dispense with any one whole Act of Parliament; I have not so much as heard of any such thing mentioned by any of the Kings Council; But here, my Lord, is a Dispensation that dispenses with a great many Laws at once, truly, I cannot take upon me to tell how many, there may be forty or above, (for ought I know.)

Therefore, my Lord, the Bishops lying under such a Grievance as this, and under such a Pressure, being Ordered to distribute this Declaration in all their Churches, which was to tell the People they ought to be under no Law in this Case, which surely was a very great Pressure, both in point of Law and Conscience too, they lying under such Obligations to the contrary, as they did. With submission to your Lordship and you Gentlemen of the Jury, If they did deliver this Petition, (Publishing of it I will not talk of, for there has been no proof of a Publication, but a delivering of a Petition to his Majesty in the most secret and decent manner that could be imagined) My Lords the Bishops are not guilty of the Matter Charged upon them in this Information; it has been expressly proved, that they did not go to disperse it abroad, but only deliver'd it to the King himself; And, in short, my Lord, if this should be a Libel, I know not how sad the Condition of us all would be, if we may not Petition, when we suffer.

Mr. Finch. My Lord, I Challenge them to shew us any one instance of such a Declaration, such a General Dispensation of Laws from the Conquest, till 1672. The first Umbrage of such a thing is, that of *Car. 2.* 1662. but your Lordship hears the Declaration of the Parliament upon it. Before that, as there was no such thing, so your Lordship sees, what the Parliament did to enable the King (not to do this thing, but something like it) in *Richard the Second's* Time, where you see the Parliament did give the King a Power to Dispense with the Statute of Provisors for a time;

time ; but at the same time declared, that very Grant of their own, to be a Novelty, and that it should not be drawn into Consequence or Example.

My Lord, we shall leave it upon this Point, to suspend Laws is all one, as to abrogate Laws ; for so long as a Law is suspended, whether the Suspension be Temporary, or whether it be for ever, whether it be at once, or at several times, the Law is abrogated to all Intents and Purposes: But the Abrogation of Laws is part of the Legislature, that Legislative Power is lodged (as I said before, and I could never find it otherwise, in all our Law) in King, Lords, and Commons—

Ld. Ch. Just. You did open that before, Mr. *Finch*.

Mr. Finch. With this, my Lord, That my Lords the Bishops finding this Order, made upon them to publish this Declaration, did what in Duty they were bound to do, and unless the Jury do find, that they have done that which is contrary to Law and to the Duty of their Places, and that this Petition is a Libel, and a seditious Libel, with an intent to stir up Sedition among the People, (We rely upon it) My Lords, the Bishops, can never be found Guilty upon this Information.

Ld. Ch. Just. Have you now done, Gentlemen?

Mr. Finch. Yes, my Lord, till they give us further occasion, if they have any other Evidence to offer, we must Answer it, if not, this is the Answer we give to what they have said.

Mr. Sol. Gen. We make no Bargain with you: If you have done, say so.

Ld. Ch. Just. You must know, that you are not to have the last word.

Mr. Sol. Gen. You have been three hours already, if you have any more to say, pray conclude.

Mr. Finch. If they say they have no more Evidence, then we know what we have to do.

L. C. Just. If you do say any thing more, pray let me advise you one thing, don't say the same thing over and over again, for after so much time spent, it is irksome to all Company, as well as to me:

Mr. Finch. My Lord, we have no more Evidence to offer to your Lordship at present, unless they, by offering new Evidence, give us occasion to Reply upon them.

L. C. Just. Gentlemen, you shall have all the Legal favour and advantage that can be; but, pray, let us keep to an orderly decent Method of proceeding:

Sir Rob. Sawyer. Pray, my Lord, favour me a word before we conclude, My Lord, I do find very few Attempts of this Nature, in any Kings Reign.

In the Reign of *Henry* the Fourth, there was an Act of Parliament that Foreigners should have a Free Trade in the City of *London*; notwithstanding the Franchises of *London*; after the Parliament rose, the King issued out his Proclamation, forbidding the Execution of that Law, and Commanding that it should be in Suspence, *Usque ad Proximum Parliamentum*, yet that was held to be against Law.

L. C. Just. *Sir Robert Sawyer*, that which you are to look to, is the publishing of this Paper, and whether it be a Libel or no. And as to the

business of the Parliaments you mentioned, they are not to the purpose.

Sir Rob. Sawyer. My Lord, I say, I would put it where the Question truly lyes, if they don't dispute the Point, then we need not labour it; but I don't know whether they will or no, and therefore I beg your Lordships favour to mention one Case more, and that is upon the Statute of 31 *Hen. 8. cap. 8.* Which enables the King by Proclamation in many Cases to create the Law; which Statute was repealed by 1 *Edw. 6. cap. 12.* That very Act does recite, that the Law is not to be altered, or restrained, but by Act of Parliament, and therefore the Parliament enables the King to do so and so: But that was such a Power, that the Parliament thought not fit to continue, and it was afterwards repealed, but it shews, that at that time the Parliament was of the same Opinion, as to this Matter, that other Parliaments have been since.

Mr. Sommers. My Lord, I would only mention the great Case of *Thomas and Sorrel* in the Exchequer Chamber upon the validity of a Dispensation of the Statute of *Edward* the Sixth, touching Selling of Wine. There it was the Opinion of every one of the Judges, and they did lay it down as a settled Position, that there never could be an Abrogation, or a Suspension, (which is a Temporary Abrogation) of an Act of Parliament, but by the Legislative Power. That was a Foundation laid down quite through the debate of that Case: Indeed it was disputed, how far the King might dispense with the Penalties in such a particular Law, as to particular Persons, but it was agreed, by all, that the King had no power to suspend any Law: And my Lord, I dare Appeal to Mr. Attorney General himself, whether in the Case of *Godden and Hales*, which was lately in this Court, to make good that Dispensation, he did not use it as an Argument then, that it could not be expounded into a Suspension; he admitted it not to be in the King's power to suspend a Law, but that he might give a Dispensation to a particular Person, was all, that he took upon him to justify at that time.

My Lord, by the Law of all civilized Nations, if the Prince does require something to be done, which the Person (who is to do it) takes to be unlawful, it is not only lawful, but his Duty, *Rescribere Principi*, this is all that is done here, and that in the most humble manner, that could be thought of; your Lordship will please to observe how far it went, how careful they were, that they might not any way justly offend the King. They did not interpose by giving advice, as Peers, they never stir'd till it was brought home to themselves, when they made their Petition, all they beg is, that it may not so far be insisted upon by His Majesty, as to oblige them to read it, whatever they thought of it, they do not take upon them to desire the Declaration to be revoked.

My Lord, as to Matters of Fact alledged in the said Petition, that they are perfectly true, we have shewn by the Journals of both Houses. In every one of those Years, which are mentioned in the Petition, this Power of Dispensation was considered in Parliament, and upon Debate, declared to be contrary to Law; there could be no Design to diminish the Prerogative, because the King hath no such Prerogative.

Seditious my Lord it could not be, nor could possibly stir up Sedition in the Minds of the People, because it was presented to the King in private and alone, false it could not be, because the Matter of it is true. There would be nothing of Malice, for the occasion was not sought, the thing was pressed upon them, and a Libel it could not be, because the intent was innocent, and they kept within the bounds set by the Act of Parliament, that gives the Subject leave to apply to his Prince by Petition, when he is aggrieved.

Mr. Att. Gen. Have you done, Gentlemen?

Mr. Finch. We have done, Sir.

Mr. Att. Gen. My Lord, I shall be a great deal more merciful to your Lordship and the Jury, than they have been, who have spent these four hours, in that which I think is not pertinent to the Case in Question: They have let themselves into large Discourses, making great Complaints of the Hardships put upon my Lords the Bishops, by the Order of Council to read His Majesty's Declaration; and putting these words into the Information of seditious, malicious and scandalous: But my Lord, I admire that Sir Robert Sawyer should make such Reflections, and Observations upon these words, when I am sure he will scarce find any one of his own exhibiting, that has so few of those aggravating words as this has, and therefore, that might have been very well spared, especially by him.

In the next place my Lord, we are told, what great Danger our Religion is in by this Declaration, I hope we have an equal concern for that with them, or any Person else whatsoever: But however, I am sure our Religion teaches us, not to preserve our Religion, or our Lives, by any illegal Courses, and the Question is, whether the Course that my Lords the Bishops have taken to preserve (as they say) our Religion, be legal or not; if it be not legal, then I am sure our Religion will not justify the using such a Course, for never so good an End.

My Lord, for the thing it self, I do admire that they, in so long a time and search that they have made, should not (which I expected) produce more Presidents of such a Paper as this is; They challenge us to shew, that ever there was any such Declaration as this, I'll turn the same Challenge upon them; Shew me any one instance, that ever so many Bishops did come under pretence of a Petition, to reflect upon the King out of Parliament.

Sir Robert Sawyer. Is that your way of Answering, Mr. Attorney?

Mr. Attorney General. Pray, Sir Robert Sawyer, you have had your time, don't interrupt us, sure we have as much right to be heard as you.

L. C. J. You have been heard over and over again, Sir Robert Sawyer, already.

Sir Robert Sawyer. My Lord, I don't intend to interrupt him.

Mr. Sol. Gen. We cannot make them be quiet, they will still be chopping in upon us.

Mr. Att. Gen. That is an Art that some People have always practised, not to permit any body to speak, but themselves.

But my Lord, I say, that those few Instances that they have produced, are nothing at all to this Matter, that is now upon Tryal before your Lordship and this Jury; nay, they are Evidences against them, for they are only matters transacted in Parliament, which are no more to be

applied to this thing that is in Controversy now, than any the most remote matter that could be thought of; and though they have gone so high in point of time, as to the Reign of Richard the Second, yet they have nothing between that and the late King's Reign, to which at last they have descended down.

But my Lord, I say, that all the talk of Richard the Second's time is wholly out of the Case; truly, I do not doubt, but that in Richard the Second's time they might find a great many Instances of some such sort of Petitioning as this, for our Histories tell us, that at that time they had 40000 Men in Arms against the King, and we know the troubles that were in that King's Reign, and how at length he was deposed; but certainly there may be found Instances more applicable to the Case, than those they produce; as for those in King Charles the Second's time, do they any ways justify this Petition? for now they are upon justifying the words of their Petition, that this power has been declared to be illegal in 1662, 1672, and 1685.

For what was done in 1662, do they shew any thing more than some Debates in the House of Commons? And at last an Address, an Answer by the King, a Reply of the Commons, and then the thing dies. Pray, my Lord, is a Transaction in the House of Commons, a Declaration of Parliament? Sure, I think, no one will affirm that any thing can be a Declaration of Parliament, unless he that is the Principal part Concurs, who is the King: for if you speak of the Court of Parliament in a Legal Sense, you must speak of the whole Body, King, Lords and Commons, and a Declaration in Parliament must be by all the whole Body, and that is properly an Act of Parliament.

Why then they come to the Year 1672, where your Lordship observes, that the late King did insist upon his Right, for after the Dispute which was in 1662, His Majesty did issue out another Declaration, and when it comes to be debated in Parliament, he insists upon his Right in Ecclesiastical Matters, and though his Declaration was cancelled, yet there is no formal Disclaimer of the Right.

My Lord, after all, how far these things that they have offered may work, as to the point that they have debated, I shall not now meddle with it, nor give your Lordship any trouble about it, because it is not at all pertinent to the Case in question, for I do (after all this time and pains that they have spent) take leave to say, that these Gentlemen have spent all this time to no purpose.

L. C. J. Yes, Mr. Attorney, I'll tell you what they offer, which it will lie upon you to give an Answer to; They would have you shew, how this has disturbed the Government, or diminished the King's Authority?

Mr. Att. Gen. Whether a Libel be true or not, as to the matter of Fact, was it ever yet in any Court of Justice permitted to be made a Question, whether it be a Libel or not? Or whether the Party be punishable for it; and therefore I wonder to hear these Gentlemen to say, that because it is not a false one, therefore 'tis not a Libel: Suppose a Man should speak scandalous Matter of any Noble Lord here; or of any of my Lords the Bishops, and a *Scandalum Magnatum* be brought for it, though that which is spoken has been true, yet it has been the Opinion

nion of the Courts of Law, that the Party cannot justify it, by reason it tends to the disturbing of the Peace, to publish any thing that is matter of Scandal; The only thing that is to be lookt into, is, whether there be any thing in this Paper, that is reflecting and scandalous, and not whether it be true or no, for if any Man shall *Extra-Judicially*, and out of a legal Course and way, reflect upon any of the great Officers of the Kingdom, nay, if it be but upon any Inferior Magistrate, he is to be punished, and is not to make his Complaint against them, unless he do it in a proper way; A Man may Petition a Judge, but if any Man in that Petition shall come and tell the Judge, Sir, you have given an illegal Judgment against me, and I cannot in Honour, Prudence or Conscience obey it, I do not doubt, nor will any Man, but that he that should so say would be laid by the Heels, though the Judgment perhaps might be illegal.

If a Man shall come to Petition the King, as (we all know) the Council Doors are thronged with Petitioners every day, and Access to the King by Petition is open to every body, the most Inferior Person is allowed to Petition the King, but because he may do so, may he therefore suggest what he pleases in his Petition, shall he come and tell the King to his Face, what he does is Illegal? I only speak this, because they say, in this Case His Majesty gave them leave to come to him to deliver their Petition; but the King did not understand the Nature of their Petition I suppose, when he said, he gave them leave to come to him.

My Lord, for this Matter we have Authority enough in our Books, particularly there is the Case of *Wrenham* in my Lord *Hobart*, the Lord Chancellor had made a Decree against him, and he Petitioned the King, that the Cause might be reheard, and in that Petition he Complains of Injustice done him by my Lord Chancellor, and he put into his Petition many reflecting things, this my Lord, was punished as a Libel in the Star-Chamber; and, in that Book it was said, that though it be lawful for the Subject to Petition the King against any Proceedings by the Judges, yet it must not be done with Reflections, nor with Words that turn to the Accusation or Scandal of any of the King's Magistrates or Officers, and the Justice of the Decree is not to be questioned in the Case; for there *Wrenham* in his Defence would have opened the Particulars, wherein he thought the Decree was unjust, but that the Court would not meddle with, nor would allow him to justify for such Illegality in the Decree; so in this Case, you are not to draw in question the truth or falshood of the Matter complained against, for you must take the way the Law has prescribed, and prosecute your Right in a legal Course, and not by Scandal and Libelling.

My Lord, there is a great deal of difference between not doing a thing that is Commanded, if one be of Opinion that it is unlawful, and coming to the King with a Petition highly reflecting upon the Government, and with scandalous Expressions telling him, Sir, you act illegally, you require of us that which is against Prudence, Honour or Conscience, as my Lords the Bishops are pleased to do in this Petition of theirs. I appeal to any Lord here, that if any Man should give him such Language, either by Word of Mouth or Petition, whether he would

bear it, without seeking Satisfaction and Reparation by the Law?

My Lord, there is no greater proof of the Influence of this Matter than the Croud of this Day, and the Harangue that hath been made, is it not apparent that the taking this Liberty to Canvas and dispute the King's Power and Authority, and to Censure his Actions, possess the People with strange Opinions, and raises Discontents and Jealousies, as if the free Course of Law were restrained, and Arbitrary Will and Pleasure set up instead of it?

My Lord, there is one thing that appears upon the Face of the Information, which shews this not to be the right Course, and if my Lords the Bishops had given themselves the opportunity of reading the Declaration seriously, they would have found in the end of the Declaration, that the King was resolved to call a Parliament in *November*; might not my Lords the Bishops have acquiesced under their Passive Obedience till the Parliament met? But nothing would serve them, but this, and this must be done out of Parliament, for which there is no President can be shewn, and this must be done in such a manner, as your Lordship sees the Consequence of, by your Trouble of this Day.

There is one thing I forgot to speak to, they tell us, that it is laid malicious and seditious, and there is no Malice or Sedition found, we know very well, that that follows the Fact, those things arise by Construction of Law out of the Fact. If the thing be illegal, the Law says it is Seditious, a Man shall not come and say, he meant no harm in it: That was the Case of *Williams* in his treasonable Book, (says he) I only intended to warn the King of the Danger approaching, and concludes his Book with God save the King, but no Man will say, that a good Preface at the beginning, or a good Prayer at the end, should excuse Treason, or Sedition in the Body of a Book; if I meet another Man in the Street and kill him, though I never saw him in my Life, the Indictment is, that it was *ex Malitia Præcogitata*, as it often happens, that a Person kills one he never had acquaintance with before, and in *favorem vite*, if the Nature of the Fact be so, the Jury are permitted to find according to the Nature of the Case, but in Strictness of Law, there is Malice imply'd: But, my Lord, I think these Matters are so common, and that is a Point that has been so often settled, that the form of the Indictment and Information must follow the Nature of the Fact, that I need not insist upon it, if the Act be unlawful, the Law supplies the Malice, and evil Intentions.

Mr. Sol. Gen. My Lord and Gentlemen of the Jury, I am of Council in this Case for the King, and I shall take leave to proceed in this Method; First, I shall put the Case of my Lords the Bishops, and then consider the Arguments that have been used in their Defence, and answer them as much as is material to be answered; and then leave it to your Lordship and the Juries Consideration, whether what has been said by these Gentlemen, weigh any thing in this Case?

First, my Lord, I take it for granted, and I think the Matter is pretty plain by this time, by my Lord President's Evidence, and their own Confession; that it is not to be disputed, but that this Paper was presented by these Lords to the King, I think there is no great difficulty in

that Matter at all, but I just touch upon it, because I would follow them in their own Method.

Then my Lord; let us take this Case as it is, upon the Nature of the Petition, and the Evidence that they have given, and then let us see, whether that will justify the thing that is done: For the business of Petitioning, I would distinguish and enquire, Whether my Lords the Bishops out of Parliament, can present any Petition to the King: I do agree, that in Parliament the Lords and Commons may make Addresses to the King, and signify their Desires, and make known their Grievances there, and there is no doubt, but that is a natural and proper way of Application. For in the beginning of the Parliament, there are Receivers of Petitions appointed, and upon Debates, there are Committees appointed, to draw up Petitions and Addresses, but to come and deduce an Argument; that because the Lords in Parliament have done thus, (there being such Methods of Proceedings usual in Parliaments) therefore my Lords the Bishops may do it out of Parliament, that is certainly a *Non sequitur*, no such Conclusion can be drawn from those Premises.

My Lord, I shall endeavour to lay the Fact before you, as it really is, and then Consider, what is proper for the Court to take notice of, as legal Proof or Evidence: And I take it, all those Presidents that they have produced, of what the Lords did, and what the Commons did, in Parliament, is no Warrant for them to shelter themselves under, against the Information here in Question.

Here *Mr. Justice Powell* spake aside to the *Lord Chief Justice*, thus:

Mr. Just. Powel. My Lord, this is strange Doctrine; shall not the Subject have Liberty to Petition the King, but in Parliament? If that be Law, the Subject is in a miserable Case.

L.C.J. Brother, let him go on, we will hear him out, tho' I approve not of his Position.

Mr. Sol. Gen. The Lords may Address to the King in Parliament, and the Commons may do it, but therefore, that the Bishops may do it out of Parliament, does not follow. I heard nothing said, that could have given Colour to such a thing, but the Curse that has been read in 1 *Eliz.*

But pray, my Lord, let us consider that Evidence they have given, they have begun with that Record in *Richard the Second's* time, and what is that? That the King may dispense with the Statute of Provisors, till the meeting of the next Parliament, and a Protestation of the Commons at the end of it, whether that be an Act of Parliament, that is Declaratory of the Common Law, or Introductory of a new Law, *Non constat*; and for ought appears, it might be a Declaratory Act: And if so, it is a Proof of the King's Prerogative of Dispensing. It might be an Act in Affirmance of the King's Prerogative, as there are a great many such, we very well know; and generally most of the Laws in that kind, are in Affirmance of the King's Power, so that the Law turns as an Argument for the King's Prerogative, and they have given him that, which will turn upon themselves, so it stood in *Richard the Second's* time, but whether that be an Argument one way or other Conclusive, is left to your Lordship, and the Jury.

Ay, but say they, there is no Execution of

such a Power, till very lately, and the first Instance that they produce is, that in the Year 1662. But your Lordship knows, that before the Reign of *Henry the Fourth*, there was great Jurisdiction assumed by the Lords in original Causes, then comes the Statute of Appeals, 1 *Hen. 4.* which takes notice, that before that time, the Lordshad assumed an original Jurisdiction in all Causes, and would proceed, and determine them in Parliament, and out of Parliament, and it fell out to be so great a Grievance, that it was thought necessary to make a Law against it, that Appeals in Parliament should be abolished and destroyed; and then comes that Law in favour of the Subject of *England*, and that settles the bounds between the King and the Lords in a great measure; before that time, the Lords were grown very powerful, and where there is a Power, there always will be Applications, and what is the effect of that Statute 1 *Hen. 4.* for all that we endeavour is, to make things as plain as can be, that no further Applications, no Accusations, no Proceedings in any Case whatsoever be before the Lords in Parliament, unless it be by Impeachment of the Commons; so that there is the *Salvo*; and the use that I make of it, is this, The Commons by that very Statute did abolish the Power that the Lords had arrogated to themselves, and ordered, that they should not meddle with any Cause, but upon the Impeachment of the House of Commons, and establish the Impeachment of the Commons, which is as ancient as the Parliament, for that was never yet spoken against; the Power of the Commons impeaching any Person under the degree of the Prince, and that is the regular legal way, and so the Commons asserted their ancient Right, and whatsoever the Lords took notice of, must come by Application of the Commons, then Conferences were to pass between the Houses, and both Houses by Address apply to the King, this is the proper way and course of Parliament; of which my Lord *Cook* says, It is known to few, and practised by fewer, but it is a venerable honourable way, and this is the Course that should have been taken by my Lords here, and they should have stayed till the Complaint had come from the Commons in Parliament, and then it had been regular for them to Address to the King; but they were too Quick, too Nimble.

And whereas the Statute of *Hen. 4.* says, That no Lord whatsoever shall intermeddle with any Cause, but by the Impeachment of the Commons, they interpose and give their advice before their time; if there be any Irregularity in Parliament, or out of Parliament, the Commons are to make their Complaint of it, and a Man must not be his own Judge, nor his own Carver, nor must every Man create Difficulties of his own, nor set upon petitioning in this sort: But there I lay my Foundation, That in such a matter as this, there ought to have been the Impeachment of the Commons in Parliament before these Lords could do any thing; and I know nothing can be said for the Bishops more than this, That they were under an Anathema, under the Curse that *Sir Robert Sawyer* speaks of, and for fear of that they took this Irregular Course: But some would say, Better fall into the hands of God than of Men; some would say so, (I say) I know not what they would say; but these being the Methods that these

these Lords should have taken, they should have pursued that Method, the Law should have carved out their Relief and Remedy for them, but they were for going by a new Fancy of their own.

My Lord, the Law continued thus, and was practised so till the 3 *Hen. 7.* where the Grievance was found, that Offences in the Intervals of Parliament could not be well punished, and then comes the Statute that sets up the Court of Star-Chamber, and there Men were often brought to Judgment and Punishment for their Sins; and though very great Power was given them, yet they arrogated to themselves a greater; and therefore that Court is abolished by the Statute of the 15th *Car. 1.* and what is the reason of abolishing that Statute? Because the Star-Chamber did not keep within their Bounds that the Law set them, but assumed to themselves a larger Power than the Law would allow; and grew very Exorbitant and very grievous to the Subject: And another reason was, which the Statute of 15 *Car. 1.* founded it self upon, because there was nothing that was brought in Judgment before that Court, but might be relieved and remedied in the ordinary methods of Justice in the Courts of *Westminster-Hall*: So that upon those two Considerations, because that Course was exorbitant, and because all the Sins and Misdemeanours that were punished there, might be punished in an ordinary way of Law in another Court; and therefore there was no need of that Court, and so it was abolished, and the Subject was pretty safe; If there was a Crime committed here, a Man might come properly before your Lordship into this Court, and have it punished.

My Lord, they find fault with the Words in the Information, and they say, Why are these Words put in, seditious, malicious? If the matter be libellous and seditious we may lawfully say, and it is no more than the Law speaks, it results out of the Matter it self; and, if it be a libellous Paper, the Law says, it is maliciously and seditiously done, and these Gentlemen need not quarrel with us for so are all the Informations in all times past, and 'tis no more than the *Vi & Armis*, which is Common Form. It may be said, How can the publishing of a Libel be said to be done *Vi & Armis*? That is only a Supposition of Law; and they may as well object to the Conclusion of the Information, that it was *Contra Coronam & Dignitatem Domini Regis*; if it be an illegal thing, or a Libel, these are necessary Consequences, it is no more than the speaking of the Law upon the Fact.

But, my Lord, let us a little consider, whether this Matter were warrantable, and whether they had any Warrant to do what was done; they pretend it was done upon this account, That the King had set forth a Declaration, and had ordered them to read it; which to excuse themselves from, they make this Petition, or this Libel, (call it what you will) and they use this as the main Argument, That they say the King has done illegally, and they tell the King plainly so, that it is illegal; for they take notice of this Declaration, and say, it is illegal; because it is contrary to the Declarations of Parliament in 1662, 1672, and 1685.

Pray, my Lord, let us consider a little, whether there be any Declaration in Parliament that they have given Evidence of; Have they

read any Declaration of the Parliament in 1662? What is a Declaration in Parliament, but a Bill that is passed by the King, Lords and Commons? That we know to be the meaning, and no other; if it pass the Commons it is no Declaration in Parliament; nay, if it pass the Lords and Commons, it is not a Declaration in Parliament, except it also pass the King; all these things are Nullities, and the Law takes no notice of them; we have it in our Books over and over, and no Court ought to suffer such Evidence to be given. I know these Gentlemen are very well acquainted with the Authority in *Fitz-Herbert's*, Title, Parliament, there was such an Act that was said to be by the King and the Lords, but because the Commons did not agree to it, it is declared and adjudged to be a Nullity, and the Court would take no notice of it; and how can any Man call that a Declaration in Parliament, which is only a Vote of the House of Commons, or of the Lords? No sure; that is one of the Heads I go upon, it's not a Declaration in Parliament, unless it be by an Act of Parliament.

Indeed my Lord, there is another sort of a Declaration in Parliament before the Lords, as they are a Court of Judicature, and that is a fair Declaration too; for if any thing comes judicially before the Lords, either by Writ of Error, or by natural Appeal from any of the other Courts, or by Adjournment, and there be any Judgment given, That is a Declaration in Parliament, and may be fairly so called. So likewise there is another judicial Declaration, which is, when any thing comes before the Lords judicially, upon an Impeachment of the Commons, and they give Judgment upon that Impeachment, That is a Declaration in Parliament: But to say, that there is any other Declaration in Parliament, is to say more than these Gentlemen can make out; if they will shew me any such I will submit to them, and not speak a Word against my Lords the Bishops, but, if these Learned Gentlemen cannot shew me any such, then they have not said that was true in this Petition, that it was so and so declared in Parliament.

For let us consider what there is in this Case upon this Evidence, for that in 1662. is only a Vote and Opinion of the House of Commons; and I always understood, and have been told so by some of the Gentlemen of the other side, that such a Vote signifies nothing: But besides, it seems to be a mistaken Address; for they say in it, That the Declaration in 1662. which they Address against, was the first Declaration of that sort, to suspend Laws without Act of Parliament; and yet, in the same Breath, they do take notice of the King's Declaration from *Breda*. But here is a mighty Argument used from the King's Speech, That because he wished he had such a Power, this must be declared in Parliament that he had no such Power: Is the Speech of the Prince a Declaration in Parliament? All the Speeches that were made upon the opening of the Parliament, will you say, they are Declarations in Parliament? Then the Chancellor, or the Keeper's Speech, or the Lord Privy Seals, must be a Declaration in Parliament. Whoever speaks the Sense of the King, if he does not speak that which is Law and Right, is questionable for it, and several have been impeached for so doing; for they look

not upon it as the King's Speech, except it be according to Law: Nothing can turn upon the Prince but what is Legal; if it be otherwise, it turns upon him that speaks it. I never did hear that a Speech made by the Chancellor (and I will appeal to all the Lords that hear me in it) was a Declaration in Parliament.

Then my Lord, we come to the business in 1672. which with that in 1662. and that in *Breda*, shews, That this of the King's is not such a Novelty, but has been done often before. In 1672. the King was in Distress for Money, being intangled in a *Dutch War*, and wanted Supply; He Capitulates with his Commons, you have heard it read, and, upon the Commons Address, he asserts it to be his Right, and makes his Complaint to the Lords how the Commons had used him; for when he gives them a fair Answer, they Replied, and there are Conferences with the Lords about it; but at length it all ends in a Speech by the King, who comes and tells them of his present Necessities, and so he was minded to remit a little at the Instigation of the Commons, and he has a good Lump of Money for it. Would this amount to a Declaration in Parliament? Can my Lords the Bishops fancy or imagine that this is to be imposed upon the King, or upon the Court, for a Declaration in Parliament?

* Here Mr. Justice Powel speaking to the Lord Chief Justice,

Mr. J. Powel. My Lord, this is wide, Mr. Solicitor would impose upon us; let him make it out if he can, that the King has such a Power, and answer the Objections made by the Defendants Council.

L. C. J. Brother, impose upon us? he shall not impose upon me, I know not be what he may upon you; for my part, I do not believe one word he says.

known by the Case of *Goddard and Hales*, the Judgment of this Court was against the Opinion of that Address.

But what sort of Evidence is all this? Would you allow all the Addresses of the House of Commons to be Evidence? Give me leave to say it, my Lord, If you suffer these Votes, these Copies of imperfect Bills, these Addresses, and Applications of one or both Houses to the King, to be Evidence and Declarations in Parliament,

* Here there was a great Hissing.

then what will become of the Bill of Exclusion? Shall any Body mention that Bill of Exclusion to be a Declaration in Parliament? If so, then there is Declaration against Declaration, the Declaration of the Commons against the Declaration of the Lords. I know not what Judgment my Lords the Bishops may be of now, concerning those things of Votes and Addresses being Declarations in Parliament, but I am sure they have spoken against it heretofore; nay, I am sure, some of them have preached against it.

And if my Lords the Bishops have said, These are Declarations in Parliament, and they are not Declarations in Parliament; and if they

accuse the King of having done an illegal thing, because he has done that which has been declared in Parliament to be illegal, when it was never so declared, then the Consequence is very plain, That they are Mistaken sometimes; and I suppose by this time they believe it.

I dare say, it will not be denied me, That the King may, by his Prerogative Royal, issue forth his Proclamation; it is as essential a Prerogative, as it is to give his assent to an Act of Parliament to make it a Law. And it is another Principle, which I think cannot be denied, That the King may make Constitutions and Orders in Matters Ecclesiastical; and that these he may make out of a Parliament, and without the Parliament. If the King may do so, and these are his Prerogatives, then suppose the King does issue forth his Royal Proclamation (and such in effect is this Declaration under the Great Seal) in a Matter Ecclesiastical, by Virtue of his Prerogative Royal, and this Declaration is read in the Council, and published to the World, and then the Bishops come and tell the King, Sir, you have issued out an illegal Declaration, being contrary to what has been declared in Parliament; when there is no Declaration in Parliament: Is not this a diminishing the King's Power and Prerogative in issuing forth his Declaration? And making Constitutions in Matters Ecclesiastical? Is not this a questioning of his Prerogative? Do not my Lords the Bishops in this Case raise a Question between the King and the People? Do not they (as much as in them lyes) stir up the People to Sedition? For who shall be Judge between the King and the Bishops? (Says the King) I have such a Power and Prerogative to issue forth my Royal Proclamation, and to make Orders and Constitutions in Matters Ecclesiastical, and that without the Parliament, and out of Parliament: Say my Lords the Bishops, You have done so, but you have no Warrant for it. Says the King, Every Prince has done it, and I have done no more than what is my Prerogative to do: But this, say the Bishops, is against Law. How shall this be tried? Should not the Bishops have had the Patience to have waited till a Parliament came? When the King himself tells them, he would have a Parliament in *November* at furthest.

L. C. Just. Pray, Mr. Solicitor, come close to the business, for it is very late.

Mr. Sol. Gen. My Lord, I beg your Patience; you have had a great deal of Patience with them, pray spare me a little. I am saying, when the King himself tells them, that he would have a Parliament in *November* at furthest, yet they have no Patience to stay till *November*, but made this Application to him. Is not this raising a Question upon the King's Prerogative in issuing forth Declarations? and upon the King's Power and Right in Matters Ecclesiastical? And when I have said this, that my Lords the Bishops have so done; If they have raised a Question upon the Right of the King, and the Power of the King in Matters Ecclesiastical, then they have stirred up Sedition. That they have so done is pretty plain; and for the Consequence of it, I shall appeal to the Case in the 2 *Cro. 2. Jac. 1.* That is a plain direct Authority for me.

Mr. Just. Powel. Nay, Mr. Solicitor, we all very well know, to deny the King's Authority in Temporals and Spirituals, as by Act of Parliament, is High Treason.

Mr.

Mr. Sol. Gen. I carry it not so far, Sir; we have a Gracious Prince, and my Lords the Bishops find it so by this Prosecution: But what says that Case? It is Printed in Three Books, in *Noy* 100. in *Moor* 375. and in Mr. Just. *Cre.* 374. Says that Case, The King may make Orders and Constitutions in Matters Ecclesiastical.

Mr. Just. *Powel.* But how will you apply that Case to this in hand, Mr. Solicitor?

Mr. Sol. Gen. I will apply it by and by, Sir. I would first shew what it is; there is a Convention of the greatest Men in the Kingdom.

Mr. Just. *Powel.* Indeed, Mr. Solicitor, you shoot at Rovers.

Mr. Sol. Gen. There is the Lord Privy Seal, the Archbishop of *Canterbury*, and a great many others; it is the greatest Assembly we meet with in our Books, and all of them are of this Opinion, That the King may make Orders and Constitutions in Matters Ecclesiastical.

My Lord, there is another Authority, and that is, from the Statute *1 Eliz.* which erected the High Commission Court, and that Statute was not Introductory of a New Law, but Declaratory of the Old Law; The King by his Proclamation declares his Sense to do such and such a thing; the Court, and all Persons there, give their Judgment and Opinion upon that Statute, That they looked upon it as the grossest thing, and the foulest affront to the Prince, for any Man to bring into Question that Power of the King in Matters Ecclesiastical; 'tis said to be a very High Crime. Why then, my Lord, what is done in this Case?

Mr. Just. *Powel.* Mr. Solicitor, Pray, when you are applying, apply that other part of the Case too, which says, that it was a heinous Offence, to raise a Rumor that the King did intend to grant a general Toleration; and is there any Law since that has changed it, Mr. Solicitor?

Mr. Sol. Gen. In the main, Judgment goes another way; as for that part, it was personal to the Prince that then was, of whom they had Scandalously reported, that he intended to do such a thing; they look'd upon it as a Scandal to King *James*, that it was a sowing Sedition, and stirring up People against the Government, and that will come up to our Case; for as some Men do it on the right side, others do it on the left; and whoever he be that endeavours to bring a dislike of the King in the People, that is moving Sedition against the Prince, but that is personal to the Prince himself, and does not go to his Successors.

Now, my Lord, I come to that which is very plain from the Case of *De Libellis Famosis*; If any Person, in any Paper, have Slandered the Government, you are not to Examine who is in the Right, and who is in the Wrong, whether what they said to be done by the Government be Legal or no; but whether the party have done such an Act. If the King have a Power (for still I keep to that) to Issue forth Proclamations to his Subjects, and to make Orders and Constitutions in matters Ecclesiastical, if he do Issue forth his Proclamation, and make an Order upon the matters within his Power and Prerogative; and if any one would come and bring that Power in Question, I say, that is Sedition, and you are not to Examine the Legality, or Illegality of the Order or Proclamation; and, that I think is very plain upon that Case, in the Fifth Report,

for it says, If a Person does a thing, that is Libellous, you shall not Examine the Fact, but the Consequence; whether it tended to stir up Sedition against the Publick or to stir up Strife between Man and Man; in the Case of private Persons, as if a Man should say of a Judge, He has taken a Bribe, and I will prove it; this is not to be sent in a Letter, but they must take a regular way to Prosecute it according to Law.

If it be so in the Case of an Inferior Magistrate, what must it be in the Case of a King, to come to the Kings Face, and tell him (as they do here) that he has Acted Illegally, doth certainly, sufficiently prove the matter to be Libellous. What do they say to the King, they say, and admit, that they have an averness for the Declaration, and they tell him from whence that averness doth proceed; and yet they insinuate, that they had an inclination to Gratify the Kings, and Embrace the Dissenters, that were as averse to them, as could be, with due tenderness, when it should be settled by Parliament and Convocation. Pray, what hath their Convocation to do in this matter?

L. C. J. Mr. Solicitor General, I will not interrupt you; but, pray, come to the Business before us; Shew us that this is in diminution of the Kings Prerogative, or that the King ever had such a Prerogative.

Mr. Sol. Gen. I will, my Lord; I am observing what it is they say in this Petition—They tell the King it is inconsistent with their Honor, Prudence, and Conscience, to do what he would have them to do; and if these things be not reflective upon the King and Government, I know not what is; this is not in a way of Judicature, possibly it might have been allowable to Petition the King to put it into a course of Justice, whereby it may be Tried; but, alas, there is no such thing in this matter.

It is not their desire to put it into any Method for Tryal, and so it comes in the Case *De Libellis Famosis*; for by this way, they make themselves Judges, which no man by Law is permitted to do. My Lords, the Bishops have gone out of the way, and all that they have offered does not come home to justify them; and therefore I take it under Favour, that we have made it a good Case for the King, we have proved what they have done, and whether this be Warrantable or not, is the Question, Gentlemen, that you are to try. The whole Case appears upon Record; the Declaration, and Petition are set forth, and the Order of the King and Council. When the Verdict is brought in, they may move any thing what they please in arrest of Judgment: They have had a great deal of Latitude, and taken a great deal of Liberty; But truly, I apprehend, not so very pertinently. But, I hope, we have made a good Case of it for the King, and that you, Gentlemen, will give us a Verdict.

Mr. Just. *Holloway.* Mr. Solicitor, there is one thing I would feign be satisfied in; you say the Bishops have no Power to Petition the King.

Mr. Sol. Gen. Not out of Parliament, Sir.

Mr. Just. *Holloway.* Pray give me leave, Sir; Then the King having made such a Declaration of a General Toleration and Liberty of Conscience, and afterwards he comes and requires the Bishops to disperse this Declaration; this they say, out of a tenderness of Conscience, they cannot do, because they apprehend it contrary

trary to Law, and contrary to their Function : What can they do, if they may not Petition ?

Mr. *Sol. Gen.* I'll tell you what they should have done, Sir. If they were commanded to do any thing against their Consciences, they should have acquiesced till the Meeting of the Parliament.

[*At which some People in the Court hissed.*]

Mr. *Att. Gen.* This is very fine indeed ; I hope the Court and the Jury will take notice of this Carriage.

Mr. *Sol. Gen.* My Lord, it is one thing for a Man to submit to his Prince, if the King lay a Command upon him that he cannot obey, and another thing to Affront him. If the King will impose upon a Man what he cannot do, he must acquiesce ; but shall he come and fly in the Face of his Prince ? Shall he say it is illegal ? And that the Prince acts against Prudence, Honour or Conscience ? And throw Dirt in the King's Face. Sure that is not to be permitted ; that is libelling with a Witness.

L. C. J. Truly, Mr. Solicitor, I am of Opinion that the Bishops might Petition the King, but this is not the right way of bringing it ; I am not of that Mind, that they cannot Petition the King out of Parliament, but if they may Petition, yet they ought to have done it after another Manner : For if they may in this reflective way petition the King, I am sure, it will make the Government very precarious.

Mr. J. *Powel.* Mr. Solicitor, it would have been too late to stay for a Parliament, for it was to have been distributed by such a time.

Mr. *Sol. Gen.* They might have lain under it, and submitted.

Mr. J. *Powel.* No, they would have run into Contempt of the King's Command, without petitioning the King not to insist upon it ; and if they had petitioned, and not have shewn the Reason why they could not obey, it would have been looked upon as a piece of Sullenness, and that they would have been blamed for, as much on the other side.

Mr. *Serj. Baldock.* After so long a Debate I shall not trouble you long, most things that are to be said have been said, but I shall only say this in short ; I cannot deny, nor shall not, but that the Subject has a right to Petition, but I shall affirm it also, he has a Duty to obey ; and, that in this Case, the Power of the King to dispense with Penal Laws in Matters Ecclesiastical is not a thing that is now in Question, nor need we here have had these long Debates on both sides : It may be perceived plainly, by the Proofs that have been read, that the Kings and Princes have thought themselves that they had such a Power, though it may be, the Parliament thought they had not ; and therefore the Declarations of the one, or the other, I shall not meddle with in this Case. That Power it self which the King has, as King of this Realm, in Matters rather Ecclesiastical and Criminal than Matters of Property, may somewhat appear by what has been read before your Lordship ; but all this will be nothing in our Case, neither has His Majesty now depended so much upon this thing ; the Declaration has been read to you ; and what's there said ? The King there says, That for those Reasons he was ready to suspend those Laws ; and be they suspended ? Yet, my Lord, with this too, That he refers it to, and hopes to make it secure by a Parliament :

So that there being this, it has not gone, I think very far ; and, it not having been touch'd here, it is not a point of Duty in my Lords the Bishops, as Bishops, that's here inquired into ; Whether they should have meddled with this or no, in this manner, is the Question. That the King is Supream over all of us, and has a particular Supremacy over them, as Supream Ordinary and Governor, and Moderator of the Church, is very plain ; and my Lord, it is as plain that in such things as concern the Church, he has a particular Power to Command them ; this is not unknown, but very frequent and common in Matters Ecclesiastical, and Matters of State ; It is not here a Question now, whether these Declarations which they were Commanded to take Care of getting read, were legal or not legal ; what Prudence there was, what Honour there was, what Conscience there was, for their not reading it, is not the Question neither : But the point was, the King as Supream Ordinary of his Kingdom, to whom the Bishops are Subject, does in Council Order ; and what is it he Orders ? Their sending out and distributing his Declaration ; they were concerned in no more than that, and it had been a very petty thing, a small thing, to send out the King's Declaration to be read by the Clergy : All the Clergy were ordered to read it, but my Lords the Bishops were only commanded to distribute it ; this he might do by Virtue of his Power Ecclesiastical. And if this be not an Evil in it self, and if it be not against the Word of God, certainly Obedience was due from my Lords the Bishops ; active Obedience was due from them to do so much as this ; it was no Consent of theirs, it was no Approbation of theirs, of what they read, that was required. So that if they had read it, or another had read it, by the King's Order, especially if that Order be legal, they are bound to do it by Virtue of their Obedience, and not to Examine more.

And my Lord, in this Petition, here they come to relieve, not only themselves that were present, (for I speak to the Preamble, as others before me have spoke to the Conclusion) but they do involve the rest of the Bishops that were absent ; for it is in behalf of themselves, and their Brethren, and all the Clergy of that Province. Now that all these should joyn in the Petition, is a thing very uncertain ; how does it construe here, whether they were altogether, and consented to it, or how all their Minds could be so fully known, that they would be all involved in the Disobedience to this Order of the King. Then, my Lord, What is the thing they are greatly averse to ? There are two things required in the Order, The Bishops required to distribute the Declaration to the inferior Clergy ; and the inferior Clergy are required to read it. Then their Averseness must be to distribute it, and the others to read it, and so they will be involved ; none of whom did ever appear to have joyned in it. And then they give Reasons for their Averseness ; and it is true, Reasons might have been given, and good Reasons should be given, why they should not do this in Duty to His Majesty ; more gentle Reasons, and other kind of Reasons, than those that they have given.

L. C. J. Pray Brother, will you come to the Matter before us.

Mr. Serj. Baldock. I have almost done, my Lord.

Mr. Just. Powell. The Information is not for Disobedience, Brother, but for a Libel.

Mr. Serj. Baldock. No, Sir, it is not for Disobedience, but it is for giving Reasons for the Disobedience in a libellous Petition; and I am going on to that. The Declaration is said in the Petition to be illegal, which is a Charge upon the King, That he has done an illegal Act. They say, they cannot in Honour, Conscience or Prudence do it; which is a Reflection upon the Prudence, Justice, and Honour of the King in Commanding them to do such a thing: And this appearing to have been delivered to the King by my Lords the Bishops; Persons, to whom certainly we all owe a Deference, as our Spiritual Masters, to believe what things they say, as most likely to be true; and therefore it having an Universal Influence upon all the People, I shall leave it here to your Lordship, and the Jury, whether they ought not to Answer for it.

Mr. Recorder. Will your Lordship please to spare me one Word?

L. C. J. I hope, we shall have done by and by.

Mr. Recorder. If your Lordship don't think fit, I can sit down.

L. C. J. No, no, go on, Sir *Bartholomew Shower*, you'll say I have spoiled a good Speech.

Mr. Recorder. I have no good one to make, my Lord, I have but a very few Words to say.

L. C. J. Well, go on, Sir.

Mr. Recorder. That which I would urge, my Lord, is only this; I think my Lord, we have proved our Information, and that they have made no Answer to it; for the Answer they have made, is but Argumentative, and taken either from the Persons of the Defendants, as Peers, or from the Form of its being a Petition: As Peers, it is said, they have a right to Petition to, and advise the King; but that is no Excuse at all, for if it contains Matter reproachful or scandalous, it is a Libel in Them, as well as in any other Subject; and they have no more Right to Libel the King than His Majesties other Subjects have; nor will the Privilege of their Peerage exempt them from being punished. And for the Form of this Paper, as being a Petition, there is no more Excuse in that neither. For every Man has as much Right to publish a Book, or Pamphlet, as they had to present their Petition. And as it would be punishable in that Man to write a scandalous Book, so it would be punishable in them to make a scandalous, and a libellous Petition. And the Author of *Julian the Apostate*, because he was a Clergy Man, and a Learned Man too, had as much right to publish his Book, as my Lords the Bishops had to deliver this Libel to the King. And if the City of London were so severely punished, as to lose their Charter, for petitioning for the Sitting of a Parliament, in which there were reflecting Words, but more soft.—

Mr. Just. Holloway. Pray, good Mr. Recorder, don't compare the Writing of a Book to the Making of a Petition; for it's the Birth-right of the Subject to Petition.

Mr. Recorder. My Lord, it was as lawful for the City of London to petition for the sitting of a Parliament, as it was for my Lords the Bishops to give Reasons for their Disobedience to the King's Command: And if the Matter of the

City of London's Petition was reckoned to be libellous, in saying that what the King had done in dissolving the Parliament, was an Obstruction of Justice, what other Construction can be made of my Lords the Bishops saying that the King's Declaration is illegal? And if the Matter of this Petition be of the same Nature with that of the City of London, your Lordship can make no other Judgment of it; but that it ought to have the same Condemnation.

Mr. Just. Powell. Mr. Recorder, you will as soon bring the two Poles together, as make this Petition to agree with *Johnson's Book*; they are no more alike, than the most different things you can name.

Mr. Serj. Trinder. My Lord, I have but one Word.

L. C. J. How unreasonable is this now, that we must have so many Speeches at this time of Day? But we must hear it; go on Brother.

Mr. Serj. Trinder. My Lord, if your Lordship pleases, That which they seem most to insist upon on the other side, and which has not been much spoken to on our side, is, That this Power which His Majesty has Exerted, in setting forth His Declaration, was illegal, and their Arguments were Hypothetical; if it were illegal, they had not offended; and they offered at some Arguments to prove it illegal: But as to that, my Lord, we need not go much further, than a Case that is very well known here, which I crave leave to mention, only because the Jury perhaps, have not heard of it; and that was the Case of Sir *Edward Hales*, where after a long Debate, it was resolved, That the King had a Power to dispense with *Penal Laws*.

But my Lord, if I should go higher into our Books of Law, that which they seem to make so strange of, might easily be made appear, to have been a frequent and constant practice.—

L. C. J. That is quite out of the Case, Brother.

Mr. Serj. Trinder. I beg your Lordships Favour, for a Word or two; if your Lordship please to consider the Power the King has, as supream Ordinary, we say, he has a Power to dispense with these Statutes, as he is King, and to give Ease to his Subjects, as supream Ordinary of the whole Kingdom, and as having supream Ecclesiastical Authority throughout the Kingdom. There might be abundance of Cases cited for this, if there were need; the Statute of *primo Eliz.* doubtless is in force at this time, and a great many of the Statutes that have been made since that time, have express Savings of the King's Supremacy; so that the King's Power is unquestionable: And if they have come and questioned this Power in this manner, by referring themselves to the Declarations in Parliament, they have done that, which of late days has been always look'd upon as an ill thing, as if the King's Authority was under the Suffrages of a Parliament. But when they come to make out their Parliament Declarations, there was never a one, unless it be first in *Richard the Second's* time, that can properly be called a Parliament Declaration; so that that of the several Parliaments is a Matter perfectly mistaken; and if they have mistaken it, it is in the Nature of false News, which is a Crime, for which the Law will punish them. More things might be added, but I consider your Lordship has had a great deal of Patience already, and

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much time has been spent, and, therefore I shall conclude, begging your Lordships Pardon for what I have said.

L. C. Just. I do assure you, if it had not been a Case of great Concern, I would not have heard you so long: It is a Case of very great Concern to the King, and the Government, on the one side, and to my Lords the Bishops on the other; and I have taken all the Care I can to observe what has been said on both sides. 'Tis not to be expected that I should repeat all the Speeches, or the particular Facts, but I will put the Jury in mind of the most Material things, as well as my Memory will give me leave; but I have been interrupted by so many Long, and Learned Speeches, and by the length of the Evidence which has been brought in, in a very broken, unmethodical way, that I shall not be able to do so well as I would.

Gentlemen, thus stands the Case; It is an Information against my Lords the Bishops, his Grace my Lord of *Canterbury*, and the other Six Noble Lords; and it is for Preferring, Composing, Making, and Publishing, and Causing to be Published, a Seditious Libel; the way that the Information goes is special, and it sets forth, That the King was Graciously pleased, by his Royal Power and Prerogative, to set forth, a Declaration of Indulgence for Liberty of Conscience, in the Third Year of his Reign; and afterwards upon the 27. of *April*, in the Fourth Year, he comes and makes another Declaration; and afterwards, in *May*, orders in Council that this Declaration should be Published by my Lords the Bishops in their several Diocesses; and after this was done, my Lords the Bishops come and present a Petition to the King, in which were contained the Words which you have seen.

Now, Gentlemen, the Proofs that have been upon this, you'll see what they are; the two Declarations are proved by the Clerks of the Council, and they are brought here under the Great Seal; a Question did arise, whether the Prints were the same with the Original Declarations, and that is proved by *Hills*, or his Man, that they were Examined, and are the same; then the Order of the Council was produced by Sir *John Nicholas*, and has likewise been read to you; then they come to prove the Fact against the Bishops, and first they fall to proving their Hands; they begun indeed a great way off, and did not come so close to it as they afterwards did; for some of their Hands they could hardly prove, but my Lord Archbishop's Hand was only proved, and some others, but there might have been some Question about that Proof; but afterwards it came to be proved, that my Lords the Bishops owned their Hands, which, if they had produced at first, would have made the Cause something shorter than it was.

The next Question that did arise, was about the Publishing of it, whether my Lords the Bishops had Published it, and it was insisted upon, That no body could prove the Delivery of it to the King; it was proved, the King gave it to the Council, and my Lords the Bishops were called in, and there they acknowledged their Hands; but no body could prove how it came to the King's Hands. Upon which, we were all of Opinion, That it was not such a Publishing, as was within the Information; and I was going to have directed you to find my Lords the Bishops Not Guilty: But it hapned, that being

Interrupted in my Directions, by an Honest, Worthly, Learned Gentleman, the Kings Council took the Advantage, and informing the Court that they had further Evidence for the King, we staid till my Lord President came, who told us how the Bishops came to him to his Office at *White-hall*, and after they had told him their Design, That they had a mind to Petition the King, they asked him the Method they were to take for it, and desired him to help them to the Speech of the King: And he tells them he will acquaint the King with their Desire, which he does; and the King giving leave, he comes down and tells the Bishops, that they might go and speak with the King when they would; and (says he) I have given Direction that the Door shall be opened for you, as soon as you come. With that the Two Bishops went away, and said, they would go and fetch their other Brethren, and they did bring the other Four, but my Lord Archbishop was not there; and immediately when they came back, they went up into the Chamber, and there a Petition was Delivered to the King. He cannot speak to that particular Petition, because he did not read it, and that is all that he knew of the Matter; only it was all done the same Day, and that was before my Lords the Bishops appeared at the Council.

Gentlemen, after this was proved, then the Defendants came to their Part; and these Gentlemen that were of Council for my Lords let themselves into their Defence, by notable Learned Speeches, by telling you that my Lords the Bishops are Guardians to the Church, and great Peers of the Realm, and were bound in Conscience to take care of the Church. They have Read you a Clause of a Statute, made in Queen *Eliz.* time, by which they say, my Lords the Bishops were under a Curse, if they did not take care of that Law. Then they shew you some Records; One in *Richard* the Seconds time, which they could make little of, by reason their Witness could not Read it; but it was in short, a Liberty given to the King, to Dispense with the Statute of *Provisors*. Then they shew you some Journals of Parliament; First in the Year 1662. where the King had Granted an Indulgence and the House of Commons Declared it was not fit to be done, unless it were by Act of Parliament. And they Read the King's Speech, wherein he says, he wish'd he had such a Power, and so likewise that in 1672. which is all nothing, but Addresses and Votes, or Orders of the House, or Discourses, either the King's Speech, or the Subjects Addresses; but these are not Declarations in Parliament, that is insisted upon by the Council for the King, That what is a Declaration in Parliament is a Law, and that must be by the King, Lords, and Commons; the other is but common Discourse, but a Vote of the House, or a Signification of their Opinion, and cannot be said to be a Declaration in Parliament: Then they come to that in 1685. where the Commons take notice of something about the Soldiers in the Army that had not taken the Test, and make an Address to the King about it; but in all these things (as far as I can observe) nothing can be gathered out of them, one way or other, it is nothing but Discourses. Sometimes this Dispensing Power has been allowed, as in *Ric. 2.* time; and sometimes it has been denied, and the

the King did once waive it; Mr. Solicitor tells you the Reason, There was a Lump of Money in the Case: But I wonder indeed to hear it come from him.

Mr. *Soll. Gen.* My Lord, I never gave my Vote for Money, I assure you.

L. C. *Just.* But those Concessions which the King sometimes makes for the Good of the People, and sometimes for the Profit of the Prince himself; (but I would not be thought to distinguish between the Profit of the Prince, and the Good of the People; for they are both one; and what is the Profit of the Prince is always for the Good of the People;) but I say, those Concessions must not be made Law, for that is reserved in the King's Breast, to do what he pleases in it at any time.

The truth of it is, the Dispensing Power is out of the Case, it is only a Word used in the Petition; but truly I will not take upon me to give my Opinion in the Question, to determine that now, for it is not before me: The only Question before me is, and so it is before you, Gentlemen, it being a Question of Fact, Whether here be a certain Proof of a Publication? And then the next Question is a Question of Law indeed, Whether if there be a Publication proved, it be a Libel?

Gentlemen, upon the point of the Publication, I have summed up all the Evidence to you; and if you believe, that the Petition which these Lords presented to the King was this Petition, truly, I think, that is a Publication sufficient; if you do not believe it was this Petition, then my Lords the Bishops are not Guilty of what is laid to their Charge in this Information, and consequently there needs no Inquiry whether they are Guilty of a Libel: But if you do believe, that this was the Petition they presented to the King, then we must come to Inquire whether this be a Libel.

Now, Gentlemen, any thing that shall disturb the Government, or make Mischief and a Stir among the People, is certainly within the Case of *Libellis Famosis*; and I must in short give you my Opinion, I do take it to be a Libel. Now, this being a point of Law, if my Brothers have any thing to say to it, I suppose they will deliver their Opinions.

Mr. *Just. Holloway.* Look you, Gentlemen, it is not usual for any Person to say any thing after the Chief Justice has summed up the Evidence, it is not according to the Course of the Court; but this is a Case of an Extraordinary Nature, and there being a point of Law in it, it is fit every body should deliver their own Opinion: The Question is, whether this Petition of my Lords the Bishops be a Libel, or no; Gentlemen, the End and Intention of every Action is to be Considered, and likewise, in this Case, we are to Consider the Nature of the Offence that these Noble Persons are Charged with; it is for delivering a Petition, which, according as they have made their Defence, was with all the Humility and Decency that could be: So that if there was no ill Intent, and they were not (as it is nor can be pretended they were) Men of Evil Lives, or the like, to deliver a Petition cannot be a Fault, it being the Right of every Subject to Petition: If you are satisfied there was an ill Intention of Sedition, or the like, you ought to find them Guilty; but if there be nothing in the Case that you find, but only that they did deliver a Petition to save

themselves harmless, and to free themselves from blame, by shewing the Reason of their Disobedience to the King's Command, which they apprehended to be a Grievance to them, and which they could not in Conscience give Obedience to; I cannot think it is a Libel: It is left to you, Gentlemen, but that is my Opinion.

L. C. *J.* Look you, by the way, Brother, I did not ask you to sum up the Evidence, (for that is not usual) but only to deliver your Opinion, whether it be a Libel, or no.

Mr. *Just. Powel.* Truly, I cannot see, for my part, any thing of Sedition, or any other Crime, fixed upon these Reverend Fathers, my Lords the Bishops.

For, Gentlemen, to make it a Libel it must be false, it must be malicious, and it must tend to Sedition; as to the Falshood, I see nothing that is offered by the King's Council, nor any thing as to the Malice: It was preferred with all the Humility and Decency that became the King's Subjects to approach their Prince with.

Now, Gentlemen, the Matter of it is before you; you are to consider of it, and it is worth your Consideration, they tell His Majesty, It is not out of averfeness to pay all due Obedience to the King, nor out of a want of Tenderfness to their dissenting Fellow Subjects, that made them not perform the Command imposed upon them; but they say, That because they do conceive, that the thing that was commanded them was against the Law of the Land; therefore they do desire His Majesty, that he would be pleased to forbear to insist upon it, that they should perform that Command which they take to be illegal.

Gentlemen, we must consider what they say is illegal in it; they say, they apprehend the Declaration is illegal, because it is founded upon a dispensing Power, which the King claims, to dispense with the Laws concerning Ecclesiastical Affairs.

Gentlemen, I do not remember in any Case in all our Law, and I have taken some Pains upon this Occasion to look into it, that there is any such Power in the King, and the Case must turn upon that, in short; If there be no such dispensing Power in the King, then that can be no Libel which they presented to the King, which says, that the Declaration, being founded upon such a pretended Power, is illegal.

Now Gentlemen, this is a Dispensation with a Witness, it amounts to an Abrogation and utter Repeal of all the Laws; for I can see no Difference, nor know of none in Law, between the King's Power to dispense with Laws Ecclesiastical, and his Power to dispense with any other Laws whatsoever: If this be once allowed of, there will need no Parliament, all the Legislature will be in the King, which is a thing worth considering, and I leave the issue to God and your Consciences.

Mr. *Just. Allybone.* The single Question that falls to my share, is, to give my Sense of this Petition, whether it shall be in Construction of Law a Libel in it self, or a thing of great Innocence; I shall endeavour to express my self in as plain Terms as I can, and as much as I can, by way of Proposition.

And I think, in the first place, That no Man can take upon him to write against the actual Exercise of the Government, unless he have leave from the Government, but he makes a

Libel, be what he writes true or false; for if once we come to impeach the Government by way of Argument, 'tis the Argument that makes it the Government, or not the Government: So that I lay down that in the first place, That the Government ought not to be impeached by Argument, nor the Exercise of the Government shaken by Argument; because I can manage a Proposition in it self doubtful, with a better Pen than another Man: This say I, is a Libel.

Then I lay down this for my next Position, That no private Man can take upon him to write concerning the Government at all; for what has any private Man to do with the Government, if his Interest be not stirred or shaken? It is the business of the Government to manage Matters relating to the Government; it is the business of Subjects to mind only their own Properties and Interest: If my Interest is not shaken, what have I to do with Matters of Government? They are not within my Sphere: If the Government does come to shake my particular Interest, the Law is open for me, and I may redress myself by Law: And when I intrude myself into other Mens business, that does not concern my particular Interest, I am a Libeller.

These I have laid down for plain Propositions; now then let us consider further, Whether if I will take upon me to contradict the Government, any specious Pretence that I shall put upon it shall dress it up into another Form, and give it a better Denomination; and truly I think 'tis the worse, because it comes in a better Dress; for by that Rule, every Man that can put on a good Vizard, may be as mischievous as he will to the Government at the bottom; so that whether it be in the form of a Supplication, or an Address, or a Petition, if it be what it ought not to be, let us call it by its true Name, and give it its right Denomination, It is a Libel.

Then, Gentlemen, consider what this Petition is; This is a Petition relating to something that was done and ordered by the Government. Whether the Reasons of the Petition be true or false, I will not examine that now, nor will I examine the Prerogative of the Crown, but only take notice that this relates to the Act of the Government: The Government here has published such a Declaration as this, that has been read, relating to Matters of Government; and shall, or ought, any body to come and impeach that as illegal, which the Government has done? Truly in my Opinion, I do not think he should or ought; for by this Rule may every Act of the Government be shaken, when there is not a Parliament *de Facto* sitting.

I do agree, That every Man may Petition the Government, or the King, in a matter that relates to his own private Interest; but to meddle with a matter that relates to the Government, I do not think my Lords the Bishops had any Power to do more than any others: When the House of Lords and Commons are in Being, it is a proper way of applying to the King, there is all the openness in the World, for those that are Members of Parliament, to make what Addresses they please to the Government, for the rectifying, altering, regulating, and making of what Law they please; but if every private Man shall come and interpose his Advice, I think, there can never be an End of advising the Government; I think, there was an instance of this in King

James's Time, when by a solemn Resolution it was declared to be High Misdemeanour, and next to Treason, to petition the King to put the Penal Laws in Execution.

Mr. *J. Powell*. Brother, I think, you do mistake a little.

Mr. *J. Allybone*. Brother, I dare rely upon it, that I am Right; it was so declared, by all the Judges.

Mr. *Sol. Gen.* The Puritans presented a Petition to that purpose, and in it they said, if it would not be granted, they would come with a great number.

Mr. *J. Powell*. Ay, there it is.

Mr. *J. Allybone*. I tell you, Mr. Solicitor, the Resolution of the Judges is, That such a Petition is next Door to Treason, a very great Misdemeanour.

Mr. *J. Powell*. They accompanying it with Threats of the Peoples being Discontented.

Mr. *J. Allybone*. As I remember, it is in the Second Part of the Folio 35, or 37, where the Resolution of the Judges is, That to frame a Petition to the King, to put the Penal Laws in Execution, is next Door to Treason; for (say they) no Man ought to intermeddle with Matters of Government without leave of the Government.

Mr. *Serj. Pemberton*. That was a Petition against the Penal Laws.

Mr. *J. Allybone*. Then I am quite mistaken indeed, in case it be so.

Mr. *Serj. Trinder*. That is not material at all, which it was.

Mr. *Pollixfen*. They there threatned, unless their Request were granted, several Thousands of the King's Subjects would be discontented.

Mr. *J. Powell*. That is the Reason of that Judgment, I affirm it.

Mr. *J. Allybone*. But then I'll tell you, Brother, again, what is said in that Case that you hinted at, and put Mr. Solicitor in mind of; For any Man to raise a Report that the King will, or will not, permit a Toleration, if either of these be disagreeable to the People, whether he may, or may not, It is against Law; for we are not to measure things from any Truth they have in themselves, but from that Aspect they have upon the Government; for there may be every tittle of a Libel true, and yet it may be a Libel still: So that I put no great stress upon that Objection, That the Matter of it is not false; and, for Sedition, it is that which every Libel carries in it self; and as every Trespass implies *Vi & Armis*, so every Libel against the Government carries in it Sedition, and all the other Epithets that are in the Information; This is my Opinion as to the Law in general.

I will not Debate the Prerogatives of the King, nor the Privileges of the Subject; but as this Fact is, I think, these venerable Bishops did meddle with that which did not belong to them; they took upon them, in a petitionary way, to contradict the actual Exercise of the Government, which I think no particular Persons, or single Body may do.

L. C. J. Gentlemen of the Jury, Have you a Mind to drink before you go?

Jury. Yes, my Lord, if you please.

[Wine was sent for, for the Jury.]

Juryman. My Lord, we humbly pray, that your Lordship will be pleased to let us have the Papers that have been given in Evidence.

L. C. J.

L. C. J. What is that you would have, Sir?

Mr. Sol. Gen. He desires this, my Lord, That you would be pleased to direct that the Jury may have the use of such Writings and Statute-Books, as may be necessary for them: to make use of.

L. C. J. The Statute Book they shall have.

Mr. Sol. Gen. But they can have no Papers, but what are under Seal.

Mr. Serj. Levinz. They may have them by Consent, and they may have a Copy of the Information.

L. C. J. They shall have a Copy of the Information, and the Declarations under Seal.

Mr. Pollixfen. If they have those, and the Libel, (as they call it) they will not need a Copy of the Information.

Mr. Att. Gen. My Lord, we pray that your Lordship would be pleased to ascertain what it is they shall have.

L. C. J. They shall have a Copy of the Information, the Libel, and the Declarations under the Great Seal.

Mr. Sol. Gen. But not the Votes of the House of Commons, nor the Journals, for they are not Evidence.

L. C. J. No, I don't intend they shall.

Sir Rob. Sawyer. My Lord, we pray they may have the whole Petition.

Mr. J. Holloway. That is, with the Direction, and Prayer, you mean.

Mr. Att. Gen. Yes, with all our Hearts.

[Then the Court arose, and the Jury went together to consider of their Verdict, and stayed together all Night, without Fire or Candle.

On Saturday the 30th day of June, Anno Dom. 1688. about Ten of the Clock in the Morning, the Archbishop, and the rest of the Bishops, came again into the Court, and immediately after the Jury were brought to the Bar.

Sir Sam. Asty. Cryer, Take the Appearance of the Jury. Sir Roger Langley.

Sir Roger Langley. Here.

Cryer. Vous avez, &c.

[And so all the rest were called, and answered.]
Then Proclamation for Silence was made.

Sir Sam. Asty. Gentlemen, are you agreed on your Verdict?

Jury. Yes.

Sir Sam. Asty. Who shall say for you?

Jury. Foreman.

Sir Sam. Asty. Do you find the Defendants, or any of them, guilty of the Misdemeanour whereof they are Impeached, or not guilty?

Foreman. Not Guilty.

Sir Sam. Asty. Then hearken to your Verdict, as the Court hath Recorded it—

You say, the Defendants, and every of them, are Not Guilty of the Misdemeanour whereof they are Impeached; and so you say all?

Jury. Yes.

[At which there were several great Shouts in the Court, and throughout the Hall.]

Mr. Solicitor General, taking Notice of some Persons in Court that Shouted, moved very earnestly that they might be committed; whereupon a Gentleman of Grays-Inn was laid hold on, but was soon after discharged. And after the Shouting was over, the Lord Chief Justice reproving the Gentleman, said,

L. C. J. Sir, I am as glad as you can be, that my Lords the Bishops are acquitted; but your manner of rejoicing here in Court is Indecent, you might rejoice in your Chamber, or elsewhere, and not here.

[Then speaking to Mr. Attorney, he said,]

Have you any thing more to say to my Lords the Bishops, Mr. Attorney?

Mr. Att. Gen. No, my Lord.

[Then the Court arose, and the Bishops went away.]

The Tryal of Philip Standsfield, Son to Sir James Standsfield of New-Milns, for the Murder of His Father, and other Crimes Libel'd against Him.

Curia Justiciaria S. D. N. Regis, tenta in pratorio Burgi de Edinburgh, Sexto die Mensis Februarii 1688. per Nobilem & Potentem Comitem Georgium Comitem de Linlithgow, Dominum Livingstoun, &c. Justiciarium Generalem totius Regni Scotiae, & honorabiles viros Dominos Joannem Lockhart de Castle-hill, Davidem Balfour, de Forret, Rogerum Hodge de Harcase, & Johannem Muray de Drumcain, Commissionarios Justiciariae dicti S. D. N. Regis. Curia Legitime affirmata.

I N T R A N.

Philip Standsfield, Eldest lawful Son to Umquibile Sir James Standsfield of New-Milns, Prisoner within the Tolbooth of Edinburgh.



Ndyted and Accused at the Instance of Sir John Dalrymple Younger of Stair, His Majesties Advocate for His Highness's Interest: That where notwithstanding by the Law of God, the Common Law.

Law of Nations, Laws and Acts of Parliament of this Kingdom, and constant Practice thereof, the expressing of ma-

licious and seditious Words to the disdain of His Sacred Majesties Person, and contempt of His Royal Government, such as drinking or wishing Confusion to His Majesty, is High-Treason, particularly by the 2d Act. 2d Sess. Par. 1st King Charles II. of ever glorious Memory: The Plotting, Contriving or Intending Death or Destruction to the King's Majesty, or any bodily harm, tending to Death or Destruction, or who shall by Writing, Printing, or other malicious Plotting,

and advised Speaking, expresse and declare such their Treasonable Intentions, after such persons, being legally Convicted thereof, they shall be deemed, declared and adjudg'd Traytors: And the Cursing, Beating, Invading, or Assassinating of a Parent by a Child, above the Age of sixteen Years, who is not Mad and Furious, is punishable by Death, and Confiscation of Moveables: And of all other Murders, Parricide is the most atrocious and unnatural; and Murder under Truſt, is punishable as Treason with forfeiture of Life, Land and Goods, and particularly by the 20 *Act. 11th Sess. 2^d Par. K. Ch. 2^d*. The King's Majesty and Estates of Parliament, considering how great and atrocious a Crime it is for Children to Beat or Curse their Parents, and how the Law of God hath pronounced just Sentence of Death against such as shall either of these ways injure either of their Parents; therefore the King and Estates of Parliament did Statute and Ordain, *That whosoever Son or Daughter, above the Age of Sixteen Years, not being Distracted, shall Beat or Curse either their Father or their Mother, shall be put to Death without Mercy.* And likewise by the 51 *Act, 11th Par. K. Ja. 6th*. It is Statuted and Ordained, *That the Murder or Slaughtering of whatsoever of the Leidges, where the Party slain is under the trust, credit, assurance, and power of the Slayer, all such Murder or Slaughtering to be committed in time coming, the same being lawfully tryed, and the Person dilated found guilty by an Assize thereof, shall be Treason, and the Person found culpable shall forfeit Life and Goods;* as in the said Laws and Acts of Parliament at more length is contained. Nevertheless it is of Verity, that the said Philip Standsfield shaking off all Fear of God, the Bonds and Ties of Nature and Christianity, Regard and Obedience to the said Laws and Acts of Parliament, did dare and presume to commit the said horrid and detestable Crimes, in swa far as, upon the first, second, third, or one or other of the Days of the Months of *June, July, August, or September* last, by past, one or other of them, he did, within the House and Kirchin of *New milns*, call for Ale to Drink some Healths, and in the presence of *John Robison*, then his Fathers Servant, *Agnes Bruce*, likewise his Fathers Servitrix, and several others, he did, as a most villanous and avowed Traitor, presume and dare to begin a Health to the Confusion of his Sacred Majesty, his native Sovereign, and did drink off the same, and caused others in his Company to do the like. And likewise Sir *James Standsfield* of *New-milns* his Father, having caused Educate and bring him up Decentlie, and in plenty conform to his Rank and Quality, and having left no means unessayed for his Literature, Education and Subsistence; yet he being a profligate and debauched Person, did commit, and was accessory to several notorious Villanies, for which, both at home and abroad, he was apprehended and detained Prisoner, as in the *Marshal-Sea-Prison* in *Southwark*, in the publick Prisons of *Antwerp* and *Orleanse*, and several other places; and tho' his Father out of his natural compassion to him, did cause release him out of these Prisons, in which he was so justly confined, he no sooner had his Liberty, than he of new invented and went about his villanous Practices and Debauches: And his Father at last perceiving that nothing could reclaim him from these and the like proceedings, having signified his inclinations to Disherish him, and in order thereto having disposed his Estate in Favours of *John Standsfield*

his second Son; the said *Philip* did thereupon conceive, harbour and entertain ane Hellish Malice and Prejudice against the said Sir *John Standsfield* his Father, and most barbarously did declare, threaten and vow at several times, that he would cut his Throat. And particularly upon the first, second, or third, or remanent days of the Months of the Year 1680, within the House of *James Smith* in *Nungate* or *Haddingtoun*: and upon the first, second, or third, or one or other of the days of the Months of *January, February, March*, and remnant Months of the Year 1687, within the House of *James Baikbie* Fermorer in *New-Milns*; and within his Father's own House of *New Milns*, and in the House of *William Scott* there; and upon the first, second, third, or one or other of the days of the Months of *January, February, March*, and remnant Months of the Year of God 1682, 1684, and 1685 Years, when he was both in *Brussels* and *Breda*, and several other places, both in *Holland* and *Flanders*, and in Prisons within which he was detained in the City of *London* and *Southwark*, or upon one or other of the days, of one or other of the Months of the saids Years, or either of them most wickedly, unnaturally, and bitterly Rail upon, abuse and Curse the said Sir *James Standsfield*, his natural and kindly Parent. And being transported with rage and malice, he did, contrary to the light and eyes of Nature, nor once, but often, and frequently curse his Father, by bidding, and praying the Devil to take him, and the Devil rive him. God damm him, and swear, if he had a Sword, he would run it through him, and if ever he came to *Scotland*, he would be avenged upon him. And particularly upon the day of *November* last, which was the last time his Father went to *Edinburgh*; he did most impiously, and unnaturally imprecate, God let him never return, and God let him never see his Face. And frequently when he saw his Fathers diet taken to him; he used to say, God grant he may choak upon it; and at other occasions, when his Father refused to eat, he was in use to say, God let never more be in his Stomach than was in it then. And upon the first, second, or third, or one, or other of the days of the Months of *September, October, or November*, last by past, or one or other of them, His Mother being recovered out of a Swond, and having said to him, *Philip*, ye will shortly want your Mother, which will be a gentle Visitation to Sir *James* your Father. To which he did Answer: By my Soul, my Father shall be dead before you, Mother; and about eight days after, he upon the like occasion did renew the same Words: As also he was in use to declare, that though at present he had neither Cloaths nor Money, yet shortly (and no body did think how soon) he would be Laird of all, and then would use other Persons as they did him now: And at other times declared, that before *Christmas* he would be Laird of all; which Curses and Imprecations, he the said *Philip Standsfield*, by a continual Habit, used, and repeated these several Years by past; and lately some few Months or Weeks, before his Fathers Murder. And not satisfied therewith, the said *Philip* did proceed to that degree of unnatural Cruelty, and malicious Spite and Enmity against his Father; that upon the first, second, third, or one or other of the days of the Months of *January, February, March*, and remanent Months of the years of God, 1680, 1681, 1682, 1683, and 1684 years, or one or other

other of the Days, of one or other of the Months, of one or other of the saids Years; he did attempt to assassinate, and offered Violence to his Fathers Person, and did chase and pursue him upon the King's High-way at *Lothian burn*, and did fire Pistols upon his Father. And likeways upon one or other of the Days of one or other of the Months, of one or other of the Years of God above specified, he did attempt to assassinate his Father for his Life, at *Culterallors*; and did fire Pistols upon him: And his Father being afraid of his Life, and under the apprehension of Violence, from the cruel and bloody Hands of the said *Philip*, his unnatural Son, He did to several Persons both of Quality, and intire Reputation, declare that the said *Philip* his Son, had both attempted to assassinate, and offered Violence to his Person, and that he was devising, and contriving his Death. And the said Sir *James Standfield* his Father, having upon the day of *November* last, gone from the City of *Edinburgh*, to his own House of *New milns*, and about Ten a Clock at Night, or thereby having gone to his own Chamber, in order to his rest, and being alone in the Room, under the Credit, Trust, and Assurance of the said *Philip* his Son, and his own Servants within his own Family; The said *Philip* did consult, and advise, and correspond with some other Persones, within and about the House for the time, to assassinate and cruelly murder his said Father, and particularly with *George Thomson* in *New-Milns*, and *Helen Dickson* his Spouse, and *Fanet Johnston* Spouse to *John Nicols*, there, in the House of the said *George Thomson* many times, particularly the *Saturdays* Night, immediately preceeding the Murder, where he cursed his Father, and said he should shortly make an end of him, and be Master of all: And accordingly he and they did Murder and Strangle him in his Bed-Chamber, and in the dead time of the night, did carry and transport him from the said Room, to the Water, near by the House, and laid his Body down upon the Water-side, and tyed a Stone about his Neck, to make him sink in the Water; and before he was thrown therein, he went back with his Accomplices to a little Kiln near by, and consulted and advised, whether it was more fit to throw him in the Water, with the Stone about his Neck, to make him sink, or to take away the Stone, least when he should be found, it might thereby appear that the Stone had been tyed by some other hand than his own; and at last resolved to take away the Stone, and throw his Body in the Water, which they returning, did accordingly: And some Persons being accidentally lying in the House at the time, they did hear a Noise of many Tongues and Voices, to their great Terror and Amazement; And the next Morning very early, some of the Servants in the House, having come to the Room, where his said Father did lye, and having missed him out of the Room, gave notice thereof, to some others of the Servants. He declared that he had been seeking him about the Water-pools; and a Noise and Cry having arisen, Search and Inquiry was made for his said Father: (and by him seemingly amongst the rest) And after some time his Body was found in the Water hard by his own House, and being dead, and his Neck broken before he was thrown in the Water; his Body did neither sink to the ground, nor receive Water, (as all drowned Bodies are in use to do) and he knowing where his Fathers Body had been put, went on the Sabbath Morning directly

to the place where his Body was in the Water, and stood a considerable space on the Water-side, directly opposite to the Body, with his Eyes fixed on the same, before his Body was found or known to any others than the Murtherers; and when *John Topping* (a stranger) passing that way, and ignorant of the whole Matter, or that Sir *James* was amissing, called to him, and asked, who that was in the Water: He made no answer, but went away from that place straight to *New-Milns*, and gave no intimation to him, or any other Person what he had seen in the Water, but appeared surprized when his Body was found there, by other Persons; and his Fathers Body being taken out of the Water, the same was by his order, carried to a dark Out-house; and though he was desired by the Friends and Servants present, to suffer his Fathers dead Body to be carried to his own House, and kept therein, and not to be buried till his Friends in *Edinburgh* and elsewhere, and Physicians in *Haddingtoun*, or near by, might see the same. Yet he refused so to do, and caused bury the dead Body of his Father privately, and in haste. And the Noise having spread abroad, that his Father had been barbarously Murdered by him, and his Accomplices: Order was given by these in Authority, to cause open the Grave that Physicians and expert Chirurgians might inspect his Body, and make Report anent the Truth of the Matter: And accordingly, by the Report of the saids Chirurgians who inspected the Body, it did appear, that his said Father was cruelly strangled and murdered, and not drowned, and that he had been cast in the water of purpose to conceal the same: And when his Fathers dead body was sighted and inspected by Chirurgians, and the clear and evident signs of the Murder had appeared, the Body was sewed up, and most carefully cleaned, and his nearest Relations and Friends were desired to lift up his Body to the Coffin: And accordingly *James Row*, Merchand, (who was in *Edinburgh* in the time of the Murder) having lifted the Left side of Sir *James* his Head and Shoulder, and the said *Philip* the Right side, his Fathers Body, though carefully cleaned, as said is, so as the least Blood was not on it, did (according to Gods usual Method of discovering Murders) blood afresh upon him, and defiled all his hands, which struck him with such a terror, that he immediately let his Fathers Head and Body fall with Violence, and fled from the Body, and in consternation and confusion, cried, *Lord, have Mercy upon me*, and bowed himself down over a Seat in the Church (where the Corps were inspected) wiping his Fathers innocent blood off his own murdering Hands upon his Cloaths. By all which it is manifest, that he did most traiterously express his hatred and malice to his Majesties Sacred Person, by wishing and drinking to his confusion, and causing others to do the same. And likewise, that he did not only unnaturally curse, invade, attempt to assassinate or beat his said Father, but under trust and assurance, barbarously and treasonable did strangle, kill, and murder him in manner forsaid, and is actor, art and part of the forsaids Crimes, or one or other of them, which being found by an Assize, he ought to be punished for the treasonable Crimes above specified, with forfeiture of Life, Land and Goods, and for the other Crimes above-mentioned, Capitally, and with the pains of Death and Confiscation of Moveables, to the Terror and Example of others to commit the like hereafter.

Pursuers.

Sir John Dalrymple, younger of Stair, His Majesty's Advocate.

Sir George Mackenzie, Advocate.

Procurators in Defence.

Sir David Thoers.

Sir Patrick Hume.

Mr. William Moniepenney.

Mr. William Dundas.

The Pannal's Procurators produced two Warrants of Privy Council, Commanding them to compeer and plead the Pannal's Defence.

Sir Patrick Hume for the Pannal (always denying the Inditement, and whole members and qualifications thereof) alleadges, That as to the first part of the Inditement, in relation to the drinking an Health to the Confusion of his Sacred Majesty, as it is most calumnious, so it is not to be supposed, that any man in his right wits would have been guilty of such a thing; And it is positively offered to be proven, that at or about the time libel'd, and several times before and after, the Defender did most heartily and chearfully in several Companies drink the King's Health, and upon all occasions he was ready to testify his Loyalty to the King, and particularly the time of the Invasion by the late Duke of Monmouth in England, where he did enter himself voluntarily a Souldier in the Earl of Dumbarton's Regiment, and continued in the King's Army till the Rebels were defeat, and the Voluntiers dismissed.

As to the second part of the Libel, in relation to the Pannal, his alleadged committing and being guilty of, and accessory to many notour Crimes abroad, and being detained Prisoner in London, Antwerp, Orleans, &c. and that he vented and entertained malice against his Father, and that he declared many times that he would cut his Throat, and that he did rail against and curse his Father, by many Imprecations.

It is answered, *primo*, That it is absolutely deny'd, that the Pannal was guilty of, or accessory to any notorious Crime abroad, or put in Prison upon that account, nor is there so much as any Crime condescended upon.

2. The Defender could not conceive any prejudice against his Father, upon the account of Disposing his Estate to his second Son; for he knew nothing thereof till after his Father's decease, that one Alexander Airsle told him that his Father had made such a Disposition.

3. As to the pretended Expressions, that the Defender should have had of Railing, Cursing, and using Imprecations against his Father, in so far as the samen are libel'd to have been done abroad, in England, Holland, or other places, he cannot be lyable to the Punishment inflicted by the Law of this Kingdom, because when a party commits a Crime in another Nation, he is only to be punished according to the Law of the place where the Crime was committed, and not according to the Law of the Nation where he is a Subject, or has his Dwelling: As is clear by the Common Law, Authentick Cod: *ubi de criminibus agi oportet. Qua in provincia quis delinquit, aut in qua pecuniarum aut criminum reus sit, sive de terra, sive de terminis, sive de possessione, sive de proprietate, sive de hypotheca, aut de alia qualibet occasione, vel de qualibet re fuerit reus, illic jure subjaceat, quod jus est perpetuum.* In that Nation where any

Person commits a Crime, or is lyable to answer upon any account whatsoever, he is to be judged by the Law of that place, which is established as a perpetual Law, and *Mattheus de Criminibus*. in his Title, *de penis*, is express of the same Opinion.

4. As to all those pretended Expressions of railing, cursing, and threatning, lybel'd, that were before March, 1685. The Defender is secured by the Act of Indemnity, by which all Crimes are indemnified, preceeding that time, against the Government and Laws.

5. As to any pretended Expressions, of railing and cursing, since that time, they being but Injuries alledged done to the Father, he might and did remit the samen, in so far he did not challenge and pursue the same in his own time, and this is clear from the Common Law, *Carpzov. Part 2. Quest. 65. Actio autem injuriarum nec active nec passive in Hæredes transit, etiamsi mortuus illatas injurias ignoraverit. Institut. lib. 4. tit. 12. par. 1. de perpetuis temporalibus action. Leg. 10. par. 2. ff. si quis cautionibus in judicio sisten. And leg. 13. ff. de injuriis, injuriarum actio neque hæredi neque in hæredem datur*; As also it is a Principle in Law, that *diffimulatio tollitur injuria*; and if it could be made appear, that the Pannal had any such Expressions, the Father did diffimulat and pass from the same, in so far as by a Letter, dated in June last, written by the Father to the Pannal, he orders him to take in his Chamberlain Accompts of the Rents of his Lands, and of any Money he had received from the Tenements, or for the Corns sold, and that he expects he will do the same exactly, and recommends to him, to be careful of all his Affairs, and subscribes himself to be his Loving Father; By which it is evident, that all former Differences (if any were) betwixt them were then taken away.

As to the third part of the Inditement, in relation to the several Acts and Qualifications insisted upon: To infer, that the Defender had Accession to his Father's death. It is answered, (*primo*) That the Inditement, in so far as it is founded upon the 51. Act Par. K. Ja. 6. in relation to the Murder under trust, which is declared to be punishable as Treason, is not relevant: Because the Father cannot in Law be said to be under trust and assurance of the Son, and that Act of Parliament takes only place in Cases where a Man is invited to his Neighbours House, or of an Traveller being in an Inn, and that he be murdered under that trust, and the same Act of Parliament being founded on in the Case of Swinton, who killed his Wife, in the year 1666. the Inditement was restricted to simple Slaughter. And in the Case of Master James Oliphant, in the year 1665, The Lords of the Session found, that a Son's killing his Mother, was not Murder under trust, and so he was not punishable by that Act of Parliament, as guilty of the Crime of Treason.

2. The Acts and Qualifications condescended on to infer the Defenders Accession to his Father's death, are but very remote and uncertain, for as to that Expression, That the Defender is alleadged to have threatned his Fathers death, It is the Opinion of all Lawyers, who have written upon the Subject, that that is but a very remote Presumption. And as *Carpzovius* expresses it, *Part. 2. Quest. 121. Numb. 51. quod est indicium admodum periculosum, quippe cum homines sæpe nil minus faciant quam quod minas exequantur & ira*

iracundia agitated minas de crimine perpetrando sepe jactet, ipso tamen animo fervore paulo post discusso, cohibeat manus, & abstineat a facinore illo quod forsant ab alio postea committitur. And *Paris de puto* gives an instance in his *Tractat de syndicatu* upon the word *Tortura*; and *Boverius*, That a Woman seeing a Person going by her Window, against whom she had a Prejudice, and that another having a hatred against her, and hearing that she had threatned to cut off that Persons Leggs, the party that did hear the Woman use the threatening, did the thing, upon which the Woman that did threaten, being challenged, and put to the Torture, did confess; Yet thereafter it was found, that she was altogether innocent, and that another had done it.

3. As to the pretended Acts of the Defender's alledged pursuing, and invading his Father, and firing Pistols at him, at *Lothian burn* and *Culterallors in Annis 1683*; and 1684. As it is most groundless, so if need were it could be made appear by the Persons who were in company with him at that time, That the Defender, and his Father, were then in intire Friendship all alongst the Journey, and he was so far from making any such Attempt, That it can be made appear, that the Defender did behave himself towards his Father, with all the Submission and Respect that became a Son to have to his Father; But as to these and all other Acts preceeding *March, 1685*. the Defender is secured by the Act of Indemnity, and as the Defender cannot be pursued for any Crime preceeding that time; neither in Judgment nor out with the same, they in effect being no Crimes, being taken away by the Act of Indemnity, they cannot be so much as made use of as Qualifications or Aggravations to infer another Crime posterior thereto.

4. As to that pretended Qualification, that when the Defender did touch his Fathers dead body after it was taken out of the Grave, the Corps did bleed.

It is answered, That this is but a superstitious Observation without any ground either in Law or Reason. And *Carpzovius* relates, *Part 3. Quest. 122. Numb. 31.* That several Persons upon that ground had been unjustly challenged, and that he in his own Experience, had seen a dead body bleed in presence of the Person who was not guilty, as also that he has seen the body not bleed in presence of the Person that was guilty. And *Mattheus de Criminibus*, is of the same Opinion, *Tit. 16. de Quæstionibus*, *Numb. 12. de Sanguine porro de Cadavere profluente quod dicitur id de plurimis experimentis comprobetur, tamen cum experimenta falsa sint; ratio vero idonea nulla reddi possit, non putaverim indicium ad torturam sufficiens esse; non enim sapientis Judicis est incerto experimento credere quod certa ratione dirimendum est.* And the truth is, the occasion of the dead bodies bleeding, was that the Chirurgions that came out to visit the body, did make an Incision about the neck, which might be the occasion of the bleeding, and also the very moving of the dead body when it was taken out of the Grave, and out of the Coffin might occasion the bleeding; especially seeing the body did not bleed for some time after, which certainly was made by the Motion, and by the Incision: As also as a further Evidence, that it could not be the Defenders touching the body, the Chirurgions did likewise touch the body as well as he, and several

others present, so that the bleeding could no more be ascribed to his touching, than the touching of the other persons present.

5. As to the other Articles lybel'd, relating to the pretended Murder, They are but meer Stories; and the Truth is, and it is offered to be proven, That the Defender having gone to his Chamber and Bed the night before his Father's death, he did not stir out of his Bed, nor out of the Room, till the next morning, that *John Robertson* his Fathers Servant came to his Chamber, where he was in Bed, and told him that he had been in his Master's Room, and that he could not find him; Upon which the Defender immediately arose, and put on his Cloaths, and went out to see where his Father was. And shortly after word being brought him, by some Persons in the Town, that they did see his Father's Body lying in the Water, and it being generally concluded by all, that he had thrown himself in the Water, and the body being taken out, and laid in a Low-Room; it was thought fit by all the Neighbours about, that he should be buried the next day.

6. The particulars lybel'd, to infer the Defender's Accession to his Fathers death, being but remote and uncertain Conjectures, it is a certain principle in Law, that *ex præsumptionibus & conjecturis nemo criminaliter condemnari potest*, especially as to a Capital Punishment: As is clear from the common Law, *Leg. 5. digest de pænis, sed nec de supplicationibus debere aliquem damnari, satius enim est Impunitum relinqui facinus nocentis quam Innocentem damnari.* And which is the Opinion of all Lawers, writing upon the Subject; As *Bartol*, upon the foresaid Law, and *Farin. part. 3. oper: Crim. Quæst. 86.* and the Lawers by him there cited. And *Muscard de prob: Conclus. 223.* layes it down as a certain conclusion, *quod Argumenta quantumcunque urgentissima, etiamsi essent talia quæ mentem indicantis adeo coactarent quod aliud credere non possit, non tamen sufficerent ad condemnationem pænæ corporalis sed duntaxat pecuniariæ.*

7. The Presumptions and Qualifications lybel'd, cannot be sustained even to infer an Arbitrary Punishment: Because they may and are taken off by other Presumptions, That either the Father was not murdered, but that in a Frainzie or melancholy fit he had thrown himself in the Water: Or at least if he was murdered, that the Defender had no Accession thereto, and the Presumptions condescended upon in behalf of the Defender, eleid the Presumptions contained in the Inditement, are these. That it is notourlie known, That his Father was subject to melancholly Fits, and that in the Year 1679, the time of Bothwell-bridge, It is offered to be proven, that he was in a fit of Distraction; and at another time in his House at the *Netherbow*, he was going to throw himself out over the Window, if one *Thomas Lindall* had not come in at the time and pulled him back by the Leggs, when his body was half out at the Window: And some few days before he went out of *Edinburgh* last, he came to *George Sterling*, Chirurgeon, and desired him to draw blood of him, for a Distemper in his Head, which he refused, unless he had advice from a *Physician*. As also a day or two before he went out of the Town, he was seen reading upon the Book of *Burtouns Melancholly*. And that day when he went out of the Town in company of *Mr. Bell* the Minister,

and Aiton Merchant in Haddingtown, they observed him to be melancholy, disordered, and more troubled than ordinary; or if it could be made appear, that the Father was murdered, yet it cannot be presumed that the Defender had any Accession thereto, or that he would have committed such an Act against the very Ties and light of Nature: As also it appears by the foresaid letter, written to the Defender by his Father, that they were in intire Friendship; as also when the surmise went abroad, that his Father had been murdered, if he had been conscious to himself that he had any Accession thereto, he would have certainly fled the Country, and gone away: But he was so far from that, that upon the first Rumor of it he came presently in to *Edinburgh*, and several days thereafter, it being told him, that he was suspected to have Accession to his Fathers Death, he came voluntarily and entered himself in Prison, that he might undergo the strictest and severest Tryal. Which alone is sufficient, if it were no more to take off all the Presumptions lybell'd, and to convince the World of the Defender's innocence; and it being a principle in Law, That *una præsumptio tollit aliam*, The Presumptions adduced for the Defender ought to be preponderat, *Mascard. Conclus. 1205.* is positive, That *præsumptiones quæ stant pro reis prævalent*. As also that *Præsumptio affectionis naturalis prævalet contrariis præsumptionibus*. So that upon both these Considerations, the Presumptions alledged for the Defender ought to be sustained, to take away the Presumptions lybell'd, and to free him from the Crime.

His Majesties Advocate answers, That the Libel consists of three Articles, (*Primo*) Treason by the Pannal's drinking the King's Confusion, and by the Murder under Trust. 20. The Cursing of a Parent. 30. The Qualifications inferring the Pannal's Accession to the Murder of his Father.

As to the first, it cannot be denied, but that the drinking or wishing Confusion to His Majesty, is the highest Act of Contempt, Malice, and Disdain to his Royal Person; and as the Relevancy of this Article is not expressly contraverted, so the atrocity of the Act, and the forcing others to do the same upon the common grounds of Law, does clearly infer Treason, and it cannot be expected, that such extravagant Words should either be express, or particularly provided against by any Law in express Terms; but the nature of the words in express Terms of our Law discharging all Speeches to the disdain of his Majesty, the Contempt of his Authority, do clearly and naturally comprehend the words libelled, and by the common Law, *Ad leg: jul. Maj. crimen læsæ Majestatis ad exemplum legis scriptæ est vindicandum*.

And whereas it is pretended, that these words were inadvertantly said, and that it appears by the Tract of the Pannal's Life, and his Readiness to engage in His Majesties Service, that the words could not be deliberate and malicious. It is replied, That it is offered to be proven, that the drinking Confusion to the King, was openly and plainly proposed; and that the Pannal did deliberately send out for Ale to drink certain Healths, and that this Health to the King's Confusion was the first or second, and that it was no lapse or mistake in the Expression; but that he forced others to pledge

and drink that same Health: And the malice and disloyalty is evident by the Healths subsequent, *viz.* Antichrist's, &c. and it is not at all relevant, (after the reiterate and deliberat expressing of these words) that he had retracted or drank the King's Health; for a Crime once committed, is not retracted or taken off by such inconsistent and unsequential Speeches; but to shew the sence the Pannal had of the importance of his own Words, the Pannal being informed, that some of the Persons present had divulged his having drunk the King's Confusion, the Pannal did conjure them to Secrecy, and did menace the Witneses with a great Kane, that he would beat and brain them if ever they told it.

Whereas it is answered in general, as to all Crimes committed without the Kingdom, that they cannot be cognosced or punished here. It is replied, That as to all Crimes against Nature or the Law of Nations, as every party is competent to be an Accuser, so every Judicature is competent, and therefore as to the Crimes of Treason, or cursing of Parents, wherever committed, they are punishable by the Justices: But because in relation to the Crimes committed abroad, there is not positive Probation, but Declarations and Testimonies; Therefore as to these Crimes, His Majesties Advocate does not insist on them as distinct Crimes *per se*, but as Qualifications, Documents and Evidences of the habitual Debauchery, and unnatural Malice exprest by the Pannal against his Father for a Tract of many Years.

Whereas it is answered, That as to all Crimes preceeding 1685, they are taken off by the Indemnity. It is replied, The Indemnity 1685, is no general Indemnity, neither as to Persons nor Crimes, but particular Crimes are remitted, and particularly enumerat without any general Clause: And as cursing of Parents is not particularly enumerat, so by the Nature of that Crime, it cannot be included or comprehended in any general Indemnity: And the words of the Act of Parliament, 20. *Act. 1. Par. K. Ch. 2d.* bears expressly, *That the Cursers of Parents shall be put to death without Mercy*. So that a general Act of Indemnity or Mercy without a special Remission, could not include this Crime, which as the Act of Parliament bears, is expressly against Nature and the Law of God: And by the Opinion of all Lawers, general Indemnities do not extend to all Crimes; but these Crimes which are called in Law *Crimina excepta*, are never intended to be Indemnified, nor such Crimes, where the Interest of Parties is more than the Interest of publick Justice, and in all former and general Indemnities, Murther and other Crimes are particularly excepted with a general Clause, excepting all such Crimes as use not to be comprehended in general Acts of Indemnity; So that this so horrid a Crime, wherein the Parent was more interested than the Publick, neither was nor could be comprehended under a general Indemnity: As also that restricted, limited Indemnity, bears expressly an Exoneration for all persons below the degree and quality of an Heretor, Wodsetter or Burgeses; and whether the Pannal were an Heretor or not, yet it cannot be said, that he is below the degree and quality of a Wodsetter or Burgeses; and therefore the Act of Indemnity is of no use to him.

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Whereas it is answered, That Sir James was reconciled with the Pannal, and wrote kind Letters to him, whereby, *dissimulando* former Injuries were taken off. It is replied, That Injuries are only taken off *dissimulando*, which are not atrocious, but never specifick Crimes; wherein the discharge or exprels Renunciation of the Party injured cannot liberat a *vindicta publica*, the Punishment of Crimes, especially in Capital Punishments, belonging to the Magistrat, and the privat Party has not the sole Interest, nor can dispense with Capital Punishments: But the Letter founded upon, does not in the least infer the Parties Forgiveness or Dissimulation of the Injury: And a Father ordering his Son to call in for Chamberlain Accompts, without empowering him to discharge the same, is not the least evidence of Confidence in his Son, much less a remitting of his Crime.

As to the second Article in relation to the Cursing, it is positively offered to be proven, not in single Acts, but by a tract and habit of cursing his Father in the most abominable termes imaginable.

As to the third Article in Relation to the Murder, that this matter may be clear, *Et ut confet de corpore delicti*, these undoubted Qualifications are offered to instruct, that Sir James Standfield was murdered and strangled, and that he did not drown himself. 1. It is offered to be proven by the Minister, that was that night in the House, that long after ten a Clock at night, and that Sir James had retired to the Chamber, where he lay alone, the Minister heard the confused Whispers, Murmurs, and Noise of several Persons, both Men and Women, which affrighted him, and that he heard the noise go away by the back-side of the House, which leads directly to that Pool where Sir James his Body was thrown in the Water.

2. Sir James's Body was found swimming above the Water, and albeit it appeared by the Ice upon the top of his Cloaths, that he had been several hours in the Water, yet there had no Water entred into his Body, which is a Demonstration, that he was dead before he was thrown in the Water; for a person thrown alive into Water drawing in of Air and Respiration; being in the Water, he must draw in Water, and if the person drawes in as much Water as fills his concavities, he becomes heavy, having so much more weight of Water, and therefore he sinks; But if a Person be thrown dead into the Water, when the Clap of his Throat is shut, the Water cannot enter, and there being so much Emptiness, the Body is light and supported by more parts of Water, than the gravity of the Body can depress. 3. There being several Chyrurgions and others sent out by order from Authority to take up and inspect the Body; to see whether there was any evidence of Strangling, or other Symptoms of Murder upon the Body: It did appear to all these Persons who did depone before a Committee of the Privy-Council; That from the one Jugular Vein to the other round the Neck, there was a tumour of congealed black bruised Blood, three inches broad, and that there was congealed Blood in the Throat, upon which matter of Fact, the Colledge of Physicians have given an unanimous Testimony in writing, that Sir James Standfield was Strangled and not drowned: And the Deaconry of the Chirurgions being convened, have

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emitted a Declaration in Writing, concurring and agreeing with the Report of the Physicians; So that it is, as clear as the light of Day, that Sir James Standfield was murdered.

2. For the Qualifications that the Pannal was the Murderer, or accessory to the Murder of his Father, these clear Evidences are offered; which makes his Crime without possibility to be palliat or denyed. 1. It is notorious that the Pannal is a most debauched, vicious, pernicious Person, and has been Prisoner or condemned to dy in all the Places or Societies he ever haunted; He entred a Souldier in the Scots Regiment where he was condemned to die at Treves, but made his escape, and his being in Prison, in the Marshal-Sea-Prisons, Orleance, and Brussels, (which makes the Circuit of his Travels) are not denyed; and his profligat life and constant Drunkenness, since he came to the Prison, is offered to be proven by the Keepers: and as it is unnecessar to trace all his Debauches; so there is one material point offered to be proven, That upon the least Provocation either by Man or Woman, the Pannal used to swear by horrid Oaths, that he would take their lives, though he should die in the *Grass-mercat* for it.

3. Sir James Standfield for these Debaucheries having disherished the Pannal, and disposed his Estate to his second Son: It is positively offered to be proven, That in the Nun gate of Haddington, in James Smith's House, the Pannal being told, that his Father would disherish him, he with horrible Oaths vowed to cut his Fathers Throat.

And whereas it is answered to this Qualification, That the saying that a Son would cut a Father's Throat, is but a remot circumstance. It is replied, That the Law, and all Lawyers do agree, That *Minæ precedentes & damnum sequuntur*, is a most pregnant Qualification of that Party's Crime, especially where the Threats were to cut a Father's Throat, which of it self was so horrid and unnatural a Villany, that it cannot be doubted he who durst vow it, wanted but an occasion to act it. And it is acknowledged, that though this be the clearest Presumption, yet *per se*, it is not full Probation: For though the Son had both vowed, and resolved, yet by an accident he might have been prevented; but the Presumption at least lays the Burden, that except the Pannal could condescend, and document, that some other Person killed his Father, he must be reputed the Murderer.

2. It is offered to be proven, That Sir James Standfield who was a Person of eminent Sobriety and Veracity, did declare to several Persons, that his unnatural Son had attempted his Life, and offered violence to his Person, and particularly, that he had pursued him on Horseback, and fired Pistols on him; and that same Friday before Sir James was Murdered, he did declare that it was not his Debts, or any thing under Heaven that troubled him, but that his Son and Family were plotting and contriving his Destruction, and the next night he was murdered.

3. It is offered to be proven, That the Pannal's Mother declared, That her Son had vowed to be his Fathers death, and that he was a vindictive Person, and that she did apprehend he had murdered him. So as to this Article, there is a concurrence of the Pannals own Oaths, to murder his Father, and of his Father and Mo-

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ther's Declarations, that he had attempted, and was still plotting the same.

The second Qualification is, that, that *Saturday*-night, Sir *James Standsfield* came home: The Pannal would not come where his Father was, either to Supper, or Prayer, and being expressly desired by several Persons, to go to his Father, and speak with him: He declared, (that same night he was murdered) he could not endure to see, or look upon his Father; and he had been all that day, clos'd with *Thompson* and his Wife, and *Fanet Johnston*. So after ten hours at even, after the Family was gone to Bed, he came out to *Thomson's* House, which is hard by the Gate, and there in presence of *Thomson*, his Wife, and *Fanet Johnston*, he declared that his Father would neither give him Money, nor Cloaths, and curst his Father, and declared that he would shortly make ridd of him, which agrees with what he had several times said in other Companies, that he was to be Laird before *Christmas*; and that he was shortly to be Master of all, and none could think how soon. As also shortly before Sir *James's* Death, the Pannal's Mother falling in Swound, it was said to him, *Philip*, ye will shortly want your Mother; to which he answered, by God his Father should be dead before her: And eight days after, his Mother falling again Sick, he repeated the same words, whereby it is evident the Murder was deliberate and determined.

3. On the *Sunday* Morning, before Sir *James's* Body was found, *Philip* came to the Minister's Chamber, and told him that his Father was gone out in the night, and that he had been searching for him about the Pools, and water side; and when the Minister reprov'd him for making such Insinuations against his Father, he laugh'd at him, and went away to the Pool, and stood looking upon his Father in the water, but made no Discovery; and thereafter a Stranger coming by upon the Highway likewise, seeing Sir *James's* body in the water, he came back and discovered the matter; at which *Philip* seem'd surpris'd, and told that he had seen his Father's Body in the Water before, but he did not think fit to be the first Discoverer, which shews, that he was conscious of his own guilt; otherways upon the first sight of his Father in the Water, he would have gone to him, but on the contrary, he never laid a hand upon his Father's Body, either to pull him out of the water, or to carry him into the House, for the dread of some extraordinary discovery, and did not allow the Corps to be brought within his Father's Gates, but caus'd carry the Corps to the Wake-miln, where to cover the Appearance of Strangling upon his Body, he entrusted *Fanet Johnston* with the care of wounding him, who was known to be a Person so odious to Sir *James*, that he could not see her for her baseness with the Pannal, and she did acknowledge, that she had not been for three quarters of a Year within the House before; and yet this infamous Strumpet, who has been Tortured by order of the Privy Council, as Accessory to the Murder, chiefly intrusted to see the naked body, and the Cloaths put on.

4. The Pannal did refuse to send for a Chyrurgion, and to let his Father's Body be sighted, though the Minister, and others did expressly demand it; and the *Englishmen* in the *Manufactory*, who were acquainted with the *Crowner-Laws*,

they made a mutiny anent the Burial, till the Corps were sighted; yet the Pannal caus'd bury the Corps that same night without shewing them.

The Corps being rais'd by order, and incision being made, whereby the Strangling did clearly appear, and the Corps being dress'd clean, and Linnen put on, there did appear no blood; but to take off Suspicion, the Corps were list'd up, and the Night-Cap being wrong put on, it was altered and changed, and thereafter the Corps were laid down without any Blood upon the Linnen; and the Pannal (who to this time had never touch'd his Father's Corps) being required to assist to lift the Body into the Coffin, having taken his Father by the right side of the Head with his left hand, *James Row* bearing the left, the Pannal's hand was altogether bloody, as if his Hand had been put in a Vessel of Blood, which notwithstanding of all his Impudent resolution to the contrary, had that horrible Impression, and Conviction upon him, that he let his Father's Head fall to the ground, and cry'd out, O God, and run away and went to a Desk in the Church, where he lay groaning and in Confusion, but durst never return to touch the Corps, and as there can no natural reason be given, but an ordinar and wonderful Providence of God, in this kind of discoveries of Murder: So the Fact was never more evident, and sure, though half a dozen of Persons were bearing the Corps, no Mans hands were bloody but the Pannals, and the Corps being two intire days in the Grave, in that Weather and Season, the Blood by the course of nature was become stagnat and congeal'd, so that the former tossing, and list'ing of the Corps, and even the Incision it self had occasioned no such Effusion, but only some water or gore; but upon the first touch of the Pannal the Murderer, there appeared abundance of liquid florid Blood, and though this *per se* might not be sufficient, and as *Mattheus* is cited, it should not infer Torture, yet *Mattheus* acknowledges that most part do sustain this, as a violent presumption oft times experimented, yet in his Opinion it is not sufficient for Torture, because Torture being in it self a Punishment, it cannot be used, except where there is *semplena probatio*, or where the Conscience of the Judge is satisfied, as to the truth of the Crime, and therefore uses an extraordinary course, to extort a Confession, which proves that this presumption is *semplena probatio per se* according to their own grounds.

And whereas it is alledged, that Capital Punishment cannot be infer'd from Conjectures, but from clear and positive Testimonies. It is answered, that the *Lex ult. Cod. de probationibus*, clearly states that probation is either, *Testibus, tabulis instrumentis documentis & indiciiis*. And *Mattheus* states a particular title upon this single Question, *Cap. 6. Titulo 15. de probationibus*, and does most positively determin that Crimes are to be proven *Documentis, Argumentis & Indiciis*. And it is most evident, that the probation which arises from the nature of the thing, which is incapable to be sophisticate, or impos'd upon, as Witnesses may be, that kind of probation is the surest, because it is always the same, and admits no variation: It's true, and it is acknowledged that *Argumenta & Indicia* must be *clara & evidentiis*, and probation being *Quod facit fidem Judici*,

Jadici, every Man's Experience tells him, that the complication and conjunction of so many evident Qualifications, though none of them *per se* were sufficient, yet being all of them joyned, it induces a greater certainty, than two Witnesses positively deponing upon the Fact. And therefore the evidence of the probation belongs to the Inquest, and the relevancy that these Articles conjoyn'd, or any part of them are sufficient to infer the Crime, belongs to the Judge.

As to the Presumptions offered for the exculpation of the Pannal, they are not at all relevant; for though so horrid a Murder is not to be presumed against Nature, yet being proved, or so strongly evinced, it does but conclude the Pannal's greater Guilt; and suppose that Sir *James Standsfield* was formerly Melancholy, and had been Frantick in the Year 1679, yet it is known he recovered his Health, and was of a compos'd, sedat temper of mind for many Years thereafter, and was capable and diligent about his Affairs, these many Years, as he had been formerly, and was so considered and employed by the wisest Men in the Kingdom; and at the time of his Death there was no Sickness, or returning of Frenzie upon him, but all that Week he had composedly done his Affairs; and did upon the *Saturday*, when he went Home, discourse rationally upon all the Subjects that occurred: But it being so clearly documented and proven that he was Strangled, it is a ridiculous conceit, and there remains no possibility that after he was Strangled, he walked out and drowned himself. And as to that Presumption, that the Pannal rendered himself Prisoner, it was indeed suitable to the rest of his Impudence, and he did not render himself till after the Order to apprehend him was intimate to him; when he could not Escape, and when he was under Observation, and there did not want Project in fixing upon this Impudence when he could not Escape, as an Qualification of Innocence, that he would render.

Sir David Thoires without repetition of the Replies made by His Majesties Advocat, doth make his Duply to the foresajds Replies, and every Member thereof, in order as follows, viz.

TO the first, Anent the Treasonable Words, the Pannals Procurators oppon their former Answers, and the Act of Parliament whereupon that part of the Ditty is founded, being only in order to such Treasonable Speeches advisedly spoken. The constant tract of the Pannal's Life, in drinking his *Majesties* good Health at all occasions, and offering to adventure his Life in his Service in the last Rebellion, sufficiently demonstrats, that if any such Expresssion did escape the Pannel, as it is denyed, the same was only rash and unadvised, and not deliberate and advised, as is required by the Act of Parliament, to infer the pains libelled; and the Qualifications added by my Lord Advocat, bearing, that the Pannal did conjure the Persons then present to Secrecy, demonstrats that the Pannal was *ex incontinenti* heartily sorrowful and penitent for the same. And it's clear by that excellent Law of the *Cod*, the words whereof are, *Si quis Imperatori maledixerit, si ex insania miserando, si ex temeritate, & petulantia remnenda, si ex animo injuriandi ad principem remittendum,*

which demonstrats, that by the Common Law, such an rash and unadvised Expresssion was never to be laid hold on to infer a capital Punishment, where the Person alledged, expresse thereof, was not otherways suspect of Disloyalty.

2. Repeats the Defence as to Crimes alledged committed abroad, and it were against reason and equity, that Persons for one and the self same Crime, should be subject to the Punishments of several Jurisdictions, where the Punishment of the saids Crimes are different: But seeing my Lord Advocat declares he hath no Probation for these alledged Crimes, but Certificats and Affidavits, they cannot be obruded as a part of the Libel, because the saids pretended Certificats and Affidavits, are neither insert in the Libel, or given out to the Pannal, and all Crimes are to be proven *testibus, non testimoniis*; and if the custom of Affidavits should be introduced in this Court, all Pannals (how innocent soever) might be murdered, by being deprived of their unanswerable Objections against the Granters of these Affidavits, &c. and therefore they cannot be sustained as a Qualification to load the Pannal, or make the Inquest have a prejudicat opinion of him.

3. As to my Lord Advocat's Reply anent the Act of Indemnity, the former Defence and Act of Indemnity is opposed, and bears expressly Murders, Robberies, Slaughters, and all other Crimes committed against His *Majesty*, and Laws of the Kingdom, either by Word, Writ, or Deed, which undoubtedly excludes all alledged Crimes, said, done, or committed by the Pannal before that time, and this favour *& gratia principis*, is to be ampliāt and extended, and not restricted, and all His *Majesties* Judges and Officers of State are commanded to sustain the same, according to the most ample Interpretations for the Pannal, that the Words will allow.

4. The pretence that the Pannal was of the quality of a Burger, or a Barron, is most irrelevant, the Pannal having no visible Fortune at the same time, and as my Lord Advocat himself acknowledgeth, no Expectation of any Fortune whatsoever, so that if Barons, Burgars, Liferenters, Woodsetters, and likewise these who have nothing in possession at the time, shall be seclused from the benefit of that Indemnity, it is scarce intelligible, to whom, and for what cause the same was granted. 5. And as to that part of the Reply, bearing, that this was a privat Injury, and so not comprehended within the Act of Indemnity, the former Defence is opposed, and all pretence of privat Injury was taken away by Dissimulation or Death.

As to the pretence that the Reconciliation can be no defence against the Libel, as to *vindicta publica*, and that the Letter whereupon the Defence is founded doth not import a Dissimulation. It is Duplyed, That the Act of Parliament being an Comminatory Law, and principally intended in favours of Parents, the same was never yet made use of, and it were very hard to make use of the same to deprive a Parent of his Child, for any rash or passionate Expresssion, especially where upon Repentance the Father had remitted the Injury; but the Father being in effect Judge of the Injury, his remitting the same ought at least to Assailzie the Child, from any capital Conclusion. And as to the alledged habitual Cursing, the same is denyed, and the former

former Defence founded upon the Act of Indemnity is repeated and opposed, and the Libel is opposed, which doth not bear habitual Cursing, but particular Acts at particular Times.

And as to the Qualifications alledged by my Lord Advocat, for clearing that the Defunct Sir *James Standfield* was murdered, the Pannal is truly sorry, that for his own Defence, and for clearing of his own Innocence, his Lawers should be necessitated to plead any thing relating to his Fathers Infirmities, or way and manner of his Death. But it is duplyed, That the whole Presumptions adduced by my Lord Advocat are allanerly fallacious Conjectures, and can neither be *separatim*, or complexly relevant to infer any such thing, because, 1. That the Minister did hear a whispering noise, and was thereby terrified, his Terror and Consternation having (as he himself pretends) put him in a Disorder and Confusion, he was thereby rendered incapable to observe or judge of any thing that happened. 2. That the Body was swimming above Water, imports nothing, the Defunct having a great Coat of thick Cloth about him, which was sufficient to keep him floating above. 3. The pretence that there was no Water in the Defunct's Body when the Chirurgions visited the same, imports nothing, because the Defunct's Body having been several times stirred before that time, by which the Water might have run out, as it actually did (in Case there was any water within it).

4. Albeit where a Man is drowned unwillingly, and endeavours to breathe, so long as he can, his breathing may suck in the Water; Yet if a Man intend to drown himself, he will certainly endeavour all means for quick dispatch of himself, and thereby keep in his Breath, and the keeping in of the Breath after that manner was sufficient, both to keep the Body floating, and the water from coming in.

5. To put the matter beyond all question, the Defunct was laying in the water a considerable space from the Bank; And albeit the Ice was not so strong as to have carried a Child, yet the Ice was whole and entire betwixt the Defunct and the Bank, which demonstrates, that the Defunct had jumped in from the Bank, to that place where he was lying. 6. As to that pretence, that there was Blood about the Defunct's Neck, all lapper'd and bruised before incision was made, the Defunct being pulled out of the water, by an great Cleik, the touching of the Neck with the Cleik, when his breath was just gone out, was sufficient to have made the Blood where that part was to lapper and congeal. 7. As to the Declarations of the Physicians, and Chirurgions, they are only Declarations *ex auditu*, and upon Report of one or two Chirurgions, and hath no Foundation, but the ignorance or knowledge of the saids two Reporters; neither can any such Declarations be obtruded against the Pannal, because not given out with the Libel; But whatever may be inferred from these Presumptions, whether the Defunct was Murdered or not, the same does not concern the Pannal, unless his accession to the Murder were instructed, as is impossible it can be.

As to the Qualifications alledged by my Lord Advocat, for fixing the Murder, or accession thereto upon the Pannal; It is duplyed to the first, That the Pannal's alledged vicious Life,

and the Story at *Treves*, his being Drunk in Prison, and Threating to cut Throats upon small Provocations, the same are extrinsick to the Lybel, and cannot be respected. 2. As to the alledged threatening used in *James Smith's House*, the Lybel is opposed, bearing these Expressions, to have been used in the Year 1684, or some Year preceeding; And therefore the former defence founded upon the Indemnity, is repeated, and opposed. And whereas my Lord Advocat pretends, that *minæ præcedentes cum damno sequuto*, is sufficient either to fix the guilt upon the Person who used the Threats, or at least to burden him with the probation, that another committed the Crime. It is Duplyed, 1. That my Lord Advocat's Position is absolutely denyed, unless he can instruct some other positive Accession against the Pannal, and these pretended Threats being taken away, not only by the Act of Indemnity, but likeways by Dissimulation, which is not only offered to be inferred from the Letter made mention of in the Defence, but likeways by the Defunct's owning, receiving, intertaining, furnishing, and providing for the Pannal, in every thing suitable as his eldest Son, the same doth undoubtedly take away all pretence that can be founded upon threatening, so many Years preceeding; and by no Law can the Pannal be burdened to prove who were either Actors, or in Accession to his Fathers Murder.

As to the second Qualification bearing, that the Defunct said to several Persons, that the Pannal offered to invade him (denying the same) the Father's Assertion could not infer a Crime against the Pannal, unless the Crime it self were otherways proven by Witnesses, and the same is Libeled to have been said by Sir *James* before the Act of Indemnity. And Sir *James's* other Assertion, that he was in trouble, for fear of Prejudice from his Family, cannot infer a Crime, especially against the Pannal; and far less can it be proven by the Relict and the other Son, who in Sir *James's* apprehension were designing mischief against him, and for their own Vindication, they would certainly depone partially against the Pannal. And the same is repeated against the other Expressions alledged spoken by the Mother; And Witnesses cannot be received to prove what another Witness said.

As to the Pretence, that the Pannal refused to sup with his Father the night before his Death. It is Duplyed, the Pannal was not at all in use to sup, except on *Sundays* night. And the Pannal had no Kindness for the Minister, Because he and others of his Gang had endeavoured to keep up discord betwixt him and his Father.

As to the alledged Bleeding of the Corps, the former Defences are opposed; And albeit the Pannal did help to lift his Fathers Corps before the incision, yet no Blood did appear till long thereafter that the incision was made, and the Pannal did fall to grip that part of his Father's Head where the Incision was. So that the Blood falling from the wound, can neither be a Ground nor Presumption for guilt; And though the Pannal was surprised to see his Father's Blood, Yet the same did only proceed from natural Duty and Affection, and not from any apprehension of Guilt. And these qualifications being all Libel'd and Debated upon, It is humbly desired for the Pannal, that the

the Lords of Justiciary would give a separat Interloquitor upon every particular qualification.

Sir Patrick Hume for the Pannal adds, That as to the point of Treason, It is offered to be proven, that it was when he was Drunk, and after Cups, and is so presumed, especially it being, as it is acknowledged by the Libel, in a Drunken company.

2. As to the Act of Indemnity, It is extended to all Crimes except the Arch-bishop's Murder, and *exceptio firmat regulat, &c.* And the Act bears not that Clause excepting other Crimes, which uses to be excepted.

3. As to the qualifications condescended on in my Lord Advocate's answer, either they are Libel'd, and so opposes the former answer; And if they be not Libel'd, they cannot be considered as qualifications.

4. Whereas it is alledged, That the Pannal was in use to threaten to cut Throats, when in passion; the Argument is retorted, For though he threatned, nothing followed; And so his Threatnings were but *verba jactantia*.

5. As to the citation out of *Mattheus*, that parties may be punished upon presumptions. It is answered, That the Case there stated is where the Person who committed the Slaughter, was apprehended in the place where it was committed, That he was all bloody and with a bloody Sword, answerable to the Wound, and that he became pale when he was apprehended, and that he had made no answer, but in terrour fled away, which are such Acts as do evidently make appear the Slaughter, and could admit of no other construction, but that cannot be pretended in this Case, where all the Presumptions are remote and extrinick, and even in the Case instanced by *Mattheus*, and others of that Nature, they are only to take effect in order to an Arbitrary, but not a capital Punishment, which is the opinion of all Lawyers, who ever wrote upon the subject, and particularly *Muscarrd, de prob: conclus. 123. Numb. 20. and 31.* where the question is stated, *an plures presumptiones conjunguntur, in order to infer a capital punishment?* And he concludes in the negative as a general conclusion by all Lawyers, but only to infer an arbitrary Punishment.

As to the bleeding of the Body, It is offered to be proven, that the Pannal touched his Father's Body before the Incision, and it did not bleed.

THe Lords, Justice General, and Commissioners of Justiciary, Having considered the Libel, pursued by His Majesty's Advocate against Philip Standsfield the Pannal: And the first part thereof, anent the Treason libel'd, they find the famen as it is lybel'd, relevant to infer the pain of Treason.

And as to the Pannal's cursing of his Father, mentioned in the Inditement; They find these Expressions, or either of them, *viz.* the Devil take him, the Devil rive him, God damn him, relevant to infer the pain of Death: And repels the Defence founded upon the Act of Indemnity, and finds the Pannal is not under or below the quality therein specified.

As to the Pannal's murdering of his Father mentioned in the Inditement, they found the Libel as it is lybelled and qualified relevant to infer the pain of Death, and remits the same with the qualifications lybel'd to the knowledge of

the Assise, and allows Witneses to be led for the Pannal's proving his Father to have been Melancholy the day before the committing of the Murder, and remits to the Assise to consider the Import thereof, if it be proven, and repels the whole other Defences proponed for the Pannal.

The Lords continues the Dyet against the said Philip Standsfield, till to Morrow at two of the Clock in the Afternoon: And ordains him to be carried back to Prison, and the Witneses and Assises to attend, ilk Person under the pain of 200 Merks.

Edinburgh the seventh of February, 1688.

Philip Standsfield Prisoner, being this day entered on Pannal, dilated, indyted and accused for the Treasonable drinking of the King's Confusion, cursing his Father, and for the cruel and unnatural murdering of him in manner mentioned in this Ditty.

The Interloquitor above-written was this day read again in presence of the Pannal, and the Assisers afternamed, *viz.*

William Bailly of Lamington.

James Glen, Stationer.

Alexander Reid, Elder, Goldsmith.

Charles Charters, Merchant.

David Hepburn of Humby.

Edward Gillespy, Merchant.

Robert Sandilands, Merchant.

Samuel Moncrief, Merchant.

Thomas Lendall, Merchant.

James Cleiland, Merchant.

Hepburn of Beinstoun.

William Paton, Merchant.

George Braithwood, Stabler.

John Marshal, Merchant.

Alexander Edgar, Chirurgeon in Haddingtoun.

The Assise lawfully sworn, no Objection of the Law in the contrary.

His Majesties Advocate for Probation adduced the Witneses deponing, *viz.*

John Robertson late Servitor to Sir James Standsfield of New-Milns, aged twenty four Years, unmarried, purged of malice, prejudice, hatred, ill will, and partial Counsel, and solemnly sworn, Depones, a little time before harvest last, the Pannal being in the Kitchen of New-Milns, in the deceast Sir James Standsfield's House, where the Deponent was likewise present, he saw the Pannal Philip Standsfield take a Cup of Ale, and heard him say: There is the Pope's Confusion, the Antichrists, the Chancelours, and the King's Confusion, and put the Cup to his Head, and drink a little, and then gave it to Samuel Spofforth, and commanded him to drink it on his Knees; depones, that there were likewise besides Samuel Spofforth, Jeremy Smith, Agnes Bruce and Elspeth Jameson; and depones, that Philip Standsfield the Pannal was not drunk at the time; Depones, That at the naming of the several Confusions above-mentioned, he still drank a little of the Cup; And this is the Truth as he shall answer to God: The Deponent further depones, that he said to the Pannal, after the drinking of the saids Confusions, that it was Treason, and he answered, Ye Dog what are you concerned; ye do not understand to whom ye speak. *Sic Scribitur,* John Robertson.

Agnes Bruce, Servant to the deceast Sir James Standsfield, aged twenty four years, unmarried, purged

purged and sworn, Depones, That a little before Harvest last, she being in the Kitchen of *New milns* with *Philip Standsfield* the Pannal, she saw him take a Cup of Ale, and drink the confusion of the Pope, and the King, and heard him bid *Samuel Spofforth* sit down on his Knees and drink the same, which accordingly he did, after this the Deponent went up Stairs, and knows no more what past at that time, but heard they drank more confusions; Depones, that about a week after it being talked in the house, that he had drank the confusions afore-said, he said to the Deponent, God damn him, if he knew who divulged it, he would be their Death: And this is the Truth as she shall answer to God, depones she cannot write. *Sic subscribitur*, *Linlithgow*.

Samuel Spofforth, late Servitor to Sir *James Standsfield* of *New milns*, aged 19 years, unmarried, purged and sworn, Depones, that a little before Harvest last, the Deponent was in the Kitchen of *New milns* with *Philip Standsfield* the Pannal, where he heard him drink a confusion to the Pope, Antichrist, and the King, and to the Devil, and the Pannal prest the Deponent to drinke the same confusions upon his knees; Depones, *John Robertson*, *Agnes Bruce*, *Jeremy Smith* and *Elspeth Jameson* were all likewise present at that time, and that these confusions were drunk severally: And this is the Truth as he shall answer to God. *Sic subscribitur*, *Samuel Spofforth*.

John Robertson above design'd being Re-examined, purged and sworn, Depones, That the Deponent being at *Morum Castle* after Harvest last, in order to give a call to a Minister, the Deponent having met with *Philip Standsfield* the Pannal, he said to him, Ye are a wise lad, if ye have subscribed that Bond, the Devil take him, and particularly, the Devil take his Father, and named his Father; depon'd, that at another time in the midst of Harvest last, the Deponent and Sir *James Standsfield* the Pannal's Father being going to *Smeitoun* with a Minister, the Pannal asked him, Where he and his Father was going, and the Deponent answered, that he was going to *Smeitoun* with his Father; And the Pannal *Philip Standsfield* said, Devil, let never one of them come back again, Horse nor Man: Depones further, That several times, and frequently, when the Deponent has been seeking the Pannal to come to Dinner with his Father, the Pannal's ordinar Answer was, the Devil dame him, and you both, and Devil rive him, for I will not go to him, and if he had a sixpence a day, he would not go near him, for his Father girned upon him like a Sheeps-head in a tongs, and that he has heard him say sometimes, God damn his Father: And this is the Truth as he shall answer to God. *Sic subscribitur*, *John Robertson*.

William Scot Clothier in *New-miln*, Aged 30 years, Married, Purged and Sworn, Depones, That betwixt *Michaelmas* and *Martimas* last, the Pannal *Philip Standsfield* having come to the Deponent's Shop, and asked for some Tobacco, the Deponent said to *Philip*, his Father would not let him want for Money to buy Tobacco; and the Pannal *Philip* said, the Devil take him and his Father both, for there never came an honest man out of *York-shire*: Depones, his Wife was present with him, when that Discourse past: Depones, he cannot write. And this is the truth as he shall answer to God. *Sic subscribitur*, *Linlithgow*.

Agnes Bruce above-designed being Re-examined, Purged and Sworn, Depones, That she did hear the Pannal usually vow and swear he would kill any person that offended him; and that the Pannal did haunt much with *Janet Johnston*, *George Thomson* and his Wife, and that he went frequently out of his Fathers House after Supper to these persons; and further Depones, that she has heard the Pannal frequently curse his father, and bid the Devil damn him, and rive him, and twell him; and that she has frequently heard him express his hatred and abhorrence of his Father, and that he could not abide to see his Father: further Depones, that the *Munday* at Night before Sir *James* came to *Edinburgh*, the last time he was in it, being about a Fourtnight before his Death, the Deponent was ordered to call the Pannal to his Mother after he was gone to his Chamber, and that accordingly she did it, and when the Pannal came down, the Deponent left him with his Mother alone, and when she was without the Door, she heard him say to his Mother several times, God damn him if he did it not; and desired his Mother to take a good Heart, for as long as he had, she should not want: Depones, she knows not what he meant by these words, but knows there had been a little quarrel betwixt Sir *James* and his Lady that same Night: Further Depones, that on *Tuesday* thereafter, when Sir *James Standsfield* was going in to *Edinburgh*, she did hear *Philip Standsfield* the Pannal say in his Mothers Chamber (his Father not being present,) God let him never return, God let him never see his Fathers face again, the Devil go with him, the Devil rive him, and take him away: and that there was no body in the Room at the time but the Pannal and his Mother, and the Deponent was at the Door: Further Depones, that about a month before, Sir *James* having reproved the Pannal, upon the occasion of an Accompt given in by *William Anderson* Brewer, she did hear the Pannal say in his Mothers Chamber (Sir *James* not being present,) God damn him if he should not do ten times worse, and that he could not endure to see his Fathers face, and that he had hated his Father these six or seven years: Further Depones, that about a Fourth-night or twenty days before Sir *James* his death, it being said that *Philip* was to go to Town with his Father, she heard him say, he would be hang'd ere he went with him, let him go, the Devil go with him, and let him never return, and this likewise in his Mothers Chamber, and in her presence: Depones, the Pannal did ordinarily shift occasions of being in his Fathers company: Depones, that the *Friday* before Sir *James* his death, she knows the Pannal and *Janet Johnston* were a considerable time together in the Pannal's Chamber, where the Deponent heard *Janet Johnston*'s tongue; but doth not know if *George Thomson* and his Wife were with them, Depones, that on the *Wednesday* before Sir *James* his death, *Philip* having cursed some of the Servants, the Deponent said to him, God be thanked, he was not their Master; and that he answered her with an Oath, she knew not how soon he might be their Master: and Further Depones, that she thought Sir *James* not so merry as his ordinar the night before his death, but that he conveyed Mr. *Bell* to his Chamber, and thereafter came down to his own; and the Deponent having desired to speak with

with Sir *James*, his Servant *John Robertson* told her she could not, because his Chamber-door was shut, and he was gone to Bed; and that she did then see light in his Room, and when she was going away, found the Hall-door which was without his Chamber-door shut, and that the Hall-door was not usually closed in the night time except Sir *James* had done it himself, and which he did but once in two or three Nights: Depones, that on the *Saturday's* night when Sir *James* came home, he did go to his Ladies Chamber, where he stayed not a quarter of an hour, and that his Lady fell a quarreling of him for going to another House before he came there, and that the Deponent came out of the Chamber, and knows not what more past there: Depones, the next morning, when Sir *James* was mist, the Deponent went in to his Room to put on a Fire, and found the Bed better spread up than it used to be, and the Curtains more drawn about it, and the Candle which usually was at the Bed-head, she found it standing on a Chair at the Bed-foot. And further Depones, that when the Defunct's body was bringing up to the House, the Deponent would have had him brought to his own Chamber, but *Philip* swore that the Body should not enter there, for he had not died like a Man, but like a Beast: Depones, that the Body was then put in the *Walk miln* (but knows not if *Philip* caused do it,) and that the Body from that was brought to a Cellar within the Clofs where there was very little light: Depones, that she did not see any water come out of his mouth, and that when the Deponent lifted up the Linen-sheet, which was over him in the Cellar, some of them caused let it down again, for it was not fit to let the Body be seen. Depones, that *Janet Johnston* was present with the Body in the Cellar with the rest, and though it was known that neither Sir *James* nor his Lady would look upon her for a good time before, nor was she openly seen about the House, yet that morning she went to the Ladies Chamber, as soon as the Body was taken out, and the Deponent was present and saw her come in, and well enough taken with: Depones, she heard *Philip* after his Father's death, Greet and Cry, but saw no Tears: Depones, immediately after his Fathers body was found, he would have forced his Fathers Chamber-door it being shut, but the Key being gotten, it was opened and he entred in, and first took his Fathers Gold and Money out of his pocket, and then got the Keys, and searched the Cabinet, and that within an hour after his Father was brought from the Water, he got the Buckles of his Father's shoes, and put them in his: Depones, that on the *Munday* after Sir *James's* death, the Lady and *Janet Johnston* having quarrelled together about some remains of the Holland of the Woonding-sheet, *Philip* came down out of his own Chamber, and the Deponent heard him say to *Janet Johnston*, hold your peace when I command you, for he would reward her well for the kindness she had done to him at that time: Depones, that when the order came from *Edinburgh* to raise the Corps again, the Deponent did meet *George Thomson* the Taylor, and perceived him shaking and trembling, and asked him what troubled him? and that his answer was, he heard the blackest News that ever he heard in his life, for Sir *James's* body was to be raised again, and said he would sew no more in the

House of *New-milns* for the World, and carried the Mournings to his own House: Depones, she knows nothing of false Keys made use of about the House, only she heard the Lady say, that there were: Depones, *Philip* had no lock-fast place in the House, except a little Coffer, and that it once being opened, the Deponent did see several Keys within it, and that he offered once the Key of one of the Rooms to the Deponent, but the Deponent took it not, because she had the ordinar Key of the Room: Depones, that *Philip* was in use to ly alone, but that after his Fathers death, he would not ly in a Room alone, at *New-milns*, and that he declared to the Deponent that he was afraid to be alone in a Room, either night or day, and that he slept not the night after his Father died, and that he should not go into the Room where his Father lay, if once he had the Cabinet out of it: Depones, that a short time before Sir *James* died, the Lady having fallen in a Swond, and the Deponent having told *Philip* of it, *Philip* came to his Mothers Chamber, and that his Mother told him then, that he was like in a short time to lose his Mother; and that he answered in the Deponents hearing, that his Father should be dead first: And depones, that some few days thereafter, in his Mothers Chamber again, and in the Deponents hearing, he renewed the same Words with an Oath: Further depones, that two Nights after Sir *James's* Death, the Lady told to the Deponent, that something then came in her Mind which she had heard, to wit, that *Philip*, before he went to *London*, when he was in his Pomp, having heard that Sir *James* was to give his Estate to his second Son, in the House of *James Smith* in the *Nungate*, had vowed to kill his Brother, and the like, or little less to his Father; and that thereafter, when they were coming into *Edinburgh*, the Lady renewed again to the Deponent the same Words, and added, what if they should put her Bairn in Prison. And this is the Truth, as she shall answer to God. Depones she cannot write,

Sic Subscribitur.

Linlithgow.

John Shand, sometimes Servitor to Sir *James Standsfield*, Aged 43 Years, unmarried, purged and sworn, depones, that a little after *Philip Standsfield*, the Pannals Marriage, the Pannal and the Deponent being in *James Smith's* House, in *Nungate*, of *Haddingtoun*, the Pannal did expostulat with the Deponent, that his Father dealt too narrowly with him, he being then married; and the Deponent told the Pannal that his Father was in straits, and exhorted him to be dutiful to his Father; thereafter the Pannal said, if I knew my Father would give his Estate to my Brother *John*, I would cut his Throat, and the Land-lord of the House being by, and present, and surprized, cryed out, *God preserve me, what means the Man*; the Land lord understanding by the Word, *His*, his Father: And though the Deponent took the Expression in the same sense, as *James Smith* did; yet the Deponent endeavoured to excuse it, by saying it was not his Father that he meant, but his Brother, or his man *Donald*; and the Pannal being present, said nothing for clearing of the Expression; whereupon the Deponent went away, and left the Pannal, and could not endure to stay longer in his Company: Depones, the night before Sir *James's* Death, being the *Friday*, the Deponent was with Sir *James* in his Chamber, in

Edinburgh, where the Defunct was reading a Sermon-book, and appeared to be sad, and said to the Deponent, I have no Comfort in my Wife and Family. And this is the Truth as he shall answer to God, *Sic subscribitur.* *John Shand.*

Mr. *Roderick Mckenzie* Advocate, Being solemnly Sworn, and Purged, depones, that about eight dayes before Sir *James Standsfield's* Death; the Deponent and he having met in the Parliament Cloffs, the Defunct invited him to take his morning Draught. And when they were gone to Mr. *Sheil's* House, the Deponent perceiving him to be in some concern, the Deponent asked him, what troubled him? The Defunct answered, that he had no satisfaction at Home; whereupon the Deponent said, that People reported that he was partly the occasion of it, having disherished his Son the Pannal, and acquainted him therewith: And the Defunct answered, ye do not know my Son, for he is the greatest Debauch in the Earth: And that which troubles me most is, that he twice attempted my own Person: And this is the truth as he shall answer to God. *Sic subscribitur.* *Rod. Mckenzie.*

Archibald Dunbar Merchant in Edinburgh, aged 26 Years, Married, purged, and Sworn, Depones, that the Deponent having met with the deceased Sir *James Standsfield* at Culter: But he does not remember positively the time, but it was either in the year of this King's Parliament, or the Harvest before, and Sir *James* and the Deponent, and some other company being in an Room: Sir *James* was discoursing of his Sons undutifulness, and within a little while having heard a shot at the utter-door of the house, and the Deponent, and others offering to go out to see what the matter was. Sir *James* was unwilling to let them, lest they should come to hazard. And thereafter having heard another Shot, they did offer to go down again, and Sir *James* still dissuaded them, and said, that it might be his distracted Son *Philip*. And they having enquired, if he was in the Country, and how he came to fear any harm from him, Sir *James* said, he believed he was in the Country, and that in his going South, he had followed him to *Lothianburn*, and shot two Pistols, first one, and then another at him, and if it had not been that Sir *James* was well horsed, and his Son *Philip* upon a work-Horse, he had killed him. And *Samuel Menzies* having said he was sure there could not be Ball in them. Sir *James* said, he had gotten too many proofs of his Son's unnaturality to him, that he had no will to be in his reverence. Depones that Sir *James* all that night went not to Bed, and the Deponent sat up with him, and conveyed him into Edinburgh. And this is the truth as he shall answer to God. *Sic subscribitur.* *Archibald Dunbar.*

Mr. *William Clerk* Advocat, purged, and sworn, Depones, that having frequent occasions to be with Sir *James Standsfield*, and he having desired him to draw a disposition of his Estate to his Son *John*. Sir *James* did complain of his Son *Philip's* undutifulness to him. And the Deponent having dissuaded him to do it, since his Son *Philip* might be reclaimed: Sir *James* said, no, for he had no expectation of it; for when he was at the *Lead-hills*, there was some Pistol shot at him, which he was sure came from his Son *Philip*. And this is the truth as he shall answer to God. *Sic subscribitur.* *William Clerk.*

Mr. *John Bell* Minister of the Gospel, aged

40 years, *Solutus*, purged and sworn, produces a written Declaration signed under his hand, upon what he knows relating to the Murder. And Depones the same is truth as he shall answer to God. *Sic subscribitur.* *John Bell.*

Follows the tenor of the said Declaration.

The declaration of Mr. *John Bell*, in answer to several interrogatores proposed by his Majesties Advocat before the Lords of the Committee of the Council.

Imprimis, I declare, that at Sir *James Standsfield's* earnest desire, I went from this Town with him to *New-milns*. And that by the way I discerned nothing but sound Judgment, and reason in Sir *James*, for his discourse was both rational and pertinent, and that both at Supper that night, and after Supper his discourse he was rational, and his carriage most civil, and was pleased to accompany me to my Chamber, and sat with me there (as I supposed) until it was about ten a Clock at night, discoursing pertinently, and to good purpose.

2. I declare, that having slept but little I was awakened in Fear by a Cry (as I supposed) and being waking I heard for a time a great Dinn, and confused noise of several voices, and Persons sometimes walking, which affrighted me (supposing them to be evil wicked Spirits) And I apprehended the Voices to be near the Chamber door sometimes, or in the Transe, or Stairs, and sometimes below, which put me to arise in the night and bolt the Chamber door further, and to recommend my self by Prayer, for Protection and preservation to the Majestie of God: and having gone again to Bed, I heard these voices continue, but more laigh till within a little time, they came about to the Chamber Window; and then I heard the voice as high as before, which encreased my fear, and made me rise again to look over the Window, to see whether they were men or women; but the window would not come up for me, which window looked to the Garden, and Water, whither the voices went on till I heard them no more, only towards the morning I heard walking on the Stairs, and in the Transe above that Chamber where I was lying.

3. I declare that I told the Women who put on my fire in my Chamber that Sabbath morning, that I had rested little that night through dinn I heard, and that I was sure there were evil Spirits about that house that night.

4. I declare that about an hour after day, *Philip* came to my Chamber, and asked if Sir *James* came to that Chamber this morning, and told me that he had been seeking him upon the bank of the Water; unto which I replied, I have not seen your Father, but what mean ye by the Banks of the Water? whereupon *Philip* without answering went down Stairs immediately, and within a little time, I followed to see what he meant, and having gone without the Gate, and up the Cawsey that leads to the Manufactory; One came running, and said, they had found Sir *James* lying in the Water, whereupon I was stricken with such astonishment, fear, and trembling, that I could go no further, but returned trembling to the Chamber, and having sitten down on the bed side, I said to an honest man who accompanied me, this is the saddest day that ever I saw; my affrightment in the night was terrifying to me, but this is more grievous; and having gone to an honest mans house,

house, where I took horse that morning, I said, if the Majestie of God did ever permit the devil, and his instruments, to do a honest man wrong, then Sir *James Standsfield* has received wrong this last night, which the Lord will discover in his good time.

5. I declare that after my return from *Morum*, that Sabbath evening, *Philip* told me that he had advertised several Freinds at *Edinburgh*, and that he was expecting the Commissary amongst others that night, whereupon I commended what he had done, in sending for such intelligent Persons, and that for two reasons (1) because it was necessary his Fathers body should be sighted, (2) Because they could advise him about his Burial. *Philip* answered that he was seen by these that took him out of the Water. But I replied that was not enough, for the Murder committed was either a violent Murder, or a distracted Murder; and having described what a distracted Murder was (upon *Philip's* relating some distemper his Father had been in some years formerly) I said, That I conceived no Person could come to such a high Act of frenzie, to do such a thing, but it would be known on him many hours, yea some days before; But I could testify, that Sir *James* was in his right reason at ten a clock, wherefore I inclin'd to think it was a violent Murder committed by wicked Spirits; And so advised that the Corps might be sighted by the nearest Physicians, and Friends, and the honest men living in that Town; nevertheless they went and buried Sir *James* that night, without either acquainting me, or several honest Persons who lived in the place. Mr. *John Bell* depones his above written declaration is truth, as he shall answer to God, *Sic subscribitur.*

Linlithgow.

John Bell.

Sir *Robert Sinclair* of *Steinstoun*, purged and sworn, Depones, Sir *James Standsfield* being at the Deponent's House, told the Deponent, that he regrated that his Son *Philip* had mispent his Time and Money, and when he came Home from *London*, he was ashamed to tell how he came on him in his Chamber, at *London*; And this is the Truth as he shall answer to God.

Sic subscribitur.

Ro: Sinclair.

James Murehead Chirurgeon, aged 32 years, married, purged and sworn, Depones, that after the Deponent and *James Craufurd* Chirurgeon had opened the Corps, about the Neck, and sewed it up again, and removed the foul Linen, and put on again the clean Linens, in doing whereof they were obliged to shake the Body to and fro, and move the head back and forward: The Deponent desired that the Friends might lift the Body, and put it in the Coffin, and that the Pannal having come and lift up the Head, he did let it fall upon the Table suddenly, and that it made a considerable noise at the falling, and that the Pannal retired back quickly rubbing his Hands on his Breast, and crying, O God! O God! and some such other Words, and that the Deponent being astonished thereat, looked to the Corps, and as the Pannal did take away his hand from it, did see it darting out Blood through the Linnen, from the left side of the Neck which the Pannal touched, and that the Deponent was amazed at the sight, partly through the darting out of the Blood, and partly through the apprehension he had of the Murder. Depones he saw no Body touch the left-

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side of the Defunct's Head, the time it bled, but the Pannal: Depones, that as soon as the Deponent recovered out of his amazement, he cryed to the Boy to give the Pannal some Triacle-water, which he did: but Depones he did not see *Philip* the Pannal return again to the Body of his Father: Depones when the Deponent and the other Chirurgion were putting on the clean Linens, and stirring and moving the Head and Craig, he saw no Blood at all. And this is the Truth as he shall answer to God.

Sic subscribitur.

Ja. Murehead.

James Murehead, and *James Craufurd* Chirurgions give in their Report and Declaration in Write, anent the Murder of *Umquhile Sir James Standsfield*, which they renewed upon Oath, in presence of the Justices and Assisers, and whereof the Tenor follows:

*Edinburgh, Decem-
ber 1. 1687.*

November 30. 1687. We viewed the Corps in *Morum* Church.

We under Subscribers *James Craufurd* and *James Murehead* Chirurgions in *Edinburgh*, having order from Sir *John Dalrymple* his Majesties Advocat to go to *Morum*, and there to take up the Corps of Sir *James Standsfield*, and to sight and view the same exactly, and if need were to open up the Body, and to consider, whether there appeared any evidence of Wounds, Bruises, or Strangling upon the Corps, besides what might have happened by his falling or drowning in the water, &c. In obedience thereto, we caused take up the said Corps, and in presence of *Philip Standsfield*, Mr. *Andrew Melvil* Minister of *Morum*, *James Hamilton* Writer to the Signer, *James Row* and *Alexander Campbell* Merchands in *Edinburgh*, *Umphray Spurway*, *James Dick*, *James Mitchell*, and *John Robertson* Indwellers in *New-Milns*, and some others having with all possible exactness viewed the Corps; We observed the Face a little swelled and inclining to a dark reddish colour, some fulness of some capillarie Veins in the Pallat of the Mouth towards the Uvula, as also a large and conspicuous swelling about three inches broad of a dark red or blae colour, from one side of the Larinx round backwards to the other side thereof, we observed the Jugular Veins on both sides the Neck very large and distended and full of Blood; There was a large swelling under and betwixt the Chin and the Cartilago Scutiformis, there was also a little scratch below the left Mandibula, which had rankled the Cuticula, and made some little Impression on the Cutis, having made Incision from the Chin down about the Larinx, and cross upon the swelling of the Neck: We found a greater laxness and distance (as we think) than ordinary betwixt the Cartilago Scutiformis and Os hyoides; we found the Tumour on the Neck, containing bruised like dark or blackish Blood; the Jugulars, when cut, bled considerably, especially that on the left-side.

Having opened his Breast, we found the Lungs distended to the filling up their Capacities, but free of Water, his Stomach, Liver, &c. were all in good condition, we found no water within the Corps, the Corps had no smell at all; The Breast, Belly, Privy Parts, &c. were all well coloured, there was no swelling in his Belly, nor any thing by ordinary to be seen on his Head; This we attest and subscribe with our Hands;

Sic subscribitur.

James Craufurd. James Murehead.
O o o o o 2 *Edinburgh,*

Edinburgh 6. December 1687.

IN presence of the Lord Arch-bishop of Glasgow, Lord Tarbat, President of Session, Advocate, and Castlehill.

James Murehead, and James Craufurd Chirurgions, being solemnly sworn in the presence of the Committee of Council, Depones that the written report anent the Body of the Deceist Sir James Standsfield is true, according to their Skill, and this is the truth, as they shall answer to God. *Sic subscribitur,*

James Craufurd. James Murehead.
John Glascow. J. P. D. C.

Edinburgh 7 February 1688. in presence of the Justices and Assisers.

James Murehead, and James Craufurd Chirurgions, being solemnly sworn, Depone upon the truth, and verity, of the above written declaration in all points. *Sic subscribitur,*
James Craufurd, James Murehead. Linlithgow.

Follows the Chirurgions of Edinburgh their opinion anent the said Murder.

WE undersubscribers, Chirurgions in Edinburgh, having fully considered the Report made by James Craufurd, and James Murehead, concerning the condition of the Corps of Sir James Standsfield, and though it be not usual to declare more than matter of Fact, yet in obedience to your Lordships commands, where ye desire to be informed, if these Symptoms, found upon the Body, do import, Drowning, or Strangling. We humbly offer our opinion, so far as our Art or Experience will allow. And whereas the report informs us, that there was found a swelling, and preternatural redness in the Face, a large conspicuous Tumour, about three Inches broad, of a dark red, or black colour, from the one side of the Larinx, round backwards to the other side thereof, a large swelling betwixt the Chin and the Cartilago Scutiformis, the Jugular Veines, on both sides very large, and distended, and when Incision was made downwards, betwixt the Os hyoid and Larinx was observed a laxnes, and distance between the Os hyoid and the Cartilago Scutiformis, Incision was made cross alongst the Tumor, it was found full of bruised Blood; The Jugulars likewise when opened yielding a considerable quantity of Blood, especially on the left side, no smell, or corruption appearing in any part of the Body. It is very probable these parts have suffered some external violence, which hath made them appear so far different from their natural figure and colour, and could not be caused by Drowning simply. As to the other part of the report, the Breast, and Belly, being opened, the Lungs found distended, the Bronchi full of Air, without any Water, nor any Water found in the Stomach, or Intestines, a Body when drowned, being generally found to have much Water in it, with other circumstances of the Report considered, gives just ground to think he was not drowned. This we subscribe at Edinburgh, the 3 day of February, 1688. *Sic subscribitur,*

John Ballie Deacon, William Borthwick,
George Stirling, Thomas Edgar,
James Craufurd, James Murehead.

Follows the Report of the Colledge of Physicians.
Edinburgh 6 February 1688.

THE Colledge of Physicians, being assembled at the desire of His Majesties Advocat: To consider a Report made by some Chirurgions, concerning the Body of the late Sir James Standsfield, and to give their Opinion, whether by the said Report, there is any just ground to believe, that the said Sir James Standsfield was Strangled, or Drowned? And they have accordingly considered the said Report. They are of Opinion, supposing the verity of the said Report or Declaration, that there is sufficient ground to believe, that the said Sir James Standsfield was Strangled, and not Drowned, in testimony whereof their Presents are subscribed by Sir Andrew Balfour, President of the said Colledge.

Sic subscribitur,

A. Balfour. P. C. R. M.

Umphry Spurway Clothier at New Milns, aged 50 Years, solutus, purged and sworn; Depones upon the truth and verity of his own Declaration given in by him, which is all written, and subscribed with his own hand, and consists of two leaves of paper, written on all sides, which is Truth, as he shall answer to God.

Sic subscribitur,

Umphray Spurway.

Follows the Declaration of Umphray Spurway, Englishman.

I Umphray Spurway of New Milns, Clothier, being summoned to appear before the Lords of his Majesties Privy Council in Edinburghe, the 6 of December, 1687. To declare my Knowledge of what I had seen, and heard, relating to the death of Sir James Standsfield of New Milns, Did then and there declare before the saids Lords, as hereafter followeth. And after declaring what I had to say, was commanded to commit to writing my said Declaration, under my own hand, which I the aforesaid Umphray Spurway do hereby humbly offer to the above said Lords of His Majesties Council, subscribing the same with my own hand.

About six Weeks before the death of Sir James Standsfield, after Night I went to pay my Respects to Sir James, as I usually did when he was at New Milns, at which time I found him not so free for Discourse, nor so pleasant as at other times: In so much that I used that freedom with him, to *Quere* the reason why his Honour was so Melancholy? who with a great Sigh, wringing his hands together, with Tears trickling down his Cheeks; said, Mr. Spurway, I have great cause for it; I have born my own burden, without complaining to others, but I have a very wicked Family, and it's very sad that a Man should be destroyed by his own Bowels; But let me be never so sparing in my Expence, both at home and abroad, yet they at home of my Family consume me; condescending on some particulars, of some extravagant Sums of Money, monethly brought into him, that his Family had expended besides what he allowed for them, which was very sufficient. But that which grieved him most was, that his youngest Son, whom he had some comfortable hopes of, and upon whom he had settled his Estate upon, his just Debts being first payed; and that to the knowledge of his Son; But now he

he was frustrated of his hopes of that his Son too: For his eldest Son had debauched his youngest Son, who had several times of late come in Drunk, as the other; This he declared to me with very great Grief of Heart: But the Saturday's-night after Sir *James*, and a Minister, one Mr. *Bell*, came to *New Milns* from *Edinburgh*, I came in at the House of one *James Marr*, where I saw Sir *James*, and Mr. *Bell* sitting by the Fire, before he had been at his own House, which I wondred at, having never known the like done by him before; but since, I have had my Thoughts, that he had a fear upon him, (good Gentleman) of going to his own House, but having sat some time with him, he desired Mr. *Marr* to send one of his People at his House, to know, if they had kindled a Fire for him; and upon the return the Messenger gave this answer: *May it please your Honour, your Fire is kindled for you*; upon which Sir *James*, and the Minister arose, and took their leave of Mr. *Marr*; And I also accompanied Sir *James* and the Minister half the way toward his home, and so took my leave of him, wishing his Honour a good Night: But the next Morning being Sabbath-day after the light well appeared, one *Agnes Bruce* came at my Chamber-door, and knocked. I went and opened the Door, says she, Sir, Sir *James is gone out of his Lodging Room this Morning, and we have sought all the Rooms of the House for him, but cannot find him*; she goes off, I immediately followed her, and when I came out of my door, I met with Master *Philip Standsfield*, and *James Dick*, Mr. *Standsfield* declares to me, Lord, Master *Spurway*, what should be the cause of this Man's discontent, that he should thus leave his Lodgings, and walk out? To which I replied, Sir, do you wonder the cause of his discontent, who never gave him content, but had been the cause of grieving him, from one to the other of them, ever since I knew the Family: But he turned his back upon me, and made no reply at all; however I went at Sir *James's* House, but could not procure the Keys of neither of the Gardens, and I sent abroad of Sir *James's* Servants, and of my own, some on Horse back, and some on foot, to inquire after him: At last a Servant of mine, one *William Bowman* found him in the River, a little be west the Town; I went at the place, and saw him lying about two Yeards, or eight Foot from the Brink of the River, lying upon his Belly, just at the top of the Water, as it were floating, only his Coat and Westcoat loose about him, and a Shirt on him that I saw. I saw the place at the Brink of the River, where some one had stood all beaten to mash with Feet, and the ground very open and mellow, although a very hard frosty Morning; So I gave order to some to get a Ladder, and to set one end into the River, as near the hinder part of Sir *James* as they could, and the other end of the Ladder to fall at the top of the Brae, which was very steep, and so they might get him out easily; So I came away from the place, and desired Mr. *Marr* to see the Body landed, declaring that I would go home, and write to Mr. *George Hume* Merchand in *Edinburgh* of the sad sight which I had seen, desiring him to communicat the same to my Lord Advocat, with desire to know by the Messenger his Lordship's Pleasure, what of advice or direction he would be pleased to give concerning it, and it should be followed; But the Messenger that I sent, after he had de-

livered my Letter to Mr. *Hume*, and Order given by Commissary *Dalrymple*, how to proceed further with the Body of Sir *James*, which Order was directed to my self by a Letter, which when I read the Letter, the Contents was: That I should endeavour to procure two or three discreet Persons of *New Milns* to my self, and we together view the Body of Sir *James*; and if we found no grounds to believe that his Person had been wronged by others, that then with all speed he should be Buried, and that as privatly, and with as little noise as could be; But this Letter, which was the Commissary's Order to me, was sent by the hand of one *James Mitchel*, Kinsman to Sir *James*; For that Horse that the Express rode on to *Edinburgh*, was taken out of the Stable, where he was set up: And one Mr. *Patrick Smith*, the Brother-in-Law of Sir *James Standsfield*, mounted on him to come for *New Milns*: So that my Express was thereby disabled, to bring me the answer of my Letter; and the said *James Mitchel*, who brought my Letter, came home at the place by Nine of the Clock, that Sabbath day at Nighr, and gave an account of the Letter that he had for me; but they diswaded him from bringing it me, so that I had it not till three Hours after Sir *James* was buried. But upon Monday Morning, I arose about three or four of the Clock; and coming out of my House, I saw great Lights at Sir *James's* Gate, which occasioned my going down, to see what the matter was; and as I went, I met with one *William Robinson*, coming up of Home, I asked what the meaning was of these Lights, and of the Horses that I then saw at Sir *James's* Gate? who answered me, that Sir *James's* Corps were brought out at the Gate, and that they were carrying it at *Morum* to be buried, having received orders from my Lord Advocat for that purpose: At which I returned to my House, thinking it very strange thus to proceed without having had the Corps viewed by some Person, as I well knew was customary in *England* in such Cases. The next step to my Remembrance, was, That upon the Tuesday night following, after I was in Bed, one Mr. *Alexander Campbell* in *Edinburgh*, with one Mr. *James Row*, and an Gentleman, one Mr. *Hamilton*, with two Chirurgions, came at my House, and caused me to rise out of my Bed, showing me an Order, which they had from my Lord Advocat, for the taking up again the Body of Sir *James Standsfield*; and commanded me to make ready to go with them, and having seen the Order, readily submitted thereunto, and when coming upon the place at *Morum*, caused the said Grave to be opened, and the Coffin taken up. It was carried into the Church, and there opened; and as soon as Sir *James's* Grave-Cloaths were taken off him, and all his upper parts uncovered home to his privyparts, methought his Face looked not as I expected, nor as others had insinuated, that were at the dressing of him at first; for they said that his Body and Face was very fair and fresh; but I found his Face at first view of another Complexion, being blackish with some strakes of red like standing, or rather strangled Blood; and under his left Ear I saw a swelling home to his Throat, of a blackish red Colour: After this I saw the Chirurgions opening his Body, beginning at the top of his Chin, and so down to the Pit of his Stomach, and then cut his Skin on both sides his

his Throat, towards each Ear, and coming at the place near his left Ear, that I saw swoln, I there saw of corroded, or congeal'd Blood, lying a lump of a great thickness, and two or three inches long, which proved to me he had been Strangled: And one thing more I observed, that when Mr. Murehead put off his Cap at first from his Head, in slipping it back, Sir James's Eye-lids opened, and his Eyes appeared, but his Eye-lids much swoln, and very red, which did also prove to me a Symptom of Strangling.

This being done, and his Breast opened, so that his Intrals appeared, and to me seemed in good order, and no appearance of water in his Body; neither then, nor when first he was taken out of the River; the like I think, has not been ever known by any Man that cast himself, or that has been cast into a River alive, and not to have his Body full of water; nor that ever a dead Man should ly at the top of the water, where no running Stream is, but a still Water, of about 5 foot deep: But to me in this it shoves, that as God is a Wonder-working God, so he has in this shoven no less, to convince Men, that this worthy Gentleman murdered not himself, but was murdered.

But my last Observation was of a wonder more, that the Lord did show, when the Chirurgions had caused the Body of Sir James to be by their Servants sewen up again, and his Grave-Cloathes put on. A Speech was made to this purpose, It is requisit now, that those of Sir James Standsfield's Relations, and nearest Friends should take him off from the place where now he lyes, and lift him into his Coffin. So I saw Mr. James Row at the left-side of Sir James's Head and Shoulder, and Mr. Philip Standsfield at the right-side of his Head and Shoulder, and going to lift off the Body, I saw Mr. Philip drop the Head of his Father upon the Furr, and much Blood in his Hand, and himself flying off from the Body, crying, *Lord, have Mercy upon me, or upon us; wipeing off the Blood on his Cloaths, and so lay himself over a Seat in the Church, some supposing that he would swarff or swoun away, called for a Bottle of Water for him. After this we went for Morum Castle, where Mr. Philip Standsfield, my self, and several others stayed until it was day: In which time I challenged Mr. Philip for his unkindness to me, by his not inviting me to accompany the Corps of his Father, when first buried, knowing the Intimacy that there was betwixt his Father and my self; and that of all the People in or about the Town, his Father delighted in no ones Company, as in mine; and that he did not give me notice of his Burial, that I might do my last Office of Love and Service to him by accompanying his Body to his Burial place; I took it very ill from him: So then Mr. Philip swore that he had sent two of his Servants to invite me, but if those damn'd Rogues would not do it, what could he help it; and yet did declare, as is proved, and as himself since confest before my Lord Advocat, that he would not invite me, assigning this as his Reason, supposing that my self, and James Marr had been Instruments of setting his Father against him, which was a false suggestion: All which particulars I have before the Lords of His Majesties Honourable Privy Council declared: So by their Command I have in this Sheet of Paper written it over with my own Hand, and do*

hereby subscribe my Name, the sixth of December, 1687. *Sic subscribitur, per me Umphray Spurway. Edinburgh, the 7th of February, 1688.*

In presence of the Justices and Assisers, Umphray Spurway owns his Declaration above written to be Truth in all poynts; As he shall answer to God. *Sic subscribitur,*

Umphray Spurway. Linlithgow.

James Mitchel, Nephew to the deceased Sir James Standsfield, aged 20 Years, unmarried, purged and sworn, Depones, that about twenty dayes before Sir James Standsfield's Death, being in company with Philip the Pannal, he heard the Pannal say, That if his Father did dispoise his Estate by him, he would kill him, though he should die in the *Grass Mercat* for it: Depones that several times about a Month before Sir James's Death, he heard the Pannal say, that little thought the People had how soon the Pannal would be Laird, and when he was, he would then ride in their Skirts that had been ill to him. And this is the Truth, as he shall answer to God. *Sic subscribitur, James Mitchel.*

John Topping in Monkrig, aged 25 Years, married, purged and sworn, Depones that upon the Sabbath-morning, after Sir James Standsfield's Death, the Deponent coming from Monkrig to New-Milns, by the side of the Water, he discovered a Body Floating, and saw Philip Standsfield looking to that place of the Water where the Body was, and the Deponent asked the Pannal, whose Body that was in the Water, and the Pannal made no answer; and when he came to New Milns, he heard that Sir James's Body was found in the water; Depones he saw the Body taken out of the Water, and went alongst with it, near to the Walk-Miln, but observed no Water come from the Body. This is the Truth, as he shall answer to God. Depones he cannot write. *Sic subscribitur, Linlithgow.*

James Dick in New Milns, aged fourty seven Years, married, purged and sworn; Depones that the Pannal Philip Standsfield and the Deponent being at Morum after taking up of the Corps, and discoursing about the finding of the Body in the water, the Deponent said to the Pannal, that he saw something in the water, when they were searching after Sir James, but he did not suppose it to be Sir James's Body, and the Pannal said, I saw him before any of you: Depones that he saw the Body after it was taken out of the Water at the Brink of the Brae, and went alongst with the Body a piece of the way, and observed no water come from the Mouth. And this is the Truth as he shall answer to God. *Sic subscribitur, James Dick.*

His Majesties Advocat desired that James Thompson, Son to George Thompson in New Milns, and Anna Mark, Daughter to Janet Johnstoun, Spouse to the said James Thompson, might be examined as Witnesses against the Pannal, for proving his Accession to his Father's Murder. And the Procurators for the Pannal having alledged, that the foresaids Persons were but Children, and so not by Law capable to be Witnesses, the Boy not being above thirteen years of Age, and the Girl not above ten years.

The Lords, Justice General, and Commissioners of Justiciary, refused to receive them as Witnesses, but in regard the Persons on the Inquest earnestly desired the said James Thompson and Anna Mark might be examined, anent their knowledge of the Pannal's Accession to the for-
said

said Murder, they allowed the forenamed persons their Declarations to be taken for clearing of the Affise. And accordingly the said *James Thomson* being examined in presence of the Justices and Inquest, declared as after follows; That *Janet Johnston* came to *George Thomson's* House betwixt nine and ten at Night, and *Philip Standsfield* the Pannal came there shortly thereafter, and the House being dark, the said *Philip* gave the Declarant a turnor to buy a Candle, which he did in the neighbouring House, and after the Declarant return'd with the Candle, his Mother ordered him to go to his Bed, which was in the same Room, and beat him because he did not presently obey. Declares he heard one come to the Door, and inquire for *Janet Johnston*, and desire her to come home, and give her Child suck: Declares he knew by the Voice that the Person who came was *Agnes Mark* the said *Janet's* Daughter, and that *Janet* ordered her to go away, and she should follow her; declares she stayed a considerable time thereafter, and the said *Thomson's* Wife was desired to go for a pint of Ale, and *Philip* took out a handful of Money to see if he had any small Money, and finding he had none, the Ale was taken on upon trust; Furder declares, that the said *George Thomson* and his Wife, and *Janet Johnston* did stay together, and whisper softly a considerable time; declares he heard *Philip Standsfield* complain that his Father would not give him Money, and pray the Devil take his Father, and God damn his own Soul if he should not make an end of his Father, and then all would be his, and then he would be kind to them; declares *Philip Standsfield* and *Janet Johnston* went away about eleven, and shortly after his Father and Mother came to the Bed where the Declarant was lying cross the Bedfoot; and the Declarant in the night time perceived his Father and Mother rising out of the Bed, and going out of the House, and that they stayed a considerable time away, about an hour and an half, or two hours, and that the Declarant was perfectly awake, when they went and were away, and he wondred what they were going about: declares his Mother came in first, and came softly to Bed, and within some time after his Father came in, and put a Stool to the back of the door, without locking it, for the Lock made always a great noise when they locked the door, and the Declarant's Father called to him whenever he came in, but the Declarant made no answer, that it might be thought he was sleeping, and his Mother asked, what had stayed his Father; and thereupon his Father and Mother did fall a discoursing of several things, and particularly his Father said, that the Deed was done, and that *Philip Standsfield* guarded the Chamber-door, with a drawn Sword and a bendet Pistol, and that he never thought a Man would have died so soon, and that they carried him out towards the water-side, and they tyed a Stone about his Neck, and leaving him there came back to the little Kiln, and reckoned whether they should cast him in the water with the Stone about his Neck or not, and whether they should cast him in far in or near the side, and at length they returned and took away the Stone from about his Neck, and threw him in the water; declares his Father said, that yet he was afraid for all that, that the Murder would come out, and his Mother answered, Hout

Fool, there is no fear of that, it will be thought he has drowned himself, because he will be found in the Water; declares when Sir *James* was missed in the Morning, the Declarant's Mother said to his Father, rise quickly, for if ye be found in your Bed, they will say that ye have a hand in the Murder; declares the Coat and Wastecoa which were upon Sir *James*, when he was found in the water, were sent to *Thomson's* House, and *Thomson's* Wife said to her Husband and *Janet Johnston* in presence of the Declarant, that she was affrighted to see the said Coat and Wastecoa, for she thought that some evil Splrit was in it, and desired her Husband to send it away, which he would not; And further that his Mother said to her Husband in the Declarant's hearing, that she was affrighted to be in the House alone after night fell, and accordingly when ever her Husband went out, she went out with him, which was not her ordinary; declares the said *George Thomson* did go into *Edinburgh* several days before the Declarant's Mother was brought in, and she did immediatly after he came into *Edinburgh* send away Sir *James's* Coat and Wastecoa, and that she was never in her own House after night, since her Husband came in, but did lie in *Janet Johnston's* House.

Sic subscribitur,

Linlithgow, I P. D.

Anna Mark Daughter to *Janet Johnston* declares that on the said Saturdays-night *Philip* came up to her Mother's House, and sent for *George Thomson* and his Wife, and thereafter he sent her to see if Sir *James* was come home; declares that she saw *Philip* with his Hat off give a low Salutation to *George Thomson* when he came up to him, and when she returned and told that Sir *James* was come, *Philip* did take a drink, and runs down to *New Milns*, that about eleven a Clock that night, her Good-father sent her to seek her Mother, and that she found her Mother with *Philip* in *George Thomson's* House, and that her Mother bad her go home, and she would come after her, and that her Good-father thereafter finding her Mother did not come, sent her for *Margaret Isles* to give suck to the Child, and went home again; but that her Mother did not come long after that, as she thinks about two in the Morning, and that she heard her Good-father say, Bitch and Whore, where have ye been so long? And she answered, wherever I have been, the Deed is done, and then went to Bed, and that after that, she heard them speak together, but could not know what they said; she declares also, that her Mother said, she was still feared, and would not abide alone, nor lie alone in the Bed; but said, she was afraid.

Edinburgh, February 7th 1688. The said *Anna Mark* being Examined in presence of the Atliſe and Justices, declares affirmative, conform to the above written Declaration in all points.

Sic subscribitur,

Linlithgow, I. P. D.

Sir George M'kenzie's Speech to the Inquest.

Gentlemen of the Inquest,

I Am glad to see so strong, and universal a propensity for Justice in my native Country, that every Man upon first hearing this Death, concluded it a Murder, and trembled least it should not have been discovered; every Man became Sollicitor in it, wished to be of the Inquest;

quest; and ardent Prayers were generally put up to Almighty God for this end, with as much earnestness as uses to be for removing general Plagues: And the Almighty in return of those, did first make so clear Impressions on all Mens Spirits, of *Philip's* being the Murderer, that he had fallen by these; but his Divine Majesty, who loves to see just things done in a legal way, furnished thereafter a full probation in an extraordinary manner, whereby we might not only convince our selves, but all such as are not wicked enough to have been the Authors. You will discern the Finger of God in all the Steps of this Probation, as evidently as *Philip's* Guilt; and this extraordinary Discovery has been made, as well to convince this wicked Age, that the World is govern'd by Divine Providence, as that he is guilty of this Murder. He is accused before you for three Crimes, *Treason*, the *Cursing of his Father*, and the *Murdering him*: Crimes in great Affinity, and naturally subservient to one another; for to pray Confusion to the King, who is *Pater patriæ*, is a Cursing our great Parent; And what can prove better a design to Murder his Parent, than the malicious hatred that prevails over a Son to Curse him? What restrains virious Men from Murdering those, by whose Death they may expect licentious Liberty, and an opulent Succession, save the fear of the Laws of the Land, or at least an innate awe of the Law of Nature? But here you see in the *Treason* a Contempt of the Laws of the Land, and in the *Cursing* an abhorrence of the Laws of Nature.

There is no Reason to suspect our Zeal in this Case from any State Design; for we took pains to shun a Probation of the *Treason*: It was forced upon us, and not sought by us, so violent were, and are we in the search of the Murder, that even *Treason* was not able to divert us. Nor press I it at this time; but to let you see there is nothing so wicked or dangerous, which this Pannal durst not attempt. He not only wishes the King's Confusion, but drinks it openly; and not only drinks the King's Confusion himself, but he forces others to do so; nor needed he to be drunk, to be guilty, for this was the first Step of his drinking; and to convince you that he knew it was a Crime, it is proved that he took his Complices sworn, never to detect it, the fatal Encouragement which always tempt him to commit his Villanies. The *Cursing* his Father is not from meer humour or dissoluteness, but it becomes yet probable by a previous design to have his Estate, and from the restraint he found from him, of being debarred from the ravishing hopes of a boundless Liberty: The Expressions are various and execrable, such as, Devil take him, drown him, rive him, let him never come back, let him never eat more, &c. and these Expressions, which should never have been once spoke, were frequently repeated, and are proved, not by suspected Persons, or Strangers, but by his Father's, and his own Servants, and such of them too as were *Philip's* own Favourites, and who think themselves very unhappy in being obliged to Depone against him.

You are then, *Gentlemen*, in the third place to judge, how far this Murder and Parricide are prov'd, in which you need to be the less scrupulous, that the Son, who is accused of it, is to

die however; for either of the two former Crimes are so far prov'd beyond all doubt, that though he should escape this, he cannot these. And as to the Probation of this Crime, I must first represent to you, that in occult or atrocious Crimes, the Law has relaxed, and remitted much of its scrupulousness in Probation, because in these the ordinary Probation cannot be had, and to admit none but such, were to reject all: And therefore in *Hamesucken*, which is the Beating a Man in his own House, but much more the Murdering a Man by way of *Hamesucken* in his own House, wherein all means are used to cover, and few can be got for discovering; you must not expect two Witnesses who saw the Murder committed, but only such Probation as can before God convince you, that this Murder was committed by that Man; no Inquest ever failed to find the Murder of Children to be clearly prov'd, though there were no Witnesses that saw it committed, and the Murdering Parents is a more atrocious Crime, because we owe more Duty to our Parents, than any Parent does to a Child, and never Son ow'd more than this did, nor can be more believ'd to have killed a Parent. For clearing whereof you are to consider first, that he did not Drown himself, as was pretended, but was Murdered by some Persons; and as the Law violently presumes, that no Man would Murder himself, so without the help of this Presumption, it is prov'd most convincingly by ocular Inspection, that he was Strangled, the marks of Strangling, *viz.* the congeal'd Blood, the Dislocation of one of the Vertebrae in his Neck, &c. being visible Signs prov'd in the ordinary way, and we have added to this the Opinion both of the Chirurgions and Physicians, who at once declared, that he was not Drown'd, and that he was Strangled; the outward marks likewise of his not being Drown'd, appearing as visibly as that he was Strangled; so you must conclude that he was Strangled; except you can think, that after he had Strangled himself, and broke his own Neck, he drown'd himself.

In the next place, who could have Murdered this innocent and obliging Gentleman, except some Person who had access to his House, wherein he was Murdered, and had Malice against himself? And these two can meet in no Person, but this unnatural barbarous Son; for one of the things that heightens his Guilt is, that he should abhorre a Father, who engaged meer Strangers to love him as a Friend: and we have prov'd that he not only hated his Father, and that he had done so for many years, but that he vowed he would take away his Life before Christmas next, and that in many various, but clear expressions, and at many several times; for sometimes he swore, if he made a Disposition to his second Son, he should take his Life; sometimes, that he should be Master of all before Christmas, and he should use the Servants as they used him; that though his Mother was like to die, that his Father should die before her: and he scarce ever spoke of his Father, without swearing he would strike a Sword to his Heart; nor would his Passion so much as suffer him to dissemble this even to his Mother; and he who durst own it to her, durst certainly do it whenever he had occasion.

I proceed now to you clear to, that I have prov'd, that he not only design'd and vow'd in Passion, that he would Murder his Father, but that he actually attempted to Murder him, and for this I have led these Witnesses, who prove, that when his Father came from the Leaden-Mines, he fled into *Culter*, as a trembling Partridge pursued by a Hawk, telling some Gentlemen, that he had been pursued seven Miles by his unnatural Son, who accordingly came to the House, and shot several Pistols in at the Windows, whereupon the Gentlemen, who now Depone, were forc'd to watch with his Father all the night, and were forc'd to Convoy him the next day near to *Edinburgh*. We have also produc'd other Gentlemen, to whom his Father declared, that he attempted against his Life: and who will not believe the best of Fathers Deponing against the worst of Sons? Nor could any thing have drawn this from the Father, save the terrifying danger, to which he was hourly expos'd. All the Supream Courts of *Europe* have found the attempt to kill, sufficient to infer Parricide, this is a higher degree of Guilt than Cursing, and yet that infers Death; and to attempt to kill a Father is more villanous, than to kill a Stranger. What shall be said then of frequent, and deliberate attempts? And thus you have this Son again prov'd guilty of Death, and even of Paricide. That which hastened the perpetrating this Crime was, that his Father wearied out with his Villanies, was at last forc'd to dispoise his Estate to his second Son, and tho' there be nothing more ridiculous than to ask, What Reason the Son had to kill his Father, as he now does? For there can be no Reason for so barbarous an Action; yet this was a Motive to him, and may be a Proof to you; for so kind a Father, who had try'd all Means and Methods to reclaim his licentious Son, had never proceeded to this, unless he had been driven to it by those frequent Attempts made by his Son upon his Life, in hopes to enjoy his Estate by the Death that he was to give. To disappoint which hopes his Father design'd to settle the Estate on the second Brother, after which Settlement he could gain nothing but the Gallows by killing his Father. Whereupon he to prevent the delivery of the Disposition, did associat to himself *Thomson*, whom himself used to call the Devil's Taylor, *Thomson's* Wife, and *Janet Johnson*, who was his own Concubine, and his Father's known Enemy, whom he could never have frequented, except upon so barbarous a design. *Thomson* deny'd that he was in the House for eight days before; and yet it is prov'd he was in *Sir James's* House, the night the Murder was committed; *Johnson* deny'd also before the Council, that she was out of her House after nine a Clock that night, and yet it is prov'd that she stay'd abroad till after twelve, so that her Husband was forc'd to send for a Stranger, to give suck to her Infant. Why did they both deny, or she abandon her Child, at so suspect a time? And it is ridiculous to pretend as they do, that they forgot so extraordinary a circumstance in so extraordinary a night, especially being examined upon it, within two or three days thereafter. By their assistance the Murder was design'd to be upon *Saturday*, the day of *January*; but God to discover, and revenge a Murder (which he thought fit to suffer to be committed,

for the punishment of so many preceeding horrid Crimes) inspir'd *Sir James* to bring with him that night, a devout Minister, for preparing the Father, and proving against the Son; and this pious and grave man, whose Merit may be laid in Ballance with many Witnesses, Depones, that he heard that night, the noise of many People within the House, which was inconsistent with *Sir James's* drowning himself without it: And Depones, that his attention followed this noise until it died out towards the River, into which he was thrown by them; and the Brink is prov'd to have been broken, and beat by many Feet, which fortifies much this Deposition. It is also prov'd, that he refused that night to come to publick Prayer with his Father, swearing that he could not look upon him, and that the next morning, when all went to find out his Father, he confess'd he had first found him; but that he came away, without discovering that he had found him, nor did he shew the least grief when he was found by others; whereas if Nature had not been quit devour'd by Vice and Guilt, he had certainly thrown himself upon his dead Father, and had lamented that fatal Death, which no man, except he, saw with dry eyes; but whilst others were mourning for his Father, this Miscreant would not suffer him to be carried in to his own House, saying that he died like a Dog. O criminal Moderation that never appeared in this passionat Creature save upon the Death of his Father. O cursed Justice, never shoven or pretended to, save in asserting, that his Father deserved no respect, because he drown'd himself. Upon this villanous pretext, he caus'd throw him into a remot House, where none were allowed to see the Body, save his own Accomplices, to prevent all Discovery by Inspection of it, and for the same reason caus'd bury him very suddenly, in spite of a Countermand from his Freinds at *Edinburgh*. But they fully perswaded, that *Sir James* was Murdered by his own Son, sent out some Chirurgions and Freinds, who having rais'd the Body, did see it bleed miraculously upon his touching it. In which God Almighty himself was pleas'd to bear a share in the testimonies which we produce; that Divine Power, which makes the Blood circulate during Life, has oft-times, in all Nations, opened a passage to it after Death, upon such occasions; but most in this case, for after all the Wounds had been sewed up, and the Body designedly shaken up and down, and which is most wonderful, after the Body had been buried for several days, which naturally occasions the Blood to congeal; upon *Philip's* touching it, the Blood darted and sprung out to the great astonishment of the Chirurgions themselves, who were desired to watch this Event, whereupon *Philip* astonished more than they, threw down the Body, crying, O God! O God! and cleansing his Hand grew so faint, that they were forc'd to give him a Cordial. But least any shadow of difficulty might remain with you, his Divine Providence, which oft-times reveals it self by the mouths of Babes and Sucklings, has brought us two little Witnesses, whom as no body could be so unworthy as to corrupt, so none can be such Infidels as not to believe, especially since they Depone against their own Parents, and have own'd firmly in their presence, what they now De-

pone in yours; from them ye have an account how *Philip* that night came into the House of their Parents, and there swore, *He would be rid of his Father that very Night*; how they went out at midnight, and after their return made their reflections, how easily *Sir James* had died, and how briskly *Philip* had behaved, by guarding the door with a Pistol in his one Hand, and a Sword in the other, how they had hung a Stone about his Neck, but had thereafter taken it away, and how the Mother durst not stay in her own House, while *Sir James's* Coat was there, and if you had seen this little Boy upon his knees, begging his Father to confess with so much Affection, so much Judgment, so much Piety, you had needed no other Probation but himself; the Father himself before his Death was convinced, and frequently foretold, that his Son would kill him, and the Mother how soon she heard of her Husband's death, and some of the circumstances, now insisted upon, and remembred what she had heard her Son say to her self, and what he had said at *Nunland*, concluded he was the Murderer, in spite even of that criminal kindness which she had for him; almost the whole Nation was convinced of this before any Probation was led: and the Lords of the Privy Council, among whom many of our Judges sit, did declare, that they thought that half of the Probation which was led before them, sufficient to convince an Inquest. How then should the least scruple remain with you, before whom so full, so clear, and so legal a Probation has been led, that like a Bend, every part of it supports another, and like a Chain, every Link draws on another?

I need not fortifie so pregnant a Probation, by laying out before you how often he and his Complices have contradicted one another, and even how often he has contradicted himself, in the most obvious and material points, and how he denies every thing with Oaths, and with equal confidence, though never so clearly prov'd: Albeit such as these are the chief things that make up the Probation in other Cases, nor how he suffered the greatest Indignities imaginable from his Complices, in presence of the Privy Council, though this convinced many of their Lordships, that he was at the mercy of those Complices, who were too far upon his Secrets, not to be slavishlie submitted to. But I cannot omit, how that since he came into Prison, he has lived so Impioullie, and Atheisticallie, as shewes, that he had no awe upon his Spirit, to restrain him from committing any Crime from a love to God, or a fear to Hell, and that he constantly filled and kept himself drunk from morning till night, thereby to drown the voice of his Conscience, and to make himself insensible of the Terrors of the Almighty.

The Judges have declared what was necessary to be prov'd, and you are only to judge, if we have prov'd what they thought necessary; and therefore there is no place to doubt, if a man's life may be taken upon meer presumptions; for the Judges have eased you of that scruple, by finding the grounds in this qualified Libel relevant: and his own Advocates have acknowledged this Probation to be so strong and unanswerable, that before the half of it was led, they went away and deserted a Client, whom they

found they could not defend, nor should any man doubt of a Probation, which ones own Advocats think invincible. If then such amongst you as are Fathers, would not wish to be murdered by your own Children; or such of you as are Sons, would not wish the World to believe that you are weary of your Fathers, you will all concur, to find this Miscreant guilty of a Crime that God has taken so much pains to detect, and all mankind has such reason to wish to be punished. May then the Almighty God who form'd your Hearts, convince them; and may this poor Nation Cite you, as the remarkable Curbers of Vice, to all succeeding Ages.

Thereafter His Majesties Advocat protested for an Affise of Error against the Inquest, in case they should assilzie the Pannal.

The Persons who past upon the Affise of *Philip Standsfield*, returned their Verdict in presence of the saids Lords, whereupon the Tenor follows.

The whole Affise called upon the Jury of *Philip Standsfield*, upon the three Points following, particularly lybel'd against him, to wit, the Crime of Treason, the Cursing of his Father, and accession to his Father's Murder, they unanimously in one voice by the Mouth of *William Baillie* of *Lamingtoun* their Chancellor, finds the Pannal guilty of the foresaid three Crimes. *Sic subscribitur*,

William Baillie of *Lamingtoun* Chancellor.

THE Lords, Justice General, and Commissioners of Justiciary, having considered the Verdict of the Affise returned against *Philip Standsfield*, they by the Mouth of *John Leslie* Dempster of Court, decerned and adjudged the said *Philip Standsfield*, to be taken upon *Wednesday* next, being the fiftenth of *February* instant, to the Mercat Cross of *Edinburgh*, and there betwixt two and four a Clock in the Afternoon to be hanged on a Gibbet till he be dead; and his Tongue to be cut out, and burnt upon a Scaffold, and his right hand to be cut off, and affixt on the East Port of *Haddingtoun*, and his Body to be carried to the *Gallowlie* betwixt *Leith* and *Edinburgh*, and there to be hanged up in Chains, and ordains his Name, Fame, Memory, and Honours to be extinct, his Arms to be riven forth, and delet out of the Books of Arms, swa that his Posterity may never have Place, nor be able hereafter to bruik or joyse any Honours, Offices, Titles, or Dignities within this Realm in time coming, and to have forfeited, amitted and tint all and sundry his Lands, Heretages, Titles, Offices, Tacks, Stedings, Roums, Possessions, Goods and Gear whatsoever pertaining to him, to our Sovereign Lord, to remain perpetuallie with his Highness in Property; which was pronounced for Doom, whereupon His Majesties Advocat asked, and took Instruments. *Sic subscribitur*,

Linlithgow.

Jo. Lockhart, David Balfour, Roger Hoge, P. Lyon.

Extracted forth of the Books of Adjournal, By me Mr. *Thomas Gordon* Clerk to the Justice Court.

Sic subscribitur,

Tho. Gordon.

Which Doom and Sentence above-written, was accordingly put to due Execution upon the Person of the said *Philip Standsfield*, in manner above prescribed.

Proceedings in the House of Commons against the Earl of Castlemaine. 1 W. and M. 1689.



THE Attorney General [Sir Geo- Treby] being (on Saturday the 26th of October, 1688.) inform'd, that the Earl of Castlemaine, Sir Edward Hales, and other Prisoners of the Tower, were brought by their Habeas Corpus to the Hall to be bail'd, desir'd to know the Pleasure of the House in that Affair; who order'd that they should presently be sent for to their Bar; which was done accordingly; Only the said Earl was not there; for he remain'd still in the Tower, having (it seems) made use of no such Writ; However the House directed the Governour to bring him up (as he did) the Monday following; And then the Speaker said to this Effect.

Mr. Speaker to my Lord.

MY Lord, the House having understood, That You went Ambassador to Rome; and also took your place at the Board as a Privy Councillor without taking the Oaths (which are great Crimes, and against Law.) They have sent for you to know what you have to say for your self.

His Lordship's Answer.

IT cannot (Mr. Speaker) but put me into more than an ordinary Confusion, when I find my self in this place as a Criminal; especially, seeing (through the whole course of my Life) the Glory and Welfare of England has been my chief Aim and Endeavour. You are pleas'd Sir to lay so great a Charge upon me, that (without shuffling or impertinence) I might ask time to consider it; Yet since I well know how much you value your time, and since time also may make what I say suspected more of Artifice than Candor, I shall now (without further delay) let you and this great Assembly see (where so many of Birth and Quality are met) how far I am from deserving either censure or reproach. But (Mr. Speaker) before I go further, I must humbly beg these few Favours of you. *First*, that you would Pardon all Tautologies or want of Method, as beginning perchance in the middle, and ending again where I should have begun. *Secondly*, That you would not take any advantage at my Answers, for I shall be Ingenuous to the utmost, and hesitate at nothing you shall ask. And *Lastly*, if (through inadvertency or haste) I should say what might shock you, that you would not stand upon the rigor of the Words, but upon the sincerity and clearness of my Explanation.

Be pleas'd then to know, Sir, I was so far from seeking this Employment, that I did not so much as dream it was design'd me; And when I knew it, I us'd my utmost endeavour to avoid it. My ignorance of the King's Intentions appears by this, that (in the Year I went to Rome)

returning out of the Country (according to my usual custom) after Michaelmas; I found a Protestant, a Person of Note at my House, who told me, that before I spoke with any Man, he was to bring me to my Lord Sunderland, and from thence I was to go to his Majesty; Nor would he (scarce) afford me time to put my self in a tolerable order to attend them. My Lord Sunderland soon hinted to me, what the King's intentions were; And when I recurr'd to his Friendship, I had this Answer, or Words to this purpose; That if Subjects should refuse their King's Service in every thing that was troublesome or *Contre-Cœur*, all Kings would be in an ill Condition; that my request was beyond his Power; and that he believed I should find his Majesty very positive; and so I did Mr. Speaker, I'll assure you. Nay to satisfy you yet more fully of my backwardness to this Journey; can you think, Sir, that I, that had been at Rome more than once; that had seen the Grandeur of so many Roman Embassies; and knew they exceeded in Splendor and Expence three times those to any Crown'd Head whatsoever, should not be extraordinarily concern'd at an Employment, which had for its Subsistence (as the Lords of the Treasury well know) no other Establishment than to Spain or France, which (being 100 l. a week) amounts only to 5200 Pounds per annum?

Having thus Sir, shew'd you how little fond I was of the thing, let me now (with Submission) ask you, what could I otherwise do in my Circumstances? For first I call all that's Good to witness, I never heard of Law against it, nor know of any to this very day; And yet (on the other side) I was not only Commanded by the King, but knew his Royal and Legal Power of Commanding the Service of his Subjects, and most particularly in Embassies, as appears by many old Examples; Nay, by a fatal one in this very Century; I mean the Case of *Overbury*, to which no body here (I'm sure) is a stranger. In the next place, Sir, what did I go to Rome for? Why only with a Letter; with a Complement from a protest and open Catholic King to his Holyness, as all Princes of that Communion do in the beginning of their Respective Reigns. Besides Mr. Speaker, as I know no Law, that forbade my Obedience, so I must needs say (and this without cramping or putting any Bounds to the Legislative Power) that no such Law can be made; For Sir, the Pope is a very considerable Temporal Prince, whose Territories border on two Great Seas, the *Mediterranean* and *Adriatic*; If then our Merchants should be by storm or other necessities, driven into his Ports; if *Englishmen* should be surpriz'd by any Roman Party as they travel in a Neighbouring Country, shall our Government (not to mention a hundred other greater accidents) want Power to send a Messenger to Ransom and Compound for them? What Law therefore was there ever yet fram'd,

or can be enacted (let the Commerce or Inter-course between Nations be never so much broken and prohibited) but that a Commander in Chief, a General, and much more a King, may bear a Parley, dispatch a Trumpet, nay, send and receive Letters as often as occasion does require?

Now (Mr. *Speaker*) for Religion, I neither had any Commission concerning it, nor Transacted with his Holyness about it; And as no body ever did, or could lay any thing of that nature to my charge, so for some confirmation of it, I will appeal even to the *Aqua fresca* Houses of Rome, and to all the Protestant Gentlemen of our Nation there during my Embassy; for though what I tell you, Sir, be a Wonder, yet the Honourable Persons, who have resided in those parts, know it to be true, that for a Dish of Chocolate or a Dish of Limonade, one may know the measures and particulars of an Embassy in that City, as well as we do what passes within these Walls at our Coffee-houses. I am sure my under Servants have often smil'd at the Grimaces and Mysteries which my Secretaires us'd in the beginning to make before my Audiences; for they have told them (within few hours after my return) almost Word by Word what had pass'd. Give me also leave, Sir, to add one truth more, which will assure you that I had no dangerous intreague in hand; and this is, that notwithstanding his Holyness never had the least imagination or thought, but that I was as real and sincere a Catholic as any Man living; and the same thing also I can say of all the Cardinals; and in fine, of the whole Court in general; Yet none of them (and every English-man in Town knew it) but look't upon me as one, that if any Immunity of the Crown were in question, or any Temporal Concern of the Kingdom touch't, would stand as much in the Gap, and be in as Diametrical an opposition, as any Person of the Reform'd Religion whatsoever.

You see then Sir, both how, and why I went; nor have I done any thing certainly to merit any Man's unkindness or ill-will; nay to lay yet further before you the hardship I am under, I shall state you a Case, not fetch't out of old forgotten Records, or Transacted in an Age disparate from ours, but of a Man attainted in this very House, in the memory of several now sitting, and even whilst I my self had the Honour to be a Member of it. The Case Mr. *Speaker* is *Axtels* the Regicide; one whose Crime (I dare say) my greatest Enemies think I abhor in the highest manner; no do I mention the thing in favour of the Criminal, but in Honour of his grave and worthy Judges. *Axtel* you know (Mr. *Speaker*) was Indicted for the Murther of Charles the First; And to shew that he maliciously contriv'd and abetted it, the Kings Council urged his Commanding in the Hall at the Tryal; his placing the Sentinels all about; and in short, his performing there the whole Office of Captain of the Guard. The Prisoner answer'd; but pray Mr. *Speaker*, let me beg Pardon, if the Interval of almost Thirty Years has made me forget his Words, I am sure the sense of them I have not; I say, Sir, the Prisoner answer'd; *My Lords I am under great oppression, I am hardly dealt with. Has Charles the Second been so gracious as to pass over the ordinary transgressions of his strayed Subjects, and to look upon the Obedience of Soldiers to their then Superiours, as if the Authority had been more Le-*

gal? And shall I now dye (who was under Military Discipline) for that, which I must have presently died for, had I not done it; to wit, had I not drawn up my Regiment, kept the Post order'd me, and perform'd the other duties, the Concourse being great and troublesome? Upon this the Judge reply'd; I confess (considering the Kings merciful Resolutions) that your Argument is strong; it has great weight in it; But Mr. Axtell, did you no more? Did you only perform the Duty of a Commanded Soldier? Who was it (I pray) that animated the Rabble? Who beat the Soldiers for not crying Justice? Who encourag'd spitting in the King's Face? And who barbarously revil'd and threatned a Noble Lady, that in the transports of her zeal (when she saw her Sovereign abus'd, when she heard such Blasphemy against him, and all this Father'd upon the Nation) made a noise or stir in the Court? These things therefore Sir, being prov'd against him; He was convicted, condemn'd, and so paid a Debt to Justice, and to the Sacred Ashes of that great and just Man.

Now Mr. *Speaker* to application; And first, (after a little glance on the tenderness of these Judges, when any necessity could be pretended) let me with your Pardon ask you, shall I suffer as a Transgressor of the Law, were there any, when I must have suffer'd by the Law, had I refus'd his Majesties Orders and Commands? But Sir, if you demand, did I no more than carry a Letter, or go with a Ceremonious *bow d'ye* from the King? I must answer yes, and a great deal more too. For my House was an *Asylum*, a Place of Refuge to all distressed or oppress'd Fellow Subjects. If Seamen mutiny'd or had any contest with their Captains, here a Reconciliation was made, and here they return'd to their Obedience, if the Captains themselves (fraughted for the Camera) were delay'd their Money, or misus'd by under Officers, they quickly found Redress, and often (by my interest) receiv'd more than they themselves expected; And if the question happened about quantity, or how Goods were condition'd at delivery, the Verdict I am sure went still on their side. Nor was my care confin'd to Rome only, but reach't to all the Factories of Italy: For the Consuls themselves, nay every private Person found both an easie access to me, and an indefatigable Zeal in their concerns; so that the Merchants in general that had to do in those Parts, were far from being behind hand in their thankful acknowledgments. Nay one of the greatest Companies of our Nation, I mean that for Turkey, not only return'd me their thanks very heartily by Letter, but did it again by Word of Mouth after my Arrival home.

I am sure (Mr. *Speaker*) if the Employment I submitted to were a fault, I have already not a little suffer'd for it; for I never put bounds (as our Travellers, as well as my own Officers, fully know) to any Expence that could be imagin'd for the Dignity of the Nation; And give me leave to tell you also Sir, that though the Name of Rome may be harsh and ungrateful to your Ears, yet what I did, was with a good intention, and like a true and faithful Englishman. For had I been sent with a Character to Constantinople, where they are Mahometans; or to China, where Gentiles; the *Eclat* or Figure which I should have endeavour'd to make, would never be consider'd by you as an Honour to their Religion, but our Country; therefore since it is a Disparagement and

and great Reflection to a Kingdom, to come below or short of others in any thing that is public and of note, I cannot but have (at least) faint hopes, that you will have some Consideration, some Opinion of an Ambassador (though at Rome) that kept up (to his Power) the Glory and Grandeur of England.

But Mr. Speaker, not to trouble you longer on the present Head, I'll end when I have told you this; That if I have done amiss in obeying the King's Commands, no Consul that has pursued a Pirate or Bandite to Rome; no private Factor that has follow'd a Debtor thither; Nor in short any Man that has writt'n so much as one Letter to that City, though it were to demand his own, but is a far greater Criminal than my self, and lyes at the Mercy of every Enemy to be indicted as a Contemner and Breaker of the Laws.

Your second Charge, Mr. Speaker, is my being a Privy Counsellour, without taking the appointed Oaths; To which I can truly say, they were never offer'd me; though I must also confess (for I shall be sincere with you in every thing) that I believe, nay that I am certain, I should not have taken them, had they been offer'd; so that I do acknowledge the Omission a fault against Law——

Here the Speaker, thinking that his Lordship had made an End, desir'd him to withdraw; but being inform'd that he had not done; He excus'd the Interruption, and then his Lordship went on.

I say (Mr. Speaker) I acknowledge this a fault against Law, were there not several things of weight, that will (I hope) justify me to you; And here, Sir, I must entreat you, not to conceive that I come now to defend or make good the Dispensing Power, but only to shew you how necessarily I was driven and induc'd to the aforesaid Omission; for (Mr. Speaker) in Controversies and Disputes, what can one do, but recur either to his own Observation, or to the Opinion of learn'd Men, and Professors in the Science?

In the first place then, when I began to examine my self as to the Right the King claim'd and asserted; I saw *Non obstantes* deem'd Legal, which signified to me *Dispensing*; I found the Power of continuing Sheriffs own'd for many Ages to be undoubted Law, and yet I knew there was a positive Statute against it; Nay I remember'd an Act, which I my self had in this House given my Vote and Consent to, viz. That about the Regulation of Carriages and Waggon; Or if this be not the exact Title, I must beseech you to pardon my Treacherous Memory, and 'tis I'll assure you the only Traytor I ever yet succoured or supported; I say Sir, I remember'd this very Act (almost as soon as made) suspended by Charles the Second's Proclamation without the least Question or Murmur; and I took so much notice of it, as to make even then this Reflection (and I do assure you upon my Honour 'tis true) That though our Monarchs could not impose and abrogate Laws of themselves, yet they had the Power (I perceiv'd) to respire them.

In the second place (Mr. Speaker) if I went abroad; I mean if I consulted the Thoughts and Sentiments of others, I found not only Great Men of the long Robe, but the Judges also

themselves declaring in favour of this Prerogative; and the Interpretation or determination of these Sages was always told me to be Law, till a new Law or a new Explanation should be enacted. What would you then (Mr. Speaker) have me to do, who was call'd to the Board by the King; who could not in Conscience take the Oaths; and yet had no reason to think I committed (in not taking them) a Crime; seeing the Law was thus openly expounded and publish'd?

And now, Sir, since I have been forc'd to mention my Religion which, I know is a legal Fault, and of a high Nature; I must not forget also to celebrate the Goodness of this House; which has pardon'd the Fault, even in the solemnest Way; and by the solemnest Act that ever pass'd since *Magna Charta*; to wit, *The great Act of Oblivion*. Give me leave, Sir, to say this too, for I can justly do it; That being so faithful and so true an Englishman, I neither should nor could (I am sure) have ever, during my Life, offended my Country, but in my Religion. Pardon also I humbly beseech you this Digression, and together with it the Incoherences and Disjunctions all along; Nor shall I any ways doubt of it, since you so well know how uneasy and troublesome a long Discourse (which my Circumstances have now required) must needs be to one, that wants both Eloquence and Practice.

But (Mr. Speaker) to return where I left, and so conclude; How, Sir, I pray you (and I demand it again of you with great respect) could I think the Omission (as I said) of the Oaths a Breach of the Laws, when our Guides, who had the Laws in their keeping, told us explicitly, and without reserve the said Oaths were not necessary? Shall I then suffer that had neither Buoy nor Mark to direct me? certainly no; for if there were a fault, 'tis not I must suffer, but the Judges, and those knowing and deputed Pilots, that hung out (it seems) the wrong Flag and Signal. I have Sir, but one Word more to trouble you with, and this I speak in behalf of all here; Nay, in behalf of all the People of England; That if I now undergo your Severity, and that single Persons (notwithstanding the Determinations and Judgments of our Courts of Justice) must be still responsible; No Man can be safe, no Man can be at rest; for no body that acts can know (as accidents will often happen) whether he be innocent or guilty.

Mr. Speaker, I am in great disorder for imposing thus on your Patience; and especially seeing I must yet presume to do it, one thing more occurring to me (as I hope) for your further Service, or at least Satisfaction; And 'tis to let you know how I came to be a Prisoner, and why I continued so thus long. Be pleas'd then, Sir, that I tell you, that as soon as the King first left *White-Hall*, I thought it decency to go out of Town; and therefore three days after I took Coach for *Montgomeryshire*, where of late I us'd to reside in the Summer time. On the Borders of that County, at a small Corporation called *Osweestree*, I was first stop't by the Rabble, and afterwards detain'd (with a strong Guard) at my Inn by the Major; though no body (as he confess) made any Oath against me; and tho' he had no Orders (as he said) from London for it; Nay, (after a Months

restraint

restraint) he deny'd me my Liberty upon Bail, notwithstanding two Neighbouring Lawyers (whom I sent for) assur'd him he could not justify the refusal by Law. I do not Sir, complain of any Incivility, either from him or the People; for I was us'd with respect enough; But I judge it extremely fit to let you see how the Liberty of a Subject was wilfully invaded by a Magistrate, and how little conscious I was of any Guilt, since instead of flying, I went to a place where I was known by every body.

In fine, Mr. *Speaker*, after a confinement of Seven Weeks, I was sent for up, and brought hither by a Party of Horse; Nor was I ever question'd or examin'd by any body, but kept (upon the suspension of the *Habeas Corpus Act*) at a Messenger's House for Three Months; And when the said Act was suspended the last time, I was Committed by my Lord *Shrewsbury's* Warrant to the Tower, for Suspicion of treasonable practices.

His Lordship having ended, retir'd with the Serjeant at Arms to his Room, where after a little stay, he was sent for in again; And then the *Speaker* told him; That since he said his Journey to *Rome* was with a Letter of Civility to a Temporal Prince, and not about Religion, The House (to be more fully satisfied of it) desir'd to see his Instructions. To which his Lordship thus answer'd.

I hope (Mr. *Speaker*) though I shall readily acknowledge my own natural Weakness, you will not yet think me so imprudent, as that (in a time of such troubles and distraction) I would keep Papers by me, and especially about *Rome*, to render my self lyable to every malicious Man's Extravagancy and Comment. This therefore caus'd me Sir (the Night before I went towards *Wales*) to burn all Papers that came to hand; and truly some among the rest, that I have since wanted; Nay this I can also justly aver, that I remember not now one Word of those Instructions, having (I'm confident) never read them twice; only this I remember, they were Things of Course; Words of Form; and needed no further consideration. Yet Sir, that you may plainly see my Sincerity, and how far I am from any design of illuding and deceiving you, I shall shew you how you may retrieve them, when I tell you, that Mr. *Monfrevens* brought them me, and that they were drawn (as I take it) by Mr. *Bridgman*; For I'm certain they came from my Lord *Sunderland's* Office.

But my Lord (reply'd the *Speaker*) had you no private Instructions? None; Answered his Lordship. What none at all, said Mr. *Speaker* again. None I'll assure you Sir, reply'd his Lordship; unless the Kings Orders, to demand a Cardinals Cap for Prince *Reinaldo of Este*, were private Instructions; Nor do I certainly know, whether those Commands were in my foremention'd Instructions, or whether I had them by Word of Mouth.

My Lord, said the *Speaker*, I have another question to ask you; to wit, who of the long Robe told you of the Kings Power of Dispensing, and that there was no necessity of taking the Oaths?

I am Sir (answer'd his Lordship) infinitely troubled, if I have through want of Care, or by any improper Expression given you occasion to misapprehend me; For I never askt any particular Man of that Profession about this Affair; But my meaning was (and I hope my words are not contrary to my meaning) that the said Power was manifestly and openly declar'd to be Law by Judges and Lawyers; So that I deem'd it no Solicism in Discourse to mention it as if they themselves had told it me.

Then his Lordship retir'd again, and after a long Debate, the House pass'd this Order. *That the Earl of Castlemaine stand committed to the Tower by a Warrant from this House of High Treason, for endeavouring to reconcile this Kingdom to the See of Rome, and for other High Crimes and Misdemeanors.*

As soon as his Lordship was inform'd of this Vote, he entreated a Member to let the House know, that he had a Word or two more to trouble them with; So that being brought in, the *Speaker* told him, that the House having notice (he had something further to acquaint them with) was very willing to hear him.

Mr. *Speaker* (reply'd his Lordship) I have nothing more to say about the former Matters; but understanding your Pleasure, I thought it my Duty to let you know, how the custom of the Tower as to Prisoners is chang'd; for in course heretofore (unless there were a particular Order of State to the contrary) they had the Liberty of the Tower; that is to say, they could walk about at seasonable hours with a Warder; But now as soon as one is committed (though it be upon bare suspicion, as I was) he is confin'd to his Lodging, and hindred from the Consolation of seeing his Friends, till (after much solicitation and trouble) leave be granted by the Secretaries. Therefore Sir, being morally certain that I shall be confin'd again as soon as I return, I humbly desire the Favour of this Freedom; It being also what I hitherto enjoy'd after I had been restrain'd for some days in the aforementioned Manner.

This said, his Lordship went out, and then was carried to the Tower, where he was made a close Prisoner, as he foretold, though what he moved, occasion'd the following Vote.

That a Committee be appointed to bring in a Bill for the better regulating the Imprisonment of the Subjects of this Kingdom, and to settle the Fees of Goalers; And it was likewise referr'd to them, to examine into the abuses of Goalers towards their Prisoners which have been heretofore Committed.

On Wednesday the 5th of the following February, His Lordship mov'd for his *Habeas Corpus*, and was brought by the Lord *Lucas*, (the present Governour of the Tower) to *Westminster*, on the 10th; So that appearing at the King's Bench, his Commitments were read, and Mr. *Attorney* having nothing to object against his being Bail'd, the Court awarded it upon the Security of Thirty Thousand Pounds; that is to say, a Recognizance of Ten Thousand for himself, and Five Thousand a piece from his four Sureties; which were, *John Earl of Bath*, *Thomas Earl of Aylisbury*, *Thomas Earl of Sussex*, and *Charles Lord Landdown*.

The Tryal of John Price, Esq; late Receiver of Ireland, and One hundred other Protestants at the Town of Wicklow in Ireland.



Uohn Price, Esq; Receiver General to the late King Charles the Second, having his Country-house in the County of Wicklow, at Ballinderry, twenty four miles from Dublin, did for the safety and preservation of himself and Family, obtain the Lord Deputy Tyrconnels Protection, (as many more of the English Protestants living in the Country at the same time did) for the late King James going away for France, and the Administration of the Government being put into the hands of his present Majesty; the Lord Tyrconnel gave out Commissions (for the raising a mighty Army) to any Irish Papist that would take one, and promise to subsist, Maintain, and Cloath their Men for three Months; most of these new Officers are men of mean Fortunes, not capable of subsisting themselves; their men live altogether on the English, coming into their Houses in the day time, and commanding from them their Meat and Drink; and often Robbing them in the night, stealing away their Cattle. Likewise the Priests of every Parish obliged all their people to furnish themselves with Half pikes and Skeanes, and bring them to Mass, or not presume to appear there, on the penalty of Excommunication, or a severe punishment; which caused all the Irish to Arm themselves with the afore said Weapons; upon which Robberies, Thefts, and other Outrages were daily committed upon the English; particularly in the County of Wicklow, where some Hundreds were got together for that purpose, who gave themselves the Name of *Merry Boys*, and had very great success in their theivish attempts upon their Protestant Neighbours, that lived hitherto secure in their own Houses; it is observable, what great power the Romish Clergy have over the Irish, they Arm themselves immediately at their Command, and yet to this day have neither kept them from Robbing of the English, nor restored them any thing taken away, which if they had been so minded, they might have done by the same Power; several of Mr. Price's Neighbours repaired to Ballinderry, to preserve themselves and Goods; but an order coming out soon after, for the taking away all Horses and Arms from the Protestants, both in City and Country; Colonel Toole with a Party of his Men came to demand what Arms and Horses they had at Ballinderry, Mr. Price and the rest having the aforementioned Protection, refused to obey their orders; and complaint coming to Dublin, Colonel Sheldon was immediately sent away with a Body of Horse and Foot, against Ballinderry; Mr. Price upon his Approach presently submitted to him, who thereupon was made Prisoner, and all the rest of the Men

that were in the House; but the Prison of Wicklow not being able to contain them, several of them were admitted to Bayl, until the following Affizes, which began March the fifth last past, and ended the eighth.

The Prisoners Names that were Indicted for this Treason, are as followeth, viz:

- 1 John Price, Esq;
- 2 Thomas King, Gent.
- 3 Richard Westland, Gent.
- 4 William Heatly, Gent.
- 5 James Lewis, Gent.
- 6 Edward Lewis, Gent.
- 7 John Burroughs, Gent.
- James Bacon, Gent.
- 8 Thomas Burroughs, Gent.
- 9 Thomas Fetherston, Gent.
- 10 Joseph Chrichley, Gent.
- 11 John Chrichley, Gent.
- 12 George Chrichley, Gent.
- 13 Thomas Williams.
- 14 James Williams.
- 15 F. Clark.
- 16 Caleb Chad.
- 17 Tho. Bathe.
- 18 Joseph Thompson.
- 19 Thomas Hallson.
- 20 Henry Gibson.
- 21 John Cock.
- 22 Thomas Peterson.
- 23 John Ward.
- 24 William Turner.
- 25 Thomas Evans.
- 26 George Atkinson.
- 27 William Evans.
- 28 Robert Milton.
- 29 William Neale.
- 30 William Hill.
- 31 George Dixy.
- 32 Stephen Robinson.
- 33 Charles Evans.
- 34 Stephen Rathborn, Junr.
- 35 Edward Philips.
- 36 John Colson.
- 37 William Wotton.
- 38 Henry Delauny.
- 39 Thomas Cross.
- 40 John Kempson.
- 41 Thomas Watts.
- 42 Edward Afton.
- 43 Robert Anthony.
- 44 Alexander Hill.
- 45 James Hill.
- 46 John Hill.
- 47 William Savill.
- 48 Edward Jones.
- 49 Peter Bland.

- 50 John Tomlinson.
- 51 Daniel Poyce.
- 52 John Jones.
- 53 Thomas Howard.
- 54 Charles Fryers.
- 55 Andrew Wills.
- 56 Michael Wills.
- 57 Samuel Allen.
- 58 Tristram Tinefly.
- 59 Robert Ashton.
- 60 Henry Tuton.
- 61 Ralph Kidd.
- 62 William Fulham.
- 63 William Erwin.
- 64 Agabus Kidd.
- 65 Thomas Page.
- 66 Thomas Allen.
- 67 Rice Bibbin.
- 68 Nicholas Scot.
- 69 Arnold Sutton.
- 70 Alexander Rathborne.
- 71 William Holson.
- 72 Isaac Collison.
- 73 Jacob Collison.
- 74 William Edwards.
- 75 Peter Barton.
- 76 John James.
- 77 John Fordan.
- 78 Randle Burroughs.
- 79 Richard Price.
- 80 Agabus Bardin.
- 81 Henry Moody.
- 82 John Burroughs.
- 83 Edward Hughs.
- 84 Edward Jernson.
- 85 James Uton.
- 86 William Ryder.
- 87 Luke Young.
- 88 William Shorter.
- 89 John Goodwin.
- 90 James Tench.
- 91 Thomas Manning.
- 92 Edward Bowers.
- 93 Thomas Adams.
- 94 Robert Dunbar.
- 95 Thomas Colston.
- 96 John Bromwell.
- 97 Samuel Price.
- 98 James Tipping.
- 99 Edward Graham.
- 100 Christopher Cooper.
- 101 William Phillips.

Grand-Jurors Names. Papists mark'd †.

- † Christopher Wickam.
 William Hoy.
 Cromwell Wingfield.
 † William Wolverston.
 † Redmond Birne.
 † Thomas Birne.
 † William Birne.
 † Peirce Cromwell.
 † Toby Walsh.
 † Toby Tool.
 Edward Burly.
 Leonard Frost.
 Peter Ayris.
 William Baker.
 † Lawrence Tool.
 Richard Lamb.
 † Daniel Birne.

After they were Sworn as usual, they received the following Charge:

L. C. Just. Keating's Charge to the Grand-Jury.

Gentlemen, You that are here Returned to Serve on this Grand-Jury, you have this day before your Eyes the greatest Example, and the firmest Proof that a Gracious Prince can give to the best of Subjects; you see his Sacred Majesty, King James the Second, (whom God long preserve for the Protection of all his good and dutiful Subjects, and for the subversion and irradicating of all those who desire the Subversion of his Government; either by Foreign Force, or inbred Conspiracy) notwithstanding the great Troubles on his own Person, yet he is not wanting in his care towards you; and I dare boldly say, it is the last thing he will relinquish in the World, after that of his own Conscience, the care of his Subjects: He hath sent us with his Commission to enquire into all the Maladies, Diseases, and Sores within your County. He has likewise given us Command to apply the healing Balsam of the Laws, which will preserve the Subject most entirely in his Property. And I am sorry, I must tell you, that there was never more need than now at this time: I am glad at the same time that I can say, that the Mischiefs fallen on a great part of this Kingdom, and on no part more than on this County, that is under the very Eye of the Government; I say, I am glad it can be said to have arisen, for the most part, from a Rabble of People, who have arm'd themselves without any direction from the Government, and that with unusual Weapons; I mean Half-pikes and Skeans: Gentlemen, I must tell you plainly, it looks rather like a Design to Massacre and Murder, than any else. They do not belong to the Army, neither are they any part of them; but these are the Vultures, Kites, and Ravens that follow Armies. Souldiers that have travelled abroad, say, Such are not known among them there: I am told, and very well assured, That in Foreign Parts, where these Vultures and Birds of Prey are, it is hard for an Army to lie conceal'd, without being discovered by them; for it is odds, but that a Horse or a Man drops where such multitudes of People are. I am very far from laying this to the Charge of any that are under Command; tho' it is possible, that some of them, under the scarcity they are in, do give their assistance, or at least encouragement to these Robbers; otherwise it could not be, that whole Flocks and Drovers of Cattle are daily driven away, and yet no one taken or brought to Justice for it. The King is not wanting in his Care, he has given Directions to have the Laws put in execution, that Criminals may be brought in and punished; and the Government has issued out many Proclamations; but they are grown too familiar with them. You are to enquire into this Matter, in order to bring to punishment, not only them that steal, but those that receive. I am told that open Markets are set up in this County of Wicklow: A fat Bullock for 5s. and a fat Sheep for 1s. but it will fall heavy on them at last. Divines say, That God Almighty oftentimes makes the very Crime to become their own punishment: And I verily fear, that a few Months will produce

a Famine in this Kingdom: And what succeeds, a Pestilence, and the worst of all Pestilences; for it is observed, that a starved Rot is the worst of all Rots; it falls out unhappily at this Season of the Year, when the Cattle are breeding: Under the Old Law the *Jews* were not to seeth the Kid in the Mother's Milk; but these unmerciful Wretches go further than that, sparing none, but destroying old and young, the increase and all. Pray Gentlemen, consider of it, and search the Houses of such as you have reason to suspect, that had not any thing to eat the last Year, go now into their Houses, and you will find whole Carcasses of Beef powdered up; nay, it may be, for want of Salt, or Money to buy it, lying rotting and stinking. Let me tell you, it will be your turn next, when they have robbed and spoiled your Protestant Neighbours, they will come to you, unless you take speedy care to prevent it. The King has done what he can, and the Government what they can; in vain is the Law made, if Offenders be not brought to condign punishment. You all know there has been an Invasion in *England* of a Foreign Enemy, the *Prince of Orange*; and the same is designed on this Kingdom: The effects of an Invasion is not known: Defence is natural to all Kingdoms and States, and therefore the Government has given Directions for raising a greater Army, than at any time heretofore this Kingdom ever had: It was so among the *Romans* of old, who in cases of necessity did things clear contrary to the Fundamentals of their Laws. The same necessity has put the King on arming here; (in *France* they have their Ban, and with us our Commission of Array, from sixteen to sixty) but without any design that the effects should be to arm the Country with Half-pikes and Skeans; they are fit indeed for the Mountains, or to guard a Man's House, but not to go abroad with at Noon day. Gentlemen, you that are Justices of the Peace, and Officers of the Army, where ever you meet, you ought to secure them, and bind them over, and know by what Authority they dare go abroad with such Weapons. I need not say any thing to you in Defence of the King, for it is really and truly your own Defence; and therefore I shall proceed into the Heads which are prepared for your Enquiry at this time: our business here is like to be very great, and our time short, and therefore I shall not trouble you with small things, we have greater matters than Assaults and Batteries. We have Desolations and Ruines to shew you and set before you, and without your care we are like to fall into the Gulph of Misery and Destructions. The first thing we have to speak of, is High Treason, we have no Petty Treason in *Ireland*. If any shall go about to Conspire the Death of the King, Queen, or the Heir Apparent, the Prince of *Wales*, this is High Treason at all times, it was so at Common Law, you must look to this betimes, for if a blow be once struck here, there can be no retrieving of it. If any one should go about to Seize the Kings Person, or Imprison him, this Gentlemen is Treason, there is but few steps between the Prisons and Graves of Kings; and by all the observation that I can make out of the English or Scotch, or Irish Histories, where we have had swarms of Murdered Kings, that if once they went into Prison, they seldom ever escap-

ed with Life. Our King has more reason than any to dread this, his Father who now is a glorious Martyr in Heaven lost his Life, and the King himself ever since his Escape with Colonel *Bamfield* from *St. James's*, has had so many miraculous Deliverances both by Sea and Land, that we may conclude he is preserved for some mighty matter, or else Providence had not done such great things for him; and 'tis but of late that he himself is escaped out of Prison. I am told by Authority, and am ordered to tell you, that he is expected in this Kingdom very suddenly, as a Place of Refuge. He is the first King I think, since *Henry the Second*, except *Richard* that has been in this Kingdom. It is a great misfortune that he should be forced to it, but we may look upon it as a great Blessing, that he should think himself safe here, when he cannot be so elsewhere.

To seize any of the King's Forts or Ships of War, for these are the Bulwarks to defend him against his Enemies, this Gentlemen is Treason.

To hold Correspondence with any of the King's Enemies, or with Rebels in actual Rebellion, or to joyn with them, this is Treason; you are not to enquire into the Punishment, but to open a Door for the Petty Jury to enquire into the matter of Fact, and what the Law is, shall by the Blessing of God be our business.

To Counterfeit the King's Coin, or Clip it, and you have very little of it at this time, therefore you had need be careful in a more especial manner, this likewise is Treason.

It is likewise Treason to counterfeit the Great Seal of the King, for 'tis the common Security, by which many hold their Estates, and some their Lives.

The killing of the Chancellor or any of the Judges or Justices of Oyer and Terminer in the doing of their Duty, this likewise is Treason, not so much with regard to their Persons, as to the work that they are about, they representing the King's Person. The meanest Constable there, if he has his Staff in his Hand, and doing his Duty, he that kills him shall dye the same death, as he that kills the best Man that wears Scarles on the Bench. Gentlemen, I must tell you another Crime, and it looks like a mark of Infamy on this Kindom. Murder in *England* is but Felony, but it has been thought fit to make it Treason here, and they that go out on burning and robbing Houses, they shall be indicted for Treason. And, Clerk of the Crown, if any such be here, now take notice I will have them indicted for Treason.

The next thing for your Enquiry is Felony, that concerning the Life of the Subject; for a Man to kill his Fellow Subject, this is Felony, if he does it on a sudden passion and heat, a Man may kill another in his own Defence; for 'tis natural for a Man to kill rather than be killed, and therefore he shall have his Pardon of course. But Gentlemen, this is not in favour of Duels, and only where there is a great Provocation, there is not a Man but has some passion about him, but for a Man to go to bed with Malice, and arise the next Morning and go meet his Fellow Subject and kill him, this is Murder and Treason in *Ireland*.

The next thing that is Felony, is concerning the Goods of the Subject, for an honest labouring Man, that by the industry of his whole Life has gotten a fair stock for the maintenance of him-

self, his Wife and Children, at night goes to bed, and next Morning when he arises, he is a Beggar and wants Bread. Gentlemen, it would make every honest Man's Heart bleed to hear what I have heard since I came into this County, it is ill in other parts of the Country, but here they spare not even the wearing Clothes and Habit of Women and Children, that they are forced to come abroad naked, without any thing to cover their Nakedness; so that besides the Oath you have taken, and the Obligation of Christianity that lies upon you as you are Christians, I conjure you by all that is Sacred, and as ever you expect eternal Salvation, that you make diligent Enquiry, let it never be said by any of you, that it was your Neighbour, or your Neighbour's Servant did it, and you are sorry for it, but will not trouble your selves, I tell you it is every Man's business, and I beseech you look into it.

To break into any Man's House after night fall is Felony, it is a sound sleep that the labouring Man takes, but the idle Rogue that lies lurking and sleeping all the Day, at Night he arises and seeks whom he may devour. If you were to do the most charitable Work, as building of a Bridge or Chappel, or mending a High-way; how many do you think of these Men with half Pikes and Skeines would come to your assistance? not one of them I'll engage. But if a House or Town be to be Plundered, they all run thither. All Riots and Routs are to be enquired into, numbers of People may meet for their own Defence, if they should hear or see the Country robbing and spoiling. By a riotous Multitude coming to burn and rob their Houses, in this Case they may meet and defend their Goods, and apprehend the Robbers, in order to bring them to Justice; but after all this, they are not to contest with the Government, nor do any thing to the Prejudice of that; I told you, I would not trouble you with unnecessary Matters, all are lost in the greatest of Crimes and Outrages that are committed daily in the Country round about.

If I should go through all the Heads of this Charge, it would take up more time than we have to spend here, and therefore I shall shut up all and say no more than this, that every Man do apply himself to his Husbandry and Tillage, to prevent that imminent danger of an approaching Famine, that seems to be coming upon us, and that you make it your business to search after, and bring to Judgment those Robbers that live on the Mountains, and while you continue to do your Duty, you shall have all the Protection the Government can give you. So upon complaint of any Justice of the Peace, that shall be backward or unwilling to appear against them, care shall be taken to punish such and make them Examples. Go together Gentlemen, and consider of these things.

The Prisoners brought into Court.

Clerk of the Crown. Set John Price to the Bar, Tho. King to the Bar, W. Lewis, James Beacon, William Heatly, Tho. Burroughs to the Bar, &c.

Hold up your Right Hands.

Cl. John Price, Tho. King, &c. You stand here indicted for that you on the 25th day of February, in the 5th Year of the Reign of our Sovereign Lord King James the Second, at Ballindery in the County of Wicklow, with divers others wicked Traytors and Rebels, in a warlike man-

ner, then and there did assemble your selves, and a cruel and open War and Rebellion against our Sovereign Lord the King, and his faithful Subjects of this His Majesties Kingdom of Ireland, did raise and levy, and did intend our Sovereign Lord the King to Death and Destruction, to bring, and to depose him from his Kingly Authority and Government of this his Kingdom of Ireland, and to fulfil and accomplish this your said traitorous Intentions and Designs, you the said Persons, with others the said wicked Traytors and Rebels, the Day, Year, and Place aforesaid, did arm your selves with divers Warlike Weapons, as well offensive as defensive; and did move and excite divers others the Subjects of our Sovereign Lord the King, to joyn themselves wickedly and traitorously, against the Peace of our Sovereign Lord the King, and the Duty of your Allegiance, and the Statute in that Case made and provided, &c.

Cl. How sayst thou John Price, art thou guilty of the Treason that thou standest here indicted, &c. or not guilty?

Mr. Price. Not Guilty.

Cl. Culprit, How wilt thou be tryed?

Prisoner. By God and the Country.

Cl. God send you a good Deliverance.

Note, The Prisoners were brought into Court in several Parties, to be Arraigned, as many as the Dock would hold at one time.

The second time the Dock was filled.

Cl. Cr. Set William Fulham to the Bar, &c.

Thady Brine, the High-Sheriff, stood up and said, My Lord, Fulham was cleared.

Bar. Lynch. Pray, Sir, who cleared him?

High Sheriff. The Chief Commission'd Officer that was here, Colonel Sheldon did acquit him.

Lynch. He acquit him, how could that be? If there be nothing against him, we shall acquit him.

J. Keating. Clerk of the Crown, is he indicted?

Cl. Yes, My Lord, a Bill of Indictment is found against him.

Penidergass the Sub-Sheriff. My Lord, I will tell you, Mr. Sheriff is mistaken; there was some Boys discharged, and he thinks Fulham is one of those Boys.

Lynch. Sir, you do well to reflect on your Employer.

High Sheriff to the Sub-Sheriff. You have done this to get Money for your self: My Lord, Fulham was not concern'd at all, and therefore was discharged.

Prisoner Lewis. My Lord, we are so crouded with a File of Musqueteers and a Serjeant, that they take up our Chairs, that we cannot sit down; and they come with their lighted Matches to our very Noses, and last Night a Piece went off in the Room among us, we have not the conveniency of quiet Repose, nor our Friends the liberty of seeing us. My Lord, we were not born Lawyers, therefore desire we may have our Friends come to us, and Council to advise with.

This Lewis and Lord Galmoy are Brother and Sisters Children, and was offered a Troop if he would turn Papist.

J. Keating. Mr. Lewis, you have been bred to the Law; but you shall have Council allowed you; And you, Mr. Sheriff, you are not to keep them with Fire-Arms, nor with Souldiers. I saw a Centry at this Door Yesterday, and forbad it—

I remember, that when *Warren, Jephson, and Thompson* were tryed in 1663. for a Design to surprize *Dublin-Castle*, because this was a great matter, forsooth, they must be guarded with Souldiers—— (They were tryed at the King's Bench; and several Persons desirous to see or hear, being gotten up into the Arch in the Wall next the Court of Common-Pleas,) as they were going up stairs, a Piece went off, and shot a Man through the Head. I tell you Mr. Sheriff, that *Brown Bill* is your Guard (pointing at one in Court) the Law knows nothing of Fire Arms; (speaking to the Prisoners) Gentlemen, I must tell you plainly, that I received Directions from my Lord Deputy (by the Attorney General) that you should have all the Justice imaginable.

Bar. Lynch. Mr. Sheriff, you must Command those Souldiers to be Civil, they are your Guards when you employ them.

Seventy Prisoners were Arraign'd and return'd back to Prison; 31 more that were indicted, and upon Bail, did not appear.

Next day——Thursday March the 7th they were again brought to Court to their Tryals; and the Jury was Impannel'd, whose Names were as followeth, Papists marked thus † viz.

† *Thomas Cowdell.*
 † *Philip Cradock.*
 † *John Pew.*
 † *Alexander Higden.*
 † *Christopher Talbot.*
 † *Garret Birne.*
 † *Dudley Keogh.*
 † *John Keogh.*
 † *David Toole.*
 † *James White.*
 † *Darby Toole.*
 † *Garret Harold.*
 † *Daniel Birne.*
 † *Patrick Mac Donnel.*
 † *Patrick O Donnelly.*
 † *Christopher Birne.*
 † *Daniel Powel.*
 † *Richard Jonston.*
 † *Theophilus Higgins.*
 † *Nicholas Wall.*
 † *Charles Tool.*
 † *Anthony Archer.*
 † *Charles Birne.*
 † *Cornelius Kenan.*
 † *Tho. Elliot.*
 † *Richard Baker.*
 † *Thady Birne.*
 † *Francis Tute.*
 † *James Moore.*
 † *Hugh Birne.*
 † *Bryan O Neal.*
 † *Dennis Cullen.*

Jaylor, set the Prisoners to the Bar.

Cl. Cr. You good Men that are to try the several Issues between the King and *John Price, &c.* and other Prisoners at the Bar, that shall be given you in Charge, &c. Jury, look at the Prisoners; Prisoners, look at the Jury, &c.

Cl. Cr. *Thomas Cowdell*, to the Book.

Prisoner Lewis. I challenge him.

Cl. What is your Cause of challenge?

Lewis. I challenge him peremptorily.

Deputy K's Council, Fitz-Patrick. My Lord, before they begin their Challenges; let us know

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whether they will all agree in their Challenges; otherwise we must be forc'd to Try them severally.

It was at length agreed, That if any one made a peremptory Challenge, the other Prisoners were to be satisfied with it.

Coll. Tool on the Bench, speaking to the L. Chief J. Keating. My Lord, Mr. *Lewis* has been Sub-Sheriff of the County, and knows all that have Freehold.

J. Keating. It is the better for himself that he does know them.

Prisoner Lewis continued to Challenge, until they had gone through the Pannel, and only two Gentlemen that were Protestants, Mr. Cradock, and Mr. Pew, were Sworn.

Cl. Cr. Mr. Sheriff, a New Pannel — The Sheriff gave in another of Eleven in number, which were all likewise challeng'd by Mr. *Lewis*. — Whilst both the High and Sub-Sheriff were looking about the Court, for to make up a third Pannel. Says

L. C. J. Keating. Mr. Sheriff, How many Freeholders have you on the Grand-Jury?

Sheriff. Six or Seven, my Lord.

J. Keating. You have been sparing enough of your Freeholders. The Law requires that all the Grand-Jury should be Freeholders, and have you but six?

Sheriff. — There is but very few Freeholders in the County, My Lord.

C. Fitz-Patrick. — In Cases of necessity, my Lord.

J. Keating. You know the Law is so.

C. Fitz-Patrick. Yes, there is a Statute for it.

J. Keating. — The Prisoner for his Life may challenge Twenty peremptorily, without shewing cause; and the whole World for want of Freehold — And shall I put such a one on for his Life? Sir, I will not be hang'd for any Body.

Fitz-Patrick. Was ever a Judge hang'd?

Mr. Handcock, Council for the Prisoners. Yes, above twenty in a few Years.

J. Keating. Mr. *Fitz-Patrick*, I will not be hanged with Justice *Belknap*, nor *Tressilian* neither.

C. Handcock. My Lord, they were hanged at Tyburn.

J. Keating. I think they were. — The greatest part of this County is in the hands of two or three Men, my Lord *Strafford* and *Rofs*.

J. Keating. Who is here that is concern'd for my Lord *Strafford*, and my Lord *Rofs*?

Court. Here is Dr. *Hall* on the Bench, for the Lord *Strafford*, and the Sheriff is concerned for my Lord *Rofs*.

J. Keating. Dr. *Hall*, and you Mr. Sheriff, let me tell you, I do not know but that their Lordships have forfeited their Estates, for this day's work. In the Act for Plantation, there was provision made for Freeholds, and there were enough before the Wars. I fear these great Lords have swallowed up the Freeholds their Ancestors made. I only tell you this.

The Sheriff by this time had drawn up a third Pannel, being eight in number.

J. Keating. Mr. Sheriff, have you all your Freeholders here?

Sheriff. My Lord, we summon'd all here.

J. Keating. On the first Pannel you might have Return'd forty, because you do not know how far Peremptory Challenges will run; and you are oblig'd after to Return a fewer Number

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when you enlarge your Pannel, but you can never enlarge it farther than it was at first.

Cl. Cr. Birne, to the Book.

Prif. Lewis. I Challenge him for want of Freehold.

J. Keating. Mr. *Birne*, have you a Freehold in this County?

Birne. My Lord, I have a Lease of Lives.

Prif. Westland. I Challenge him peremptorily.

Bar. Lynch. What, Sir, do you begin to Challenge? This shall not be allowed you, to Challenge one upon another.

C. Hancock. My Lord, you are Council for the Prisoners.

Lynch. Sir, you are not to tell me my Duty; I will have you to know, Sir, I shall give an Account for my self. I am Judge for the King too, as well as Council for the Prisoners; and I am concern'd for the King.

J. Keating. (turning towards him.) And do you think I am not concern'd as well as you?

Lynch. Yes, my Lord, I speak for you as well as my self.

Coun. Fitzpatrick. My Lord, they agreed at first, that one Man should Challenge for them all — At this rate we are never like to get a Jury for them; it is but an ill sign of their Innocency, that they are not willing to come to a Tryal.

Mr. Hancock, } In the Peremptory Chal-
Council for the } lenges they agreed (but not
Prisoners. } in the Challenges for Free-
hold) and this peremptory Challenge we will stand by.

J. Keating. I will tell you how I understood it; that in their Peremptory Challenges, if any one of them Challeng'd, the rest should be concluded by it; Mr. *Westland* has made a Peremptory Challenge, and they are willing to stand by that — however, Mr. *Birne*, stand by, do not go away, we may call you again. Clerk of the Crown, proceed, — &c. — which he did, until he ended the Third Pannel.

Sub-Sheriff calls Will. Baker. My Lord, he has a Free-hold.

Baker. My Lord, I have no Free-hold.

Keating. You see the Sub Sheriff is a fit Man to be an Officer; he is blind — he is indifferent.

High Sheriff calls Peter Ayris. An. He is on the Grand-Jury.

Keating. Mr. Sheriff, why do you call such?

Sheriff. I saw him in Court, and so I called him, my Lord.

J. Keating. There is already but five Peremptory Challenges made, so that they may Challenge fifteen more peremptorily; and there is but two Sworn, so that there wants ten.

Cl. Cr. Sheriff, see if you can get any more.

Sheriff. I see never a Free-holder in the Court.

C. Fitzpatrick. My Lord, the Sheriff ought to be punished for his Neglect.

Bar. Lynch. Sir, why did you not take care to Return a Jury of Free-holders? You shall be Fined for it.

High Sheriff. My Lord, I have Return'd all the Free-holders there is in the County (I sent yesterday above Twenty Miles for one Gentleman here;) They are all gone out of the Country; — I hope you do not expect I should go to the North, or *Isle of Man*, or *England*, or *Scotland*, among the Rebels, to Summon them.

J. Keating. I do really believe you, Mr. Sheriff, you have done like an honest Man; — Mr. *Fitzpatrick*, what do you say in this Case?

Fitzpatrick. My Lord, I cannot tell what to say.

Deputy King's } What if there was not one
Coun. Hamond. } Freeholder in the County, must not Justice be done?

J. Keating. Can we make a Law for it?

Hamond. My Lord, I know that in case of an Ejectment, a Tryal has been removed from one County to another.

J. Keating. Can you by Law go to another County in Case of Life?

Hamond. It appears there is not sufficient Free-holders in this County, the Lands being in some few hands.

J. Keating. You know the Law is otherwise, and what would you have us that are Judges, do? Pray tell us, Sir, what you would be at?

Hamond. We would have it removed to the next County, or another County.

J. Keating. For Gods sake, Mr. *Hamond*, do not put us on making Law.

Lynch. Mr. *Hamond*, when did you hear, that ever a Matter Capital was tryed in a Foreign County? In matters Civil, by Rule of Court, or Order of Chancery it may be, but of a Capital Offence it was never known; and we are by our Commission to Try Offences committed against the Law in the Counties where the Fact was committed. — We must Try them in this County, and cannot remove them from one County to another.

J. Keating. Mr. *Hamond*, because I would take you off of this new Law that you so much insist on, that in case of an Ejectment it may be Tryed in a Foreign County — I tell you it cannot be Tryed in a Foreign County: We have no Law for it but that of *K. James*, and the Reason was, because of the Story that was here on foot, for an Heir Male, if Collateral he carried it against the Heir general. *K. James* he gave direction that in that case it should be Tryed in a different County. And that my Brother tells you of Trying in a different County, by order of Chancery is this, A person comes in Chancery, and he suggests, that such an one was too potent in such a County, and therefore he desired it might be Tryed in an indifferent County, or get such a Rule of Court on such a suggestion. And this was the case of the Archbishop of —, when he was Bishop of *Limerick*. And if *Walcot* might be believed, he said, was the occasion of his running into Rebellion.

C. There is a Case in *Hobart*, &c.

J. Keating. I would undeceive you in that particular. As in the Case of *Austen* and Colonel *Garret Moor*. If in the County of *Galloway* it was *Austens*, if in the Kings County it was Colonel *Moors*. So that you see in disputable Cases, the Law has regard, that it be Tryed by Juries in proper Counties. And truly I think it one of the most reasonable Laws in the world, that a man shall be Tryed by his Country, by the Neighbourhood; and it has given ground to a good English Proverb, *He that has an ill Name is half Hanged*. A Mans Repute among his Neighbours goes a great way in this matter. When his Neighbours shall say they never knew ill by him. And this Man to be carried out of the County of *Wicklow*, to be Tryed at *Wexford*, you may by the same rule bring a Jury from *Tyrone*, or the farthest part of *Connaught*. There is nothing like what you say in the Law.

Hamond.

Hamond. I do not say that ever I met with such a thing in the Law.

Lynch. And do you think that we will make the Precedent?

Hamond. That two or three persons should have almost the whole County.

J. Keating. Before God I believe they think they have little enough, whatever you may think of their having too much.

Lynch. What you say Mr. *Hamond*, if there be any thing in it, we shall advise with all the Judges. The Judges declaring their Opinion, that the Prisoners after being Arraigned, could not be admitted to Bayl.

C. Suxborough, to Baron Lynch. My Lord, you took Bayl for Captain *Ruth* at *Kilkenny*, after his Arraignment.

Bar. Lynch. What, Sir, do you reflect on me? There was no Evidence appeared; and my Brother bayled him as well as I.

Suxborough. I say he was Bayled.

Hancock. My Lord, Mr. *Cooper* at *Galaway* was Bayled by your Lordship likewise.

L. C. J. Keating sent privately to *Dublin* to the Deputy, acquainting him, that if they were left in prison untill the next Assizes, they would certainly perish, they having lost all they had, and the County was not able to maintain them; upon which he received Orders to Bayl all but Seven of the Principal, viz.

John Price Esq; *James Bacon.*

Tho. King. *Joseph Crichley.*

Richard Westland. *George Crichley.*

William Lewis.

Who are kept close Prisoners in order to their Tryal the next Assizes, which will be in this Month of *July*. Upon the taking these Gentlemen Prisoners, the Souldiers and Rabble plundered and spoyled all the English Families in *Balinderry*, *Redrum*, *Balina-Clash*, &c. and the Irish Women with their Skeans came afterwards and stript the Women and Children Naked, leaving them in a most miserable and deplorable condition, having not left them either Bread, or any Food in several Towns, but carried all away with them. And as an Irish man a Tanner declared to several at the Assizes, in the hearing of this Relator, That one Captain *Toole* had for his share Twenty six Horse Loads (or more) of Plunder; and the Lord of *Louths* Troop of Dragoons that were quartered in *Wicklow* Town, had great quantities of Woollen and Linen Cloth, Womens Cloaths, Pewter and other Goods in abundance. But the *L. C. J. Keating* coming there to the Assizes, and having an account of the extream poverty and misery the Protestants thereabouts were reduced to, did encourage their Petitioning, and where they could find their Cloaths, &c. he endeavoured to help them in the recovery of them. And Mr. *Richard Lamb* having Ten fat Bullocks taken away by Collonel *Tooles* men, and brought to *Wicklow*, and there killed and eaten by the Souldiers. He preferred a Petition to the Court, Colonel *Toole* being present on the Bench.

L. C. J. Keating. Collonel *Toole*, you heard the Petition read; do you know any thing of these Oxen Mr. *Lamb* had taken from him by your Soldiers?

C. Toole. My Lord, I will tell you how it was; Mr. *Lamb* had sold the Bullocks to Mr. *Price*, and as they were driving them to *Balen-*

derry, the Soldiers met them and took them away.

L. C. J. Keating. But Mr. *Lamb* was at home at his own House, and not at *Balinderry*, the Bullocks were to be paid for upon Mr. *Lamb*s delivering them to Mr. *Price* at *Balinderry*, your Souldiers took them away from his Servant several miles from *Balenderry*; I see no reason why Mr. *Lamb* should not be paid for them.

C. Toole. My Lord, Colonel *Sheldon* came down soon after with the Kings Army, and I advised with him, and he ordered they should be killed for the Army, which was done accordingly.

L. C. J. Keating. Pray Colonel *Toole* however, Mr. *Lamb* ought to be paid for them; he was not concerned with *Balinderry*, but kept his own House.

Council Fitzpatrick. My Lord, his House was a Garrison too.

Mr. Hancock. For shame Mr. *Fitzpatrick*, a Thatcht Cabin a Garison; I find you are for making all Protestants Rebels that live peaceably at home in their own Houses.

C. Toole. My Lord, I have no more to say to the matter.

Clerk of the Crown. Calling over the Gentlemen of the County, called one — *Savil* Gent.

Savil. Here I am, my Lord, God knows, a poor Gentleman, being Robb'd of all, and not a penny left me to buy a pint of drink.

L. C. J. Keating. Pray Sir when were you Rob'd?

Savil. The last Wednesday they came and took away what little they had left untaken before, my Wife and Childrens Cloaths, Robbing me of all.

L. C. J. Keating. Pray Sir, what value may your loss be?

Mr. Savil. Truly my Lord, I have not yet computed my loss, but they have taken away all; I desire your Lordship will discharge me from attending the Court, for I have not wherewithal to subsist while I am here.

L. C. J. Keating. Sir I am sorry for you, I discharge you.

L. C. J. Keating. Colonel *Toole*, Let the Officers be sent for into Court, to hear this Proclamation read; that is sent down here by the Government.

Toole. My Lord, they are here most of them, here is Captain *Archbold*, Captain *Toole*, &c.

Clerk of the Crown. Read the Proclamation, the substance whereof was, That they should restore the Protestants such of their Horses again, as were not fit for the Kings Service, &c.

J. Keating. Calls for it from the Clerk, and giving it to Colonel *Tooles* hand, who stood next him on the Bench, Sir, Pray take this Proclamation, and I hope you will take care that obedience be given to it.

Toole. My Lord, we have received other Orders, Colonel *Sheldon* who is our Chief Commander, has given directions to have them kept for Draught for Carriages.

J. Keating. Nay, Sir, if Colonel *Sheldon* must be obeyed before the Government, I have no more to say, I have done.

Toole. My Lord, I shall obey it.

J. Keating. Pray then Col. *Toole*, let the Horses be sent for, while that I am here, that what Horses are not musterable may be return'd: I cannot in my Conscience go about to fine Men,

Men, for not appearing at the Assizes, when they have not a Horse left them to ride on.

The further Proceedings at the Assizes at Wicklow, in Ireland: Being an account of the Tryal of several Felons, &c. March, the 6th and 7th, 1688-9.

Several were Arraigned for stealing considerable Numbers of Cows, Sheep, &c. but the Evidence against most of them durst not appear to prosecute.

Leaghlín Birne Indicted for stealing Nine Head of black Cattle, from one Colwell: No Person appearing to prosecute, says,

J. Keating (to the Jury): Gentlemen, you have nothing against this Man; he was born in the state of Innocency: But the truth is, the Parties dare not appear against him.

Witnesses came in against three Fellows, (viz.)

Maurice Cavenagh, Edmond Poor, William Bowland.

Clerk of the Crown, calling them to come and prosecute, and they appearing.

J. Keating. You that are Evidences against the Prisoners at the Bar, I charge you as you will answer it before God, that you neither for favour or affection be inclined to spare any of these Villains; and likewise, that you will conceal nothing of the Truth, as you will answer it at the Great Day; for I tell you, the Cries and Groans of the poor Women and Children, and the many Families that are ruined, and in great Distress, will go up to Heaven against you.

Evidence against Ed. Poor. My Lord, when I came to him, and asked him, why he stole my Cows? He said, The Devil did make him do it. I spake him fair, and he gave me Money for my Cows.

Poor. I, my Lord, and he promised not to trouble me.

J. Keating. It was an unlawful Promise, the Law would not justify him in it; he has done like an honest Man: If you paid the Money out of Conscience, you did well; but I fear it was your danger of the Halter made you part with your Money; for if 22 s. and Damnation stood in the way, I believe you would have kept the Money: I am sure without Satisfaction you cannot expect Absolution; the Priest that gave the other Advice, for the Maddoge or Skean, will, I suppose, tell you so.

Two Protestant Evidences against Maurice Cavenagh, for stealing several Head of black Cattle, bearing Judge Keating speak against Skeans, said,

Evidence. My Lord, when we seized him, we took a Skean away from him.

J. Keating. Sir, How durst you carry such an unlawful Weapon?

Cavenagh. My Lord, I am a Butcher, it was a Butcher's Knife.

J. Keating. Ay, I do not question but thou canst butcher upon occasion.

One Hicky spoke. My Lord, he is no Butcher; but one of the greatest Rogues in the County round us. I have been in pursuit of him several times.

Cavenagh. He is a Murderer, my Lord, do not believe him.

Evidence. My Lord, it was near ten Inches long, thick at the back, and sharp point, every way a Skean.

J. Keating. Is that your Butcher's Knife? you are a great Villain, for carrying such a Weapon.

Cavenagh. I was order'd to have a Skean, my Lord.

J. Keating. Pray, Sir, who order'd you?

Cavenagh. The Priest of the Parish.

J. Keating. A Priest, Sir, (turning to his Brother Judge) Do you hear that Brother?

Bar. Lynch. What Priest, Sir? What Priest? What is your Priest's Name?

J. Keating. Hold Brother. Come, Sir, I shall not ask your Priest's Name; I believe you will have occasion to see your Priest soon, to do you a better Office, than to advise you to carry Skeans.

(And looking towards Coll. Tool, and two Priests on the Bench, next Sheriff Birne.)

J. Keating. A Priest, Gentlemen; a Priest is a Minister, and a Minister of the Gospel, his Doctrine ought to be Peace, for the Gospel is a Doctrine of Peace: When our Saviour came into the World, Peace was proclaimed; and when he went out of the World, he left it for a Legacy to his Disciples: *My Peace be with you.* And pray, Sir, tell your Priest so from me, when you see him. It is not for Priests to arm or animate such Villains as you are for Mischief. I shall not ask your Priest's Name.

Clancy an Irish Gentleman. My Lord, he belies the Priest; he is a Rogue.

Cavenagh. I do not: The Priests of every Parish did give Orders to get Half-pikes, and Skeans; and they were getting together in Companies, in every Parish.

J. Keating. Who were they that were gotten together; such Fellows as you?

Cavenagh. No, my Lord, better Men than I; a great many that are here in Court.

The Jury withdrawing, and returning soon again, brought Poor and Bowland in guilty, Cavenagh not guilty.

J. Keating. Gentlemen, you have acquitted the greater Villain; at your Door let it lie.

The Ordinary being called to give Bowland and Poor the Book, for their Clergy.

J. Keating. Sir, I expect as true a Return from you, as if I were there my self: The Times are so that Men must forget Bowels of Mercy. Ordinary, do your Duty: What place do you shew them?

Ordinary. My Lord, I shew them the 50th Psalm.

J. Keating. Let them read the 5th Verse— This is an Act of Mercy; and I know not why it should not be in Irish rather, the Country Language; it was formerly in Latin, because the Romish Church hath their Worship in Latin.

The Ordinary return'd them both (Non Legit).

J. Keating. You William Bowland, and you Edmond Poor, you have been Arraigned for stealing of Cows, two several Thefts: It is a great misfortune and sin to be guilty of such Crimes at any time; but yours is so much the worse, because it falls in a time when there are such general and vast Depredations in the Country; that many honest Men go to Bed possess'd of considerable Stocks of black and white Cattle, (gotten by great labour and pains, the Industry of their whole Lives) and in the Morning when they arise, not any thing left them; but turn'd out of all, to go a begging, all being taken away by Rebels, by Thieves and Robbers, the Sons

Sons of Violence, that make every thing they lay their Hands on their own. On this side the *Cape of Good Hope*; (where are the most brutish and barbarous People we read of) there is none like the People of this Country; nor so great a Desolation as in this Kingdom, at this day, any where to be found, and particularly in this County: It is come to that pass, that a Man that loses the better part of his Substance, chuses rather to let that, and what he has besides go, than come to give Evidence: And why? Because he is certain to have his House burnt, and his Throat cut, if he appears against them. Good God! what a pass are we come to! For what has any Man, if the stronger Hand can take it from him; it is better to live under no Law, than in such a place. We have lived to see twenty nine Years of Peace pass over our Heads: And I have sat on this Bench before now; I pray God, that my Lenity and others, has not given Encouragement to these Thieves and Robbers; there may be a Rogue in the Court, or one that is evilly inclined (I know none) but take notice of this, the Government is at length tyr'd with Mercy, they see it does no good; and Examples and Punishments of this kind, are not intended so much in a great part for the Punishment of the Offender, as for discouraging of others; to make them take warning by their Example, that, seeing what evil Courses bring Men to, they may reform.

I will not take up time to tell you how the benefit of Clergy came; whether in the room of the Cities of Refuge that were in the old times; I know that Restitution was under the Jewish Law sufficient Satisfaction; and if the Thief could not make Restitution, he was to be sold for a Slave, and the Money given to the Party. But as the World grows old, it grows worse, and those Lenitives signifie nothing for preventing Thieving and Robbery; for Thieves and Robbers are like a Gangreen in the Commonwealth, they are worse than Drones in the Hive. I cannot tell my self, that under the Circumstances we are in, I should advise to pardon any that are taken in this general Depredation that we are under, and therefore you *Bowland* and *Poore*, that might have lived as safely under the Laws, as the biggest Man in the Kingdom, and none of your fellow Subjects durst lay his Hand upon you, but he was liable to answer for it; and thus you might have lived to a fair old age, and ended your days in Peace, but you have chosen the quite contrary, for the Law provides likewise for the Punishment of wicked and offending Persons, among which number you are found by a Jury of Twelve able Men of your Country; and therefore the Sentence of the Law is this, *That you be both and each of you taken from this place, to the place from whence you came, and there your Irons to be struck off, and from thence to the place of Execution, and there you shall be Hanged by the Neck till you are dead, and the Lord have Mercy upon your Souls.*

And now let me give you advice, your time is short, spend it well, and flatter not your selves with the hopes of a Reprieve or Pardon; and for you *Poore*, you have shortned the work of your Life, you have gone a great way towards Heaven, if that Restitution you made was out of Conscience. Mr. Sheriff, let them have a Confessor sent to them, for Saturday is the day

of their Execution. *The Women their Friends setting up the Cry in the Court.*

J. Keating. They did not cry thus when the Cows were brought home to them, they were busied then in the killing and the powdring them up.

The Copy of a Protection or Pass, given by an Irish Officer to some notorious Robbers of the County of *Wicklow*.

I James Byrne, Ensign to Captain Charles Byrne, do hereby certifie to you, Terlagh Kelly, Patrick Byrne, and Patrick Mac-Teige, and William Doyle, to save you harmless from any Misdemeanors whatsoever. As witness my Hand this 24th of April, 1689. James Byrne.

The following Letter being sent by the Lord-Deputy to the Judges of Assize, was read in Court to the Grand-Jury, &c.

By the Lord-Deputy, General. and General Governour of Ireland.

After Our hearty Commendations, We Greet you well. As His Majesty was graciously pleased to entrust us with the Government of this his Kingdom, so upon the Invading of England, and upon receiving certain Information, that the Prince of Orange did intend also to invade this Realm, We have, for the Defence thereof, raised a considerable Army, far above what could be maintained by the King's Revenue at the best of Times, and when the Trade of this Country was in the most flourishing Condition; this we have done by the King's Command, to support his Regal Authority, Crown and Dignity, and to preserve the Lives, Liberties, and Properties of all his Liege People within this Kingdom. And since our Dangers are at hand, and that we may daily expect the Landing of an Enemy, who intends the Subversion of His Majesty's Government, the total Destruction of all his good Subjects. Here we find our selves under an absolute Necessity to keep the King's Army still on foot, in order to our Preservation from the approaching Dangers. And tho' we have hitherto with all the Care and Industry imaginable, and by the generous Concurrence of the Officers, supported the new raised Forces, without being a Burthen to any of His Majesty's People. Yet considering the decay of Trade, the great fall of the Revenue in these distracted Times, the great Charges the Officers have been at in subsisting Men, it cannot be expected that the standing Forces can hereafter be maintained without Supplies; and since the same cannot be done by Parliament, We cannot think of a more effectual Expedient, than by voluntary Subscriptions, by way of Loan, from the People; which if generously done, with what may be made of the Revenue, may support the Army, and will stop all the Disorders that may be committed by the Souldiers, which we shall always endeavour to prevent with all the Care and Industry possible. By this Husbandry may go on as formerly, and we shall be in a Capacity to form the Army so, as that, with the Assistance of Almighty God, we do not doubt to put this Kingdom in a perfect posture of Defence. We do therefore pray your Lordships to Recommend this weighty Matter effectually at the open Assizes in every County when you sit, to all the Inhabitants of such Counties, and to appoint the respective Sheriffs of such Counties, to procure voluntary Subscriptions, by way of Loan, from the Inhabitants of such Counties,

Counties, of some certain Sum of Money from each, to be subscribed to their Names, to be afterwards satisfied by them respectively, in Money, Wheat, Oats, or Oatmeal, towards the Maintenance of the Army, to be paid in, or delivered to the respective Sheriffs, or their Order, and in such places as the said Sheriffs shall respectively appoint, from whom we expect an account of their Proceedings herein, and a Copy of such Subscriptions as shall be made. We do not doubt but every True and Loyal Subject will, according to his Ability, and the Excellency of the Subject matter, generously and cheerfully Contribute towards the carrying on of so great, so necessary, and so glorious a Work. We expect your diligent Care herein, and so we bid you heartily Farewel. From His Majesty's Castle of Dublin, the Second Day of March, 1688. Your very Loving Friend,

Tyrconnel.

An Answer to the foregoing Letter being drawn up by the Grand Jury, and entred into their Book, and presented to Sir Henry Lynch, setting forth the extream Poverty of their County, occasioned by the daily Ruin of the English, &c. That they were not in a Capacity to subsist themselves, and therefore not capable to raise any thing considerable for the Army; (Chief Justice Keating returning to Dublin, and leaving Baron Lynch to go on to the other Counties, &c.) the said Lynch told the Grand Jury before he discharged them, that the Writing they had drawn up, was a Reflection and Scandal to their Country, would be taken very ill by the Government, and did not question but it would be brought in hereafter as an Evidence against them; and therefore order'd it should be torn out of the Book, which was done accordingly.

The Tryals of Sir Richard Grahme, Baronet, Viscount Preston in the Kingdom of Scotland, and John Ashton, Gent.

Anno Regni Domini Willielmi & Dominae Mariae, Angl. &c. Secundo. Die Veneris, 16. die Januarii, Anno Dom. 1690. The King and Queen's Writ of *Habeas Corpora* was sent to the Governour of the Tower of London, to bring up the Bodies of Sir Richard Grahme, Baronet, Viscount Preston in the Kingdom of Scotland, John Ashton and Edmund Elliot, Gent. to the Sessions House in the Old-Baily, London; where they were brought between the Hours of Ten and Eleven in the Forenoon; and being placed at the Bar, were Arraigned upon an Indictment of High-Treason, found the Day before by the Grand-Jury for the County of Middlesex, at Hicks's-Hall, in manner following.

Cl of Arraignments.



SIR Richard Grahme, hold up your hand, (which he did, and so the other two.)—You stand indicted by the Names of Sir Richard Grahme, late of the Parish of St. Anne within the Liberty of Westminster, in the County of Middlesex, Baronet; John Ashton, late of the Parish of St. Paul Covent-Garden in the County aforesaid, Gentleman; and Edmond Elliot, late of the Parish of St. James within the Liberty aforesaid, in the County aforesaid, Gent. for that you, as false Traytors against the most Illustrious and most Excellent Princes William and Mary, King and Queen of England, Defenders of the Faith, &c. your Sovereign Lord and Lady, not having the fear of God in your Hearts, nor weighing the duty of your Allegiance, but being moved and seduced by the Instigation of the Devil, the cordial Love, and true, due, and natural Obedience, which every true and faithful Subject of our said Sovereign Lord and Lady, the King and Queen that now are,

towards them our said Sovereign Lord and Lady the King and Queen should, and of right ought to bear, wholly withdrawing; and contriving, practising, and with all your strength intending the Peace and Common Tranquillity of this Kingdom of England to disturb, molest, and disturb; and War and Rebellion against our said Sovereign Lord and Lady, the King and Queen that now are, within this Kingdom of England to stir up, move, and procure; and the Government of our said Lord and Lady the King and Queen of this Kingdom of England to subvert, change and alter; and our said Lord and Lady, the King and Queen, from the Title, Honour, and Royal Name of the Imperial Crown of this their Kingdom of England to depose and deprive; and our said Lord and Lady the King and Queen to death, and final destruction to bring and put; you the said Sir Richard Grahme, John Ashton, and Edmund Elliot, the nine and twentieth day of December, in the second year of the Reign of our said Lord and Lady the King and Queen that now are; and

and divers other days and times, as well before as after, at the Parish of *St. Clement Danes*, in the County aforesaid, falsely, maliciously, Devillishly, and Traiterously, with Force and Arms, &c. with divers false Rebels and Traytors, to the Jurors unknown, did Conspire, Treat of, Compass, Imagine, and intend our said Lord and Lady the King and Queen that now are, (your supreme and natural Lord and Lady) from the Royal State, Crown, Title, Power, and Government of their Kingdom of *England*, to Deprive, Depose, and Cast down; and the same our Lord and Lady the King and Queen that now are, to Kill, and bring and put to Death; and the Government of this Kingdom of *England* to Change, Alter, and wholly to Subvert; and a miserable Slaughter among the Subjects of our said Lord and Lady, the King and Queen, within their Kingdom of *England*, to Cause and Procure; and an Insurrection, War, and Rebellion against Our said Lord and Lady, the King and Queen that now are, within this Kingdom of *England* to Move, Procure, and Aid; and the same your most evil, wicked, and Devillish Treasons, and Traiterous Compassings, Imaginations, and Purposes aforesaid, to fulfil, perfect, and bring to effect, you the said *Sir Richard Grahme, John Ashton, and Edmund Elliot*, as false Traitors, then and there, to wit, the said Nine and twentieth day of *December*, in the said second Year of the Reign of our said Lord and Lady, the King and Queen that now are, and divers other days and times, as well before, as after, at the Parish of *St. Clement Danes* aforesaid, in the County aforesaid, with Force and Arms, &c. falsely, unlawfully, wickedly, and traiterously, did Propose, Consult, and agree to Procure and Prepare great Numbers of Armed Men, War and Rebellion against our said Lord and Lady the King and Queen, within this Kingdom of *England* to Levy and Make; And that you the said *Sir Richard Grahme, John Ashton, and Edmund Elliot*, afterwards, to wit, the same Nine and twentieth day of *December*, in the aforesaid second year of the Reign of our said Lord and Lady, the King and Queen that now are, at the Parish of *St. Clement Danes* aforesaid, in the County aforesaid, falsely, maliciously, and traiterously, did Prepare, and Compose, and then and there did Cause, and Procure to be Prepared, and Composed, several Traiterous Letters, Notes, Memorandums, and Instructions in writing, to shew and inform *Lewis* then and yet the *French King*, and his Subjects, then and yet Enemies of our said Lord and Lady, the King and Queen that now are, and very many other evil-disposed Persons, and false Traytors, to the Jurors unknown, of and concerning the Number, Force, and Condition of certain Ships, for, and on the behalf of our said Lord and Lady, the King and Queen of *England*, then, and there designed and prepared for the defence of their Kingdom of *England*, and their Enemies aforesaid to repel and resist; and how some of the same Ships were Manned, and of the Names of the Captains of several of the said Ships; and how the Castles and Fortresses of our said Lord and Lady, the King and Queen, called *Portsmouth, South-Sea, and Gosport*, within this Kingdom of *England*, were strengthened and fortified, and how the same Castles and Fortresses, into the

hands and possession of Enemies and false Traytors against our said Lord and Lady, the King and Queen, might be taken and seized; as also of the time, places, ways, manners, and means by which, when, and where the same Enemies of our said Lord and Lady, the King and Queen, this Kingdom of *England* might invade and infest; and the same Enemies, and the Ships of the Enemies of this Kingdom of *England*, should fight against our said Lord and Lady, the King and Queen, and their faithful Subjects; as also to procure, provide, prepare, and obtain against our said Lord and Lady, the King and Queen that now are, Assistance and Armed Men, our said Lord and Lady the King and Queen that now are, from their Royal State and Government of this Kingdom of *England* to cast down and Depose, and to stir up, promote, and procure the aforesaid *Lewis* the *French King*, (then, and yet an Enemy of our said Lord and Lady the King and Queen) this Kingdom of *England* to Invade; and to send Ships within this Kingdom of *England*, the City of *London*, of our said Lord and Lady the King and Queen that now are, to Plague; as also to cause very many Subjects of our said Lord and Lady the King and Queen that now are, to Rise, and War and Rebellion against our said Lord and Lady the King and Queen within this Kingdom of *England* to move, procure, make, and levy. And you the said *Sir Richard Grahme, John Ashton, and Edmund Elliot* afterwards, to wit, the same day and Year, at the aforesaid Parish of *St. Clement Danes* in the County of *Middlesex*, of and for the same your Treasons and Traiterous Compassings, Imaginations, and Purposes aforesaid, to execute, fulfil, perfect, and bring to effect into your Hands, Custody, and Possession, then and there secretly, Knowingly, Unlawfully, and Traiterously did obtain, procure, detain, had, concealed, and kept two several Bills of Exchange then before made, for the Payment of several Sums of Money to the Enemies of our said Lord and Lady the King and Queen that now are; as also very many Traiterous Letters, Notes, Memorandums, and Instructions in Writing, then and there composed and prepared with that intent to shew and inform *Lewis* then and yet the *French King*, and his Subjects, then and yet Enemies of our said Lord and Lady the King and Queen that now are, and very many other Evil Disposed Persons, and False Traytors to the Jurors unknown, of and concerning the Number, Force and Condition of the Ships, for and on the behalf of them our said Lord and Lady the King and Queen of *England*; then and there designed, and prepared for the Defence of their Kingdom of *England*, and to Repel, and Resist their Enemies, and how some of the same Ships were Manned, and of the Names of the Captains of divers of the same Ships, and how the Castles and Fortresses of our said Lord and Lady the King and Queen, called *Portsmouth, South Sea and Gosport*, within this Kingdom of *England*, were Strengthened, and Fortified; and how the same Castles and Forts into the Hands and Possession of Enemies and false Traytors against our said Lord and Lady the King and Queen, might be taken and seized; as also the Times, Places, Ways, Mariners, and Means, by which, when, and where

' where the same Enemies of our said Lord and
 ' Lady the King and Queen, this Kingdom of
 ' *England* might Invade, and Insest, and the
 ' Enemies, and Ships of the Enemies of this
 ' Kingdom of *England* should Fight against the
 ' same our Lord and Lady the King and Queen
 ' of *England*, and their faithful Subjects; as also
 ' to procure, provide, prepare, and obtain a-
 ' gainst our said Lord and Lady the King and
 ' Queen, Assistance and Armed Men, to Invade
 ' this Kingdom of *England*, and our said Lord
 ' and Lady the King and Queen that now are,
 ' from their Royal State and Government of this
 ' Kingdom of *England*, to cast down and depose,
 ' and to stir up, promote, and procure the afore-
 ' said *Lewis* the *French* King then, and yet an
 ' Enemy of our said Lord and Lady the King
 ' and Queen, to Invade this Kingdom of *Eng-*
 ' *land*, and to send Ships within this Kingdom of
 ' *England*, the City of *London*, of our said Lord
 ' and Lady the King and Queen to plague; as
 ' also to cause very many Subjects of our said
 ' Lord and Lady the King and Queen, to Rise,
 ' and War, and Rebellion against our said Lord
 ' and Lady the King and Queen, within this
 ' Kingdom of *England*, to move, procure, make,
 ' and levy. And you the said Sir *Richard Grahme*,
 ' *John Ashton*, and *Edmund Elliott*, afterwards, to
 ' wit, the Thirtieth day of *December*, now
 ' last past, at the afore said Parish of *St Cle-*
 ' *ment Danes*, in the County of *Middlesex*, con-
 ' cerning, and for the same your Treasons, and
 ' Traiterous Compassings, Imaginations, and
 ' Purposes afore said, to execute, fulfil, perfect,
 ' and bring to Effect, for One Hundred Pounds
 ' in Moneys, numbred by you the said Sir *Rich-*
 ' *ard Grahme*, *John Ashton*, and *Edmund Elliott*,
 ' then and there paid, and deposited, unlawfully
 ' and Traiterously did hire and prepare, and
 ' then and there did cause and procure to be hi-
 ' red and prepared a certain Ship, and three
 ' Men; you, the said Sir *Richard Grahme*, *John*
 ' *Ashton*, and *Edmund Elliott*, with the said Bills
 ' of Exchange, and the afore said Traiterous
 ' Letters, Notes, Memorandums, and Instru-
 ' ctions in Writing, into the Hands, Custody and
 ' Possession of you the said Sir *Richard Grahme*,
 ' *John Ashton*, and *Edmund Elliott*, secretly, un-
 ' lawfully, and traiterously, kept concealed and
 ' detained, from this Kingdom of *England*, unto;
 ' and into *France*, in Parts beyond the Seas, then
 ' and yet under the Rule and Government of the
 ' said *Lewis* the *French* King, then and yet an
 ' Enemy of our said Lord and Lady the King
 ' and Queen, secretly to carry and transport,
 ' with that intent the said Bills of Exchange,
 ' Traiterous Letters, Notes and Memorandums,
 ' and Instructions in Writing there in parts be-
 ' yond the Seas, to the Enemies of our said
 ' Lord and Lady the King and Queen, and o-
 ' ther Evil-disposed Persons to deliver and dis-
 ' perse. And the said most wicked Treasons,
 ' and Traiterous Compassings and Imaginations
 ' afore said, to fulfil, perfect, and bring to effect,
 ' as also to cause, promote and procure the afore-
 ' said Enemies of our said Lord and Lady, the
 ' King and Queen, to invade this Kingdom of
 ' *England* with Ships and Armed Men. And
 ' you the said Sir *Richard Grahme*, *John Ashton*,
 ' and *Edmund Elliott*, afterwards, to wit, the
 ' 30th Day of *December* now last past, at the
 ' afore said Parish of *St Clement Danes*, in the
 ' County afore said, concerning, and for the
 ' same your Treasons, and Traiterous Compa-
 ' ssings, Imaginations and Purposes afore said,
 ' to execute and fulfil, maliciously, traiterously,
 ' and advisedly, then and there, and diverse o-
 ' ther days and times, as well before as after,
 ' took upon your selves to very many other
 ' Traytors to be aiding and assisting in the Exe-
 ' cution of the Treasons, and Traiterous Com-
 ' passings, Imaginations and Purposes afore said;
 ' and then and there, to wit, the same 30th
 ' day of *December* now last past, at the Parish of
 ' *St. Clement Danes*, in the County afore said, ma-
 ' liciously, secretly and traiterously did hire, and
 ' prepare, and then and there did cause and pro-
 ' cure to be hired and prepared a certain Boat,
 ' and one Man, to the Jurors afore said un-
 ' known; you the said Sir *Richard Grahme*, *John*
 ' *Ashton*, and *Edmund Elliott*, from thence to, and
 ' into the afore said Ship, so as afore said, hired
 ' and prepared to carry and convey. And you
 ' the said Sir *Richard Grahme*, *John Ashton*, and
 ' *Edmund Elliott*, maliciously and traiterously into
 ' the same Boat, then and there did enter; and
 ' your selves from thence, in and by that same
 ' Boat, unto and into the Ship afore said, then
 ' and there unlawfully and traiterously did cause,
 ' and procure to be carried with the intention
 ' afore said. And you the said Sir *Richard Grahme*,
 ' *John Ashton*, and *Edmund Elliott*, with the same
 ' Bills of Exchange, and the afore said traiterous
 ' Letters, Notes, Memorandums and Instru-
 ' ctions in Writing, and in your Hands, Custody
 ' and Possession then and there, in and with the
 ' Ship afore said, did sail, and depart towards the
 ' afore said Kingdom of *France*, in Parts beyond
 ' the Seas; the same your most wicked, evil
 ' and traiterous Intentions, Purposes, Compa-
 ' ssings and Imaginations afore said, to fulfil, per-
 ' fect and promote, against the Duty of your
 ' Allegiance, against the Peace of our said Lord
 ' and Lady the King and Queen that now are,
 ' their Crown and Dignity, and against the
 ' Form of the Statute in that Case made, and
 ' provided. And the Indictment further sets forth,
 ' that long before the afore said Nine and Twen-
 ' tieth day of *December* now last past, open War
 ' between our said Lord and Lady the King and
 ' Queen, and the afore said *Lewis* the *French*
 ' King was begun, declared, and waged, and
 ' yet is; Which said *Lewis* the *French* King, and
 ' his Subjects, and the men of those parts, then
 ' and yet, were, and are, Enemies to our said
 ' Lord and Lady the King and Queen that now
 ' are, and to their Kingdom of *England*: And
 ' that in the time of the afore said War between
 ' them our said Lord and Lady the King and
 ' Queen, and the afore said *Lewis* the *French*
 ' King, you the said Sir *Richard Grahme*, *John*
 ' *Ashton*, and *Edmund Elliott*, being Subjects of
 ' our said Lord and Lady the King and Queen
 ' that now are, as false Traitors against our said
 ' Lord and Lady the King and Queen, during
 ' the War afore said, to wit, the Nine and
 ' Twentieth day of *December*, in the Second
 ' year of the Reign of our said Lord and Lady
 ' the King and Queen that now are, and diverse
 ' other days and times as well before as after, at
 ' the Parish of *St Clement Danes* afore said, in the
 ' County afore said, with force, and Arms, &c.
 ' To the afore said Enemies of our said Lord and
 ' Lady the King and Queen that now are, un-
 ' lawfully, and traiterously were adhering, and
 ' assisting, and in Execution, and performance
 ' of

of the same adhering you the said Sir Richard Grabme, John Ashton, and Edmund Ellyott, then, and there, to wit, the same Nine and Twentieth day of December in the Second year of the Reign of our said Lord and Lady the King and Queen that now are, above said, at the afore said Parish of St. Clement Danes in the County afore said, falsely, maliciously, and Traiterously did prepare, and compose, and then and there did cause and procure to be prepared and composed, as also into your Custody, and Possession then, and there unlawfully secretly, and Traiterously did obtain, detain, conceal, and keep, divers traitorous Letters, Notes, Memorandums, and Instructions in writing, to shew and inform the afore said Lewis then and yet the French King, and his Subjects, then and yet Enemies of our said Lord and Lady the King and Queen that now are, of and concerning the Number, Force, and Condition of certain Ships, for and on the behalf of our said Lord and Lady the King and Queen of England, then and there designed, and preparing, for their defence of their Kingdom of England, and their Enemies afore said to repel, and resist; and how some of the same Ships were manned, and of the Names of several of the Captains of the said Ships; and how the Castles, and Fortresses of our said Lord and Lady the King and Queen, called Portsmouth, Southsea, and Gosport within this Kingdom of England were strengthened, and fortified, and how those same Castles and Fortresses into the hands and possession of the same Enemies of our said Lord and Lady the King and Queen might be taken, and Seized, as also of the Time, Places, Ways, Manners, and Means, by which, when and where the same Enemies of our said Lord and Lady the King and Queen that now are this Kingdom of England might invade, and Insest, and they the said Enemies, and the Ships of the said Enemies of this Kingdom of England should fight against our said Lord and Lady the King and Queen, and their faithful Subjects. And that during the War afore said, to wit, the afore said Thirtieth day of December now last past, you the said Sir Richard Grabme, John Ashton, and Edmund Ellyott, at the afore said Parish of St. Clements Danes in the County afore said, unlawfully, and Traiterously did hire, and prepare, and then and there did cause and procure to be hired and prepared a certain Ship, and three men, you the said Sir Richard Grabme, John Ashton, and Edmund Ellyott, with the same Traiterous Letters, Notes, Memorandums, and Instructions in writing, from this Kingdom of England, unto, and into France in parts beyond the Seas, then and there under the Rule and Government of the afore said Lewis the French King, then and yet an Enemy of our said Lord and Lady the King and Queen, secretly, during the War afore said, to carry, and transport, to the intent the same Traiterous Letters, Notes, Memorandums, and Instructions in writing there, in parts beyond the Seas, to the afore said Enemies of our said Lord and Lady the King and Queen that now are to deliver, and disperse during the War afore said, in aid of the said Enemies of our said Lord and Lady the King and Queen in the War afore said: And that you the said Sir Richard Grabme,

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John Ashton and Edmund Elliot, during the War afore said, to wit, the afore said thirtieth day of December now last past, at the Parish of St. Clement Danes, in the County afore said, concerning, and for the same your Treasons and traitorous Adhearings and Purposes afore said to execute and fulfil, maliciously, traitorously, and advisedly, then and there did hire and prepare, and then and there did cause, and procure to be hired, and prepared a certain Boat, and one Man to the Jurors unknown you the said Sir Richard Grabme, John Ashton, and Edmund Elliot from thence to and into the Ship afore said, by you as afore said, hired and prepared to carry and convey: And that you the said Sir Richard Grabme, John Ashton, and Edmund Elliot, maliciously, and traitorously into the same Boat then and there did enter, and your selves from thence secretly in and by the same Boat unto and into the same Ship then and there did cause and procure to be carried in Prosecution of the adhering afore said. And you the said Sir Richard Grabme, John Ashton, and Edmund Elliot then and there with the same traitorous Letters, Notes, Memorandums, and Instructions in writing, in your custody and possession being, during the War afore said, to wit, the same day and year, in and with the Ship afore said did sail, and depart towards the afore said Kingdom of France, to the intent the same traitorous Letters, Notes, Memorandums and Instructions in writing, in parts beyond the Seas to the said Enemies of our said Lord and Lady the King and Queen that now are to deliver, concerning and for Aid, Intelligence, and Council by you the said Sir Richard Grabme, John Ashton, and Edmund Elliot to the same Enemies of our said Lord and Lady the King and Queen that now are to give and yield, during the War afore said, against the Duty of your Allegiance, against the Peace of our said Sovereign Lord and Lady the King and Queen that now are, their Crown and Dignity, and against the Form of the Statute in that Case made and provided. How say you Sir Richard Grabme, are you guilty of this Felony, and High Treason whereof you stand indicted, or not guilty?

L. Preston. My Lord, I have something humbly to offer to your Lordships.

L. C. J. Holt. What is it your Lordship would say?

L. Preston. My Lord, I find I stand indicted by the name of Sir Richard Grabme, Baronet, but I do take my self to be intituled to another way of Tryal, as being a Peer of England, by vertue of a Patent before the Vote of Abdication was made; and it was in a time when all your Processes, and all your Writs went in the late King's Name, and all Officers acted by vertue of his Commissions. My Lord, this is a matter that concerns me in point of Life, Estate, Posterity, and all that's dear to me; and therefore I desired to know whether your Lordships think fit to allow me my Peerage; I offer it, my Lord, with all the respect and modesty imaginable.

L. C. J. Holt. My Lord, I apprehend your Lordship to offer against your being tried here, that you are a Peer.

L. Preston. I take my self to be so, my Lord.

L. C. J. Holt. My Lord, you must make that out to the Court.

R r r r r 2

L. Preston

L. Preston. I told your Lordships the Ground of my Claim and Apprehension; it is from a Patent I received before the Vote of Abdication, when all Commissions, and all Process, and all the Courts of Judicature run in that Name.

L. C. J. Holt. Where is that Patent, my Lord?

L. Preston. It is in the Hands of the House of Lords.

L. C. J. Holt. My Lord *Preston*, we cannot take notice of that Patent; if your Lordship plead that you were made a Peer by a Patent under the Great Seal of *England*, you must produce it under the Great Seal, that the Court may see what it is, and whether it be sufficient to justify your Plea.

L. Preston. I hope your Lordship and this Court will enable me to do that, by sending an Order to the Clerk of the House of Lords, to bring the Patent hither; for it is in his hands.

L. C. J. Holt. My Lord, that is not in our power: If your Lordship take your self to be a Peer, and would thereby stop this Court from proceeding to try you, you must be ready to make it out.

L. Preston. I am ready to make it out, if I had my Patent here, that would make it out. Certainly there is some Authority now in being (I humbly offer it with all Submission and Respect) that may order the Clerk of the House of Lords to attend this Court, and produce this Patent.

L. C. J. Holt. My Lord *Preston*, we are not to enable you to plead to the Jurisdiction of the Court:

L. Preston. My Lord, I offer it with all respect to the Court: I am concerned in it for my Life, and my All, and if that be over-ruled, this I hope you will do before you go on, you will hear me by my Council.

L. C. J. Holt. My Lord, it is nothing that you have said; for if your Lordship plead this Plea to the Jurisdiction of the Court, it ought not to be received without shewing your Patent.

L. Preston. My Lord, I desire my Council to be heard to this matter.

L. C. J. Holt. I know your Lordship has had the benefit of Council, and I know your Council must tell you, that what you say goes for nothing, unless you put in your Plea, and produce your Patent, that the Court may judge upon it.

* *Sir John Somers.* * *Mr. Sol. Gen.* My Lord, I have observed what my Lord *Preston* has mentioned.—

L. Preston. Pray Mr. Solicitor will you speak out, that I may hear what you say?

Mr. Sol. Gen. My Lord, I say, I have taken notice of what your Lordship has offered: It has been most truly observed by the Court, that it is your Lordships part to make good your Plea, and it ought not to be expected that any Court should help a Person to plead to its Jurisdiction: But because it should not be pretended that an advantage was taken against the Prisoner for a defect in point of form, or that any thing was insisted on which should have the least appearance of a hardship, and that we may proceed in the most clear and unexceptionable manner that can be, I must beg leave to observe to your Lordship and the Court, how far this matter which my Lord *Preston* has insisted on has been debated and determined in another place.

L. C. J. Holt. So; on Mr. Solicitor.

Mr. Sol. Gen. My Lord, upon the 11th of *November* 1689. My Lord *Preston* did make some claim in the House of Lords that he was a Peer of the Realm; the House of Lords demanding of him upon what he founded his pretence; he said he claimed by Letters Patents from the late King *James*, which passed the Great Seal before the time of the Vote of Abdication. The Lords required that those Letters should be produced, which being done, and my Lord *Preston* insisting upon his Claim to be a Peer of *England*, the Lords thought fit that day to commit my Lord *Preston* to the custody of the Black Rod. The next day being the 12th of *November*, upon solemn debate of the validity of these Letters Patents, and consulting with the Judges then present, the Lords *nemine contradicente* did adjudge and declare those Letters Patents to be void and null: And by another Order of the same date, they did order Mr. Attorney General to prosecute my Lord *Preston* in the *King's Bench* for a High Misdemeanour in presuming to claim Peerage by those Letters Patents. And by a third it was ordered that the Letters Patents should remain in custody of the Clerk of the Parliament. Thus you see, my Lord, this matter hath had already a solemn Determination in a Court which had the most proper Consuance and Jurisdiction of Claims in this Nature. And they having pronounced their Judgment, I did not think it would have been urged again in this place. I thought it proper to mention these things to shew how it comes to pass that my Lord *Preston* has not his Letters Patents to produce, and to satisfy every Man that there is no hardship put upon my Lord *Preston*, by trying him here when he ought to be tried by another Judicature. The Lords have given Judgment against these Letters Patents, and have ordered that they shall remain in custody of the Clerk of the Parliament, and my Lord *Preston* is not a Stranger to these Transactions, and therefore if my Lords Council had been of Opinion he could have made any use of them, they would have inform'd him he must have taken another course to have got them, and could not expect this Court should make an Order for him, contrary to the Order of the House of Lords, to take the Letters Patents out of the hands of the Clerk of the Parliament, and this, to help him to a Plea against their own Jurisdiction. I omitted one thing, that upon the 27th of the same Month of *November*, upon my Lord *Preston*'s humble Submission and Petition, his Lordship was discharged of his Imprisonment, and the House of Lords were pleased to remit the Order given to Mr. Attorney, for Prosecuting him in the *King's Bench* for the Misdemeanour. So that I cannot but wonder to hear of this Claim of Peerage after that Submission. But there is nothing offered to the Court by my Lord that the Court can take any legal notice of. If my Lord will plead any thing to the Jurisdiction of the Court, he ought to have his Plea in Form, and be ready with his Proofs to make it good.

Mr. Serj. Thompson. My Lord *Preston* upon this last Order of the House of Lords has disclaimed any right of Peerage when he made his Petition, otherwise he had not been discharged. —

L. Preston. My Lord I beg leave —

Mr. Serj. Thompson. Besides, my Lord, what my Lord Preston offers is a matter of Record as all Letters Patents are, and tho' out of his hands he might have had recourse to the Record of the Inrolment.

L. Preston. For that, my Lord, I must humbly beg of your Lordships a little time to put my self in a Capacity to plead it in Form. If you will over rule it, I can say nothing to it; I offer it with all the modesty and respect imaginable.

L. C. J. Holt. It shall do your Lordship no prejudice, my Lord, God forbid but that you should make use of all advantages that you can invent for your defence. But, my Lord, we must tell you what you have offered is nothing that we can take any notice of, unless you had your Patent to produce, and we cannot give your Lordship time to plead to the Jurisdiction of the Court.

L. Preston. Then if your Lordships are pleased to over rule this matter I submit, but I hope you will give me leave to make all the just defence I can for my self. Does your Lordship over rule me in it?

L. C. J. Holt. I suppose we are all of the same Opinion, if not, I suppose they will declare their minds.

L. C. J. Pollexfen. That which has been said by Mr. Solicitor, was only that you and all the World may be satisfied that there is nothing of hardship put upon you. But the Court, if this had not been said, yet could take no notice of what you say, unless it were pleaded, and pleaded in legal Form. But if the matter be, as the King's Council have represented it, that this Patent you now pretend to have, hath already had its determination in a proper place, this Court (which is an inferiour Court to that of the Lords in Parliament) cannot intermeddle with it. We cannot help you, nor can we set up what was condemned there. So that you can entertain no hope or expectation of our doing any thing for you in this matter, or any relief or help by such a Plea.

L. C. Baron. My Lord Preston, you may remember, (I am sure some of us that were there present do,) that you did decline further insisting upon this matter in the House of Lords, and thereupon you had that great favour from the House shewn you, as the King's Council have opened.

L. Preston. I did decline it, 'tis true, my Lord; when they had declared it a Misdemeanour, I made my application to the Court, and therein declared I was sorry for having misdeameaned my self.

Mr. Serj. Thompson. If your Lordships please, we will read the very Orders of the House of Lords, to satisfy my Lord Preston, that we put no hardship upon him.

L. Preston. If there be any thing of hardship upon me in this Case, it is because I think I have a right to insist upon this matter, and cannot have an occasion or power to have that which I would make my Defence by.

L. C. J. Holt. Your Lordship shall have a fair Tryal, if you will please to put your self in a Condition to be tryed, by pleading to the Indictment.

Mr. B. Lechmere. The Lords in Parliament have disclaimed you for being a Peer, and we cannot make you one.

L. Preston. My Lord, I hope your Lordships will put no hard thing upon me; but give me leave and your Lordships help to make my defence.

L. C. J. Holt. You shall by the Grace of God have all the liberty you can desire to make your Defence; but you must first plead.

L. Preston. Since your Lordships are pleased to over rule me in this Case, I shall say no more of it. I did not intend to offer any thing that might be an Offence to the Court.

L. C. J. Holt. As I told your Lordship before, so I assure you now again it shall do you no prejudice.

L. Preston. Then if your Lordship please, since the Language is different in which the Indictment is written from that in which it was read, and some things may be of different Signification in both Languages, I desire the Indictment may be read in Latin.

L. C. J. Holt. Read it in Latin.

L. Preston. I have one thing to beg of your Lordship before it be read.

L. C. J. Holt. What is it you desire, my Lord?

L. Preston. My Lord, I humbly desire, because I cannot retain all the Contents in my Memory, that my Solicitor may have leave to stand by me.

L. C. J. Pollexfen. Do you all joyn in this desire, for if you should each of you severally, have it read a great many times over, they that take Notes in Short-hand may take a Copy of it as it is read, and a Copy not to be allowed.

L. C. J. Holt. If we find they desire to be troublesome, we can over rule them.

L. Preston. I would be guilty of nothing that may give the Court Offence, nor offer any thing that should take up the time of the Court unnecessarily.

L. C. J. Holt. If they would have it read in Latin, let it be read.

L. Preston. If it be troublesome to the Court, I waive it my Lord.

L. C. J. Holt. No, we do not think it troublesome.

L. C. J. Pollexfen. Mr. Ashton and Mr. Elliot, do you desire to have it read again?

Ashton, Elliot. We all joyn with my Lord, and desire it may be read in Latin.

L. C. J. Holt. Read it. (Which was done.)

Cl. of Arr. Juratores pro Domino Rege & Domina Regina: super Sacramentum suum presentant quod— & contra formam Statuti in eo casu editi & provisi.

L. Preston. My Lord, I am sorry I have taken up so much of your time, I thought the difference of Language might have made some mistake, which I thought would be of advantage to me in my Tryal: And for the same reason I humbly request you will please to order me a Copy of the Indictment.

L. C. J. Holt. My Lord, that we cannot do; it hath been frequently demanded upon these occasions, but always denied. I have always known it denied.

L. Preston. Your Lordship will give me leave to say what your Lordship must needs know much better than I, there is a Statute in the 46 of Ed. 3. that doth order a Copy of any Record to any Prisoner, or other Person if he demand it: And it has been granted, as I am informed in other Cases, particularly in the Case of Colonel Sidney.

L. C. J. Holt. No, my Lord, it was denied in Colonel *Sidney's* Case.

L. Preston. If I mistake I beg your Lordships pardon. It is a Reason in a late Law made for the Reversal of Mr. *Cornish's* Attainder. The Parliament do there say that it was not a legal Tryal, because he had not a Copy of the Indictment, and time given him to prepare for his Defence.

L. C. J. Holt. Truly, my Lord, I do not know how that matter stands: That Reversal of Mr. *Cornish's* Attainder is but a private Act of Parliament. I never saw it, nor heard it read, nor can we take notice of it. But your Lordship is to be tried by the same methods of Law, that all Persons that have gone before you have always been, it has always been the course, that the Prisoner should not have a Copy of his Indictment, Colonel *Sidney* had it not, and I remember in the Case of Sir *Hen. Vane* in the year 1662, he demanded a Copy of the Indictment, and it was denied him, and it has been constantly denied ever since in such Cases.

L. Preston. I humbly desire to know whether it was not granted in the Case of my Lord *Russel*.

L. C. J. Holt. No indeed my Lord, my Lord *Russel* had it not, I can take it upon me to say that, for I know all the Proceedings in that Cause.

L. C. J. Pollexfen. No my Lord, never any Man had it in all my Experience.

L. C. J. Holt. Some of us that are here were of Council for my Lord *Russel* at that time, and we did not advise him to demand a Copy of the Indictment, for we knew he could not have it by Law.

L. Preston. I am very tender of taking up your Lordships time unnecessarily, but it stands me upon to do all I can to defend my self, may not I have my Council heard to that point? because if it be a point of Law, though your Lordships are of Council for the Prisoner, yet I beg that I may have my Council heard to argue it.

L. C. J. Holt. To what point would you have your Council heard?

L. Preston. To that point, whether I may not have a Copy of my Indictment according to the 46. of *Ed. 3.* that is the point I would have my Council heard to.

L. C. J. Holt. There is no such Statute as your Lordship mentions, that gives the Prisoner a Copy of his Indictment.

Mr. *Jones.* If your Lordship please to hear me for my Lord *Preston*.—

L. C. J. Holt. Nay, Mr. *Jones*, you are mistaken in this matter: If my Lord himself will shew that there is any such Statute, we will consider of it, and if it be a matter that requires debate, we may assign my Lord Council to argue it, but till then Council are not to be heard. My Lord *Preston*, if your Lordship can shew us that Statute, pray do?

L. Preston. My Lord, I desire none if it be not so.

L. C. J. Holt. I have heard a Discourse concerning such a Statute, but I could never find it.

L. Preston. I suppose my Solicitor is here with it, there is such a Statute my Lord.

L. C. J. Pollexfen. The Court over ruled it in the Case of Sir *H. Vane*.

L. C. J. Holt. And so it was I remember in another Case, and in none of the Tryals that have been since King *Charles* the Second came in, was ever a Copy given that I know or heard of.

Mr. *Sol. Gen.* My Lord, this Statute that my Lord *Preston* mentions, the 46 of *Ed. 3.* is printed at large in the Preface to my Lord *Coke's* 3d Report; and has been insisted upon in several Cases in the *King's Bench*, where the Prisoner has desired a Copy of his Indictment, but a Copy has been always denied, and this Statute has been taken to extend only to Records, which may be Evidence for the Subject.

L. C. J. Pollexfen. 'Twas always ruled that it did not extend to this matter.

L. C. J. Holt. My Lord, 'tis a misconstruction of that Statute that your Lordship thinks that it gives the Prisoner a Copy of his Indictment: For that Statute says that all Persons shall be free to make use of the Publick Records, and take Copies of them, because oftentimes the Records are Evidences of Mens Estates, and their Titles.

L. Preston. My Lord, an Indictment I suppose is a Record.

L. C. J. Holt. But not such a Record as is within the intent of that Statute.

L. Preston. My Lord, I am tender of taking up your Lordships time, but since all that is dear to me is at Stake, I desire to this point I may be heard by Council.

L. C. J. Pollexfen. My Lord, I am satisfied you have had Council with you, I have heard a great many. Does any one of them tell you that this has been done? If ever any one of them will come and shew us when it has been done, you say something, but I dare say none of them will or can. Mr. *Jones* there, is as like as any body, but I believe he will not say it ever was done.

L. Preston. My Lord, I cannot say my Council has told me so, but I have read such a Statute my self, for it stands me upon it, and I believe there is such a Statute, and it will be produced before your Lordships. If your Lordships will insist upon not allowing me a Copy, I desire I may be heard to it by my Council, for I take it to be a point of Law, with humble Submission to your Lordships.

L. C. J. Holt. My Lord, we must not hear Council to debate plain points that have no manner of Question in them; It has been always disallowed, and 'tis a settled point at Law, and as plain as any whatsoever, that no Copy of an Indictment ought to be allowed to a Prisoner in Felony or Treason.

L. Preston. My Lord there is a Statute that says it shall be allowed to all Persons to have Copies of Records, as well for, as against the King, and certainly the Indictment is a Record, and a Record of great consequence to me at this time; and though my Council has not told me when it was done, yet those that I have advised with, do say that the Statute is express.

L. C. Baron. If any doubtful words be in such a Statute, yet the constant practice must expound it, and since it has been so often denied, nay always, the Law is now settled, that it is not within the meaning of that Statute.

L. C. J. Holt. We must go in the way of our Predecessors, we received the Law from them, and must not contradict the received practice of the Judges in all Ages, nor alter the determinations

tions that have been made in all Cases of the like nature.

L. Preston. I hope your Lordships intend, and I don't question it, that my Tryal should be a legal Tryal; If there be such a Statute that gives me a Copy of the Indictment, and the Court deny it me, I am not legally tried.

L. C. J. Pollexfen. If you please to name the Statute my Lord, It shall be read to you, but you are mistaken if you think there is any thing in that Statute that will do your Lordship service in this point.

L. C. J. Holt. See the 46 of Ed. 3. Read it.

L. Preston. Here is a Copy of the Record in Court.

L. C. J. Pollexfen. It is not Printed, but it is mentioned in the Preface to my Lord Cokes third Report, and 'tis mentioned no where but there that I know of; but whether there were any such Statute or no *Non constat*, for it is not printed. But if it be a Statute it does not meddle with things of this nature, such as Indictments; for you must consider, my Lord, yours is not a Case different from all other Cases of like nature as to this; But it is the Case of all men that are Tried as you are to be. And if all people were to have Copies of their Indictments to make exceptions out of them before they plead; instead of days of Gaol delivery, the whole year would not be sufficient; but would be spent before they could be brought to their Tryal.

L. Preston. My Lord, I am to defend my self as I can by Law; and not to consider what other peoples Cases are. It is my particular Case now, what the Case may be as to any other hereafter, or what the general consequence may be is not to be considered, but if there be any thing that is legal that can give me an advantage in making my defence, I know your Lordships are too just to hinder me from taking advantage of it.

L. C. Baron. My Lord it is no new thing to demand it, it has been frequently demanded, but it has been always over ruled.

L. Preston. My Lord, it is now desired, and a reason is given you that perhaps was not given before; there is such a Law. My Lord Chief Justice says well it is not printed, but it is a Record, and there is a Copy of that Record in Court. I desir'd there should be; I am sure.

L. C. J. Holt. If you have a Copy of any Record of an Act of Parliament, it shall be read, if it be proved.

L. Preston. Nay we offer nothing if we don't prove it, but there is such a Record, and the Solicitor is ready to attest it. Pray swear Mr. Whitaker.

Mr. Serj. Thompson. Swear him.

Cl. of Ar. You shall true answer make to all such questions as shall be demanded of you by the Court. So help you God. Is this a true Copy?

Mr. Whitaker. It is a true Copy.

L. C. J. Holt. Where did you examine it?

Mr. Whitaker. My Lord it is a true Copy of the Record, I examined it at Mr. Pettys Office in the Tower.

L. C. J. Pollexfen. Upon what Number Roll is it?

Mr. Whitaker. There is the Number Roll and all upon the Book.

Clerk reads. *Item pria les Commons que come recorde & queconque chose en la Court le Roy de raison devoient demurrer illecoques par perpetuel evidnee & aide de tous parties a yeell, & de tous ceux a queux en nul manner illi atteignent quant, mistier leur suit. Et ja de nouvel refusent en la Court nostre dit Seignior de serche ou evidence encounter le Roy en disadavantage de lui. Que please os deiner per Estatute que serche & Exemplification soit faitz as touz Gentz de quconque Recorde que les touche en ascun manner auxy bien de ce que chiet encounter le Roy come autres Gentz. Le Roy le voer.*

L. C. J. Pollexfen. It is only Copies of Records that they shall have for Evidence.

L. C. J. Holt. My Lord Preston, your Lordship hears by this Record, you may as well pray that an exemplification be made of this Indictment as a Copy, for so the words of this Act run, it is only meant of those Records that were to be given in Evidence. But this Indictment that you would have a Copy of, is not now to be given in Evidence nor to be exemplified, and so it does not reach your Case.

L. Preston. My Lord, this Indictment is a Record, and a Record against me, and I think it is given in Evidence against me.

Mr. J. Eyres. No my Lord, it is no Evidence but an Accusation, it is no proof at all.

L. Preston. It is always sworn unto.

Mr. J. Eyres. The Witnesses are Sworn that Testifie the matter of it to the Grand Jury, but the Indictment it self is no Evidence.

L. C. J. Holt. Suppose a Statute be doubtful, as truly I do not take this to be, we are to expound the Statute as it has been expounded in all Ages: It was never thought by any Judges in any Reign, that this Statute did entitle a Prisoner to have a Copy of his Indictment, but always held the contrary.

L. Preston. Will your Lordship be pleased then to allow me Council to be heard to it?

L. C. J. Holt. No, my Lord, not Council in a plain Case: If the Court apprehend there is any Matter that may be debateable, or whereupon a Doubt may be made, we may assign Council, and shall; but never in a plain Case, where there is no manner of Question.

L. Preston. My Lord, here is a Doubt in this Case.

L. C. Baron. But, my Lord, it's not the Doubt of the Prisoner, but the Doubt of the Court that will occasion the assigning Council.

L. Preston. But the Prisoner may offer his Doubt to the Court, and your Lordships are so just, that you will take care that the Doubt may be legally resolved.

L. C. J. Holt. My Lord, it is our Duty to see Justice and Right done, and God willing, it shall be.

L. Preston. And I am bound in Duty to my self in such a Case to insist upon all Advantages I can have by Law.

L. C. J. Holt. My Lord, no Body blames you, though your Lordship do urge things that are unnecessary, or improper; and we shall take care that it shall not tend to your Lordships prejudice. We consider the Condition you are in; you stand at the Bar for your Life; you shall have all the fair and just Dealings that can be; and the Court, as in Duty bound, will see that you have no Wrong done you.

L. C. J. Pollexfen My Lord *Preston*, for this thing that you now mention, in all Ages, in all our Books, it is the same thing, and has been in all Mens Cases that have been for their Lives, denied; and this Statute that you bring is quire of another intent: For it is said, the Records shall remain in Court for perpetual Evidence, and the Aiding of all Persons to whom they shall belong. My Lord, this is none of your Case; for God knows, you expect no Aid from this Indictment: But this is meant of all Copies that concern the Estates of Men, that they may have recourse to their Records to make out their Evidences to their Estates, or to have them Exemplified under the Seal of the Court for Evidence: But to have a Copy of an Indictment, thereby to be enabled to consult with Council, how to make Exceptions to that Indictment, is a thing that has been denied in all Ages by all the Judges that ever were. If any one can say to the contrary, it were something; but shall we now admit Council to debate a thing that has been in all Ages denied, and never admitted so much as once? That cannot be expected from us.

L. Preston. The Act says, That it shall be all Records that shall be in Aid to any Person that shall desire it. Here is no distinction made of what kind the Records are to be: If it be for the Aid of any Person, it ought to be granted, and I may be aided by this Record, if I have a Copy of it; and I think it is hard, when I am so much concerned in this Record, that I cannot be helped to it by this Law.

L. C. J. Pollexfen. Constant Experience has gone according to what we say.

L. Preston. If that be Law, and it has not been demanded, then they are not entituled to have the benefit of it: But now I demand it, sure it is good Law.

L. C. J. Holt. It is no question a good Law, but not applicable to your Lordship's Case: I suppose we are all of the same Opinion; if any think otherwise, I desire they would speak.

L. Preston. My Lord, I submit to the Court, but then I desire one Thing, you know my Life, my Fortune, my Reputation, my Posterity, and all are at Stake, and all that is Dear to me must fall with me if I miscarry. Therefore I take leave to represent, That I have had very short Notice of my Tryal, I assure you I have not had above 6 or 7 days Notice, I hope you will not refuse me a little longer time before I come to my Tryal, and I have had no Copy of the Jury yet.

Mr. Sol. Gen. If my Lord please to Plead to the Indictment, that will be time enough to move afterwards, and till Issue is joyn'd, it cannot properly be moved for.

L. C. J. Holt. It is not proper to desire time yet, till you have put your self upon your Tryal by Pleading to the Indictment.

L. Preston. It was granted in Colonel *Sidney's* Case, he had 8 or 10 days granted him after he had Plead'd; and in the Act for the Reversal of *Mr. Cornish's* Attainder, it is given as one Cause for the Reversal, that he had not time to prepare for his Defence.

L. C. J. Holt. My Lord, 7 days is very fair Notice, your Lordship knew when the Sessions would be, and your Lordship might reasonably expect, that you should be Tryed here, I think truly you have had very fair Notice.

Mr. Ashton. My Lord, we have had 7 days Notice of our Tryal 'tis true, this day Seven night at Night we had Notice we were to be Tryed as this day, but 3 days of the 7 we had not the Liberty of seeing any Friend or Council, or any Body, not till *Tuesday* Night, and that we got with great Application, and great Charge to get an Order for Council to come to us, so that though we have had 7 days Notice, yet we have had but 3 days in all to consult with any Body, and we never have had a Copy of our Jury till this Minute.

L. C. J. Pollexfen. We see the Nature of the Thing, and I am sorry that I must say it is fit that we should take notice of it, perhaps the thing that you are accused of is not true; but if it be true, you see what it is, that there are Letters and Papers preparing for a Design to set all the Kingdom in Confusion: Men that will venture upon such sort of Things are not to Condemn the Law if it be a little hard upon them, for 'tis the common Preservation that is principally aimed at in Prosecutions of this Nature; and if this Accusation be true, 'tis but Just and Reasonable, that all speed should be used to enquire into and prevent it, and as it falls out in this Case, it is not in our Power to do it. This Sessions is set before this Business is known, and this is an Act done in this County, and therefore the Sessions is the proper place for the Tryal, and so you have the same sort of Proceedings that all other Criminals have, which are very many, though I hope not many of so high a Nature, 7 days Notice you have had you acknowledge; if my Lords please we will Indulge you as far as we can, and give you time for your Tryal till to-morrow, but you must Plead presently,

L. C. J. Holt. My Lord, we debate the time of your Tryal too early, for you must put your self upon your Tryal first, by Pleading.

L. Preston. My Lord, I hope I shall always carry my self as becomes me towards the Court, but I do not really think, you have any Tryals that are of so great Concernment, and this sure is a fit time for me to offer it, for it may be, I have a great many Witnesses in the Country, and at a distance from this place and one another.

L. C. J. Holt. My Lord, we cannot dispute with you concerning your Tryal, till you have Plead'd, I know not what you will say to it, for ought I know there may be no occasion for a Tryal. I cannot tell what you will Plead, your Lordship must Answer to the Indictment before we can enter into the Debate of this matter.

L. Preston. Will your Lordship give me leave to move it afterwards?

L. C. J. Holt. You may offer any thing then concerning your Tryal, if you can shew any Reason to defer it, it will be proper to do it then.

L. Preston. Truly, my Lord, I think one Reason why my Tryal ought to be put off, is, Because I have Privilege of excepting against so many of my Jury, but if I have not time to look into the Pannel I shall lose that Privilege.

L. C. J. Holt. We are not to come to that yet, you are to Plead now.

L. Preston. Then your Lordships are pleased to over-rule my Claim of Peerage.

L. C. J. Holt. My Lord, we are of Opinion you ought to Plead to this Indictment.

C. of Ar. What says your Lordship, Are you Guilty of this High Treason, or not Guilty.

Lord

L. Preston. Not Guilty.

Cl. of A. Culprit. How wilt thou be Try'd?

L. Preston. By God and my Country.

Cl. of Ar. God send you a good Deliverance.

John Ashton, What sayst thou? Art thou Guilty of the same High Treason, or not Guilty?

Mr. Ashton. My Lord, I have only this to observe, besides what my Lord *Preston* has offered, as to the Business of the Act of Parliament, your Lordships have been pleased to over-Rule that Plea; But, my Lord, I am told, That if an Indictment be faulty, but even in a Letter, we cannot be found Guilty upon that Indictment. Now, if we never have a Copy of that Indictment, how shall we know whether there be any such Fault in it? Your Lordships, who are our Council, I suppose have never seen the Indictment, and suppose there be Twenty Faults, we have not the advantage of them, by not having a Copy, and how shall we come to have any Advantage, if neither your Lordships, who are our Council, nor we our Selves can see them. It may turn upon that.

L. C. J. Holt. But we will see it when you come upon your Tryal.

L. C. J. Pollexfen. That is a Mis-Information, for it may be such a Letter as is not Material, and it may be such as is Material; as, suppose, your Name being *Ashton*, the *A* should be left out, it would then be a Question, What there would be to Charge you.

Mr. Ashton. We know that it has been so in several Instances.

L. C. J. Pollexfen. It may be such an Omission that may make it no Crime, but we must not presently conclude that it is so, but you have heard it Read, and so have we; if there had been any such Letter mistaken, it would have been taken Notice of.

Mr. Ashton. As to the Reading, there may in the Reading of the Indictment be many Words not nicely observed; I suppose the Indictment be Right, I say it is possible, it may, or it may not; but if your Lordships never see it, who are our Council by Law, nor you will allow us Council to look into it; if there be Forty Faults in it, we can have no advantage of it.

L. C. J. Holt. We must not allow you Council to pick holes in the Indictment; that never was done. If you assign any Reason, we may assign you Council to debate any matter of Law that may arise, but never was Council allowed to find out Faults in an Indictment, when you come to your Tryal we shall try you upon your Indictment, and if there be any thing considerable, you are to suppose we shall observe it for your advantage.

Mr. Ashton. My Lord, We never had a Copy of the Pannel of our Jury, I pray we may have it.

L. C. J. Holt. That you cannot have till you have Pleaded.

L. C. Baron. *Mr. Ashton,* We have over-ruled my Lord *Preston* about a Copy of the Indictment, Do you think we shall Grant it you when we have denied it him?

Mr. Ashton. My Lord, I desire we may have a Copy of the Pannel.

L. C. J. Holt. You must Plead first.

C. of A. Are you Guilty of the High Treason, or not Guilty?

Mr. Ashton. Not Guilty.

C. of A. How will you be Tried.

Mr. Ashton. By God and my Country.

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C. of A. God send you a good Deliverance.

Edmund Elliot, How say you? Are you Guilty of the same High Treason, or not Guilty?

Mr. Elliot. Not Guilty.

Cl. of Ar. How will you be tried?

Mr. Elliot. By God and the Country.

C. of A. God send you a good Deliverance.

L. Preston. My Lord, I hope now it may be time to pray that my Tryal may be deferred.

L. C. J. Holt. Why would you have it deferred?

L. Preston. Because of the distance of my Witnesses, and other Things that would be necessary for me to have to prepare me for my Defence; and besides, we have not had a Copy of the Pannel of our Jury, and the Reason of the Law does Order, that because it gives us liberty to except against them, and that we cannot know how to do, unless we inform our selves of the Men; and therefore I beg, that I may have a Copy of the Pannel.

L. C. J. Holt. As for having a Copy of the Pannel, the Court grants it. Let them have a Copy of the Pannel.

C. of A. Here is one ready for you.

Mr. Sol. Gen. There was Direction given that there should be one ready.

Mr. Ashton. We have demanded it every day since we had notice of our Tryal.

L. C. Baron. You could not have it till there was an Issue joyned, and that could not be till you had Pleaded.

L. C. J. Holt. And as to the putting off your Tryal, I know not to what time to put it off.

L. Preston. My Lord I am willing to have this matter Tried as soon as possible, for it cannot but be uneasy to me to lie under these Accusations; but some of my Witnesses live in the Country, at a remote distance; if it may be next Term my Lord, or the next Sessions; for, if I have a Copy of the Pannel to Night, and am to be Tried to morrow Morning, How can I provide for my Defence? I cannot be prepared to except against the Jury, and I am sure you will be tender, and consider the Case of a Man, whose Life and Fortune are concerned in this Business.

L. C. J. Holt. To put it off till the next Term is to remove it out of this Court, that we cannot do, and to put it off till after the Term will be too long a time.

L. C. J. Pollexfen. We cannot sit here after Monday, because the Term begins on Tuesday.

L. Preston. My Lord, this Term is always a short Term, and if I be Tried to morrow, it is Trying me without giving me time for my Defence.

Mr. Sol. Gen. My Lord, there has been all the care taken that the Nature of the Thing was capable of, to prevent any complaint of this kind. Order was given, that my Lord and these Gentlemen should have notice as early as was possible. As soon as ever Mr. Attorney General had had an opportunity of looking into the Evidence, notice was given them, that they should be Tried, and that this was the day appointed for their Tryal. But there shall be no contending in a Matter of this Nature, for a day. If it be desired, and the Court please to put it off till to morrow, we are contented, but there can be no reason to put it off for a longer time. As there is always a tenderness to be used, and I know will be,
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and as far as I am concerned, always shall be towards Persons in these Circumstances, so there is a regard to be had towards the Government and the Publick. I am sure if the Accusation that is against these Gentlemen is true, the Government is highly concerned that this Matter should come to a speedy Examination, and that Persons that enter into such Designs be brought to Judgment: The Charge in the Indictment is of such a Nature as draws very great Consequences along with it, it concerns no less than the Life of the King and Queen, the Destruction of the Fleet of the Kingdom, and the Invasion of the Realm by the Forces of a Declared Enemy. These are the things that the Prisoners are charged with, and certainly there ought to be no delay in the searching into such Matters as these. They have had a Weeks notice of Tryal already, and for many days of that week at least they have had as many Council to assist them as they desired, and all the Solicitors that they had a mind to, have had free access to them, so that they have wanted no opportunity to prepare for their Tryal that Men in their Circumstances could have: As to what has been said with relation to the Jury, the Law indulges them in the Number of their peremptory Challenges without being put to shew Cause, and the Court hath granted them at the very instant of their Pleading a Copy of the Pannel, and there is a reasonable time between this and to morrow for their making such Enquiry into the Jury as is justifiable and fit to be made. But if by time to look into the Jury, it be meant, that there may be a time for tampering, that I am sure your tenderness of the Government will not permit, you will take care as much that no such thing be done, as you will, that they should not be surprized. If your Lordships are pleased, that the Tryal be put off till to morrow, we will be ready to morrow to attend it.

L. Preston. My Lord, 'tis a very hard presumption that Mr. Solicitor makes of our asking a Copy of the Pannel, that it is with a design to tamper with the Jury.

Mr. Sol. Gen. I did not say so, but I said till to morrow was time enough to make a Justifiable Enquiry.

L. Preston. But if I be to be tryed to morrow, I am willing to be tryed to day, for I am as ready now as I shall be then.

L. C. J. Holt. It may be so, and as ready as you will be after the Term: But I know not what your Lordship means by expressing such resentment, that because you can't have what time allowed you would, therefore you will have none, but be tryed now.

L. C. J. Pollexfen. You may have time enough to prepare your self as to the Jury certainly between this and to morrow.

Mr. Serj. Thompson. My Lord, we that are for the King have given these Gentlemen notice long enough to be prepared, if we should try them now, for that's the time we gave notice for, but because we would indulge them as far as we could, we are willing that they should have till to morrow, and intending them that kindness, are not ready to try them to day, and there can be no pretence for them to put off their Tryal any longer, for there can be no want of Evidence as to the Fact we charge them with, for all the Evidence that we shall bring against them was taken from themselves, or the greatest part of it.

L. C. J. Holt. Well, what time will you be ready then?

Mr. Serj. Thompson. To morrow morning.

L. C. J. Holt. Then to morrow at Eight a Clock you are to be tryed.

L. C. J. Pollexfen. My Lord *Preston*, do but consider you have had seven days notice, and to morrow makes eight.

L. C. J. Holt. You had notice for this day this day sevennight.

Mr. Ashton. But we have had only three days time to consult with our Council, though we desired we might have our Council come to us that day.

Mr. Sol. Gen. They were told, they must apply themselves to the King for that at the same time.

Mr. Ashton. We did so that night to my Lord *Sidney*, then Sunday interven'd, which was no day for Business, and we could not have our Order. On Monday we could not have it till night; so that it was Tuesday before we could get any Body to us. My Lord it is a weighty concern; and all such hasty Proceedings were thought very hard in the late Times, and particularly the denying Mr. *Cornish* time, and 'tis one of the Reasons given in this Kings Declaration for his coming here into *England*, the hardships that the Law laid upon Men in their Tryals, which he came to prevent.

L. C. J. Pollexfen. The hardship that was upon Mr. *Cornish* was, that he was taken upon the Tuesday off from the *Exchange*, and tryed before that day sevennight, and that was hard indeed; but besides, he was taken about his Business off from the *Exchange*, I know not whether you were about your Business, your Lawful Business, when you were taken, God of Heaven knows that. And pray consider here is a matter of very great consequence on the one side and on the other: For if Men be Plotting against the Government, to give them time to carry on their Plots will be mischievous on that side.

Mr. Ashton. My Lord, till that be legally proved before your Lordships, that is but a supposition.

L. C. J. Pollexfen. That will lie upon them to prove.

L. C. J. Holt. Mr. *Ashton*, we are to suppose you not Guilty, till you are proved Guilty.

Mr. Ashton. Then my Lord, the Law says we may except against so many Persons, what is the end of the giving us a Copy of the Pannel? 'tis not to be presumed we can do it by their Faces, for what can I say to the Face of one I never saw? We must enquire concerning the Men, and that is a work of time, for some of these Gentlemen I presume live eight or ten miles out of Town, Is it possible for me before to morrow morning eight a Clock to send to 35 Men to enquire after them?

L. C. J. Holt. No, nor is it intended you should.

L. C. J. Pollexfen. Nay, if you intend to send to the Jury-Men, we have no reason to give you time.

Mr. Ashton. I mean to enquire after the Men, their Lives, what Religion they are of, what sort of Men they are.

L. C. J. Holt. I suppose they are all Protestants of the Church of *England*, but suppose they are all Strangers to you, and yet good and lawful

lawful Men of the County, and there be no difference between you and them, then they are fit to try you.

Mr. *Ashton*. 'Tis true my Lord, but if I have liberty to except against 35, I ought to know something of them.

L. C. J. *Pollexfen*. Yes, and inform your self as well as you can of them, but not to send to them, that is not to be permitted.

L. *Preston*. There is another Point to enquire of them, and that is, Whether they be Freeholders or not?

L. C. J. *Pollexfen*. We have neither your Lordships Affidavit, nor the Oath of any other Person, only an Allegation.

L. C. J. *Holt*. My Lord, you must expect your Tryal to Morrow Morning, we cannot put it off, we are limited in time, the Sessions can hold no longer than *Monday*, because of the Term.

Mr. *Ashton*. Then will your Lordship please to put it off till Monday?

L. C. J. *Holt*. No, we shall not have time to do it, it may be a long Tryal.

L. *Preston*. I protest to your Lordships I cannot be ready to Morrow to make that Defence I desire, and design to make, and which I may make if your Lordships give me a longer day.

Clerk of Arraignments. Here is a Copy of the Pannel for your Lordship.

It was delivered to the Lord Preston, who gave it to his Solicitor.

Mr. *Ashton*. My Lord, we shall not have time to enquire into the Jury.

L. C. J. *Holt*. Look you, we are not bound to do this, but you have it as soon as you have Pleaded.

Mr. *Ashton*. My Lord, it will take up 5 or 6 Hours in writing of it out, and we must each have a Copy.

Mr. *Sol. Gen.* They are all joyned in one Indictment, and have joynt-Council, and joynt-Solicitors, as we are informed.

Mr. *Ashton*. Then I hope you will allow us liberty till *Monday* for our Tryal.

L. C. J. *Pollexfen*. The Court cannot allow longer time; the Court here can sit no longer than *Monday*, and here must needs be a great deal of Business to do of the ordinary Business of the Sessions, and when that day comes, perhaps it will not serve to go through with the Tryal, and then it must be Adjourned till after the Term, and in the mean while some are in hopes the King of *France* may come and determine the Matter.

Mr. *Ashton*. Pray my Lord, Let no Suggestion against us, prepossess the Opinion of the Court before we be Tried.

L. C. J. *Pollexfen*. I don't Suggest any thing, but 'tis in the Indictment alleadged against you, and that you are to be Tried upon, and if such things be there Suggested, as we would give you all reasonable time for your Defence, so we must take care that the Government sustain no hurt by delays.

L. C. J. *Holt*. It is observed by the King's Council, that they are Things of very great Consequence, and therefore they press for the Tryal.

L. C. J. *Pollexfen*. I cannot believe but that you will be as ready to Morrow, as you can be on *Monday*.

Mr. *Ashton*. The Government cannot be prejudiced by putting of it off till *Monday*, sure.

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L. C. J. *Pollexfen*. The Evidence that is to Convict you, lies all on their Side that are for the King, and I cannot imagine, where your Witnesses should be, unless they are in *France*; but you had reason to expect your Tryal, being apprehended in the manner as you were, and to provide for it.

L. C. J. *Holt*. The want of Witnesses is only a Surmise, and a Pretence, for there is no Oath of any Witnesses that they want, or who they are; indeed if we had Oath made that they wanted material Witnesses, and to material Points for their Defence, that might be occasion for our further Consideration; but shall we put off a Tryal upon a bare suggestion of the want of Witnesses? sure that was never done.

L. C. J. *Pollexfen*. Name any one particular Man that is your Witness, and the particular thing that he can prove, for if any of your Witnesses do know any thing of this kind, it must be Particulars and not Generals; If you will not name them, it is plain, it is only a pretence you insist upon for delay.

Mr. *Ashton*. My Lord, I insist upon the point of the Jury, that we have not time to look after them.

L. C. J. *Holt*. Then that of the Witnesses is waved.

L. *Preston*. 'Twas I that desired Time for my Witnesses.

L. C. J. *Pollexfen*. But you neither name them, nor bring us any Oath about them, or of any thing they can prove for you.

L. C. J. *Holt*. Pray don't spend the time of the Court, nor your own time unnecessarily, you must prepare for your Tryal to Morrow.

Mr. *Ashton*. My Lord, there is not a person in Court, I believe, but will think it hard that we are so straitned in time.

L. C. J. *Holt*. The time you have had notice to prepare for your Tryal, is sufficient.

Mr. *Ashton*. Mr. *Cornish's* Case has been complained of as a very hard Case in this very respect, and we would hope, the King, that now is, came to reform such abuses.

L. C. J. *Holt*. You have been already told, wherein the hardship of that Case lay, I am sure yours is not like it; but take notice, we will be Sitting here punctually at Eight.

L. *Preston*. Will your Lordship please to let us have our Council come to us, and our Friends.

L. C. J. *Holt*. Yes sure, you shall have all that is necessary for your Defence, that we can allow you, but unnecessary Delays must be avoided.

Then the Prisoners were taken away by the Keeper of *Newgate* to the Goal.

Sabbati xvii. January 1690.

THIS Day between the Hours of Eight and Nine in the Morning, the Court being sat, and those Persons who were return'd upon the Jury were called over twice, and their Appearances Recorded; then the Prisoners were brought to the Bar.

Clerk of Arraignments. You the Prisoners at the Bar, these Men that you shall hear called and personally appear, are to pass between our Sovereign Lord and Lady our King and Queen, and you upon tryal of your several Lives and Deaths; if therefore you, or any of you will

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Challenge

challenge them, or any of them, your time is to challenge them as they come to the Book to be Sworn, and before they be Sworn.

L. Preston. My Lord, I beg your Lordship will inform me, whether if I have any thing to offer to the Court, it is proper before the Jury be impannelled, or after.

L. C. J. Holt. My Lord, I don't know what your Lordship has to offer, I think you have nothing to offer why the Jury should not be sworn, for now your Lordship has put your self upon your Tryal, and are going to proceed in that Tryal, and the Jury are going to be sworn; if you have any thing to offer, as to them, you may challenge them.

L. Preston. Truly my Lord, I have something to offer, but it is only what I did humbly offer Yesterday, and that is, That my warning was so short, that I am not prepared for my Tryal. We had not above three or four days wherein we might consult about it, all the former time we have been kept close Prisoners; we are now brought here to be tryed, without having time to look into the Pannel of our Jury. The Pannel we had not till Yesterday, and I humbly beg, that I may have some time to prepare for my Defence.

L. C. J. Holt. My Lord, this is that which you insisted upon Yesterday. Your Lordship said you wanted Witnesses, and your Lordship did not then mention what Witnesses you wanted, nor was any Oath made of any one that you wanted; and therefore the Court over-ruled you, and wished you to prepare for your Tryal, and would not put it off: For if it should not be to Day, but should be put off till another time, it must be the putting of it off till another Sessions; for we are streightned with it in point of time, for the Session can last no longer than Monday, and you have had convenient Notice.

L. Preston. Truly, my Lord, I think it is hard when my Life and Fortune, and all are concerned, that I should be hurried on to a Tryal, only because the Court is streightned in point of time; and yet that is the only Reason that I can perceive, why such haste is made. I desire a little more time to prepare my self; and I think it very hard I should be denied; I must submit it to your Lordships: if you will not allow me time, I cannot make my Defence as I would.

L. C. J. Holt. My Lord, as to the Shortness of the time, that is no Objection; you have had convenient Notice, as much Notice as the Law requires, and as much time as without particular cause shewn, hath here at any time been given in such a Case. If indeed there had been any particular Reason offered for putting off the Tryal, and you had made it appear by Oath, the Court possibly might have put off the Tryal; but because your Lordship only suggested you wanted a Witness, naming neither Person, nor Place, or Matter such Witness should prove, they are of Opinion no cause appears for such delay of your Tryal.

L. Preston. My Lord, I assure you I am not prepared for my Tryal.

L. C. J. Holt. My Lord, the Court over-ruled this Matter Yesterday, it cannot be put off.

Mr. Sol. Gen. My Lord, I would humbly offer your Lordship one thing before the Jury be called and sworn. By the Law, these Gentlemen at the Bar have the Privilege to challenge peremptorily to the Number of 35; which is

so great a Number, that if each of them severally take advantage of it, (as they may do by Law, and God forbid they should be denied any advantage the Law gives them) it will be next to impossible to have a sufficient Number of Jurors appear so as that we may proceed in the Tryal.

L. Preston. Truly, my Lord, we don't hear what Mr. Solicitor says.

L. C. J. Holt. Do you not? Then I'll tell you what he says when he has done: Go on, Mr. Solicitor.

Mr. Sol. Gen. My Lord, all that I would know of them is, Whether they intend to take the Advantage that the Law gives them, of single and particular Challenges; for then they must be tried severally: Or whether they will be content that the same Persons that are challenged by any one, shall stand challenged for all three. I leave it to them to take their own choice; let them do what they please in it.

L. C. J. Holt. My Lord *Preston*, Mr. Solicitor tells you what the Law is, that every one of you may challenge five and thirty without Cause; and if the Court should proceed to try you all together, and every one of you should challenge five and thirty, perhaps a sufficient Number will be wanting to try you, the Number challenged will then amount to 105 in all. If so be you agree in your Challenges, that what one challenges shall be challenged by the other two, then the Court will go on, and try you all together, otherwise they will be forced to sever you; therefore he desires to know, whether you will joyn or sever in your Challenges.

Mr. Sol. Gen. Take your own choice, Gentlemen, and do what you think best.

L. Preston. My Lord, the matter of challenging is so great an Advantage to a Man upon his Life, that for my part I must insist upon that which the Law gives me, to challenge as many for my self as I think fit, to the Number that the Law allows me.

L. C. J. Holt. My Lord *Preston* says, he will, as 'tis fit he should, take all Advantages he can; What says Mr. *Ashton* to it?

Mr. Ashton. My Lord, I expect the same Advantage.

L. C. J. Holt. You must have it; it is not proposed to preclude you from any Advantage that the Law allows you: If you insist upon that Advantage, you must have it, and then you must be tried severally.

Mr. Sol. Gen. Then my Lord, since they are pleased to declare they will sever in their Challenges, we must desire to sever them in their Tryal, and to begin with the Tryal of my Lord *Preston*.

Mr. Ashton. My Lord, I desire the Liberty to be by when my Lord is tried.

L. C. J. Holt. No, no, that is not to be permitted.

Mr. Serj. Thompson. If you had joyned in your Challenges, then you had been tried all together.

L. C. J. Pollexfen. That advantage you lose by severing in your Challenges; you lose the Assistance of each other at your Tryal.

L. C. J. Holt. That is the Consequence; but do as you please; set them by.

L. C. J. Pollexfen. It may be they do not so well weigh the Consequence, therefore call them

them again. Gentlemen, Do you consider the Consequence of your not joyning in your Challenges? You must not be by if my Lord Preston be tried by himself, but must withdraw, and thereby you will lose the Advantage of helping one another.

Mr. Elliot. My Lord, I desire to be tried alone.

Mr. Ashton. And so do I, my Lord.

L. C. J. Holt. Then, Captain Richardson, take them away.

Afterwards the Court was informed that Mr. Elliot desired to be tryed with my Lord Preston, and thereupon they were called again.

L. C. J. Holt. Gentlemen, Do you desire to be tried alone, or with my Lord Preston?

Mr. Elliot. My Lord, if you please, I desire to be tried with my Lord.

Mr. Sol. Gen. Does Mr. Ashton desire it too?

Mr. Ashton. No, my Lord, I desire to be tried by my self.

Mr. Sol. Gen. Then we will try my Lord Preston by himself.

L. C. J. Holt. Mr. Elliot, the King's Council do not think fit to try you with my Lord Preston, without Mr. Ashton; and unless you will all join, you must all be tried severally.

Mr. Elliot. I can only answer for my self.

Mr. Ashton. I am for being tried alone.

L. C. J. Holt. Then my Lord Preston must be tried alone.

The other two were carried back to Newgate, and the Lord Preston was bid by the Clerk to look to his Challenges.

Cl. of Ar. Sir Goddard Nelthorpe, Baronet. Challenged.

Sir Thomas Cooke, Knt. Challenged.

Sir William Hedges, Knt. Challenged.

James Boddington, Esq; Challenged.

Thomas Johnson, Esq; Challenged.

Ralph Bucknall, Esq; Challenged.

Craven Peyton, Esq;

L. Preston. I do not except against him.

Cl. of Ar. Then swear Mr. Peyton. (Which was done).

Lucy Knightley, Esq; Challenged.

Scory Barker, Esq; Challenged.

Thomas Cuthbert, Esq; Challenged.

Alban Cbaire, Esq; Challenged.

John Herbert, Esq; Challenged.

Hugh Squire, Esq;

L. Preston. I have nothing to say to him. Sworn.

Cl. of Ar. John Tully, Esq; Challenged.

George Ford, Esq;

L. Preston. I do not challenge him. Sworn.

Cl. of Ar. Henry Whitcheot, Esq; Challenged.

John Crosse, Esq; Not appeared.

Thomas Smith, Esq; Challenged.

William Withers, Esq; Challenged.

Richard Cradock, Esq;

Mr. Cradock. My Lord, I know not how I came to be summoned upon this Jury; for I am no Freeholder.

L. C. J. Holt. Then set him aside.

Cl. of Ar. John Cane, Esq; Challenged.

William Jacomb, Esq;

Mr. Jacomb. My Lord, I am no Freeholder.

L. C. J. Holt. How long have you not been a Freeholder?

Mr. Jacomb. Near this four Months.

L. C. J. Holt. Give him his Oath. (Which was done.)

Have you no Freehold in the County of Middlesex in your own Right, nor in the Right of your Wife?

Mr. Jacomb. No, my Lord.

L. C. J. Holt. Then you must go on to the next.

Cl. of Ar. Joseph Dawson, Esq;

Mr. Dawson. My Lord, I am an ancient Man, and not fit to serve upon the Jury.

L. C. J. Holt. Well, now you are here, for this time serve; we will excuse you hereafter.

Mr. Sol. Gen. My Lord, we challenge him for the King.

L. Preston. My Lord, I desire to know when any one is challenged for the King, whether they must not shew cause.

L. C. J. Holt. By and by, if there be not enough, they shall shew cause.

L. C. J. Pollexfen. You shall have all that the Law allows you certainly, my Lord.

Cl. of Ar. Thomas Austin, Esq; Not appeared.

Richard Paget, Esq;

L. Preston. Has this Gentleman any Freehold?

Mr. Paget. Yes, my Lord, I have in the County of Middlesex.

L. Preston. I do not except against him.

Mr. Serj. Tremain. My Lord, we challenge him for the King.

L. Preston. My Lord, I humbly desire they may shew their cause.

L. C. J. Holt. My Lord, Cause is not to be shewn by the King's Council till all the Pannel be gone through; and then, if there be not Twelve left to try, then they are bound to shew Cause; that is the Law.

L. Preston. My Lord, it is a thing of a very tender concern to me; I desire to know, if it be not usual that they should assign the Cause, when they Challenge any for the King: For if it be not according to Law, it may be a prejudice to me; and I desire I may have Council heard to that point.

L. J. C. Holt. My Lord, shall we assign Council to dispute Matters not disputable? There is not any more clear Case in all our Law, than that: If your Lordship please, you shall have a Book to read, that the King is not bound to shew Cause till the Pannel is perus'd.

L. Preston. Then I don't insist upon it.

Cl. of Ar. Walter Bridal, Esq; Challenged.

Samuel Hodgkins, Esq; Challenged.

Thomas Elton, Esq;

L. Preston. I do not challenge him.

Mr. Serj. Tremain. Then we challenge him for the King.

Cl. of Ar. Arthur Bayly, Esq;

L. Preston. I have nothing to say against him. Sworn.

Cl. of Ar. John Milner, Esq; Not appeared.

Richard Page, Esq;

L. Preston. I do not except against him.

Mr. Serj. Thompson. Then we challenge him for the King.

Cl. of Ar. Richard Marsh, Esq;

Mr. Marsh. My Lord, I desire to be excused; I am not fit to serve upon a Jury.

L. C. J. Holt. Why?

Mr. Marsh. I am thick of hearing.

L. C. J. Holt. Methinks you hear me very well.

Mr. Marsh. Truly, my Lord, I do not hear well.

L. C. J. Holt. Well, you may spare him, if there be enough.

L. Preston. My Lord, I do not challenge him; I desire he may be sworn.

Mr. Serj. Tremain. We challenge him for the King.

Cl. of Ar. Thomas Harriot Esq; *Challenged.*

Naib. Wall Esq;

L. Preston. I do not except against him.

Mr. Sol. Gen. We challenge him for the King.

Cl. of Ar. Matthew Browne Gent.

L. Preston. I do not challenge him.

Mr. Serj. Tremain. We challenge him for the King.

Cl. of Ar. Thomas Crosse Gent. *Not appeared.*

Robert Breedon Gent.

L. Preston. I have nothing to say against him. *Sworn.*

Cl. of Ar. James Partherick Gent. *Challenged.*

John Bailly Gent. *Challenged.*

William Bourne Gent. *Challenged.*

Henry Gerrard Gent. *Challenged.*

Richard Cooper Gent.

L. Preston. I say nothing to him.

Mr. Serj. Thompson. I challenge him for the King.

Cl. of Ar. John Bignal.

L. Preston. I do not challenge him. *Sworn.*

C. of Arr. James Firne Gent.

L. Preston. I do not challenge him. *Sworn.*

C. of Arr. Robert Longland Gent. *Challenged.*

Edmund Salter Gent. *Challenged.*

John Howlet Gent. *Challenged.*

Richard Fitz-Gerald.

L. Preston. I do not except against him.

Mr. Serj. Tremain. We challenge him for the King.

Cl. of Arr. John Owting Gent.

L. Preston. I do not except against him. *Sworn.*

Cl. of Arr. Mark Lawne.

L. Preston. I do not challenge him. *Sworn.*

Cl. of Arr. Thomas Battle. *Not appeared.*

Francis Chapman Gent. *Challenged.*

Gilbert Urwin Gent. *Challenged.*

Richard Bealing Gent. *Challenged.*

Edward Fuller Gent.

L. Preston. I do not Challenge him. *Sworn.*

Cl. of Ar. John Collins Gent.

L. Preston. I don't Challenge him. *Sworn.*

Cl. of Ar. Thomas Hollings.

L. Preston. I have nothing to say against him.

Mr. Ser. Tremain. We challenge him for the King.

Cl. of Ar. William Silcock Gent.

L. Preston. I do not Challenge him.

M. Serj. Tremain. We Challenge him for the King.

Cl. of Ar. John Preston Gent. *Challenged.*

Thomas Wright Gent. *Challenged.*

Benjamin Boulby Gent.

L. Preston. I do not Challenge him. *Sworn.*

Then they were counted, and the Twelve Sworn were those whose Names follow.

JURORS,

Craven Peyton, Esq;

Hugh Squire, Esq;

George Ford, Esq;

Arthur Bailly, Esq;

Robert Breedon, Gent.

John Bignal, Gent.

James Ferne, Gent.

John Owting, Gent.

Mark Lawne, Gent.

Edward Fuller, Gent.

John Collins, Gent.

Benjamin Boulby, Gent.

Then Proclamation for Information and Evidence was made, as usual.

Cl. of Ar. Sir Richard Grahme, Hold up your Hand — (which he did) — Gentlemen, you that are Sworn, look upon the Prisoner, and hearken to his Cause. He stands Indicted by the Name of Sir Richard Grahme, late of the Parish of St Anne within the Liberty of Westminster Baronet, together with John Ashton, &c. — *prout* in the Indictment *mutatis mutandis* — and against the form of the Statute in that Case made and provided; upon this Indictment he hath been Arraigned, and thereunto hath pleaded *Not Guilty*, and for his Tryal hath put himself upon God and his Country, which Country you are; your Charge is to enquire, whether he be Guilty of this Felony and High Treason whereof he stands Indicted, or Not Guilty; if you find that he is Guilty, you are to enquire what Goods or Chattels, Lands or Tenements he had at the time of the Felony and High Treason Committed, or at any time since: If you find him Not Guilty, you are to enquire whether he fled for it, if you find that he fled for it, you are to enquire of his Goods and Chattels, as if you had found him Guilty; If you find him Not Guilty, nor that he did fly for it, you are to say so, and no more, and hear your Evidence.

Mr. Knapp. May it please your Lordship, and you Gentlemen of the Jury, This is an Indictment of High Treason against my Lord Preston, who is Indicted by the Name of Sir Richard Grahme Baronet, and stands now Prisoner before you at the Bar; and the Indictment sets forth, that the Prisoner, together with one John Ashton and Edmund Elliot, as false Traitors against our Sovereign Lord and Lady King William and Queen Mary, not weighing the Duty of their Allegiance, the 29th of December, in the Second year of their now Majesties Reign, at the Parish of St Clement Danes, in this County of Middlesex, did Conspire, Consult and Imagine to Depose their Majesties from the Throne and Government of these Kingdoms, and to bring the King and Queen to final Death and Destruction, and to Levy War within this Kingdom, and procure an Invasion to be made here; and that to bring their Treasons to pass, they did prepare and compose, and cause to be prepared and composed divers Treasonable Letters, Notes, Memorandums, and Instructions in Writing, which were to inform the French King and his Subjects, and other Enemies of the King and Queen, of the Number, Force and Condition of their Majesties Ships, and how some of them were Mann'd, and the Names of several of the Commanders of them, and how the Castles and Forts of Portsmouth, South-Sea and Gosport within this Kingdom were fortified, and how they might be Seized and Surprized by the King's Enemies; as also to inform them of the time, places, ways and means how they might invade this Kingdom, Depose their Majesties, and Fight with their

their Ships against their Majesties Ships, and cause and procure great Forces to be raised against the King and Queen, and send Ships to plague the City of *London*, and War and Rebellion within the Kingdom to procure; and that they did knowingly and secretly prepare and conceal two several Bills of Exchange for the payment of Money to the King's Enemies, and got these Bills of Exchange, Letters, Notes and Memorandums into their Custody; and afterwards, the 30th of *December*, for the Sum of One Hundred Pounds, by them, or some of them paid, they did hire a Ship to carry them and the said Bills of Exchange, Letters, Notes, Memorandums, and Instructions, into parts beyond the Seas, to, and among their Majesties Enemies; and did also prepare a Boat, which was to carry them to the Ship, and accordingly they went into the Boat, and went on Board the Ship with the Bills of Exchange, and Papers aforesaid, and being on Board they set Sail, and made away towards *France* with those Bills of Exchange and Papers, with intention to disperse them, and to perfect their said Treasons. And the Indictment further sets forth, that there was, and is a War between our King and Queen, and the French King, and the People of those parts, under his Dominions, who are Enemies of the King and Queen; the Prisoner, together with those other two named before, as false Traitors, did adhere to the Enemies of the King and Queen, and to bring about this Treason, they did procure such Bills of Exchange, Letters, Notes, Memorandums and Instructions, and did hire such Ship and Boat to carry them and those Papers into *France*, and did go on board the said Ship, and Sailed away for *France*, with intention to aid and assist the King's Enemies in Counsel and Intelligence, by those Papers, and Bills of Exchange, as I before opened unto you, and this is laid to be against the Duty of his Allegiance, against the Peace of their Majesties, their Crown and Dignity, and against the Form of the Statute in that Case made and provided. To this Indictment, Gentlemen, the Prisoner Pleaded he is Not Guilty, and for his Tryal hath put himself upon his Country, which you are; if we prove him Guilty, it is your Duty to find him so.

Mr. Sol. Gen. My Lords and Gentlemen of the Jury, the Indictment hath been opened to you at large, and I do not doubt but you have observed it: It consists of two Parts, which are formed upon two several Branches of the Statute of the 25th of *Edward 3.* the one is for compassing and imagining the Deposing and Destruction of the King and Queen; the other, aiding and assisting the King and Queens' Enemies.

Treason, Gentlemen, consists in the imagination of the Heart, but because that imagination of the Heart can be discovered no other way but by some open Act; therefore the Law doth require, that some Overt Act, manifesting that Intention and Imagination, be assigned and proved. I doubt not but you have observed that there are several Overt-Acts of both these kinds of Treason, assigned in this Indictment.

Gentlemen, the general Design of the Conspiracy (as will appear by the Evidence) was this: The King and Queen were to be Deposed, and this was to be effected by a French Army and a French Fleet.

It will be easily Granted, that nothing more dreadful can enter into the Imagination of an

English-man, than the destruction of our Fleet, and the Conquest of the Kingdom by the Arms of *France*.

But yet it will be part of the Evidence that we shall offer to you, that the Prisoners, and others of the Conspirators seem to be of another Mind, for amongst the Papers which were taken with the Prisoners, you will see one, which is styled, *The Result of a Conference*, wherein they pretend to shew the possibility of Restoring King *James* by the Power of the French King, and yet to preserve the Protestant Religion, and the Laws and Liberties of the Kingdom. They themselves went no farther than to think it possible, and I believe it will be hard to persuade any other English-man, that it is possible, unless one Instance could be given, that the French King ever employed his Arms for setting up any Body but himself, his own Religion, and his own Government. I never heard that he did pretend to Form any part of his Glories upon the virtue of Moderation, or Self-denial. And there can hardly be imagined a greater Instance of Self-denial, than for the French King, after he had destroyed the Dutch and English Fleets, and subdu'd our Forces at Land, not to make use of his Success, so as to add these Three Kingdoms to his Conquests, and possess himself of the uncontested Dominion of the Sea for ever, but only to Intitle him at so great Hazard and Expence, to become a Mediator between King *James* and the People of *England*, and by his Mediation, to establish the Protestant Religion, and the Liberties of the People; And yet as absurd as this seems, you will find this to be the Result of one of their Conferences. I did never think it was the part of any who were of Council for the King in cases of this Nature, to endeavour to aggravate the Crime of the Prisoners, by going about to put false Colours upon Evidence, or to give it more than its due weight; and therefore I shall be sure to forbear any thing of that Nature. But I think it my Duty to give some short Account of the Nature and Course of the Evidence to be produced to you, which consisting of several sorts, it will be in some sort necessary to open it, that you may the more clearly apprehend it, and with more ease make your Observations upon it.

Gentlemen, we shall produce in Evidence, as well living Witnesses, as Papers and Writings, which by a strange kind of Providence were taken upon my Lord *Preston*, and the other two Persons named in the Indictment when they were Apprehended; and therein this Design that I have opened to you, will be made Evident beyond all contraction.

As to the living Witnesses, the course of the Evidence will be this. One *Nicholas Pratt* is the Owner of a Smack, called the *Thomas and Elizabeth*, he does usually entrust his Wife *Jane Pratt* with the Hiring out of this Smack; *William Paceley* is Master of the Vessel, and has of late been made a Part-owner, to protect him from being Press'd; for it is a Priviledge that the Owners of Vessels claim, not to be Press'd.

Some time since, (the Witnesses will tell you the precise time) this *Jane Pratt* was sent for to one Mr. *Burdett's* House in the City, where she met with Mr. *Ashton*, who desired to know, whether she could undertake to Convey him

and some others, with safety into *France*. She said, she did not doubt but she could do so; and thereupon Mr. *Ashton* told her, That he and his Friends were Merchants and Traders, and that they should make great advantage, to the value of a Thousand Pounds at least, if they could be there quickly; their Discourse went no farther at that time, but Mrs *Pratt* was appointed by Mr. *Ashton* to bring the Master of the Vessel along with her, for he had a mind to Discourse himself with the Master, and they were to meet at the *Wonder Tavern* in *Ludgate-street*; and because there should be no mistake about the Meeting, Mr. *Ashton* gave the Woman a Note of Direction in Writing, ready to be produced.

Accordingly by the 29th of *December*, Mrs. *Pratt* and the Master came to the *Wonder Tavern*, where Mr. *Ashton* met with them, and there they treated of the Price to be given for the Hiring of this Vessel to carry them to *France*, and I think 150 Guineas was the Sum then insisted upon, but no Bargain was made at this time, but there was a new Appointment to meet the next day, which was the 30th of *December*, at Mr. *Burdett's* House.

The next day when she and the Master came thither, they found there together *Ashton* and *Ellyot*, the two other Persons named in the Indictment, and there this Matter was treated of with great secrecie in Mrs *Burdett's* Bed-Chamber.

And they came to an Agreement, that 100 l. should be the Sum to be paid to Mrs *Pratt* for conveying into *France*, *Ashton* and *Ellyot*, and two other Persons; So the Contract was Originally made for others besides Mr *Ashton* and *Elliot*, and the Money was actually deposited by Mr *Ashton* and *Ellyot* in Mrs *Burdett's* Hand, and a Six-pence was broken, one half of which was delivered to Mrs *Burdett* to keep, the other half Mr. *Ashton* was to take along with him, and when the Master had safely landed them in *France*, Mr. *Ashton* was to deliver his half of the Six-pence to the Master; which being brought to Mrs *Burdett* either by him or Mrs *Pratt*, upon the joining of the two pieces together, the Master was entituled to receive the Hundred Pounds.

The next Appointment was to meet at one Mr. *Rigby's* House in *Covent Garden*, and that was to be on the One and thirtieth of *December*, when the Voyage was to be begun: And the Tide not serving to go through-*Bridge* till late, the appointment was to meet the later. When they, Mrs. *Pratt*, and the Master came there, they found only Mr *Ashton* and Mr *Ellyot*, but before that time care was taken to provide a Sculler at *Surrey-Stairs* to be ready to carry them on board the Smack, and the Waterman was appointed to stay in a little Ale-House thereabouts to be ready when he should be called.

About ten a Clock at Night four Persons came down together, and went into this Sculler with the Master of the Smack, and made what hast they could through-*Bridge* till they came to *Pickle-berring* Stairs over-against the *Tower*, where the Smack lay, and there went aboard the Master and these four Persons, my Lord *Preston*, a Servant of my Lord *Preston's*, Mr *Ashton* and Mr. *Ellyot*.

The Smack set sail immediately after they were on Board, and their hast made them carry away the Watermans Coat which he had lent them whilst they were in the Sculler, and that

accident was the occasion of discovering who the Waterman was that carried them from *Surrey-Stairs*.

After they were on Board the Smack, they were possessed with great fear of being surpris'd, they knew the nature of the Business they were about, and the danger they were in if they should be discovered, and therefore when they were to pass by the *George Frigate*, a Man of War that lay in the River, they desired the Master to hide, which he did, by putting them under the Quarter-Hatches, a place where they could not stand or sit, but must lie along on the Ballast. When they were passed by the *George Frigate* they quitted that place, but when they were near the Block House at *Graves*, they grew apprehensive, and they desired to be hid a second time, which was accordingly done.

And they continued to lie in that place till they were taken, and it was a happy thing they did so, the place was such that they had not any possibility of throwing away their Letters and Papers, though they had made preparation for it in case of any Accident, having tied them together, and fix'd a piece of Lead to them, that so if they saw themselves in danger of being taken, they might easily sink the *Pacquet*; But being so close shut up in this place, that they could not execute their Purpose, the Papers were taken, and will be offered to you in Evidence.

Gentlemen, Captain *Billop*, by the Order of a noble Lord now present, was directed to use his utmost diligence to seize some dangerous Persons, of whose design of going beyond Sea for some very ill Ends, an Intimation had been given. He got ready a Pinnace well Mann'd, and went in pursuit of them down the River, and both as he went and return'd, he took care to search suspected Vessels; when he came to this, he demanded of the Master what number of Men he had on Board, pretending he came to press Men; the Master told him he had but three, and for those he had a Protection. But the Captain said he must be better satisfied, and must search the Vessel, and in the search he found these four Persons lying concealed in this secret place, under the Quarter-Hatches.

As they were taken out one after another, one of the Seamen observed Mr. *Ashton* to take up a Bundle of Papers from off the Ballast, and put it in his Bosom, and near the place where Papers lay, he took up two Seals, which after proved to be my Lord *Preston's* Seals when he was Secretary. Captain *Billop* being inform'd of this by that Seaman, he put his Hand into Mr. *Ashton's* Bosom, and took away from him the Bundle of Papers with the Lead fix'd to it.

When they were put on board the Captain's Pinnace, they all pressed him much, that he would let them go on shore at *Gravesend*, pretending want of Refreshment, they not having eaten, and the Night having been cold, but he did not think that proper, nor safe, but told them, they should go on Board the *George Frigate*, and refresh themselves there.

When they came on Board the *George Frigate*, all the three Gentlemen, and my Lord *Preston* in particular, were very earnest with Captain *Billop* to dispose of the Bundle of Papers, mixing extraordinary Promises, with great Complements.

Not prevailing there, when they were return'd to the Pinnacle, they renew'd their Sollicitations, and one of them told him, it would be easie to remove all Suspicion by fixing the Lead to some other Papers of little Signification, which were found in my Lord *Preston's* Pocket, which he might produce, and they would without difficulty pass for the Papers that were taken.

But the Captain was too just to comply with this Proposal. When they found he was not to be moved, you will find from the Witnesses, that their Promises were turned into Threats, and they used another sort of Language.

When they were brought to *Whiteball Stairs*, upon their landing they gave Money to the Master and the Seamen, desiring them to say, they were hired to go for *Flanders*, and not for *France*.

Gentlemen, these things which I have opened carry a strong Presumption of Guilt, for *Englishmen*, especially one of that Quality of my Lord *Preston*, to go into the Country of an Enemy without any manner of Passport, and in such a manner as they could not expect but to be seized for Spies, unless they were assured, that their Character was so well known there, that they should be look'd upon not as Persons coming to get Intelligence, but to give it, unless they were well assured of a good Reception, when they came there.

But there is no occasion to leave any thing to Conjecture in this Case, what is contained in these Papers makes the Design of the Voyage beyond dispute. I think, Gentlemen, after you have heard the Evidence, you will be very well satisfied, that my Lord *Preston* and the other two who stand indicted, were equally concerned in the Papers; they were all alike earnest to preserve them from being seen, they all solicited for the disposing of them, and promised Rewards if they might prevail.

Gentlemen, these Papers are of various Natures.

One I mentioned before, is Entitled, *The Result of a Conference between several Lords and Gentlemen, both Tories and Whigs*, in which it was undertaken to prove the Possibility and Methods of Restoring King *James* by a *French* Power; without endangering the Protestant Religion, and the Civil Administration according to the Laws of this Kingdom.

Another contains Heads for a Declaration to be prepared, in order to be published when the *French* have had Success at Sea, and are landing; and that is filled with such Pretences as they thought most specious, and most likely to amuse and delude the People.

There is another sort of these Papers which consists of Letters. These Letters are directed in false Names, and are not subscribed, and it is not to be imagin'd it should be otherwise. Yet, Gentlemen, (though that is not the present Business) the Hands of the Writers of these Letters are very well known, and the Subject Matter of them will easily reveal to you for whom they were intended, for though these Letters are most of them Written under divers Cants, some under the Colour of Trade, some of them under the Colour of a Law-Suit for the Redeeming of a Mortgage, others under the Notion of a Match, and a Settlement to be made upon that Match, yet the real Business is so

plain, that you need but hear them read to see through the Disguise.

Though they begin generally in the Stile of Merchants writing to one another, or the like, yet towards the end of the Letters you will observe Expressions of Duty and Reverence (Terms which do not usually pass in Correspondence between Persons of that sort) sufficient to shew, that somewhat else was intended to be covered in what went before.

Gentlemen, It will appear to you, that some of the Writers of these Letters were of the number of those who were secured the last Summer when the *French* Fleet was upon our Coasts, and you will observe they complain, that by reason of that Restraint, the Design was very much hindred, though they have endeavoured to redeem that loss of time since their Discharge, and have carried on the Business with more vigor than ever.

In short, The design of these Letters is to importune the setting out of the *French* Fleet with all possible Expedition: They say they must not suffer such a fit Season to be spent unprofitably; That the best time is between this and the first of *March* to come to a good Market; and if they come not before the 10th of *March*, all will be lost. In another of their Letters they say, If the Suit be well solicited and managed, it may come to a final hearing before the end of *Easter* Term.

They complain that there are several indiscreet Letters came from *St. Germain's*, that turn to the prejudice of the Design. Those Letters are not enough disguis'd to deceive the People here, but speak too plainly what is to be expected from themselves, and from the *French*. You will take notice, that the Letters which all you will hear, are all Bills with high Characters of the Bearer: for which reason they write in such general Terms, because the Bearer was intrusted with the whole. Some of the Letters say, no Particulars are or need be expressed, because he will inform them of every thing. Others, That they could not write so much as he could say; and that nothing was wanting but to allow him a full and fit Season to give an account of all the Business; and that they intirely depend upon his account of them and their Condition.

And, Gentlemen, in one of the Letters the Bearer is styled a Lord; and to whom can that be applied, unless to the Prisoner at the Bar?

In another Letter, when they speak of sending the Copper and the Linen (the Goods pretended for carrying on the Trade) it is added, And what the meaning of that is, they must refer to the Bearer, who was able to give them a particular account.

I have mention'd so much of the Papers, only that you might have a general Notion of them; that so when you hear them read, you may more readily make your Observations. I assure you I have been as careful as I could, not to exceed the Truth in opening any part of the Evidence. But it is your part to see whether what I have opened be made out in Proof.

There is another Paper that gives an account of their Majesties Fleet to be sent out this Summer; and there is an Observation at the end of it, that it was hoped it may be out in *March*. But you will find by other Papers (and particularly by one of my Lords own Hand-writing) that he was of another mind, that the Fleet will not be out before *June*.

T t t t

Gentle-

Gentlemen, the last sort of Papers which I will mention to you, are some *Memorandums* and *Notes*, written by my Lord *Freston*; wherein he gives an account of several things of great moment; which as his memory served him, are put together without Connexion or Method, being only to remind him of them when he should have occasion to mention them.

He therein gives an account of the number and strength of the *English Fleet*; how they are manned, and who are the Principal Officers and Commanders, and in what time they will be out.

He likewise gives an account of the number and state of the *Dutch Fleet*, and how that is to be divided and disposed of.

And with relation to the *French Fleet*, there is a particular *Memorandum*, That they must be out at farthest in *April*; That they must be out so as to separate the *Dutch Fleet* and ours; That they must be sure to look in at *Spithead* as they come by, and secure what Ships should be in that Harbour from joyning the rest.

There is also a hint given of those that were most likely to come in to them. And there is Advice in what place their Fleet should fight ours. They must not come so high as *Beachy*, where they fought the last year, but rather chuse to fight in the Chops of the Channel.

There is an account of *Portsmouth*, how fortified and garrison'd, that it had but 500 Men; that *Gosport* had nothing but *Pallisadoes* about it; and *Southsea Castle* very weak.

There are *Memorandums* of other Heads proper for a Declaration.

There are the Names of several Persons, some of them with particular Characters, and some without; and amongst the rest, there is this Character given of the Clergy of the City of *London*, that they are the worst of all others.

Gentlemen, we shall proceed to the Evidence, and first call the Living Witnesses, and then read the Papers; and when you have heard what the one can say, and what the other contain, we must leave it to your Consideration, and submit all to the Direction of the Court.

Mr. Serj. Tremain. Pray swear Mrs. Pratt.

Jane Pratt.

Who was sworn with Seven or Eight more.

Mr. Serj. Tremain. Mrs. Pratt, Pray will you tell us what you know concerning the hiring of a Vessel, and whither it was to go? and by whom it was hired, and for what? Pray tell your whole Knowledge in this Matter.

Mrs. Pratt. Mr. Burdet, may it please your Lordship, sent for me, to his House, to hire a Vessel to go for *France*, and asked me if I could carry them secure; I told them I could let them have a Smack that would carry them; and if it please you my Lord, we met several times at his House, and at last there was Mr. Ashton there, and Mr. Ashton appointed to meet at the Dog Tavern upon *Ludgate-bill*; I think they call it the *Wonder-Tavern*.

L. C. J. Holt. Mistress, Pray begin again, and speak out.

Mrs. Pratt. Mr. Burdet sent for me to hire my Smack to go for *France*, and they asked me if I thought it would carry them secure; I told them yes, I thought it would. And I came several times about it to Mr. Burdet's House; the Smack was not then come to the Tower, as it did afterwards; and then after they sent for Mr. Ashton,

and he met me at Mr. Burdet's, and meeting at Mr. Burdet's, he gave me a Note, to meet at the Dog Tavern upon *Ludgate-bill*; and there Ashton met, but Mr. Burdet did not come.

Mr. Serj. Tremain. Who was with Ashton when you met at the Dog Tavern?

Mrs. Pratt. None but a Man of his, as Mr. Ashton said; there we sat about an hour and an half and did nothing: At length we went away, and appointed to meet at Mr. Burdet's House the next day at seven or eight a Clock, and there we met, and the Bargain was made.

Mr. Serj. Tremain. What Bargain?

Mrs. Pratt. I askt 150 *l.* and they told me that was too much; says Ashton, I will give you Four-score: Says Mr. Burdet, pray encourage them, offer them 100 *l.* thereupon he did offer 100 *l.* and we agreed for 100 *l.*

Mr. Serj. Tremain. What day was that, can you remember?

Mrs. Pratt. We met on the Monday, and the Tuesday we agreed.

Mr. Serj. Thompson. What Money was paid?

Mrs. Pratt. Ninety three Guineas and Six-pence.

Mr. Serj. Tremain. Who was by when the Bargain was made?

Mrs. Pratt. Mr. Elliot was along with them; Mrs. Burdet and the Master of the Vessel at the Agreement.

Mr. Serj. Tremain. What is the Master's Name?

Mrs. Pratt. His Name is *Pasely*, and there was Six-pence broken, and Mr. Ashton took one of the Six pences, and Mr. Burdet ordered him to give his Wife the other, and so he did; and when the money was paid, Mr. Ashton brought it in a Paper wrapt up, and said, we should see it told out, and he told it out there, and it was Ninty three Guineas and the Six-pence.

Mr. Serj. Thompson. Who did they tell you they were to carry into *France*?

Mrs. Pratt. Truly my Lord they said Three, that was all.

Mr. Serj. Tremain. What followed then? Did they give you any Note where you were to come for them?

Mrs. Pratt. Mr. Ashton bid Mr. Elliot write a Note where they should come; it was at Mr. Rigby's in *Covent-Garden*, at the *Seven Stars*, and there we were to meet at Eleven a Clock at night; and when we came there, Mr. Ashton was within, and went out and fetch'd in some Company, Mr. Elliot came and two other Gentlemen that I never saw in my Life before.

Mr. Serj. Thompson. Mistress, you speak of the breaking of a Six-pence, what was to be done with that?

Mrs. Pratt. My Master was to bring the half of the Six-pence that Mr. Ashton had, to Mistress Burdet, and then we were to have the 100 *l.*

Mr. Serj. Tremain. Had Mrs. Burdet the other Piece?

Mrs. Pratt. Yes, Mr. Ashton had one half, and she had the other.

Mr. Serj. Thompson. Was there any Provision carried on Board this Smack?

Mrs. Pratt. Yes, there was a Hamper and a Trunk, which were fetch'd from Mr. Burdet's House; my Man *John Fisher* carried the Trunk, and a Porter carried the Hamper, and I took care to see it put in the Vessel.

Mr.

Mr. Serj. Tremain. When you came to *Covent-Garden* that Night, what Discourse had you? and what Inquiries were there made, and by whom?

Mrs. Pratt. Mrs. Ashton comes in, as she said Mr. Ashton was her Husband, and said there was some News from Court, of having Papers in a Hat, and that they had chosen some Lord or other: Something it was I remember, I can't tell what; but says one Gentleman that stood by, and said, I was chosen the last Year, that signifies nothing; and another said, I missed it; It is only a *Christmas Gambal*, it signifies little.

Mr. Serj. Tremain. What further discourse had they?

Mrs. Pratt. Mrs. Ashton said she was afraid they should have no very good Luck, for the Cock crowed.

Mr. Serj. Tremain. Was there any discourse what advantage they should get by going, or you by carrying of them?

Mrs. Pratt. They said they would help us to the earning of 1000*l.* before *Lady-day*, if they went this time safe.

Mr. Serj. Tremain. Pray Mrs. recollect your self; were they to go to *Flanders*? or where?

Mrs. Pratt. They were to go for *France*: they were not to go for *Flanders*.

Mr. Serj. Tremain. What time of Night did you depart from Mr. Rigby's?

Mrs. Pratt. About Eleven a Clock.

Mr. Serj. Thompson. How did they go away from Mr. Rigby's?

Mrs. Pratt. I did not go with them: Mrs. Ashton kept me, and gave me the Leg of a Goose and some Drink.

Mr. Serj. Tremain. Do you know any thing further?

Mrs. Pratt. No; I think I have told all.

Mr. Serj. Tremain. Were you hired for *France*, or *Flanders*? I ask you once again.

Mrs. Pratt. We were hired for *France*; any place there where we could touch.

Mr. Serj. Tremain. Was there any particular Port mentioned?

L. C. J. Holt. If you have done with her, will my Lord ask her any question?

L. Preston. My Lord, I desire she may be askt, whether she ever saw me before?

Mrs. Pratt. No; never, my Lord, but in the Tower.

L. C. J. Pollexfen. But, she says, when they were at Rigby's there came in two Gentlemen with Mr. Ellyot that Night.

L. Preston. I desire to know of her whether I was one of them two.

Mr. Serj. Thompson. My Lord, she does not say your Lordship was one of them.

Mrs. Pratt. No, my Lord, you were not one of them.

Mr. Serj. Thompson. Then set up Pafeley. Pafeley, what do you know about hiring of this Smack to go for *France*? I think you are Master of the Smack, called the *Thomas* and *Elizabeth*, are you not?

Mr. Pafeley. Yes.

Mr. Serj. Thompson. Then pray give an account of the whole matter.

Mr. Pafeley. The Smack was hired of the Woman, and not of me; and when I came up to *London* she told me she had got a Voyage over to *France*, if I was minded to go; I said, yes: and she appointed me to go along with

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her to this Mistress, what do ye call um's House, this Mrs. Burdet, and when he came to this House, there was no body within but Mr. Ashton: presently after came in Mr. Ellyot; after they came in they told us the things were not ready yet, but they would be ready presently to carry on Board; when these things were ready, John Fisher carried the Trunk down, and the Porter carried the Hamper, and I went with them along to *Billinggate* and carried them on Board; and when I carried them on Board I went to *Billinggate* again, and so we went along to this Mr. Burdet's House; and so when we came up to Burdet's House, Ashton and Elliot were not there present, but we had been there but a little time e'er they came in, and then they came and said to my Owner and me, You shall see the Money told; it was all in Gold but one Six-pence; there was Ninety three Guineas: And, after the Money was told, there was a Six-pence that was broken in half, and the Guineas he rolled up in a Paper, and gave them to Mistress Burdet, and bid her lay them up; and he gave her one half of the Sixpence, and kept the other half himself; and when I brought that other half that he had, or my Owner, then she was to give the Money to her or me.

Mr. Serj. Tremain. Pray what Room of the House was this in at Mr. Burdet's?

Pafeley. It was on the Left Hand going in.

Mr. Serj. Tremain. Was it a Bed-Chamber?

Pafeley. Yes, 'twas.

Mr. Serj. Tremain. What time of Night was it pray?

Pafeley. About Eight a Clock.

Mr. Serj. Tremain. What discourse had you with them there, pray?

Pafeley. They asked me if I thought they might get well over? I told them yes, I believed they might.

Mr. Serj. Thompson. Did they tell you what part of *France* they were to go to?

Pafeley. No, they named no place, but any part in *France*.

Mr. Serj. Tremain. Well, go on, tell us what they said further.

Pafeley. So, Sir, they gave us direction to meet them at the *Seven Stars* in the little *Piazza's* in *Covent Garden*: when we came there it was Eleven a Clock at Night, and they were not in the House when we came in, except 'twere Mr. Ashton; but presently after Ashton and Ellyot came in, and they sat down; and so in came two Gentlemen more, but what they were, or who they were, I don't know; and they discoursed about Papers shaking in a Hat, and said they should have no good Luck, for the Cock crowed: And after this Ellyot and Ashton came out of the House and called me to go with them, and after we were gone out, Mr. Ashton leaves Ellyot and went away from him, and Ellyot bid me go along with him, says, come Master, come along with me; he did not name any place whither they were to go, but it happened to be *Surry-Stairs*, and going down, he calls in at the corner House, which is an Ale-house, for the Water-man, and bid me go before to the Water-side; and when we came thither the Water-man steps into his Boat, and I after him; and when I was in the Boat I went into the Stern, and by that time I was seated in the Stern there came down four Men; but I never saw my Lord and his Man before they came into the Wherry.

T t t t t 2

L. C. J.

L. C. J. Holt. Who came into the Wherry?

Paseley. There was all those four, *Mr. Ashton*, *Mr. Ellyot*, my Lord, and his man.

L. C. J. Holt. Where was this do you say?

Paseley. At *Surry-stairs*, there the Boat was.

Mr. Serj. Tremayn. Was the Prisoner at the Bar one of them?

Paseley. Yes, he was.

L. C. J. Holt. Well, what did you do then?

Paseley. After we were seated in the Boat at *Surry-stairs* we put off, and went down through Bridge, and going through Bridge we came on Board; the Vessel, riding just against the Tower almost, and we went all on Board; and when we came on Board, my men were all asleep, and being asleep, I called them out of the Cabin to hale up the Anchor; and there being very little Wind stirring, we could not go very far, but came just below the half-way Tree, and then we stopt, and I order to drop the Anchor for fear of the Vessels in the River: and the next morning about Eight a Clock we weighed our Anchor again, and went on till we came near to the *George Man of War*, and there they all of them hid.

Mr. Serj. Tremayn. Who?

Paseley. All of them, my Lord. There was *Ashton*, and *Ellyot*, and my Lord *Preston*, and his man.

Mr. Serj. Thompson. In what place did they hide?

Paseley. In the Quarter-hatches, under the Hatches where we lie.

Mr. Serj. Thompson. Did they desire you to hide them?

Paseley. Yes, they did.

Mr. Serj. Thompson. What did they say?

Paseley. They said; that if there should come any Boat on board to press, I should shew them my Protection; and so there came no Boat then.

Mr. Serj. Tremayn. How big is this place that they hid in?

Paseley. 'Tis in the Quarter under, near the Cabin-hatches.

Mr. Serj. Tremayn. I ask you what kind of place it is?

Paseley. They cannot sit upright, nor stand upright, but they are fain to lie along, or lean upon their Elbows.

Mr. Serj. Thompson. Well, go on, what happened afterwards?

Paseley. After that we were past the man of War; they came up and sate in the Cabin where we used to eat our Victuals; and when we came to *Gravesend*, over against the *Dock-house*, they would go down again and hide, and did so till we passed the *Block-house*, and then they were for coming up again, and then I saw a Boat coming about *Tilbury* which made towards us, and thereupon they ducked down again, and the Hatches were laid down upon them, and there they remained till they were taken.

Mr. Serj. Tremayn. Where were they taken?

Paseley. They were taken between the North *Block-house* and the Little—

Mr. Serj. Tremayn. But I mean in what part of the Ship?

Paseley. They were taken in that little place where they were hid.

Mr. Serj. Tremayn. Were the Hatches shut down upon them?

Paseley. Yes, they were.

Mr. Serj. Tremayn. How long had they been hid before they were taken?

Paseley. A quarter of an Hour, or thereabouts.

Sir W. W. Did they desire to be hid there?

Paseley. Yes, they did, and they were hid there.

Mr. Serj. Thompson. Now tell us, after such time as they were taken, what they said, and what you observed.

Paseley. After they were taken, they said nothing to me, my Lord, nor none of them did speak to me after the Boat had taken them.

Mr. Serj. Thompson. But what happened after they were taken?

Paseley. After they were taken, Captain *Billop* ordered them to go into the Boat, and us with them; and when we came to *White hall-stairs*, one of them said to me, Master, when you come upon your Examination, say you were bound to *Flanders*, and not for *France*.

Mr. Serj. Thompson. Which was that that said so?

Mr. Paseley. 'Twas *Ellyot*, and he gave me half a Crown to bear my expences that Night, and said he would remember to take care of us afterwards.

Mr. Serj. Thompson. Did they give any money to the Seamen?

Paseley. Yes, *Ashton* gave one of my men half a Crown, and bid him say he was bound for *Flanders*, and not for *France*; and my Lords man gave my other man half a Crown.

L. C. J. Holt. Was my Lord *Preston* by when that money was given?

Paseley. My Lord was upon the Bridge, but not near me.

Mr. Serj. Thompson. If my Lord have any Questions to ask him, we have done with him for the present.

L. Preston. No, my Lord, I have no Questions to ask him.

L. C. J. Pollexfen. Was my Lord *Preston* by when the directions was given you to say you were to go to *Flanders*, and not to *France*?

Paseley. I say he was upon the Bridge, but was not near me.

Mr. Serj. Tremayn. What discourse had you on board with any of them?

Paseley. Very little. They askt me if I thought they should go clear, and I told them yes, I thought they might.

Mr. Serj. Tremayn. Clear of what?

Paseley. Clear of the Vessels searching: They examined me that Night I was at the *Seven Stars*, if I knew the way of the *Swing* on the back of the Channel, to go clear of the Town. I told them I did not know the way by the Back of the Sands by *Margaret's*, but the *Swing* would not keep them clear of the Town.

Mr. Serj. Tremayn. Was there a Note written whither you were to come?

Paseley. Yes. There was a Note written to meet them at the *Seven Stars* in the little *Piazza's*.

L. C. J. Pollexfen. Whereabouts is *Rurder's* House?

Paseley. That is in *Queen-street* in the City.

Mr. Serj. Tremayn. You *Paseley*, Did the Waterman that brought them on Board, leave two Coats behind him?

Paseley. Yes, the Waterman did leave two Coats;

Coats; and I put them into my Chest, and afterwards they broke open my Chest, and took them out, and brought them to my Lord Chief Justices.

Mr. Serj. *Tremain*. Then we will next produce that Waterman. Set up *Charles Betsworth*.

Mr. Serj. *Thompson*. Come, will you give us an Account who you carried on Board a Smack, and what hapned.

Betsworth. I was going over the Water from *Surry Stairs* about Seven or Eight a Clock, and a Gentleman at the Stairs call'd *Sculler*, and ask'd me if I would carry him down the River; said I how far, says he to the Tower; said I 'tis against Tide, and I can't carry you down so low; he said he would stay till the Tide turn'd; said I, if I be out of my Bed so long, I deserve to be well paid for it; If you will give me Half a Crown I'll carry you down; says he I'll give it you; so then I came a-Shore, and he ask'd me what my Name was, I told him *Charles Betsworth*; says he, will you be sure to stay for us; Yes, said I, if you will be sure to come: If I be not at the Stairs, I'll be at that Ale-house there in the Corner; so I staid, and carried over a Fare or two over the Water; and about Eleven a Clock, as I was sitting in the House a Gentleman comes, and calls *Charles*, and so out I went to my Boat, and took them in. There was one man, as I suppose, in the Stern, and he that called me out followed me down, and by and by came three more into my Boat; one of them had a Whitish Cloak on, and the other a gray loose Coat, and a red Bag, of the quantity of a Peck; and so we put off, and rowed away; and just under the Temple Wall, which was all the Words I heard from them, that I can remember, says one Gentleman, When do you hear the King goes away? and another made answer and said; a *Tuesday*: So we rowed down through Bridge, and when we were through Bridge, they asked where the Vessel lay; and he that was in the Stern said, it was *Southwark* side, over against the Tower, and bid me row over thither. And when we came just below *Battle-Bridge*, that man said, that is she that rides a Head of us, I look'd, and she had a Pennant up; so they were put on Board; and as soon as they were on Board, she went off, and I rowed up to the Bridge, and went through Bridge, and came up as far as and there I staid and took my Scull and my Staff out of my Boat; and when I took them out, I missed my Clothes; says I, God blefs me, I have lost my Clothes; but then I thought it was but a still Tide, and therefore I would try if I could overtake them; for I thought they could not be got far, there being little or no Wind; so I went down to the Place where the Vessel lay, and she was gone; and I enquired of several Smacks that lay there, but could hear nothing, and I rowed as low as *Limehouse Reach*; and about *Black Wall* and *Limehouse Reach*, I came up to a Smack, that I supposed was she, and I cry'd out, Ho the Smack; and they answered me So; I asked them if I did not bring a Fare a board that Smack a while ago; then they said no; I told them I had brought a Fare on Board some Smack that lay about *Horsleydown* and *Pickle-berring Stairs*, and they had got two Coats of mine, which I had forgotten, and it had a Pennant up when they went on Board, but this had none; so I rowed on further, till I came as far as *Berking*

Sherf; and I thought there being so little Wind that none could be gone beyond me; and therefore waited to see a Smack with a Pennant coming down, but I could not meet with it, and there I lay all Night in my Waitcoat; and the next day I came back to *Greenwich*, and as I came along, I went on Board several Vessels to enquire, because I took her for an Attendant upon a Man of War, but I could not hear of my Clothes, till last *Friday* was Seven-night, two Watermen came, and brought me the Clothes I lost.

L. C. J. Then you have your Clothes again?

Betsworth. Yes, I have.

Mr. Serj. *Thompson*. Pray look upon that Gentleman there, my Lord *Preston*, are you sure that he was one of them that was in your Boat?

Betsworth. I can't tell that ever I saw him in my Life before.

Mr. Serj. *Tremain*. You *Pafely*, I ask you, was my Lord *Preston* one of the Gentlemen the Waterman brought on Board your Smack?

Pafely. Yes, he was.

Mr. Serj. *Tremain*. Is that the Waterman?

Pafely. Truly my Lord I can't tell; but the Waterman's Coat was left on Board.

Mr. Serj. *Tremain*. Then let me ask you another Question, Had you a Pennant?

Pafely. Yes, I had when I came on Board.

Mr. Serj. *Tremain*. Did you take in your Pennant?

Pafely. Yes, I did afterwards.

Mr. Serj. *Tremain*. Why did you take it in?

Pafely. They asked me if there was a Pennant; and I told them yes; and they bid me take it in.

Mr. Serj. *Tremain*. Who bid you take it in?

Pafely. *Ellyot* did; so we took it down.

Mr. Serj. *Thompson*. Will my Lord ask *Betsworth* any Questions?

L. *Preston*. No, I have nothing to say to him.

Mr. Serj. *Tremain*. What did they carry a board with them, *Pafely*?

Pafely. They had nothing a board but the Trunk and Hamper, that were brought down before from *Burder's House*; and there was nothing brought in the Boat but only a Leather Bag.

Mr. Serj. *Tremain*. Then set up *Fisher*. I think his Name is *John Fisher*. You were one of the Seamen that did belong to the Smack, I think.

Fisher. Yes, I was.

Mr. Serj. *Thompson*. Pray then tell us, who were brought thither; and what happened upon it.

Fisher. About six Hours before they came on board us, our Master came himself on Board, and took me along with him; but whither I was to go then I did not know. He carryed me to a House in the City, and there gave me a small Trunk to carry, and a Hamper to a Porter: and we went away with them; and he bid us, at *Billingsgate*, carry them a Board, which we did.

L. C. J. *Holt*. When was the Trunk and Hamper brought on board?

Fisher. About six or seven a Clock at night, on *Wednesday*, I think.

L. C. J. *Holt*. Well, and what followed?

Fisher. My Lord, and Mr *Ashton*, and Mr *Ellyot*, and my Lords man, and the Master came on Board between eleven and twelve: There was no more came on Board that I know of; but we were asleep when they came on Board:

Board; and immediately our Master ordered us to hale up the Anchor. Now there was but little Wind stirring; and by that time we were sail down as low as half-way Tree, it being still Flood, we could go no farther: so there we were ordered to stop, and we lay by till morning; and about eight in the morning we weighed Anchor again, and about nine, when we came to the *George* Man of War, they hid, they desired to go down into the Quarters, and we laid the Hatches upon them.

Mr. *Serj. Tremain*. What kind of place is it that they hid in?

Fisher. They could not stand upright, nor sit upright, but they must lie or lean upon their Elbows. So when we were got below the Ship, they came up again into the Cabin: And when we came at *Gravesend* near the Block House, then they hid again till we were below the Block-House; and then we spied a Boat coming, which made them to keep below; and there they continued till Captain *Billog* took them.

Mr. *Serj. Tremain*. Were they all four there?

Fisher. Yes all four.

Mr. *Serj. Tremain*. After they were taken, what said they?

Fisher. After such time as they were taken, and come up to *Whitehall Stairs*, Captain *Ashton* gave me a Half-Crown piece; and bid me say they were going to *Flanders* and not to *France*.

Mr. *Serj. Tremain*. But whither were you going?

Fisher. Truly, I did not know where we were to go, till since we came on Shoar. I understood nothing till they hid; and then indeed I thought we were going to *France*.

Mr. *Serj. Tremain*. When did any Body tell you you were to go to *France*?

Fisher. Since we came on Shoar.

Mr. *Serj. Thompson*. Will my Lord ask him any Questions?

L. *Preston*. No.

Mr. *Serj. Tremain*. Then the next Witness we call is one *Amonds*, Pray tell us what you know of this Matter.

Amonds. May it please you my Lord, I know nothing concerning my Masters Business, but all that I know of this Business is, That they came on Board about Twelve a Clock at Night, and I was then asleep in the Cabin, and hearing some come on Board, and my Master call, I looked out, and there were three or four Gentlemen, and my Master, and he ordered us to set sail immediately, and make our way down as fast as we could; there was little or no Wind; so that when we came down to the half way Tree, we were forced to come to an Anchor, and there we rid at Anchor till it was broad day, when there was a brave Gale to the Westward, and by that time we got down to *Long Reach*; about Nine a Clock we came to the *George* Frigate, a Man of War, and they understanding that, desired to hide these Gentlemen.

L. C. *J. Holt*. What Gentlemen?

Amonds. My Lord *Preston*, Mr *Ashton* and Mr *Ellyot*, and the other Gentleman that was with them.

L. C. *J. Pollexfen*. Look upon my Lord there, was he one?

Amonds. Yes, that Gentleman was one.

L. C. *J. Holt*. Well, go on.

Amonds. And so Sir, after we were passed the Frigate, they came up again, and did not de-

sign to go down any more till they see some other danger. When we came almost to *Gravesend*, they went down again: When we were past the *Block House* I was at the Helm, and they were resolving to go to Dinner, and bid that Man, my Fellow, to reach them some Victuals out of the Hamper: And while he was reaching them some Victuals, I see the Pinnace coming towards us; said I, here is a Pinnace coming a Board; says my Lord and they, we must go down again and hide, and so they did go down again; we apprehended that they were coming aboard to press us, and they had no mind to be seen. When the Pinnace came near, they waved to us in this manner, as much as to bid us stay; so we laid the Sail by, and staid for them till they came up; and when the Captain came on Board, says he, this is worth our coming on Board, here are a couple of brisk Seamen will do the King Service; I must have them, I think; says I, I hope not so, Noble Captain; says he, have you any thing to keep your selves clear? Yes, says our Master? I am sorry for that, says the Captain; what is it? says the Master, I have a Protection; says the Captain, let us see your Protection: so the Master pulls out his Protection, and shews it: Well, says the Captain, I must look a little further, and away he goes into the Cabin, and takes up the Hatches where these Gentlemen were; says the Captain; Hye, hye, who is here? Turn out, says he; but I suppose they did not make so much hast as the Captain expected; so he called some of his men on Board; and when they came on Board, my Lord came out, and the rest of the Gentlemen and says my Lord to the Captain, I hope you will be so kind as not to take any thing from us: Says he, I'll meddle with nothing but Papers, 'tis Papers I look for, and put his Hands in both his Pockets and pulled out Papers, and put them into his own Pocket, but whether they were new or old I can't tell; and there was a Watch likewise, but that he gave my Lord again, and said, I'll meddle with nothing but Papers: then he searcht Mr. *Ellyot*, and Mr *Ashton* was the last that came out, and there was one of my Lords Watermen in the Cabin with him; and, says he, and please you Noble Captain, That Gentleman puts something in his Bosom: Says the Captain, What did you put in your Bosom, Sir; nothing, says he, but my Handkerchief.

L. C. *J. Holt*. Who said so?

Amonds. Mr. *Ashton*, and shews him his Handkerchief, and afterwards the Captain put his Hand in Mr. *Ashton*'s Bosom, and pulled it out.

Mr. *Serj. Thompson*. What did he pull out?

Amonds. A Roll of Papers with a Piece of Lead to it.

Mr. *Serj. Thompson*. Did you see the Lead fix'd to the Papers.

Amonds. I did see it fix'd to the Packthread that tyed the Papers.

Mr. *Serj. Tremain*. What sort of Place is it in which they were taken?

Amonds. They could not sit nor stand upright in it.

Mr. *Serj. Tremain*. Had you any money given you?

Amonds. I had half a Crown given me by my Lord's man.

L. C. *J. Holt*. Who was it gave you the money?

Amonds.

Amonds. It was my Lord's man, he that was on Board the Ship; he gave me half a Crown in *Whitehall*, and said, I should say we were bound for *Flanders*, and not for *France*, but who the half Crown came from I can't tell, my Lord said nothing to me at all.

Mr. Serj. Tremain. Did you hear any Discourse as they came down?

Amond. No, I did not mind any thing of discourse, for I never came among them, unless it were at the Hour of Watching.

L. Preston. Pray did I say any thing to you at *Whitehall*?

L. C. J. Holt. My Lord, your way is to propose your Questions to the Court, and they will ask them for you.

L. Preston. My Lord I desire to ask him if I said any thing to him at *Whitehall*.

L. C. J. Holt. What say you? Did my Lord *Preston* say any thing to you at *Whitehall*?

Amond. No my Lord, he never said any thing to me at all; it was his man that gave me the half Crown, and spoke to me.

L. C. J. Holt. Will your Lordship ask him any other Questions?

L. Preston. No my Lord.

L. C. J. Holt. Then call your next Witness.

Mr. Serj. Tremain. Swear Captain *Billop*.
Which was done.

Mr. Serj. Thompson. Come, Captain *Billop*, Pray will you tell my Lord and Jury, where you did apprehend my Lord *Preston*, and the Circumstances of what happened at their taking.

Capt. Billop. Sir, I met with them at the upper end of the *Hope*.

Mr. Serj. Thompson. Pray give us an Account from the beginning to the end, what passed, how you came with the Boat, and all that happened at that time.

Capt. Billop. About Two a Clock, or between One and Two, upon the last of *December*, my Lord *Danby* came to me at one of the Doors of the House of Lords, and told me his Father would speak with me; and he carried me to my Lord *Linsey's* Chamber, where immediately my Lord President came, and told me there were some Persons were going for *France* about Business of dangerous Consequence, and he desired me to use some means to get them apprehended; I then proposed what I should have to enable me for the Undertaking. My Lord *Danby* said there was such a Boat, that he would procure for me, and my Lord President gave me a Letter to another Person, who was to instruct me further about this Matter: My Lord *Danby* got the Boat ready, and some Men and Arms in it; but I thought there was not Arms enough, so I borrow'd some Arms of my Lord *Lucas*, and about Eleven a Clock as near as I remember we put off from *Tower Wharf*, it being very calm; I thought we should be swifter than any Vessel, and should have the advantage of them all; and therefore run down as far as *Graves-End*; and I brought several Vessels by the Lee, in which time I pressed some *Barkin* men, two or three of them; and amongst them, one that knew the Vessels that lay in the River, having been on Board several; and we did board divers, and took out some Men, having a Press Warrant; and he that I had taken of the *Barkin* Men, after he had passed by several Vessels, seeing this Vessel sailing, told me that was the *Thomas* and *Elizabeth*; whereupon we made up to them, and waving

towards them, they staid for us: when we came up, there was standing by the Master two lusty Sailors, and I told him I would take but one of them; he said he had a Protection, I bid him shew it me; when I was come on Board, and had looked upon his Protection, I told him I must look a little further, and I went down into the Cabin, and took up the Hatches, and there I found them all four lying together.

Mr. Serj. Thompson. What four?

Captain Billop. My Lord *Preston*. I did not know him then, nor till afterwards.

Mr. Serj. Tremain. Who else was there?

Captain Billop. Mr. *Elliot* was there, and Mr. *Ashton*, who were both my former Acquaintance, but my Lord *Preston* I had forgotten, till one of them called him my Lord, and I asked them what Lord it was; and they said it was my Lord *Preston*; so then I saluted my Lord, so we rowed up.

Mr. Serj. Thompson. Pray Captain tell us what happened in the Vessel before you went out of it, after you found them there?

Captain Billop. I handed my Lord *Preston* up first, and after he came out of that little place, which he was forced to creep out of on his Knees, I turned my Lord about, and told him I must search him; he said, he hoped I would not meddle with any thing; I told him I would meddle with nothing but Papers, so I put my Hand in his Pocket and took all the Papers I could find, and put them in my own Pocket, and taking out a Watch, I delivered it to my Lord again. The next was Mr. *Elliot*, and I searcht him, and found nothing at all upon him. After that *Ashton* came up, and one of my Men told me that Gentleman had put something in his Bosom; whereupon I gave him a sudden turn, his Back being towards me, and asked him what was that he put in his Bosom? he told me nothing but his Handkerchief, and pluckt his Handkerchief out; with that I clapt my Hand in and got the Packet, and took it out, with the Lead fixt to it; I have the Lead now in my Pocket.

Mr. Serj. Tremain. Pray will you produce it, Sir. *Which he did.*

Captain Billop. This is the Lead, several of my Men saw it when 'twas fix'd to the Packet.

Mr. Serj. Thompson. What did you do with the Packet?

Captain Billop. I put it immediately into my Pocket, as soon as I had searcht Mr. *Ashton* further, and then commanded these Gentlemen all into my Boat, and took all the People that belonged to the Smack with me, after I had brought her to an Anchor, and left two of my men on board of her, and there she rid till next Day, when I sent two more of my men to bring her up, and those two men I order'd to search all the parts of the Vessel, and take what they could find, and whatsoever they found they should carry it to the *Tower* to my Lord *Lucas*; which, I supposed, they did.

Mr. Serj. Tremain. Well, Captain *Billop*, after such time as you had taken these Papers, and brought these Gentlemen into your Boat, pray what discourse had you with them? What said they to you concerning the Papers?

Captain Billop. It was a pretty while before we talked of any thing; the beginning of our talk was, I remember, they desired to go ashore at *Gravesend* to refresh themselves, for it was cold, and they had not eaten any thing: it was my Lord

Lord that desired it; but I begged his pardon for that, and told him there was a Man of War that lay at *Long-reaab*, where as I believed his Lordship would be very well accommodated with any thing he wanted.

Mr. *Serj. Thompson*. Well, what said they afterwards?

Captain *Billop*. My Lord *Preston*, after I had saluted him upon knowing who he was, and Mr. *Ashton* and Mr. *Elliot* telling him I was of their Acquaintance, he said he was glad he was fallen into a civil Gentleman, and they said they were glad they were fallen into the hands of an Acquaintance. I told my Lord I hope he should never find any thing otherwise than civil from me; my Lord was very civil to me in Complimenting, and assuring me he would acknowledge my favour and kindness to him.

Mr. *Serj. Thompson*. Ay, what did he say to you?

Captain *Billop*. My Lord *Preston* told me, if ever it lay in his Power to do me service he would, and he did not doubt but he might, and he used a great many Words and Expressions of Kindness, and his readiness to do me service; and amongst the rest, my Lord said once to me, if I would dispose of the Packet——

Mr. *Serj. Thompson*. Pray speak that again.

Captain *Billop*. My Lord *Preston*, in one of his Discourses of his Kindness in doing me service, had this Expression, as near as I can remember, if I would dispose of the Packet.

Mr. *Serj. Tremain*. What he would do for you if you would dispose of the Packet?

Captain *Billop*. He did not come to any particular instance of what he would do: but he said he would serve me in any thing that lay in his Power; Mr. *Elliot* and Mr. *Ashton* discoursed me several times about it; they courted me, and desired me to throw the Packet over board; but I told them I would not do any thing of that kind; and Mr. *Elliot* said that I might take the Papers that I took out of my Lord *Preston*'s Pocket and tie the Lead to them, and say that was the Packet, and throw the t'other over-board. I told him he took the King's Council to be odd People, and very indiscreet, that could not find out such a thing as that: After this was over, we had a little interval, and there was a Hamper in the Boats Stern, and there was some Bottles of Wine taken out, and we drunk several times; and by and by we had some discourse a little further about the same thing, and they pressed me to throw the Packet away; and one time particularly Mr. *Ashton* I remember, said it would be a generous thing, *Billop*, if you would go along with us, I think you may do as well there as here.

Mr. *Serj. Tremain*. Whither would he had you gone with them?

Captain *Billop*. He did not name any place, as I remember.

Mr. *Serj. Tremain*. What promises did they any of them make you?

Captain *Billop*. *Mun Elliot* whispered me several times, Dear *Billop* throw the Packet over-board, what good would it do you to injure so many honest Gentlemen? And Mr. *Ashton* and Mr. *Elliot* said, I had it now in my Power to make my self as great and as rich as I would be.

Mr. *Serj. Tremain*. What did any of them say about the Tide turning?

Captain *Billop*. *Mun Elliot* also said, It was impossible the Current or the Tide could run long this way, or always this way.

Mr. *Serj. Thompson*. When you had refused this that they desired of you, notwithstanding their Promises, pray tell us how they turned their discourse into Threatnings

Captain *Billop*. *Elliot* told me, when nothing would prevail, that every Dog had his day; but I answered, I hoped never to see it your day; but however, said I, pray desist from any such Language, for I can't bear it. After that they never askt me any thing about it.

Mr. *Serj. Thompson*. Now tell us what you did with these Gentlemen, and these Papers afterwards?

Captain *Billop*. I brought these Gentlemen up to my Lord *Nottingham*'s Office, and delivered the Packet with the Lead fixed to it, and stood by my Lord *Nottingham* in the Room till he had opened the Papers, except while my Lord *Preston* was examined, and when he opened the Papers I stood by, that I might see him make them up again; and, I think, I took some of them in my hand, and said I might read them, but I was uneasie, and not disposed at that time to read many of them, so I did not read them all.

Mr. *Serj. Tremain*. They were all by when *Ashton* said you would do generously to go along with them, were they not?

Captain *Billop*. Yes, they were all in the Boat.

Mr. *Serj. Tremain*. Did not one of them say to you, I know if Captain *Billop* do serve us, he will do it generously.

Captain *Billop*. Yes.

Mr. *Serj. Tremain*. Who was it?

Captain *Billop*. It was *Ashton*.

L. *Preston*. I desire I may ask Captain *Billop* a Question.

L. C. J. *Holt*. Pray, my Lord, put your Question to the Court and they will ask it him.

L. *Preston*. I desire to know my Lord, where it was, I said this to Captain *Billop*, that he would dispose of the Packet.

Captain *Billop*. Just after I had first saluted your Lordship, you said, you were glad you were fallen into the Hands of a civil Gentleman.

L. *Preston*. Was it aboard the Boat that I desired you to dispose of the Packet?

Captain *Billop*. Yes, and before we came on board the *George* Frigate, when we drunk about, upon the opening of the Hamper, it was in the Boat I am very sure, and before we came on board the *George*.

L. C. J. *Holt*. My Lord *Preston* said to you, you say, he would do you all the Kindness that lay in his Power if you would dispose of the Packet; how would he have you dispose of it? What did he mean by it?

Captain *Billop*. I don't remember he used any other Word, but that dispose of the Packet.

Mr. *Serj. Thompson*. But *Ashton* and *Elliot* did desire of you a great many times to throw it over board?

L. *Preston*. I desire he may be ask'd this Question: You said you carried these to my Lord *Nottingham*: Did you see them opened?

Captain *Billop*. Yes, I did see them opened, and I saw my Lord as he opened, lay them one by one, and read them over, and put them up again. And I looked upon several of them, while my Lord *Nottingham* was reading others; and

and I stood by the Fire, and I see my Lord make them up, and he tied them with a piece of Twine, and he clapt his Seal upon them, and delivered them to me; and I went immediately and delivered them to my Lord President.

L. Preston. Were you all the while by, while my Lord Nottingham was reading the Papers?

Captain Billop. Yes, I was by when he opened them, and read them, and staid till he put them up again; and as they came from his hands, I presently carried them to my Lord President.

L. Preston. Are you sure, or can you swear that these are the same Papers which were taken on board the Smack, that you carried from my Lord Nottingham to my Lord Danby?

Captain Billop. So many of them as I looked into, I marked; and all that I marked I can swear to, and no more than them I cannot.

Mr. Serj. Thompson. I think you say all those Papers that you delivered to my Lord Nottingham, you saw my Lord Nottingham seal up, and all them you carried to my Lord President.

Capt. Billop. Yes, I did so; all that my Lord opened at that time, were put together again, and his Seal put to them.

L. C. J. Holt. But my Lord asks you, whether you can swear the particular Papers?

Captain Billop. What I read, I marked, and them I can swear to.

L. C. J. Holt. You say you carried all those Papers my Lord Nottingham sealed, after he had opened them, to my Lord President.

Captain Billop. Yes, my Lord, I did see my Lord Nottingham open them, I see him make them up again; and when they were made up, he put his Seal to them, and I carried them to my Lord President.

Fury man. My Lord, I desire Captain Billop may be asked one Question.

L. C. J. Holt. Ay; What is it you would ask him?

Fury man. I desire to know whether the Papers were sealed when he took them and brought them to my Lord Nottingham?

Captain Billop. No; they were all tied up together with a Tape, or a Twine, I think with both, very fast together.

Fury man. There was no Seal on them when he took them,

Captain Billop. No; but there were several Letters within the Pacquet that were sealed.

L. C. J. Holt. Was not the outside of the Pacquet sealed?

Captain Billop. I don't remember, the outside was sealed; there was a Cover, but as near as I remember, they were folds of Paper fast tied together.

Mr. Serj. Thompson. You delivered them as you took them, to my Lord Nottingham?

Captain Billop. Yes: I never took them out of my Pocket after I had taken them from Mr. Ashton till I came to my Lord Nottingham's Office, where I deliver'd them to him.

Mr. Serj. Thompson. Had you ever opened them, or seen them opened, before they came to the Hands of my Lord Nottingham?

Captain Billop. No indeed.

Mr. Serj. Tremain. Then set up Johnson. (which was done.) Pray tell us what you know of this Matter?

Johnson. I was in my Lord Dunblain's Barge, and I went down with this Captain Billop, and

we were on board several Vessels; and we light upon a Ketch, where we pressed some Men, we thought it had been only some Seamen that were to be pressed, we did not know of any thing else. When we had rowed down as far as you have heard, we rowed up again, and searched several little Vessels and Smacks that were in the River; when a Fisher-man that we had pressed, said, That that was the Vessel the Captain enquired after: And then the Captain bid us take some small Arms; and I took a Pistol, and I went aboard. The Captain read the Protection, and then said, he must look further: When the Captain look'd into one of the Cabins, and took up the Hatches, I saw a great piece of Roast-Beef, and my Lord Preston by it, and a Mince-Pye, and a Fowl; and we took the Beef out, but my Lord's Man said, he missed his Knife, it lay upon the Bench: And then came my Lord up, and his Man, and Mr. Elliot; and when Mr. Ashton (the Man with the Pock-holes) came up, he went down again and pretended to look for his Hat; but when he was down, I see him cram something into his Bosom, and I told the Captain, I had seen him put something in his Bosom; and the Captain took him hold by the Buttons of his Coat and turned him about, and asked him, what he put into his Bosom? He said, nothing but his Handkerchief; and pulling it out of his Bosom, he shewed it the Captain: but the Captain put his Hand into Mr. Ashton's Bosom and pulled out the Pacquet.

Mr. Serj. Thompson. You say you see him put something in his Bosom when he went down: Did you observe whence he took it?

Johnson. It was upon the Gravel, and there were a couple of Seals which he afterwards took up lying by, and I believe he took up the Pacquet, and forgot the Seals.

Mr. Serj. Tremain. Pray let us see the Seals.

Mr. Sol. Gen. Your Lordship observes the Pacquet was not at first in Mr. Ashton's Bosom.

L. C. J. Holt. No, it was not.

Mr. Sol. Gen. But he took it up from the place where the Seals lay, and put it in his Bosom: Pray in what place did this Pacquet and these Seals lie?

Johnson. Upon the Ballast, for they had shov'd away the Board.

Mr. Sol. Gen. Was my Lord Preston upon the Ballast?

Johnson. Yes, my Lord lay almost upon his Back, he was the first that we saw, and he came out first; they were all four lying together there.

Mr. Sol. Gen. Who lay next my Lord Preston?

Johnson. My Lord's Footman, Mr. Ashton lay next, and Mr. Elliot lay next.

Mr. Sol. Gen. Where were the Seals then?

Johnson. My Lord was the first that I see come up.

Mr. Sol. Gen. But I ask you where the Seals were?

Johnson. The Seals were down upon the Ballast; whether they were my Lord's or no, I cannot tell, or whose they were?

Mr. Serj. Tremain. Now that we will ask Captain Billop: Are these the Seals?

Captain Billop. Yes, these are the Seals this Man gave me.

Johnson. I took them from off the Ballast.

Mr. Serj. Thompson. Did my Lord own these to be his Seals?

Captain Billop. I did not ask him that I know of.

Mr. Serj. Thompson. Well, Johnson, go on, tell what you know further.

Johnson. After we came to *Long-reach*, a Gentleman that had a long Perriwig, a black Gentleman, Mr. Elliot I think they call him, had a pair of Whiskers on when he was taken; and he took a pair of Scissers and cut them both off; and he said, if ever he liv'd, he should remember me, having a Tooth out, because I was so sharp upon him to make him come out: And when we came on board the *George Frigate* in *Long-reach*, my Lord's Man came to me, and said, he would give me something to drink, if I would deliver him the Seals.

L. C. J. Holt. Had you any Discourse with my Lord Preston himself about them?

Johnson. No, it was his Footman that came to me, and said there was no body there but myself and him; I had them, and he would give me something to drink if I would deliver them, but I delivered them to Captain Billop.

L. Preston. My Lord, may I ask a Question or two of this Witness?

L. C. J. Holt. Yes, my Lord, if they have done with him. What say you, Brother Thompson?

Mr. Serj. Thompson. We shall have done with him presently, my Lord. Pray had you any Money given you?

Johnson. No, but my Lord gave the Ship's Company ten Shillings to drink, and one piece was a Brass Half-Crown.

Mr. Serj. Thompson. What did they say as they went along, as you remember?

Johnson. They had a great deal of Discourse while we rowed; I was at the next Oar to them, but I cannot tell what 'twas.

Mr. Serj. Thompson. Who did discourse?

Johnson. Ashton, Elliot, and the Captain.

Mr. Serj. Thompson. Cannot you remember what they said any of them?

Johnson. They did talk together several times, Elliot said he was a cold; and came and rowed at the Oar a while, and Elliot swore an Oath, says he, they row all as if they were rowing to Prison; but truly I did not much mind their Discourse, I minded my rowing. There were some Victuals handed to us which we did eat.

Mr. Serj. Tremain. Did Elliot seem to be angry? What did he say?

Johnson. Elliot wished that a Thunderbolt might drop into the Boat several times, and sink it; and when we went through Bridge against Tide, he wished that London-Bridge might have fallen upon our Heads.

L. Preston. Now I would ask him, if your Lordship please, Did you see Ashton take up the Pacquet?

Johnson. Yes, I did, as it lay by the Seals.

L. Preston. I perceive there seems to be some stress laid upon my lying next to Mr. Ashton, and my Seals lying by the Pacquet.

L. C. J. Holt. My Lord, here has been no Inference made from that yet by the King's Council.

L. Preston. My Lord, it is in vain to deny we were all together there.

Johnson. You were the first that I see, my Lord.

L. Preston. We were all together, but there is no such thing to be gathered from thence as they would insinuate; but I suppose 'twould be deduced from hence, as if this Pacquet, because it lay near these Seals, should be my Pacquet.

L. C. J. We have not yet heard, my Lord, what use they will make of it.

L. Preston. But I desire to take notice of it, my Lord, and I think it is a very hard Presumption because we were in one place and the Seals at a little distance from the Pacquet, therefore the Pacquet must be presumed to be mine, I hope it shall not be presumed against me.

L. C. J. Holt. Since your Lordship mentions it, I will take notice a little of it too: It is only a circumstantial Evidence that is made use of against you; how far it will weigh, is to be left to the Jury when all the Evidence is heard. The Pacquet is found in the place where your Lordship lay, and by it Seals that belong to you; one is the Seal of your Office, as Secretary of State, the other is your own proper Coat of Arms.

Jury-man. With Submission, my Lord, I desire this Witness may be asked this Question, Whether he saw Captain Billop take the Pacquet out of Ashton's Bosom?

Johnson. Yes, I did.

Jury-man. And, whether he saw Billop deliver the same Pacquet to my Lord Nottingham?

Johnson. No, I did not.

L. C. J. Holt. You Gentlemen of the Jury, consider this, he was not then by: Captain Billop tells you, that very Pacquet which he took out of Ashton's Bosom he carried to my Lord Nottingham, and he tells you my Lord opened it in his presence, and he is sure he put all the Papers together again and set his own Seal upon them, and then he took them from my Lord Nottingham, and carried them to my Lord President.

Johnson. As soon as I came to *White-hall*, I was set Sentinel over those three Men that came out of the Smack, and was not admitted into the Room.

Mr. Sol. Gen. Then we must desire my Lord Nottingham may be sworn.

The Earl of Nottingham sworn.

Mr. Serj. Tremain. Where are the Papers?

Earl of Nottingham. Mr. Bridgman, I think you have the Papers.

Mr. Sol. Gen. Pray, my Lord, does your Lordship remember Captain Billop brought a Bundle of papers to you, and what became of them? Will your Lordship be pleased to give the Court and the Jury an account of it?

Earl of Nottingham. My Lord, all that I have to say in this matter is, Captain Billop brought to me a Bundle of papers tied about with a Packthread, to which was fixed a piece of Lead, I believe the same piece that was now produced, at least it was one very like it, he brought also a Signet which I presume I can know again when I see it.

Mr. Serj. Thompson. Pray shew my Lord the Seals. *(which was done.)*

Earl of Nottingham. This is the Signet I presume which he brought to me, I am sure he brought just such a one, if not the same: those Papers when he delivered them to me, I opened in his Presence, and when I had so done, I read them and put them up together again and sealed them with my own Seal, and delivered them to him.

him back again. What the Papers are, and what he did with them, I suppose he will give you an account.

L. C. J. Holt. But your Lordship says the Bundle of Papers he delivered to you, you sealed up, and delivered to him again.

Earl of Nottingham. All those Papers that he brought to me, I did seal up, and deliver back to him again.

Mr. Serj. Thompson. Pray, my Lord, were they ever out of Captain *Billop's* sight while your Lordship had them?

Earl of Nottingham. Not after they were opened: there was a little Paper that was tied to the Bundle which fell loose upon the taking away the Lead, and I opened that while he was by, and the Bundle lay upon the Table while I examined my Lord *Preston*, and after my Lord *Preston* was gone out, I called in Captain *Billop* (who went out while I examined my Lord) and I opened that great Pacquet in his sight and read the Papers, and he read some of them, and all the Papers in the great Pacquet, and the little Paper that was stuck in; I delivered sealed up to Captain *Billop*.

Mr. Serj. Thompson. Pray, my Lord, were the Letters in the Pacquet sealed?

Earl of Nottingham. Yes, there were some of them sealed, and all that I received from him I delivered to him, and no more.

L. C. J. Holt. The Gentlemen of the Jury hear what my Lord says.

Earl of Nottingham. The very same, all; and no more, I say.

Mr. Serj. Thompson. Captain *Billop*, when you had them back from my Lord of *Nottingham*, pray to whom did you deliver them?

Captain Billop. To my Lord President.

Mr. Serj. Tremain. Then we must desire my Lord President would be pleased to be sworn.

The Marquess of Carmarthen, Lord President of the Council, was sworn.

Mr. Sol. Gen. We must desire the favour of your Lordship, to acquaint the Court when Captain *Billop* came to your Lordship, what he said, and what he brought with him.

L. President. Captain *Billop* did bring me a bundle of Papers, and he told me he brought them from my Lord of *Nottingham*, and they were sealed, wrap'd up with a Packthread, and sealed with a Seal, which I knew to be my Lord's Seal; he delivered them to me my self; and these Papers I kept till I shew'd them the King the next morning. And after I had shew'd them the King, the King delivered them up back to me, having read some of them, and commanded they should be delivered to the Cabinet Council. A Cabinet Council was called, and accordingly there I did deliver them Paper by Paper, and they were all marked by my Lord *Sidney*, and some I think by my Lord *Marlborough*; and so I delivered them all together to my Lord *Sidney*.

Mr. Sol. Gen. Then we desire my Lord *Sidney* would please to be sworn.

The Lord Sidney Sworn.

Mr. Serj. Thompson. Will your Lordship please to acquaint the Court and the Jury what Papers were delivered to you, and by whom, and where those Papers are?

L. Sidney. The Papers that were delivered by my Lord President, I have kept them, my Lord, ever since: As soon as I had them, I read them,

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and marked them with a Letter of my own Name, the Letter *H*. I have kept them ever since, only one morning I gave them to Mr. *Bridgman* to be copied out as soon as he could; and he delivered them me back again, and they have not been out of my Custody since, only the night before last Night they were sent to Mr. *Solicitor* to read, and brought immediately to me again.

Mr. Sol. Gen. To whom did your Lordship deliver them to be copied?

L. Sidney. To Mr. *Bridgman*, I tell you.

Mr. Sol. Gen. So that they were never out of your Lordship's Hands till now, but only in Mr. *Bridgman's* Hands?

L. Sidney. No, I kept them in my Pocket ever since, only the Night before last Night when they were sent to you.

Mr. Sol. Gen. Did your Lordship mark them before they were delivered to Mr. *Bridgman* to copy?

L. Sidney. Yes, I marked them when I received them.

L. Preston. My Lord Chief Justice, your Lordship does observe that Captain *Billop* swears that they were never out of his Possession till he delivered them to my Lord *Nottingham*; my Lord *Nottingham* says he never opened them, but left the Pacquet upon the Table while I was examining.

L. C. J. Holt. Pray, my Lord, will you speak a little louder that I may hear you?

L. Preston. My Lord, I am saying, my Lord *Nottingham* says, That while he was examining me, the Pacquet lay upon the Table unopened, and were never out of his Eye till he sent them sealed by Captain *Billop*, and so they come to my Lord President, and they were kept by my Lord President; my Lord President says, my Lord *Churchill* saw the Papers, and they were in his Possession.

L. C. J. Holt. My Lord *Preston*, your Lordship does mistake my Lord President, he does not say that they were in my Lord *Marlborough's* Hands; but he did communicate them at the Cabinet Council where my Lord *Marlborough* was; he said indeed, they were in the King's Hands, but he was by all the while.

L. Preston. From that time they came out of my Lord President's Hands, I know not what may be put in, nor what taken out, these Papers are not sealed, as I hear of, afterwards; and passing through so many Hands, no body knows what may be done to them: Truly, I think it very hard to swear, after all this, that these are the Papers that were taken aboard the Smack.

L. C. J. Pollexfen. Will you please to ask any Questions to satisfy your self of any of these Noble Lords?

L. C. J. Holt. My Lord, I'll put your Lordship right.

L. Preston. With all my Heart, my Lord.

L. C. J. Holt. Your Lordship hears what Captain *Billop* says; he says, he brought them, as he took them out of *Ashton's* Bosom, to my Lord *Nottingham*: My Lord *Nottingham* opened them before him, and did deliver them to him again, having made them up. My Lord *Nottingham* says, the same Papers Captain *Billop* delivered him, he delivered back again, all, and no more; and *Billop* says, he carried them to my Lord President; my Lord President shew'd them to the King, and afterwards carried them

to the Cabinet Council ; there the same Papers were opened, and there they were marked, some by my Lord *Marlborough*, and all by my Lord *Sidney*.

L. Preston. Your Lordship will please to observe this ; my Lord *Nottingham* was pleased to say, he opened no Papers till I was called in and examined, and then Captain *Billog* withdrew. Now, my Lord, I don't know whether the Captain can say that these were the very same Papers that he took in the Smack ?

L. C. J. Holt. Captain *Billog* says, that he saw the Papers opened by my Lord *Nottingham*.

Captain *Billog*. My Lord *Preston* observes a thing that is very right, my Lord, that after I had delivered the Pacquet to my Lord *Nottingham*, while my Lord was examined, I withdrew ; but my Lord *Nottingham* has given your Lordship an account, that he had not opened the Pacquet then, but only the small Letter or Note that lay apart from the rest : But, my Lord, the Pacquet was in the same condition when I came in again, upon the Table, as when I left it ; my Lord *Nottingham*, as I believe, had not opened that Pacquet, for I found it just as I left it, upon the Table.

L. C. J. Pollexfen. My Lord *Nottingham* says, he delivered back to Captain *Billog* all the Papers that he received from him ; they were never out of my Lord *Nottingham's* presence ; nor were they opened, as my Lord says, but in *Billog's* presence, nor opened till after my Lord's Examination, except the little Paper that was stuck in, and was loose upon taking away the Lead.

Mr. Sol. Gen. Pray swear *Mr. Bridgman*.
(Which was done.)

Mr. Serj. Thompson. Pray, when you received the Bundle of Papers from my Lord *Sidney*, to whom were they carried, and to whom were they delivered ?

Mr. Bridgman. My Lord *Sidney* gave me these Papers to have them copied ; and I copied some of them with my own Hand, the others I delivered to *Mr. Poultney*, and were copied in my presence in the Office : They were never out of my sight, and as soon as ever they were copied, I carried them back to my Lord *Sidney*, and delivered them to him myself.

L. Preston. Were any of them taken from you, Sir ?

Mr. Bridgman. My Lord, I say I copied some of them myself, the others were copied in my sight and presence, in the Office.

Mr. Serj. Thompson. Pray, Sir, let me ask you one Question ; Were the same papers that were delivered to you by my Lord *Sidney*, re-delivered back again and altered ?

Mr. Bridgman. I am very sure I gave them all the same back again, because I read them every one before they were copied.

Mr. Serj. Thompson. Did you observe my Lord *Sidney* had marked them before you had them ?

Mr. Bridgman. Yes, they were all marked before I had them.

L. Preston. My Lord, I desire to ask *Mr. Bridgman* this Question, Pray, Sir, were they sealed up when you sent them to my Lord *Sidney* ?

Mr. Bridgman. No, they were not sealed, they were tied up, but about the Seals I remember when I was in my Lord *Sidney's* Office —

L. C. J. Holt. The Question is ask'd you, Whether you carried them back sealed or no ?

Mr. Bridgman. No. They were not sealed when they were delivered to me, but I can safely swear they were never out of my Custody till I delivered them back again ; for what I did not copy myself, were copied in my sight.

Mr. Serj. Thompson. But your Lordship is pleased to observe they were all mark'd by my Lord *Sidney* before they were delivered unto him.

Mr. Sol. Gen. Then, my Lord, we have done with our living Witnesses for the present, and will read the Papers.

Mr. Bridgman. One thing, my Lord, I do remember, as soon as my Lord *Sidney* received the Papers back again, he looked over every one of them and read them, and looked upon the Marks.

L. Preston. If your Lordship please, I would beg the favour to ask one Question of my Lord *Sidney* ; Pray, my Lord, did your Lordship number the Papers ?

L. Sidney. No, my Lord, I did not number them.

L. Preston. But your Lordship says upon your Oath and Honour, that those are the very Marks upon them that your Lordship set there.

Mr. Sol. Gen. We are indeed to produce them, and then we shall ask that particular Question.

L. C. J. Holt. My Lord *Sidney* will see them, and then he will answer your Lordship's Question.

L. C. J. Pollexfen. My Lord *Preston*, my Lord *Nottingham* is here a Witness, and his Occasions call him away, have you a mind to ask him any more Questions ?

L. Preston. No, my Lord.

L. C. J. Pollexfen. What say you, Gentlemen, have you any further occasion for my Lord *Nottingham* ?

Mr. Sol. Gen. My Lord, we must beg his Lordship's Patience, we do not know what occasion there may be ; I desire this Paper may be shewn to my Lord *Sidney*.

(which was done)

L. Sidney. That is my mark, that Paper I know is one of the Papers.

Mr. Serj. Tremain. Here are two of them, one of these is the Copy of the other, both were taken in the same Packet, the one is fairer written than the other.

Mr. Sol. Gen. Gentlemen, the Paper we are now offering to you is that which I mentioned before, it is the Result of a Conference ; there were two of them taken in this Bundle, the one of them seems to be the first Draught, the other is a Copy more fairly written ; but I think they are both in effect the same ; however they were both taken in the same Pacquet, and you shall hear them read.

L. Preston. My Lord, I desire that before it be read, it may be shewn to Capt. *Billog*, to know whether it be the very Paper that he took.

L. C. J. Holt. Ay, let Capt. *Billog* look upon it.

Capt. *Billog*. My Lord, I do not remember that Paper.

L. Preston. Your Lordship observes that Capt. *Billog* cannot swear that this was one of the Papers that he took.

Capt. *Billog*. All the Papers that I looked into I marked, and all the Papers that I mark'd I can swear to, and no others.

L. C. J. Pollexfen. Did you look into all the Papers ?

Capt.

Cap^t. Billop. No, I did not.

L. C. J. Holt. But he swears all that he brought to my Lord Nottingham were sealed up by my Lord Nottingham, and carried by him from my Lord Nottingham to my Lord President, and my Lord President swears he delivered them all to my Lord Sidney, and my Lord Sidney swears this is one of those Papers.

L. Preston. Certainly; my Lord's swearing to a Paper in this manner cannot be a good Proof: my Circumstances, my Lord, are very hard, and your Lordship, I have heard, ought to be of Council for me in any Point of Law; and, my Lord, I humbly desire to know, whether this can be a Proof of a Paper, that he says was taken in a Pacquet, and yet he can't swear it?

L. C. J. Holt. My Lord, he does not swear that this was one of the Papers; but the Question is, Whether all these Witnesses together do not prove it? You see how the Evidence runs; All the Papers taken were delivered to my Lord Nottingham: All that were delivered to him were sent back by him sealed, and delivered to my Lord President; my Lord President brought them all to the Cabinet-Council, and delivered them to my Lord Sidney, and this my Lord Sidney says is one of those Papers;

L. Preston. My Lord, I have a very great Honour for that Noble Lord, and I am sure, if he had not been upon his Oath, he would have said that which was truth; but in this condition that I am in, I must crave leave to observe every thing I can for my self, and I cannot but say these Papers are very oddly managed, and delivered up and down from one hand to another; I desire your Lordship would please to observe that these Papers are here brought after a very odd manner.

Mr. Serj. Thompson. My Lord Preston, you are not to sum up the Evidence to the Jury till we have done, nor to make your Observations.

L. C. J. Holt. Brother, my Lord opposes the reading of the Paper, as not well proved.

L. Preston. I do so, my Lord, and I hope your Lordship will advise me whether you do think it a sufficient Evidence and Proof of these Papers; they are Papers that have been copied out, and sent unsealed from hand to hand by some Messengers from one to another, and which now appear to be unsealed, and some of which he that took them cannot swear to.

Jury-man. My Lord, we cannot hear one word that is said.

L. Preston. That is my misfortune: but I am urging to my Lords the Judges, whether this Paper ought to be read, and I desire your Lordship to advise me, whether it can be admitted as Evidence, being thus oddly proved?

L. C. J. Holt. It is Evidence surely, my Lord: but the Question is, What Credit the Jury will give to this Evidence, the Jury are Judges of that; but certainly it is Evidence to have the Paper read.

L. Preston. I doubt not but your Lordship will do me Justice, and I readily acquiesce in what your Lordships do appoint.

L. C. J. Pollexfen. Pray, my Lord, see how the Evidence stands about this matter; first it is sworn by Billop, that he took a Bundle of Papers, tho' 'tis true, the Particulars he does not undertake to swear to; Well, what is next? why, says he, all that was in that Bundle I carried to my Lord Nottingham, and I received from my

Lord Nottingham all that I carried to him. What says my Lord Nottingham? he swears I delivered back again to Cap^t. Billop the same Papers he delivered to me, and all and no more, sealed up with my Seal. When he has it sealed up, what does he do with it? why he carries it to my Lord President. Is there any possibility of creeping out of this Evidence? Well, he delivers them to my Lord Sidney, and my Lord Sidney says this is one of those Papers: Can there be a plainer Evidence than this? when he says, all he had lie carried to my Lord Nottingham, and my Lord Nottingham swears all he did receive he sent back sealed by him to my Lord President, and my Lord President swears all he received so sealed he gave to my Lord Sidney, and my Lord Sidney swears this is one of those Papers.

L. Preston. But your Lordship will please to observe they were carried to the King, and they were in the hands of my Lord Marlborough.

L. C. J. Holt. No, my Lord, nor out of the sight of my Lord President. My Lord President says my Lord Marlborough marked some of them, but they were delivered to my Lord Sydney, and my Lord Sydney does say they are the same Papers that he had from my Lord President, and my Lord President says, they are the same that were brought him by Captain Billop from my Lord Nottingham, and my Lord Nottingham swears he sealed them, the same Papers, all and no more than he received from Captain Billop.

L. C. Baron. Your Lordship should observe where the defect of the Proof is, and then it may be supplied; for truly, put it altogether, I cannot see how there could be a plainer Proof given.

L. Preston. My Lord, I desire to be heard as to this, my Lord President was pleased to say, that some of them were delivered to the King.

L. C. J. Holt. No, they were shewn to the King, but my Lord President was by all the while that the King did read them.

L. Preston. My Lord, where a Mans Life lyes at stake, and all that is dear to him, your Lordship will certainly allow him to make what observations he can for himself.

L. C. J. Holt. Ay, in God's Name, by all means: You shall have all the Liberty you can desire.

Mr. Sol. Gen. My Lord, we desire my Lord President will be pleased to look upon those Papers.

Which was done.

L. President. This is one of the Papers that I received from Captain Billop, and which I shewed to the King, and which I brought to the Cabinet Council; and this is another of the Papers.

L. Preston. Pray my Lord, was your Lordship by when His Majesty read those Letters.

L. President. Yes, my Lord, I was.

L. Preston. My Lord, I ask it for this end, to know whether they were out of your Lordships sight.

L. President. No never; I was in the Kings Cabinet, His Majesty read some of them, and then put them up again, and gave them me, and I delivered them at the Cabinet Council to my Lord Sidney.

Mr. Sol. Gen. My Lord, we desire this Paper may be read.

L. C. J. Holt. Read it.
Clerk of the Peace, Reads.

The Result of a Conference between some Lords and Gentlemen, both Tories and Whigs, in which it was undertaken to prove the possibility and method of restoring by a Fr. Power, without endangering the Protestant Religion and Civil Administration, according to the Laws of this Kingdom.

1 **F** Must either Oblige or Conquer us: If the last, he will find few helps here, but a bloodier resistance than ever the Romans, Saxons, or Normans found: It being incredible, how unanimous and obstinate that very thought renders the People, so that it may make us a heap of ruin, but no Nation that can ever help or import any thing to F.

2. If K. L. desires to oblige Us, and make the Work easie, that he may be at leisure to ply the Empire or Italy, or to have an advantageous Peace, he must take off the frightful Character we have of him, and shew us he has no such design, as returning our Offended K. a Conqueror upon us, but that he can and will be our Friend and Mediator; upon which terms he will find that many Lords and Gentlemen will speedily shew themselves to his Satisfaction; especially, if he makes haste, and loses no approaching Opportunity.

3. If he incline to this sort of Sense, he must over-rule the Bigotry of St. G. and dispose their Minds to think of those Methods that are more likely to gain the Nation; for there is one silly thing or other daily done there, that comes to our notice here, which prolongs what they so passionately desire. The Methods thought upon are these,

First, To prevent dangerous and foolish Intelligence, by forbidding all in that Court to write any News hither, and that K. J. only have his Correspondence by whom to hear from, and speak to People here; since Letters so often miscarry, and are filled with nothing but what we should not hear; and what we have are Arguments for the most part against the K's Restoration.

Secondly, Since there is a great Body of Protestants that never defected, and that many Thousands are returning, and that they are the Natural Weight and Power of these Kingdoms, by having the Heads, Hands and Wealth of their side, to the odds and advantage of at least Two Hundred Protestants to one Catholic; the K. may think of nothing short of a Protestant Administration, nor of nothing more for the Catholics than a Legal Liberty of Conscience; for much *e mutt* is against all other Notions, to which all private Passions, and artificial Frames in Government must yield or break. He may Reign a Catholic in Devotion, but he must Reign a Protestant in Government. Cromwel could not, yet on a broader bottom, with a Victorious Army, subsist or keep what he had got.

Thirdly, He must give us a Model of this at St. G. by preferring the Protestants that are with him above the Catholics; one being Loyal upon less ties of Interest, and to tell the Nation here what they are to hope for when he comes.

Fourthly, He must give Incouragement to Lords and Gentlemen here to come to him, at least Seven or Nine for a standing Council,

which will make us here think he is in some degree ours again, and that we have a relation to him, and some interest and share in him, by the Men of Quality of our own Religion that are with him. This will incomparably facilitate the matter here, nor will they, when they come, come empty, and in their own Names, which is still better, and will be more satisfactory there.

Fifthly, To induce this, English Protestants should be encouraged by an Edict of Liberty from the K. of F. to have Chappels at their own Costs, in which to Worship God after their respective ways, by which that K. will make us reflect upon his Conduct towards his Hugonots, rather to flow from the hazard he thought himself in by their Antimon. and resisting Principles, than a desire of Persecution.

Lastly, All other requisite Measures depending upon the acceptance this finds, an Answer hereunto is impatiently desired by those that have Discouraged the K's Business to this Maturity. So ended with an Unanimous Consent, both Tories and Whiggs upon this Occasion, that are in a way of closing in his Interest.

L. Preston. I can very safely swear, my Lord, that I never saw that Paper in my Life.

L. C. J. Holt. Come, go on with your Evidence.

Mr. Sol. Gen. This is another Paper of the same, but the Words that are written short in that are written at length in this.

The Paper was read accordingly, and in the first blank there was written K. J. in the first Paragraph (*France*) twice, in the third Paragraph (*St. Germain's*) in the Fifth, (*Mathemat. for Much e mutt*) the rest are obvious, and need not to be supplied.

Mr. Sol. Gen. Pray shew my Lord Sidney that Paper, what says your Lordship to it?

L. Sidney. This is one of the Papers that I marked, and that I received from my Lord President.

Mr. Sol. Gen. Pray will my Lord President be pleased to give himself the trouble to cast his Eye upon that, and see if that be one of the Papers.

L. President. My Lord, I remember it well, it is one of the Papers I received from Capt. Billop.

Mr. Serj. Tremayn. This Paper is what Mr. Solicitor mention'd as heads of a Declaration.

L. Preston. My Lord, I think it necessary to offer one thing to your Lordships before it be read, I desire Capt. Billop should swear it to be one of his Papers.

Mr. Sol. Gen. If your Lordship pleases, you observe what has been done already. My Lord President says 'tis one of those Papers that was sent him by my Lord Nottingham; and my Lord Sidney has sworn it is one of the Papers he had from my Lord President.

L. Preston. I shall not give your Lordship any more trouble than needs; I only offer it to your Lordship: I wave it.

L. C. J. Holt. There is Evidence enough to have the Paper read.

Clerk of the Peace, Reads.

That the King will return with a design of making an Entire Conquest of his People, is so

so ridiculous as well as difficult, that it needs not be spoken to.

That the Kings Declaration be worded in General Terms, That he will Govern by the Laws, that they shall be the Rule of his Actions, that he will Endeavour to settle Liberty of Conscience by Law, that whatsoever things were formerly done by him, which occasioned Jealousies in the minds of his People, shall be left to the determination of a Parliament, to be formally and regularly called as soon as is possible.

That he has given sufficient Evidence of his unwillingness to bring an Army of Strangers into his Kingdom, by refusing the Succours of the King of France offered him, and which were even ready to be Embarked upon the first Notice of the P. of Oranges intended Invasion.

That he brings with him such an Army only as is necessary for his own defence, and for the security of such of his Loyal Subjects as shall resort to him, that he will dismiss them as soon as he shall have rid the Nation of those Foreigners who have Invaded it, and trampled upon the Laws and Liberties of his People.

The Kings large exercising his Dispensing Power gave the great alarm to the People, and contributed most of all toward the General Defection. Yet when that Power came to be debated in the last Convention, there appeared so many difficulties in the limiting of it, (every Body, even the present Judges believing it necessary, That a dispensing Power should be in the K.) That it was let fall, and that point remains as it was. And without mentioning that, or any other particular, the K. can be in no danger by leaving all things which have been the occasion of Jealousies to the determination of Parliament, where besides the Kings professed Friends and Servants, there will not want others who will be glad of opportunity to ingratiate themselves.

L. C. J. Pollexfen. Gentlemen of the Jury, If you desire any thing to be read again, or any thing doubtful in it, should be Explained, tell us, and it shall be done.

Juryman. No, my Lord, There is no occasion for that. I believe we apprehend these three Papers that have been read.

L. Preston. My Lord, It is necessary the Gentlemen of the Jury should be satisfied in this point.

L. C. J. Pollexfen. Ay in any point, and if they desire any scruple should be cleared, the Court will do it for them.

Juryman. My Lord, I desire to know whether Captain Billop Signed that Paper or no.

L. C. J. Holt. No, he did not sign half of them, but unless it be proved, you ought to take it for granted, that it is not Signed by him.

L. Preston. My Lord, I think it fit the Jury should be satisfied in any scruple they raise.

L. C. J. Holt. They asked this Question, Whether Captain Billop did sign the Paper, and I told them Captain Billop did not say so, and therefore they are to take it for granted, that he did not.

Juryman. My Lord, We take this last Paper that was read to be a Paper that was delivered in the Bundle taken from Mr. Ashton to my Lord Nottingham, but not Signed by Capt. Billop.

L. C. J. Pollexfen. Then you take it right.

Mr. Sol. Gen. Then the next paper that we produce is a List of the *English Fleet* that these Gentlemen were carrying over into France.

L. Preston. That is printed, and to be found in every Coffee-House.

Mr. Serj. Tremain. Shew that paper to Captain Billop. (*Which was done.*)

Can you take it upon your Oath, Captain, That that paper was in the Pacquet that was taken in Mr. Ashton's Bosom.

Captain Billop. That paper I have marked, and that paper I swear was in the Pacquet I took away from Mr. Ashton aboard the Smack.

L. C. J. Holt. You are sure of it.

Captain Billop. Yes my Lord.

L. C. J. Holt. Then read it.

Cl. of Peace. Reads.

S H I P S.

Rates.	Ships.	In Repair.	Not.	Building.
1	8	5	3	
2	12	11	1	
3	35	34	1	
4	38	34	4	4
5	14	14		1
6	9	9		
Fireships	25	25		8
Bomb-Vessels	1	1		8
Kerches	1	1		
	143	134	9	21

Brought in by Admiral Ruffel to the House of Commons, December the 24th 90. the Fleet, whereof 60 Dutch.

Memorandum, The new Ships Building are expected, will be ready to be lanch'd by the end of March.

Mr. Serj. Tremain. Pray shew this Paper to Captain Billop. (*Which was done.*)

Pray was that paper there among the others that were taken with these Gentlemen?

Captain Billop. Yes it was.

Mr. Sol. Gen. Can you take it upon your Oath, that that paper was in the Pacquet that was in Mr. Ashton's Bosom.

Captain Billop. Yes, my Lord, I can.

Mr. Serj. Tremain. Pray shew him that paper too. (*Which was done.*)

Mr. Sol. Gen. And can you take upon you to say, That that was one of the papers in the Pacquet?

Captain Billop. Yes, it was.

Mr. Sol. Gen. My Lord, We desire these may be read.

Clerk of the Peace reads, New-Years Eve, and it is directed for Mr. Redding.

Sir, Though the Bearer of this will do us the Justice, to assure you, we are as full of Duty, as unfeignedly, and unconcernedly yours, as your self could wish; yet this Gentleman has undertaken. You will forgive the Presumption, if I do my self the Honour to give you this fresh assurance in a few words, which I hope we do by our Accounts; I shall omit no Occasions, not neglecting the least, and making zealous Wishes for the greatest, to shew our selves such as we ought to be.

Sir,

' Sir, I speak in the plural, because I write
' my Elder Brother's Sentiments as well as my
' Own, and the rest of the Family, though
' lessened in Number; yet if we are not migh-
' tily out in our Accounts, we are growing in
' our Interest, that is in yours: He that delivers
' this, will I hope, intirely to your Satisfaction,
' represent us and me in particular, as with all
' the Devotion imaginable, and unchangeable
' Affection'.

Yours, God grant the happiest New-Year.

Mr. Serj. Tremain. Read the other paper.

Cl. of Peace. This is dated Dec. 31. 1690. I
must not let this Bearer depart, Madam, with-
out assuring you—

Mr. Sol. Gen. Hold, Sir, Don't read that yet.
Here, shew this paper to Captain Billop:

(Which was done.)

What say you Captain Billop? Is that one of
the papers taken from Mr. Ashton.

Captain Billop. Yes, This is one that I read
and marked.

Mr. Sol. Gen. Then read it.

Cl. of Peace, reads: This is directed for Mistris
Redding.

' As 'tis impossible for me to expresse that Ex-
' traordinary great Satisfaction it gave me this
' time Twelve Month, when I had the Honour
' to receive that mark of your Favour and
' Goodness under your own hand; so I have
' lived in some pain for an Opportunity to write
' you my humblest Acknowledgments and truest
' Duty, from which by the Grace of God I am no
' more capable of swerving, than of renouncing
' my hopes of Heaven: I lay this in behalf of my
' Elder Brother and the rest of my nearest Rela-
' tions, as well as for my self: You may intire-
' ly depend upon us, not only for a constant ad-
' herence to so well chosen a Principle, but for
' our utmost Activity to promote your Interest,
' which are inseparable from our own: I need
' come to no Particulars by this Bearer, who
' can and will tell our whole heart; and I wish
' you could see them, how sincerely they are
' devoted to your Service. God grant you a
' most happy New Year, and many, very many,
' and very happy. Our young Master hath all
' our best Wishes, he daily gains more Friends,
' and we get ground of his Adversaries.

New Years-Eve.

Mr. Sol. Gen. Now read your other Paper of
the 31. Dec. 1690.

Cl. of Peace. Reads, December 31. 1690. ' I
' must not let this Bearer depart, Madam, with-
' out assuring you of my best respects: I have
' written by him to a Friend of yours, but de-
' pend upon you to give my Note Credit.

' Though my Creditors were no Friends to
' the Match which has been so long in treaty,
' for your Relations have been very hard upon
' me this last Summer; yet as soon as I could
' go safely abroad, I pursued the business, and
' do beg you to believe, that no Endeavours of
' mine shall be wanting to perfect the Settle-
' ment. You once put me in hopes of seeing
' you before this *Christmas*: Your Friends are
' sorry for the Disappointment, pray lose no
' more time than is of absolute necessity: The
' Bearer will tell you all things may be now

' easily settled, if the right way be taken. I
' long to hear how your young Daughter does,
' she will find many Friends, and I hope her
' Portion will be well secured. God send you a
' happy New-Year, and that I may be merry
' with you before it be far spent, and I beseech
' you, keep me in the good Opinion of your
' Friend, I will always make good what I pro-
' mised to you. *It is directed for Mrs. Charlton.*

Jury-man. My Lord, I desire to know what
that is directed to.

Cl. of Peace. 'Tis directed to Mrs. Charlton.

Mr. Serj. Tremain. Shew Captain Billop those
two Papers. *(Which was done.)*

What say you to them Captain?

Captain Billop. My mark is on the outside,
but there is nothing written in that, I believe it
is taken off from the Inner paper.

L. Preston. Pray my Lord is this any proof? I
beseech you for God's sake to have a regard to
a Man's Life.

Mr. Sol. Gen. Pray shew the paper, to my
Lord Sidney. *(Which was done.)*

Lord Sidney. This was one of the papers I
received from my Lord President.

Mr. Sol. Gen. Then we must beg my Lord
President would be pleased to look on it.

(Which was done.)

L. President. This was one of the papers
brought me by Captain Billop, from my Lord
Nottingham, in that Bundle.

L. Preston. Captain Billop does not know the
paper, though his mark be to it.

L. C. J. Pollexfen. It is not indeed very ma-
terial, whether he does or no, because he did
not read all; but I would observe that 'tis
sworn by my Lord Sidney, that this was delivered
to him by my Lord President, and sworn by my
Lord President, that he had it in that Bundle
from Capt. Billop.

L. Preston. But, my Lord, it does shew that
there may be some alteration in the papers, be-
cause he having marked it, and marking none
but what he read, he does not now own that to
be the paper.

Mr. Sol. Gen. Pray will your Lordship be
pleased to take it as it is: These are two papers;
the one is only the Cover, the other is the Writ-
ing: Captain Billop has only marked the Cover,
and not the Writing, but my Lord Sidney he has
marked the paper it self, as delivered him by my
Lord President, and my Lord President has given
you an account, that it is one of the Papers he
received in that Bundle from Captain Billop.

L. Preston. I only mark, That there may be
alterations made in these papers since they were
taken.

Mr. Serj. Tremain. Pray read it.

Cl. of Peace, December 31. 1690. it is directed
to Mr. Jackson.

' The Bearer can give you so full an account
' of all things relating to your Estate here; that
' I need not have troubled you at this time, but
' that I am desirous to lay hold of any Oppor-
' tunity I think safe to assure you of my Service,
' and that I will never quit your Interest what-
' ever the rest of the Freeholders do: Your Ad-
' versary has been so hard to his Neighbours,
' that he has extreamly disoblig'd all the old
' Tenants, and a little matter would redeem the
' whole Estate, if you would appear in *Westmin-*
ster

After Hall your self, the best Council have a good Opinion of your Title, and will zealously pursue your Instructions: I only beg you would hasten them to us, and that you will appear your self as soon as is possible, no time should be lost, and the Cause may be brought to a final hearing before the end of Easter Term, if it be well solicited. I heartily wish you a happy New-Year, and beg you to tell Mr. Charlton that I long to know wherein I may serve him, and that I will follow his Directions to the utmost, while I live: God keep you and yours.

L. Preston. Pray, Sir, to whom is that Letter directed?

Cl. of Peace. To Mr. Jackson, my Lord.

Mr. Serj. Tremain. Pray shew that paper to my Lord Sidney. (Which was done.)

L. Sidney. This is one of the papers I receiv'd from my Lord President.

Then it was shewn to my Lord President.

L. President. This is one of the same papers that I received in the Bundle from Captain Billop.

L. C. J. Holt. Read it.

Cl. of Peace. Reads, 31st. December.

The Interruption of the former Correspondency had a very ill Effect many ways, but for that reason, no Opportunity ought now to be lost, and I hope this will prove a happy one.

In Trade as well as in Government Schemes must be laid, for there is no living from hand to mouth any more in Commerce than in Politicks. Lay therefore your designs probably, and pursue them diligently, and with Vigour, though it be a hazardous time, yet by venturing boldly, where venturing is advisable, it often returns great profit.

There is nothing more to be said, but to give the Bearer fit and full Seasons to tell what he knows, both as to Goods fit for our Market and when and where to be sent; the Sea will quickly grow so troublesome, that unless you dispatch what you intend for us, you will lose a great opportunity of advantage. I hope the account he has to give of our Negotiations here, with the Merchants that deal with us, especially those that have lately brought us their custom, will both encourage a larger Trade, and excite the utmost diligence; I will say nothing of my self, it shall be enough that I can live in the good Opinion of one I bear so great a reverence and affection for; but for this honest Factor, I must own I can hardly say enough. Truth and Boldness are excellent qualities in a Servant, and he has shewn both, as occasion has required him to shew them.

I have but one word to add, and pray take it as the truest mark of unalterable respect, chuse well, but have to do but with a few, for a multitude may give, but can never keep Council.

I shall with more impatience than becomes me, wait the result of this, and it will be a great mark of Goodness, to let us have it the best and safest way.

Once more, let not the Season spend unprofitably, for a more likely one can hardly come than between this and the 1st of March. Interpret this I pray, as no private interest of my own, or partial motion of any other Person. It is my Sense, my Duty, and my Friendship,

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which will not let me prevaricate, nor suffer those I love and honour to lose so happy and pressing an occasion of advantage. With the best Wishes I close up this, and am &c.

L. Preston. Pray, my Lord, who is that Paper directed to?

L. C. J. Pollexfen. This is directed to no body at all.

Mr. Sol. Gen. Shew that Paper to my Lord Sydney.

(Which was done.)

Lord Sydney. This was one of the Papers I had from my Lord President.

Then it was shewn to my Lord President.

Lord President. This is one of the Papers I had from Captain Billop.

L. C. J. Holt. Read it.

Clerk of the Peace Reads. This is Dated December 31. but is not directed to any Body at all.

It is a presumption incident to those that are any where upon the spot, to think that they know better than those that are not, what is fittest to be done in any Occurrence: This makes me say, that now is the time to make large advantages by Trading; the Sea being freer than two Months past, or we can hope it will be two Months hence. This Gentleman is well instructed in our Markets, and what the Goods are we want, and when and where they should be sent: It is most earnestly desired that this happy opportunity may not be lost, especially by the late Undertakers, and I would not for much, they should receive the least disgust. They are somewhat positive in their terms; but they also say, they will be good and constant Customers; and I have more than once seen the mischief of over-rating and over-staying the Market. Opportunities are to be used, they cannot be given by Men.

The Bearer needs nothing from me to commend him, but he is deserving in our Opinion here, and many will take their measures by the usage he finds there; and indeed the pressing posture of our Trading Affairs will not permit more Experiments. If the several Parcels arrive nor, that have been promised, before the 10th of March at furthest, (especially the Copper and Linnen, of which the Bearer will be more particular) I am satisfied we shall lose this Summers profit. I am the more pressing because I am well assured of what I write; and if ever I judged right it is upon this occasion.

I have said nothing of another Gentleman that takes this Opportunity to see those parts, but he has shewn a zeal and a sincerity in this affair equal to most. Jo. is not yet gone, by a misfortune, but he will follow with a good Postscript in this affair. Of my self I will say nothing, I hope I need not, for no body without Vanity can be more sincerely and affectionately a Friend and Servant to the Company than my self. I writ at large yesterday, and cannot write what the hand that gives this can say; and therefore will write no more, but that with the greatest Respect, I am, &c.

Mr. Serj. Tremain. Pray shew this Paper to my Lord Sydney.

(Which was done.)

Lord Sydney. This is one of those Papers I received from my Lord President.

X x x x x

Then

Then it was shewn to the Lord President.

Lord President. This was one of the Papers in the Bundle I received from Capt. Billop.

L. C. J. Holt. Then read it.

Clerk of the Peace, Reads.

SIR, I vow to you, I do not repine at having lost all for your sake which I got by your favour, but it grieves me extremely that there is not that left which can secure me from being troublesome to you; for that is the thing in the World I would not be. I have told my Lord my condition. What I desire of you he thinks very moderate, I hope you will. Pray Sir be not backward in settling my little affair, for I have deserved your Care. Your Daughter and I must starve, if this Government can make us. I hope our Interests are not divided, that is, you have an equal tenderness at least for both. If you think fit to speak what I would have you to this Bearer, he will give me a just account of it. You know he is obliged to be my Friend, and I believe him grateful, since he ventures so boldly for you. He brings with him some merry Papers. Adieu, for I dare write no more; but pray send a Messenger on purpose to me, that I may know exactly what you will do, and would have me do. If you send upon no other business, there will be no danger. Pray Sir ask my Lord, and he will tell you how I have been used, and upon what account; I believe you know it not.

Dec. 29. Your Daughter is very well, very tall, and very pretty, as I am told.

L. C. J. Pollexfen. That is not directed to any body neither.

Mr. Serj. Tremain. Pray then shew these Papers to my Lord Sydney and my Lord President; (which was done). They were two.

L. C. J. Pollexfen. These Papers my Lord Sydney swears he received from my Lord President, and my Lord President swears he received them in the Bundle from Billop.

Mr. Serj. Thompson. We pray they may be read.

Clerk of the Peace. Dec. 31. 90.

WAs my Condition more desperate and uneasy than it is, I desire no greater satisfaction than to have done my Duty to so good a Master, I wish it was of more use to him; that is not my fault, nor of those I have acted with: Let it be looked into what has been foretold both as to *Engl. Scot. and Irel.* and see if most of it is not come to pass already, and the rest will follow if not prevented. I wish it may also be considered what usage we have met with from men employed, and how they have left your Business and Friends; how they managed it, you will know from all hands; things they could not do, nor durst not undertake were better undone than not done by them. Men in this Place, and in these Times, must have some Courage as well as Sense to do any thing with People here. It is not my own ill usage makes me say this, but my concern for one I wish the best to in the World, and will give my Proofs of this upon all occasions. I need not enlarge, since all our Grievances are known to him that brings this. For my own part I will stay here, so long as I can be safe, if with ne're so great trouble; but it would be some Comfort to know Men (when driven from hence) may be so; therefore the reports of Peoples usage are terrible,

as well as of the indiscretions of *St. Germ. Family*, we feel the smart of it by ridiculous Letters falling daily into the hands of the Government. Their Master and Mistress are little obliged by it no more than we: If there is any thing, Sir, you do particularly command me, or depend upon me for, let me know it. I cannot undertake much, nor furnish more. I have still helped every Body, and paid to every thing I could; and if a twelve month ago my condition was what I then represented, you best know if it has been mended. Use, and considering that of others, makes me grow more contented; and if the prospect of misery to us all was any satisfaction, that is now plainly seen.

Pray God bless us all, by restoring every Man his own, and you with long Life.

He that gives you this, hath furnished for your use to me, &c. Two Hundred Pounds, which I desire may be repaid.

Mr. Sol. Gen. Read the t'other, it is in the same hand, and was enclosed in the former.

Clerk of the Peace Reads. I only beg Madam, no ill malicious Report may take any place in your Thoughts, in regard to me. I value your good Opinion, and will endeavour to deserve it. I can do little towards, but wish most heartily for your Happiness. I know no Interest, Madam, but my Masters and yours, nor do I think they are to be made two: If you command me any thing, I will faithfully obey you, as I have ever done him.

We all depend upon this Bearers accounts of us and our Condition. His Faith and Courage hath been enough experienced.

Mr. Serj. Tremain. Here is another Paper, shew that to Capt. Billop.

(Which was done.)

Capt. Billop. This Paper I did mark, and this was one that was in the Bundle.

L. C. J. Pollexfen. What is it Brother, pray open it.

Mr. Serj. Tremain. 'Tis a draught of a Cypher, with an Alphabet of Names for carrying on the Correspondence.

Mr. Serj. Thompson. Your Lordship observes these matters were designed to be carried on under several sorts of Cants.

L. C. J. Holt. What says Captain Billop to that Paper?

Capt. Billop. That was one of the Papers that I read at my Lord Nottingham's, and markt it there.

L. C. J. Holt. Then Read it.

Clerk of the Peace Reads. For Mrs. Anne Russell, to be left with Mrs. Richeson at the Blue-Boar in Ryder-street, near St. James's.

A — the King.

B — the Queen.

C — the Prince of Wales.

D — the Prince of Orange.

E — Canon and the Scotch Officers.

F — the Duke of Berwick.

G — Duke Tyrconnel.

H — Major General Sarsfield.

I — Lieutenant General Shelden.

L — King of France.

M — Marshal Luxemburgh.

N — Marshal Belford.

O — Duke Powis.

P — Dutchess Powis.

Amsterdam — Breast.
 Rotterdam — Deip.
 Hague — Havre de Grace.
 Brill — Dunkirk.
 Harlam — Callis.
 Italy — England.
 Germany — Scotland.
 Spain — Ireland.

Mr. Serj. Tremayn. Then the next Papers we produce are the Bills of Exchange; Pray shew them to Capt. Billop. What say you Capt. Billop, were those among the other Papers?

Capt. Billop. Yes, they were I remember very well.

Mr. Serj. Tremain. My Lord, they are in French, and therefore we must Swear a Gentleman that we have here, to interpret: Call Mr. Humphry Levermere.

Mr. Levermere, Here I am.
 (He was sworn)

A Londres, le 29 Decembre.

Monseieur,
 L'E presante vous sera rendus par Monsieur Orbinet, qui est un de mes bons amis, & qui se fera cognoistre par quelque personne de vostre Cognoissance. Vous m'obligerez tresensiblement en de luy rendre service en tout ce que vous pourriez. Il pourra vous communiquer quelque Affaire en Commission; vous pouvez avoir Confiance en luy de toutes les manieres, je vous prie donc-que l'obliger en tout ce que vous pourriez. Je suis

Monseieur, Vostre tres humble & tres obeissant
 Serviteur

A Mon. Mon. Jo. du Livier, Paris. P. du Livier.

A Londres le 29 Decembre } 1690.
 8 Janvier }

Monseieur,
 A Un jour de vue il vous plaira payer par cette premiere d'Eschange, a l'Order de Mr. Michel Orbinet, Trois Mille trois cents trente trois Livres valeur, du dit Sieur suivant l'advis de

Vostre tres humble & tres obeissant Serviteur,

A Mon. Mon. Jo. du Livier, Paris. P. du Livier.

Londres le 29 Decembre } 1690. Pour Liv. 3333.
 8 Janvier }

Monseieur,
 A Un jour de vue, plaira payer par cette me premiere d'Eschange, a l'Order de Mr. Michel Orbinet, Trois Mille trois cents trente trois Livres Tournois, valeur du dit Sieur & suis

Vostre tres humble Serviteur,

A Mon. Mon. Anthoine
 Pelletyer, Merchand, a Paris. J. Berionde.

London the 29th December.

S I R,
 T His present will be delivered you by Mr. Orbinet, who is one of my good Friends, and who will make himself known by some Person of your Acquaintance. You will very sensibly oblige me in doing him Service in all that you can. He will be able to communicate some Affair in Commission; you may have Confidence in him about all Points: I pray you then to oblige him in all that you can. I am,

S I R, Your most humble, most

To Mr. Joseph
 Du Livier Paris. obedient Servant,

Vol. III.

P. Du Livier.

London the 29th, December } 1690.
 8 January }

S I R,
 A T one days sight be pleased to pay by this First of Exchange to the Order of Mr. Michael Orbinet, Three thousand three hundred thirty three Livres, Value of the said Gent. according to the Advice of

To Mr. Joseph
 Du Livier. Paris. Your most humble, and most
 obedient Servant,

P. Du Livier.

London, 29 December } 1690. For 3333
 8 January } Livres.

S I R,
 A T one days sight be pleased to pay by this my first of Exchange, to the Order of Mr. Michael Orbinet, Three thousand three hundred thirty three Livres Tournois, Value of the said Gent. And I am

To Mr. Anthony Pelletier,
 Merchant, at Paris. Your most humble
 Servant,

J. Berionde.

Mr. Serj. Tremain. Pray how much do they all come to?

Mr. Levermere. They come to 500 l. wanting but Twelve pence.

Mr. Serj. Tremayn. My Lord, we have shewn your Lordship part of the Papers that were taken in this Pacquet, but we have reserved three of the Papers till the last place; and these three Papers, if we had no other, were sufficient to maintain this Indictment, for they are written all with my Lord Preston's own Hand, wherein he gives an Account how the French should Invade us, how the Forts may be taken, how London should be plagued, and what a sort of Rascals the Clergy of London are; these are the Contents of the Papers among other things. Pray shew them to Captain Billop.

(Which was done.)

Captain Billop. These were two Papers that were in the Pacquet, and the other little one with them.

L. Preston. My Lord, I would desire your Lordship to observe one thing, to the best of my remembrance, Captain Billop said, he only mark'd six of the Papers.

L. C. J. Holt. How many has he sworn to?

L. Preston. I believe he has proved more.

Capt. Billop. I never said so; I mark'd a great many, tho' not all, but I did not say how many.

Mr. Serj. Tremain. Were these Papers taken in the Pacquet?

Capt. Billop. Yes, all three.

L. Preston. Just now he said but two.

Mr. Sol. Gen. Have you look'd upon them all, Sir?

Capt. Billop. Yes, I marked but two of them, but the other little Paper was with them, I read them my self, I remember it very well.

Mr. Serj. Thompson. Then we pray the Clerk may read them.

(Cl. of Peace reads.) Lady D. 2000 l.

And 200 l. for Shop Debts —

Mr. Serj. Thompson. My Lord, we would open this piece of Evidence before we read it,
 X x x x x 2 that

Mr. Bland. I have seen my Lord's Hand sometimes.

Mr. Serj. Thompson. Have you looked upon those Papers, Sir?

Mr. Bland. Yes, I have.

Mr. Serj. Thompson. Pray whose Hand are they?

Mr. Bland. I do believe these three Papers are my Lord Preston's Hand-writing.

Mr. Serj. Tremain. Then we pray Mr. Warr may be sworn. *(Which was done.)*

Mr. Serj. Thompson. Do you know my Lord Preston's Hand?

Mr. Warr. I have seen my Lord Preston write, but not very often; most commonly it was only his Name: but I have seen him write some Letters too.

Mr. Serj. Tremain. Pray, Sir, look upon those Papers; whose Hand are they do you believe?

Mr. Warr. This Paper seems to be like my Lord Preston's Hand; the other I cannot say much of, because that which I commonly saw him write was a large fair Hand, and this is a little Hand.

Mr. Serj. Tremain. Pray, Mr. Warr, look upon these Seals; whose Seals were they?

Mr. Warr. I believe the Seals to be my Lord Preston's; one of them was his Seal when Secretary of State.

Mr. Serj. Thompson. You were under him in that Office, were you not?

Mr. Warr. Yes, my Lord, I was.

Mr. Serj. Tremain. Now my Lord, we have done with our Evidence, and shall rest here till we hear what my Lord Preston says to it.

L. C. J. Holt. My Lord Preston, you have heard what has been said concerning the matter you have been indicted for; What has your Lordship to say for your self?

L. C. J. Pollexfen. If the Gentlemen of the Jury desire to see the Seals, they may have them.

(The Seals were shewn to the Jury.)

Mr. Sol. Gen. My Lord, we have done for the present.

L. C. J. Holt. Then if your Lordship please, you may make your Defence.

L. Preston. My Lord, in the first place I must refer my self again to my Indictment, for I find, my Lord, that the Treasons of which I am accused, were none of them done in the County of *Middlesex*, and they are laid to be done within this County; I find nothing of that kind proved upon me to be done here, for any Memorandums that they say may be in that hand, I hope the Gentlemen of the Jury will consider, that there was nothing followed upon any of these things, that may be found in those Papers: And in the next place, I desire to know, whether they are sufficiently proved to be mine; that is, whether similitude of Hands is proof or not against me in such a Case. I humbly offer these things to your Lordship, and hope your Lordship and the Jury will consider of it.

L. C. J. Holt. Is this your Lordship's Defence, my Lord?

L. Preston. My Lord, I leave these things to the Consideration of the Court and the Jury.

L. C. J. Holt. Your Lordship insists upon it first, that there is no act of Treason proved in the County of *Middlesex*; and then, whether similitude of Hands be a good proof to prove

these three Papers, or any of them to be your hand.

L. Preston. No body saying they see me write them, if I did write them.

L. C. J. Pollexfen. My Lord, have you no Witnesses, nor nothing that you would use of Evidence for your self?

L. C. J. Holt. Would your Lordship disprove any thing of the matter that has been proved against you?

L. Preston. I must deny the whole Fact; but I have no Witnesses or Evidence to offer you.

L. C. J. Holt. Then your Lordship has no more to say?

L. Preston. I have not. I must leave it so with your Lordship and the Gentlemen of the Jury.

Mr. Sol. Gen. We shall offer nothing farther, but leave it wholly to your Lordship.

L. C. J. Holt. Your Lordship has done then?

L. Preston. Your Lordship observes none of the Witnesses have declared that I was going into *France*, nor knew any thing of it. I did not hire the Ship, nor any thing of that kind; tho' I suppose if they had, it is not Treason; but your Lordship observes there is no such thing has been sworn.

L. C. J. Holt. My Lord, as to the first matter that your Lordship makes a Question upon, Whether there be any act of Treason proved in *Middlesex*, that does depend upon the proof of your Lordship's being concerned in the papers, for if your Lordship had an intention in carrying these papers into *France*, which speaks a design to invade this Realm, your Lordship took Boat in *Middlesex* at *Surrey-Stairs*, in prosecution of that Intention, there is an Overt-act in this County of *Middlesex*.

L. Preston. Your Lordship and the Gentlemen of the Jury observe these papers were not found upon me.

L. C. J. Holt. No, my Lord; but if it be proved that your Lordship had an intention to carry these papers into *France*, and took Boat in order to go with them into *France*, in the County of *Middlesex*, where ever your Lordship acted in order to that design, that is Treason, and there you are guilty. It is a Treason complicated of several Facts, done in several places.

L. Preston. My Lord, I humbly desire to know, whether they have been proved to be my papers?

L. C. J. Holt. That is a Question that must be left to the Jury upon the Evidence.

L. Preston. No body swears they are mine; nor were they found upon me.

L. C. J. Holt. But what I am speaking to your Lordship, is in answer to your Question about the place, for you say, that there is nothing proved done in the County of *Middlesex*; now the Question is, Whether your Lordship had a design to go to *France* with these papers; if you had, and if your Lordship did go on Ship board in order to it, your taking Boat in *Middlesex* in order to go on Ship-board, is a Fact done in the County of *Middlesex*.

L. Preston. It is not proved by any Witnesses that I designed to go into *France*.

L. C. J. Holt. That is before the Jury upon the Evidence.

L. Preston. I hope your Lordship, and the Jury will observe 'tis not proved, and in the next place, there are no papers taken upon me, with humble Submission, there is no proof of any such thing.

L. C. J.

L. C. J. Holt. Well, how far your Lordship was concerned in these papers, and whether you were going with them into *France*, is to be left upon the Evidence that hath been heard, to the Consideration of the Jury.

L. Preston. But I humbly submit that.

L. C. J. Holt. Have you any more to say?

L. Preston. As to what I offer, that nothing has been proved in *Middlesex*, I hope your Lordship will take it to be a point of Law, and then it ought to be argued; and I desire I may have Council.

L. C. J. Holt. No, 'tis a Matter of Fact only; but if you please, the rest of my Lords the Judges may give you their Opinion; for this is a Question upon a Supposition that your Lordship was guilty of a Design of going into *France*, and this with a purpose to depose the King, and alter the Government; then the Question is upon such a Supposition that you were guilty of that Design, whether you were guilty in *Middlesex* or no.

L. Preston. My Lord, they have not proved that Design.

L. C. J. Holt. We do not say, it is taken for granted now, but 'tis a Question upon a Supposition. Now my Lord, I'll tell your Lordship in short my Opinion, the rest of the Judges will tell you theirs, I am of Opinion, if your Lordship had such a Design to go with these papers into *France*, and these Papers were formed by you, or you were privy to the Contents of them, then it is plainly proved, that you went into a Boat in the County of *Middlesex*, in order to carry on this Design, and that will make it a good Indictment, and here is a plain Overt-act of High-Treason in *Middlesex*.

L. C. J. Pollexfen. I am of the same Opinion; for your Fact as to this particular point in Law stands thus: You are indicted of High-Treason in two points; one is, For conspiring to depose the King and Queen, and alter the Government: and the other is, For aiding and assisting the *French* King, and his Subjects, declared Enemies, and in open War against the King and Queen, and to invite the Enemies of the Kingdom to invade the Kingdom. Now this Design, and this Help and Assistance, are written in these papers; for they are Instructions for the carrying on of this Design. You my Lord are the Person that is charged to go with these papers to help on this Design; you began your Journey in the County of *Middlesex*, for according to the Evidence, you took Water at *Surrey* Stairs, which is in the County of *Middlesex*, and every step you made in pursuance of this Journey, is Treason, where-ever it was: So then here is a sufficient proof of a Fact in *Middlesex*.

L. Preston. That, my Lord, is a point of Law, and I humbly desire your Lordship, that I may have Council in this Case. It is not proved by any Body, that I said I would go into *France*; and in the next place, it is not proved that I had these papers about me; there has been no Evidence given that I did take Water with an intention to go with these papers into *France*.

L. C. J. Holt. The Jury are to be Judges of that.

L. Preston. Then my Lord, what have I done? I have not done any thing within the danger of any Statute upon which I am indicted; besides, Lord, what I have to offer further, is this, I think I ought to have two credible Witnesses to

prove every Fact, and I hope the Gentlemen of the Jury will consider, there is nothing but Supposition as to me; and I hope I and my Family shall not be ruined upon a Supposition.

L. C. J. Holt. Has your Lordship any more to say?

L. Preston. All the Judges have not given their Opinion.

L. C. J. Holt. The rest will give their Opinions, if you desire it.

My Lord Chief Baron, what say you?

L. C. Baron. My Lord *Preston*, I am called upon, it seems, to give my Opinion in this Case; but this I take it must be left to the Jury, what credit they will give to the proof. Your Lordship makes a Question, as the proof stands, whether here be any thing done in this County; here are Instructions given to the *French* King how to invade *England* and carry on the War against us. These Instructions are contained in several papers, and these papers in a Pacquet are carried to the Smack, which Smack was hired to go to *France*. You are found taking water at *Surrey*-Stairs, which is in the County of *Middlesex*, in order to go to the Smack: You did go to the Smack; the papers were taken in your Company, and were seen lying by your Seals; and the Witnesses swear, they believe some of them to be your Hand; you took care to desire to have them disposed of. Now how far the Jury will believe this matter of Fact, that is thus testified, is left to them; this seems to be the Proof, and if the Jury do believe it, here is a plain Evidence of an Overt Act in the County of *Middlesex*.

L. Preston. I do insist upon it, with humble Submission, it is not proved that these papers were taken upon me, or that I did take water at *Surrey*-Stairs to go to *France*.

L. C. Baron. That must be collected out of all the Circumstances; the Credit of which is left to the Jury.

L. C. J. Holt. All the rest of my Lords the Judges are of the same Opinion, as they tell me? Have you any more, my Lord?

L. Preston. I must submit.

L. C. J. Holt. Gentlemen of the Jury, My Lord *Preston* stands indicted for High Treason, in imagining and compassing the Deposition, Death, and Destruction of the King and Queen; and for that purpose, did write, or cause to be writ, several treasonable Papers and Letters, designed to go into *France*, and there to correspond with the *French* King and his Subjects, who are Enemies to the King and Queen; and to carry with him those treasonable Papers and Letters, containing a Project and a formed Design how this Kingdom should be invaded by Foreigners.

There is another Treason in the Indictment mention'd, and that is for adhering to and abetting the King's Enemies, there being open War declared between the King and Queen, and the *French* King.

You have heard, Gentlemen, a very long Evidence, Witnesses have been produced *viva voce*, and several papers have been read to you; some of the papers that have been produced, tho' they may seem mysterious and canting, yet they are not so very obscure and unintelligible, but if you consider them well, the meaning of them will appear. Others of them are more express, and do plainly demonstrate a Design, that this King

King and Queen should be deposed, and that there should be another Prince set upon the Throne, and restored to the Government of this Kingdom.

Gentlemen, There are two other Persons mentioned in the Indictment with my Lord, and tho' my Lord is only now upon his Tryal, yet the evidence which doth affect them, doth also concern my Lord.

You have heard how there was an Intention of some Persons to go to *France*, and how Mr. *Ashton*, one of the two others that stands indicted with my Lord, did treat with one Mrs. *Pratt*, one of the Witnesses, to hire a Vessel for that purpose, and it was by the means of one Mr. *Burdett*, that lives in the City; they had a Meeting at *Burdett's* House, where they treated about the Price that should be given for the Hire of this Ship to go to *France*, but at that time they did not agree. It was concluded, that the Woman and *Ashton* and *Burdett* should meet at the *Wonder Tavern*, but Mr. *Burdett* not being there, nothing was concluded upon then.

After that the Woman, Mr. *Burdett*, and *Ashton*, and *Elliot*, met at Mrs. *Burdett's*; the Woman insisted at first upon 150 *l.* After they had been treating for some time, the Bargain was made to go to *France* for 100 *l.*

Then the next thing considered was, how this Money should be paid, by agreement, 93 *Guineas* and 6*d.* which made up the 100 *l.* was deposited in Mrs. *Burdett's* hand; a Six-pence broken, one part Mrs. *Burdett* had, and the other part of the Six-pence Mr. *Ashton* had; and when either Mrs. *Pratt*, or the Master of the Vessel did bring back that part of the Sixpence that *Ashton* had to Mrs. *Burdett*, the Money was to be paid.

After this Agreement, they were appointed to go to the *Seven Stars* in *Covent Garden*, to the House of one Mr. *Rigby*, and there the Woman, Mrs. *Pratt*, and the Master of the Vessel, *Ashton* and *Elliot* met, and they were that Night to go away and to take Water at some place near to go on Ship-board; and having stayed there till it was about ten a Clock at Night, then they went away into the *Strand* and so into *Surry-street*, and took Water at *Surry-stairs*.

But before that they came from Mr. *Rigby's*, some Persons went to *Surry Stairs* to see for a Boat, and met with that Fellow that was here produced, who was a Sculler, and did hire him to go through the Bridge when the Tide served, and to carry some Gentlemen on Ship-board; they agreed with him for half a Crown, and he was to stay in an House near the Stairs until they came.

And at the time appointed, Mr. *Ashton* and Mr. *Elliot* and the Master of the Vessel came to that place, and my Lord *Preston* and his Man with them to take Water. My Lord *Preston* was not at *Burdett's* House at the hiring of the Ship, nor at Mr. *Rigby's*; but it is proved by the Master of the Vessel, that he took Water with the rest of them at *Surry-stairs*, that he went with them on Ship-board, and was to go along with them.

Being on Board the Ship, they did appear to have some Apprehensions of Danger, and passing by a Man of War, my Lord *Preston*, his Man, and the other two went under the Quarter-Hatches, where they lay down to prevent themselves from being taken or discovered; and they hid another time when they came near *Graves-*

end, and coming up they seeing a Boat coming towards them, they hid themselves again. Captain *Billop*, who it seems, was sent to apprehend them, pretended he was to press Seamen, and when he came on Board the Smack he said he would press the Mariners, who answered they had a Protection: But he being upon his Search pulled up the Boards of the Quarter-Hatches, and there was my Lord *Preston* and the other Persons lying down: It was not a place that was very proper for Gentlemen, or indeed for any Passengers, to repose themselves in; it was an uneasy place, no body could stand or sit upright in it, nay, there was no convenient place for lying down, but they must lean upon their Elbows, which posture those Gentlemen were in; so that their purpose was plainly to conceal themselves, and their concealing themselves must be because of some Design they were about, which they would not have discovered.

They being taken out from under the Hatches, one of the Witnesses tells you he saw a Pacquet lying there, and *Ashton* pretending to fetch his Hat, went down, took it up, and put the Pacquet into his Bosom; and the Witnesses informing Captain *Billop* thereof, he caused *Ashton's* Coat to be searched, and from thence took the Pacquet and a piece of Lead tyed to it, which was produced here in Court.

When they were bringing away in Custody, they seemed all of them to be very much concerned about this Pacquet; some of them, that is, *Ashton* and *Elliot*, would have had it thrown with the Lead over-board. My Lord *Preston* did not say so much, but Complimented Captain *Billop* in this manner, He was glad he was fallen into the hands of a Civil Gentleman, a Person of worth, and he should always acknowledge his Kindness, and would do him all the service he could if he would dispose of the Pacquet.

My Lord *Preston* was searched at that time, and Letters of no great moment taken about him. *Ashton* and *Elliot* would have had Captain *Billop* to take those Letters which were taken in my Lord *Preston's* Pocket and tye the Lead to them and have thrown the Pacquet over-board, and to report to the King and Council, That those Letters were the Pacquet that was taken with the Lead, and so have perswaded him to be false to the Trust that was reposed in him.

And *Ashton* and *Elliot* used many Expressions to induce him to that Compliance; they told him the Government was unstable, and every Dog had his Day, and the Tide would turn; and that he would deserve very well if he would change sides and go with them where they were going, and that he had opportunity to get any Preferment he would have.

L. Preston. My Lord, I hope your Lordship observes that I said none of all this.

L. C. J. Holt. No, my Lord, I do not say you did; my Lord *Preston* did not say any thing of all this, but only about disposing of the Pacquet that his Lordship spoke of to Captain *Billop*, and Complimented him, and promised him Kindness if he would dispose of the Pacquet.

But, Gentlemen, as there was a Pacquet taken, so there were two Seals taken at the same time and in the same place, which have been produced and shewn to you; they lay both of them upon the Ballast under the Quarter-Hatches, near the Pacquet: the one of them is the Seal of my

my Lord *Preston's* own Coat of Arms, the other Seal belongs to the Secretaries Office, which Office my Lord once held in the late Reign.

L. Preston. I beg your Lordship would be pleased to observe that the Papers were not taken upon me, and it can be no Treason to have Seals, I suppose.

L. C. J. Holt. Good my Lord, I will not do your Lordship any wrong; I do not say that the Papers were taken about you; no nor the Seals; but only that they lay upon the Ballast from whence the Pacquet was taken: And I say further, That these Seals are not denyed by your Lordship to be your Seals; the one is your own Seal of your Coat of Arms which was taken at that time, and so I do not your Lordship any wrong, and by the Grace of God will not.

L. Preston. It is no Crime, I hope, to have Seals.

L. C. J. Holt. I do say, my Lord, the Papers were taken about *Ashton* and not about your Lordship; but they lay upon the Ballast where the Seals were, and where your Lordship lay: But how far my Lord *Preston* is concerned in this matter, is to be considered by you of the Jury by and by.

Now, Gentlemen, you have heard how earnest Mr *Ashton* and Mr. *Elliot* were; one of them, to wit, *Elliot*, wisht a Thunder-Bolt might strike the Boat under Water as they were coming back; and when they came through Bridge he wisht that *London Bridge* had fallen upon them and knockt them upon the head.

L. Preston. But I hope that is not to lye upon me neither, for I said no such thing.

L. C. J. Holt. No: But *Ashton* and *Elliot* did say these things, and how the case stands as to that in Relation to your Lordship is to be considered. It is proved they afterwards gave Money to the Seamen, half a Crown a piece, to two of them, to say they were going to *Flanders*, and not to *France*.

Now Gentlemen, that my Lord was on Board this Vessel, that my Lord was under the Hatches, and that the Papers were taken in this manner, is beyond all contradiction: So likewise that the Ship was hired for *France*; that my Lord took Water at *Surrey Stairs*, and was taken in this Vessel in that manner that you have heard.

The next thing Gentlemen is about the Papers: I must tell you though there are several of them that do seem mysterious, yet they are Papers that do shew a very great design of Deposing the King and Queen, and a purpose of altering the present Government.

But Gentlemen, I will mention to you those Papers that are very plain, and leave you to consider what construction to put upon those that are obscure. There is one Paper that seems to be instructions and heads for a Declaration, that is to say, That the King of *France* must not come with a design to make an intire Conquest.

L. Preston. My Lord, with submission to your Lordship, I hope you will please to remember and observe to the Jury, that Paper is not proved to be mine.

L. C. J. Holt. No my Lord, I'll do your Lordship no wrong, but I cannot speak all my words at once.

L. Preston. I am sure you will not my Lord, but I beg leave to put your Lordship in mind.

L. C. J. Holt. Well then Gentlemen the Paper begins, *That the King's Declaration is to be formed in general Terms, that he will govern by the Laws, that they shall be the Rule of his Actions, that he will endeavour to settle Liberty of Conscience by a Law, and that whatsoever was done by him that gave any occasion of Jealousy, shall be settled by Parliament. That the hath given sufficient Proofs and Evidence of his not being willing to bring an Army of Strangers into the Kingdom, by refusing the Succours the King of France offered him, and that were even ready to be Embarked upon the first notice of the Prince of Orange's coming. That he brings such an Army only as is necessary for his own Defence, and securing such of his Loyal Subjects as should come to him; and that he will dismiss them as soon as he shall have rid the Nation of those Foreigners that had invaded us, and trampled upon the Laws.*

So that Gentlemen, here is a Paper in this Pacquet, that has plainly laid open and proved the Design, and shews the meaning of it was to seduce their Majesties Subjects from their Allegiance; it was to be in such general Terms, making general Promises, hoping thereby that People would be the more easily imposed upon to renounce their Allegiance to their present Majesties.

But Gentlemen, the Declaration imports farther, that the Realm was to be invaded by Foreigners, and to palliate it, it is pretended that Foreigners were only brought in to rid the Nation of Foreigners, and you know who are meant by that: So that this Project was only to colour a Foreign Invasion; and this Declaration was to direct them how and upon what pretences they should invade this Kingdom.

Gentlemen, there is no manner of doubt but this is a Treasonable Declaration, and if any Person had this in his Possession, and was going into *France* to carry, with an intention there to make use of it, that is Treason, though it be couched under specious Pretences of restoring People to their Liberty: It was plainly a Design to invade *England* by a *French Army*.

L. Preston. My Lord, that Paper was not found about me.

L. C. J. Holt. No, no, my Lord, it was not; but good my Lord give me your favour, I will certainly observe every thing that is fitting; but I tell you I cannot do it all at once.

Then Gentlemen, there is another paper found in the Pacquet, that is said to be the result of a Conference that was had between divers Lords and Gentlemen, as well *Tories* as *Whiggs* as they call them, to prove it possible to restore the late King by *French Arms*; and how this may be effected, were Proposals made: Yet still it was pretended to preserve the Protestant Religion, and the Civil Administration according to Law.

And that it might be brought to pass, the credulous were to be imposed upon, and made to believe that the *French King* would not conquer *England* for himself; no, but he would conquer it for the late King; he would be at that vast Charge, that great Expence of Men and Arms to restore King *James*, and make no Profit of it himself.

And it was proposed how to seduce the People of *England* into a belief of the *French King's* Kindness; He was to indulge the *English* Protestants in *France*, and let them have the exercise of their own Religion there at their own Charges; and this to satisfy the *English* Protestants, that

that his Persecution of the *Hugonots* in France, was not out of aversion to the Protestant Religion, but only because of their Antimonarchical and relisting Principles. So that they were proposing among themselves what they were to do to make the People believe the *French King* had no dangerous Design against our Religion and Liberties; and if they could meet with Persons to believe this, that was a probable way thought upon in this Conference to get a great many Adherents to the *French King*, thereby this Invasion to be facilitated; and the whole Project rendred more successful.

There is another thing Gentlemen, in this Paper, and that is this; they complained of the mismanagement of their Affairs at *St. Germain's*; that though they did earnestly desire the Restitution of the late King, yet there was always some foolish thing or other that came from *St. Germain's* that obstructed their Design.

What that foolish thing is, I can't say, it does not appear; but whether it were not too great a Discovery of their Zeal for Popery, and the advancement of the Popish Religion, is worth your Consideration.

And something is to be done for Satisfaction of the People as to that; and it is advised that there should be Seven or Nine, or such a Number of *English Men* that should go over, and be received into favour at *St. Germain's*, and they should be of the Council there, and these were to be Protestants; and that was to be a colour and pretence that the late King was reconciled to the Protestant Interest, because he chose Protestant Counsellors, and had received them at *St. Germain's*, and was advised by them.

This, says the Paper, will make the World believe, he is ours, and that we have gained him; which was to delude a great many of the People of *England*, that they should not be affrighted in case there should be such an Invasion of *England*, but invited rather and encouraged to joyn with the *French* when they came.

But, Gentlemen, the three last Papers that have been produced to you, are Papers that do somewhat more nearly concern my Lord *Preston*.

The first Paper contains several Memorandums; It begins with *Lady D.* 2000 *l.* who that *Lady D.* is, I must leave it to you to imagine, tho' perhaps it may not be hard to guess.

It takes notice that the *English* and *Dutch* were like to joyn; and these Memorandums do also shew a design and purpose of something to be done for the prevention of that Conjunction. They seem also to be Instructions to be made use of upon going into *France* to negotiate or transport some matters of dangerous Consequence.

L. Preston. My Lord, I hope that your Lordship will observe, that these Memorandums are broken kind of Notes, incongruous and incoherent.

L. C. J. Holt. Ay, my Lord, they are so, they are but broken things; but I say still, they are Memorandums that were to be used for some purpose: Now I leave it to the Jury to consider of the matter of them: What can be plainer than what is there expressed? The *French* are to come in time, before the *Dutch* and the *English* joyn; they are to watch their Opportunity and come betimes, and they are to fight at the Chops of the Channel, and not to come so far as *Beachy*.

L. Preston. This is all but presumptive Evidence, my Lord.

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L. C. J. Holt. I appeal to your Lordship if it was not in the Paper, and I appeal to the memory of the Jury whether I misrepeat it or not.

The Paper mentions *Gennings* and *Strickland* and *Trevannion*, that they were to come from *St. Malo's* in one Night; the King (meaning the late King) was not to be on Board; and there were Ships to lye at *Newcastle*, to plague *London*: It is easy to understand what they meant. Among these Memorandums, it is made as a remark, that the *London Clergy* are the worst. It gives an account how *Portsmouth* was fortified, and *Gosport*, and what number of Men were in them; and of the state and condition of our Navy; what rates our Ships were, and how many, and who were to be the Commanders.

L. Preston. I beg your Lordship to observe this is not Treason.

L. C. J. Holt. I shall tell you that my Lord, by and by; I am now stating the Evidence.

Gentlemen, my Lord *Preston* insists upon it, that these Papers were not found about him: It is true, they were not, but it does not therefore follow that they were none of his Papers: But you have Three Witnesses, *Mr. Townsend*, *Mr. Bland*, and *Mr. Warr*, produced to prove these Papers to be my Lord's Hand; *Mr. Townsend* says he was acquainted pretty well with my Lord *Preston's* Hand; he was one of his Clerks in the Office of the Wardrobe; he says he has seen my Lord write several times, and does believe the Writing to be his Hand; and to the same purpose says *Bland*; and *Mr. Warr* swears to one of the Papers, that he believes it to be my Lord *Preston's* Hand.

L. Preston. I hope your Lordship will please to observe to the Jury, That this is only a proof of Similitude of Hands, no body see me write them.

L. C. J. Holt. They only say they do believe it to be your hand; no body says they saw you write them; if I omit any thing, pray tell me when I have done.

Gentlemen, there are other Papers which have been produced and read, that are writ in Canting Terms, which yet plainly shew the general Design; they tell the Party that Council are of Opinion, he has a very good Title; they hope he will appear himself, and if the Cause be well solicited it may come to a hearing before the end of *Easter Term*.

There is another matter mentioned in another Letter which is under the disguise of Trade, That the Goods must come before the first of *March*. And another of them says, That unless the Copper and the Linnen come before the tenth of *March* they should lose this Summers Profit.

Gentlemen, what can be the meaning of all this?

L. Preston. I know not indeed, my Lord.

L. C. J. Holt. In another of the Papers it is said, 'Tis thought our Fleet will be ready by *March* or *April*, but they believe not till *June*.

Truly, Gentlemen, I have not been able to take particulars of every Letter, but I must leave it to your Observation; only there is one of them that makes mention of acquainting my Lord with the condition of the Writer, and direction is therein given to speak to the Bearer; and what other Lord was there, but he in the Company?

Y y y y y

L. Preston.

L. Preston. I desire to observe, my Lord, that I was not the Bearer.

L. C. J. Holt. Truly, my Lord, I can't tell who was meant; I must leave it to the Jury to judge of that; but there was no other Lord in that Company.

L. Preston. I give your Lordship thanks for observing that it was not proved that they were taken upon me before; but I beg your Pardon for interrupting of your Lordship.

L. C. J. Holt. Interrupt me as much as you please, if I do not observe right; I will assure you I will do you no wrong willingly.

Now, Gentlemen, the Question is in the first place, Whether this be Treason? and I told you before, without question, if any Persons do go into *France* to Negotiate such a design as this, or do purpose to go into *France*, and do any Act in order thereunto, that is High Treason; and these Letters do import High Treason as great as can be committed, a Treason against the King and Queen, a Design to invade the Realm, to subvert the Government, to restore another Prince to the Throne by the assistance of Foreign Force.

There was a Design to delude and impose upon a great many People, and those that would not be deluded into a belief by these fair Pretensions of Friendship, they were to be subdued by an Army of Foreigners.

Then, Gentlemen, the next Question will be, how my Lord *Preston* is affected by this Evidence, and whether you have sufficient proof from what has been offered, to satisfy you, that he is Guilty of this Treason or no.

First my Lord tells you, there has not been a clear proof that these are the Papers that were taken; for (saith he) they have been conveyed from hand to hand, and therefore possibly there might be some Alteration made in them. You, Gentlemen are to consider, notwithstanding this objection, whether the Identity of the Paper be not proved.

Captain *Billop* tells you he took them, and in what manner; and afterwards carried them to my Lord *Nottingham*, who laid them by for a little while upon his Table, and Captain *Billop* withdrew (that is part of my Lords Objection) while my Lord *Nottingham* examined my Lord *Preston*: after that, my Lord *Nottingham* called in *Billop* again, and *Billop* swears the Pacquet was not opened, but remained intire in such manner as they were delivered to my Lord *Nottingham*; and so says my Lord *Nottingham*. Then Captain *Billop* saw my Lord *Nottingham* open it at that time, and he saw all these Papers every one put up again by my Lord *Nottingham*; so that he could not be deceived: and my Lord *Nottingham* delivered them to him, and he carried them to my Lord President all sealed up with my Lord *Nottingham's* Seal: And my Lord President tells you he opened them, and brought them to the King, and had them back from the King; but they were never out of his sight while the King read some of them, but he took them all and brought them to the Cabinet Council, where my Lord *Sidney* received all these Papers that have been read, and marked them. You have my Lord *Sidney's* Oath that these are the Papers he had from my Lord President; you have my Lord President's Oath that he had them from *Billop* sealed with my Lord *Nottingham's* Seal; you have my Lord *Nottingham's* Oath that he had them from *Billop*; and *Billop* swears that they were taken in the Smack.

So that it is plain, if you believe this Evidence, that they are the same papers. Besides, as to several of them, *Billop* marked them, and swears directly to them. If you believe these Witnesses, as you have no reason I think, to the contrary; it is plainly proved these are the very Papers which were taken from the Bosom of *Ashton*, and taken up by him from under the Quarter-Hatches in the Smack.

L. Preston. I beg your Lordships pardon for one thing.

L. C. J. Holt. My Lord, what say you, pray? Say what you will

L. Preston. With humble Submission, there is one thing that I think the Jury ought to take notice of, That when the papers were sent from Mr. *Bridgman* to my Lord *Sidney*, they were sent by a Messenger.

L. C. J. Holt. My Lord, you are mistaken as to that Objection, for my Lord *Sidney* did not send them to Mr. *Bridgman* by a Messenger, but he delivered them with his own hand, and after he had set his own Mark upon them; and Mr. *Bridgman* says they were never out of his sight, he copied them all but two or three, the other Mr. *Poultney* copied in his presence, and so he swears he re-delivered them to my Lord *Sidney*.

L. Preston. With humble submission, my Lord, if I remember right, they were in a third hand.

L. C. J. Holt. Never, never.

L. Preston. Did not my Lord *Sidney* say so, or Mr. *Bridgman*?

L. C. J. Holt. No: neither my Lord *Sidney*, nor Mr. *Bridgman* said so; I suppose the Jury are apprehensive of the matter; I would not mislead them, I'll assure you, nor do your Lordship any manner of Injury in the World.

L. Preston. No, my Lord, I see it well enough that your Lordship would not; I am for my Life, and beg your Lordships pardon for interrupting of you.

L. C. J. Holt. Gentlemen, the next thing is to consider, Whether my Lord *Preston* be answerable for these Papers or a Party in this Treason.

First, Gentlemen, I would have you to consider that there was the hiring of a Vessel for *France*: It is true, my Lord *Preston* was not present at the bargain; but you observe that my Lord *Preston*, his Servant, *Ashton* and *Elliot* took Water at *Surrey-Stairs* on purpose to go on Board that Smack.

Now, Gentlemen, Whether or no you can intend any other ways than that my Lord *Preston* was privy in the hiring of this Vessel, though he was not present at the hiring of it; for how should my Lord *Preston* be ready to take Water with them at *Surrey-stairs*? Can you imagine my Lord came there by chance, and took a sudden Resolution? If you can imagine that he came only to go a Ship-board without knowing the previous Design, truly you imagine a very great thing for my Lords advantage.

It is plain he went voluntarily without Compulsion; truly, I think the Evidence is very strong to induce you to believe he was privy to this design, and that he did know of hiring the Vessel.

L. Preston. I hope your Lordship will observe at the same time, that I was never seen before we took Boat.

L. C. J. Holt. My Lord I have observed it, and I lay that weight upon the Evidence, that I think it will naturally bear, and no more; and leave it to the Jury to consider, whether your Lordship was privy to the Design or no, when they

they weigh the Circumstances of the Evidence together.

L. Preston. I hope I shall not be condemned upon Presumption and Argument.

L. C. J. Holt. What weight the Evidence has they will consider.

And then, Gentlemen, there is another thing that I would observe; Why should my Lord *Preston*, a Noble Man, a Person of his Honour and Quality, put himself in such a place as he was found in, and that twice? It must sure be out of an Apprehension of some Danger. As for the Seamen they were secure enough; they were not frightened, because they thought they were protected, and my Lord *Preston* knew he was not lyable to be prest; the Master of the Vessel tells you they were fearful, and therefore hid themselves in a place they could not stand in, nor sit in; there was the Gravel and Ballast, it was uneasy to them, dangerous to their Health to be there.

Gentlemen, why do Men avoid the light and put themselves under covert, unless they have some evil design? Persons that are innocent seek not obscurity.

The Seals were found there, and my Lord does not deny they were his Seals.

L. Preston. I do not deny that, I hope it is no Crime to have such Seals.

L. C. J. Holt. Ay but, says my Lord, that does not affect——because the Papers were not found about me, but were found about *Ash-ton*. Gentlemen, if you can imagine my Lord *Preston* had a different Design from the rest of the Company that were with him, then you may acquit my Lord, and find him Not Guilty. But it is left to you to consider whether he had not the same Design with them. Besides there's mention made in one of the Letters, *My Lord*, and there was no other Lord but he; and here are Papers proved to be my Lord's own hand, containing several of the matters of which he stands Indicted, and he would have had the Captain to have disposed of the Papers.

Now, Gentlemen, what account does my Lord give you where he was going? it seems they did pretend at the time they were taken, and they would have had the Master of the Vessel said, that their design was for *Flanders*; but the Witnesses tell you positively, That the Vessel was hired for *France*.

Truly, Gentlemen, I must leave the matter to your Consideration whether my Lord be Guilty of this Design or Not Guilty.

There is another thing that my Lord has urged (for I would not willingly omit any thing material on the one side or the other) he says his Indictment is laid in the County of *Middlesex*, but the Papers were not taken there, the Ship they went on board lay at Anchor in *Surrey*; and when they were taken it was in the County of *Kent*, and so there is no Proof of Treason in *Middlesex*.

Ay, but Gentlemen, give me leave to tell you, if you are satisfied upon this Evidence, that my Lord was privy to this Design, contained in these Papers, and was going with them into *France*, there to excite an Invasion of this Kingdom, to Depose the King and Queen, and make use of the Papers to that end, then every step he took, in order to it, is High Treason, wherever he went; his taking Water at *Surry-stairs*, in the County of *Middlesex*, will be as much

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High-Treason, as the going a Ship-board in *Surrey*, or being found on Ship board in *Kent*, where the Papers were taken.

Gentlemen, I have failed of recollecting several of the Particulars of the Evidence, because they are many; and you will not depend upon my Recollection of things so very incoherent as some Parts of the Evidence in the Papers are, but upon your own Notes and Observations.

If you do think, having heard this Evidence, That my Lord was not concerned in this Matter, That my Lord had no Design to go into *France* with these Papers, but that he was an utter Stranger to all these things, then you are to acquit my Lord. But if you believe my Lord was privy to, and knew of the hiring of this Vessel, and that he went to carry on the Design, contained in these Papers; and that he wrote some of these Letters, and with the others he was acquainted, then you are to find him guilty.

L. C. J. Pollexfen. My Lord, if you please, I would observe one thing, to the Jury.

L. C. J. Holt. Ay, by all Means my Lord.

L. C. J. Pollexfen. Gentlemen of the Jury, I shall say but a few Words to you, because indeed my Lord has sum'd up the Evidence very fully, for matter of Law: I am fully of Opinion there never was a more black nor horrible Treason than is in this Plot that is now discovered; for I think *Englishmen* have no greater Enemies than the *French* and the *Papists*, and you see this is a Plot to bring in both; and therefore I think there was never any thing of greater Consequence to the Government and the Nation than to have this Plot detected and punished; tho' perhaps never any thing was more improbable than this same Plot, that it should ever take effect, whatsoever they promised to themselves, and their Desire of having it effected might persuade them to the contrary.

But, Gentlemen, the thing that I would mention about the Matter before you now, is this; Here are three Papers that by three several Witnesses, acquainted with my Lords Hand-writing, are testified, as they believe, to be his Hand-writing; if so, then there is an End of all, for therein is a horrid deal of Treason contained. If these Instructions, these Memorandums, these Heads that were written down were my Lords, and he did intend to go with these in a Voyage towards *France*, that will be sufficient of it self, if there were nothing else in the Case, to maintain this Indictment.

But, Gentlemen, you have in the rest of the Papers, that were taken, a great Character of the Bearer; that the Bearer had done great things; that the Bearer could inform them fully of every thing; and there should be full and intire Confidence put in the Bearer, and a great such many Phrases.

But, says my Lord, I was not the Bearer, it was Mr. *Ash-ton* that the Papers were found about; it does not appear directly who the Bearer was; and they were not found about me.

Now, Gentlemen, pray let us look a little how this Evidence stands: Pray where was this Bundle found? even upon the Gravel, where my Lord *Preston* and Mr. *Ash-ton* lay; there was it found, and my Lord's own Seal with it.

How, in the Name of God, came my Lord's Seals to be found with other Peoples Papers, if they did belong to any body else? How came they together in that place? It may be he had

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a mind to leave his Seals behind him, because they would discover his Quality. But why should my Lord *Preston* have all this fear upon him? Why should two Men go and take a Ship for themselves and two others; and when they came to take Boat, take in my Lord and his Man, if they were not the two others that were designed? and this to be done at Night in the Dark? Why should my Lord be under such terrible Apprehensions as to creep into a hole so unfit for one of his Quality?

Why do you not hear from my Lord some good Account upon what occasion my Lord and his Man were going to *France*? Or whither else my Lord was really going? for some where or other it was plain he was going.

Gentlemen, no Man goes into an Enemies Country without some Licence, unless he go upon some ill Design: Fear seldom is without some Guilt; and there appears, throughout the whole management of the Story, that there was a great deal of fear upon these Gentlemen.

Besides afterwards, when he is taken, and the Letters taken with him in the same Company, you hear what endeavours there were to suppress the Truth, even by my Lord's desiring to have the Pacquet disposed of; and my Lord's Man gave one of the Seamen half a Crown to say they were going to *Flanders*, not to *France*. I suppose the Man knew how unfit it was to be known that they were going to *France*: And my Lords two Companions spared for no Pains to get the Pacquet thrown over-board; tho' all that my Lord said was what great Kindness he would do him when it lay in his Power, if he would dispose of the Pacquet; I suppose that is very easily intelligible.

Gentlemen, there is one thing which is mentioned in one of the particular Letters that I desire particularly to observe to you, and that is all I shall say to you; Here is a Letter in my Hand that in divers places has somewhat remarkable, it says, *Your Daughter and I must starve, if this Government can make us: That the Party did not repine at all for having lost all for your sake, which your favour had bestowed.* And in another place this Letter doth say, *Your Daughter grows very tall, and very pretty, as I am told.* But that which I chiefly mention it for, is, it's twice mentioned, *My Lord will tell you all my Condition, how I have been used; and I have told my Lord my Condition: what I desire of you, he thinks very moderate.*

And pray consider and remember, that the first Article of my Lord's Paper, that is taken to be under my Lord's own Hand, there is two thousand pound to the Lady *D.*

Now if any body should put these together, do they lack any great Interpreter for? for my part I leave them to you.

Then in another place, towards the end of the Letter, it is said, *Pray, Sir, ask my Lord how I have been used.*

Now this Letter being thus taken, and there is never a one of the rest that was a Lord, do you think any of the rest was meant? I must leave it to you.

If my Lord *Preston* had produced any Testimony to prove his own good Carriage and Behaviour towards the present Government, it had been very much for his advantage, and might have had great weight with you; but when

things appear only in this manner as they do now, I must leave it to you.

Gentlemen, 'tis a great Matter, and of great Moment; if those that conspire against the Kingdom, against the Protestant Religion, and against the present Government, may do it with impunity, it will be worth the considering what the Consequence of that may be. Your own Consciences require you to do Right and Justice on both sides; and if you are satisfied he is not guilty, you will find him so; if you are satisfied that he is guilty, you will find him so.

L. Preston. My Lord, may I have the liberty to say any thing before the Jury go out?

L. C. J. Holt. Your Lordship should have said what you had to say before. It is contrary to the course of all Proceedings in such Cases to have any thing said to the Jury after the Court has summed up the Evidence, but we will dispence with it. What has your Lordship to say?

L. Preston. My Lord, I humbly thank your Lordship; I am not acquainted with such Proceedings.

L. C. J. Holt. My Lord, you know I permitted your Lordship to interrupt me as much as you would, which was never done before in any such Case.

L. C. J. Pollexfen. It is contrary to the course of the Court: But yet if you have any thing to say to the Court or the Jury, for this once we permit it.

L. Preston. Gentlemen of the Jury.—

L. C. J. Holt. My Lord, what you have to say, pray direct your self to the Court, that we may hear what it is.

L. Preston. My Lord, I only desire the Jury may be informed that I am a Protestant, that I was baptized in the Religion of the Church of *England*, and have always lived in it, and hope to dye in it. My Lord, 'tis true, things have been urged with Severity against me that are a little hard; in making that, which I hope will amount to but a Presumption, to be a Proof; as in the Case of the Letters that are written in a Cant, and my Intention to go to *France*, and those words in the Letter, where my Lord the Bearer is named. But your Lordship observes, That that Letter is not directed to any body, and that is full of Cant as well as all the rest; Why should I be supposed to be the Bearer any more than either of the others, and they were found about one of them? But, my Lord, for the reason of my going beyond Sea, it was this; I designed to go to *Flanders* or any place I could be driven to, and that ought not to be wondred at; for really I who had lived quietly after the loss of my Places, upon this Revolution, and suffered great Inconveniences in my Estate, and was retired to my own House, with a Design to live a retired Life, was imprisoned twice in the Tower, and proclaimed a Traytor in every Market Town, without any Indictment; and my Imprisonment tended greatly to the impairing my Health and my Fortune; all this made me very uneasy here: and, my Lord, I went under a fixed Resolution to go to *Flanders* or any place where I thought I could be quiet.

L. C. J. Holt. My Lord, your Lordship should have said all these things before, for it is not the course to reply upon the Court; if you had had any thing to say, you know we heard you out of Course, and I let you interrupt me as much

much as you did think fit, though that has not been allowed at any time before. But, my Lord, pray let me say one thing more: Suppose your Lordship did think your self hardly used, though I know not any reason you had to think so; yet your Lordship must remember it was in a time of danger that your Lordship was taken up before, and you had shewed your Dissatisfaction with the present Government, and therefore they were not to be blamed if they secured themselves against you; but if you had a mind to retire into the Country, or to go abroad, was France the only Country you could choose? a known declared Enemy's Country at open War with the Government?

L. Preston. My Lord, I beg your Lordship's Pardon, if I give any Offence.

L. C. J. Holt. No, my Lord, you give me no Offence at all; but your Lordship is not right in the course of Proceedings; I acquaint you with it not by way of Reproof, but by way of Information.

L. Preston. Then I hope the Gentlemen of the Jury will consider, that all that is alledged against me is but Presumption; my Life and Fortune, my Posterity and Reputation, are all at Stake; I leave all to the Jury's Consideration, and the God of Heaven direct them.

L. C. J. Holt. If you go on thus to reflect upon the Court, you will make the Court to reflect upon you. The Jury hear how the Evidence has been stated: I think it has been done very impartially, and without any Severity to you: Why should you think we would press the Evidence further than it ought to go against you? You are a Stranger to most of us, and I am sure we do not desire your Life; but still we must take care that Justice be done to the Government and the Kingdom, as well as to any

particular Person; and Evidence that is given must have its due Weight and Consideration: If any one can design innocently to go into France, at this time of day, with such Papers, and in such a manner, that I leave to the Jury's Consideration.

Then the Jury withdrew, to consider of the Evidence, and the Court adjourned for a little while, and returned in half an hour; and the Jury came in and were called over, and appeared.

Cl. of Ar. Are you all agreed of your Verdict?

Jury. Yes.

Cl. of Ar. Who shall say for you?

Jury. Our Fore-man.

Cl. of Ar. Sir Richard Grahme, hold up your Hand, (which he did) Look upon the Prisoner. How say you? Is he guilty of the Felony and High-Treason whereof he stands indicted, or not guilty?

Foreman. Guilty.

Cl. of Ar. What Goods and Chattels had he?

Foreman. None at all that we know of.

Then the Verdict was recorded.

L. C. J. Pollexfen. I think, truly, Gentlemen, you have done according to your Evidence; and though it be a hard Case upon particular Men that have brought themselves into these Inconveniences; yet it is necessary Justice should have its due course, or else there is no longer living for any Man in any Society or Government.

Then the Prisoner was carried back to Newgate, and the Court Adjourned till Monday Morning following at seven a Clock.

Die Lunæ, xix Januarii, 1690.

The Court being Sate, the Jury was called over, and the Appearance of those who answered Recorded. Then Mr. Ashton and Mr. Ellyot were brought to the Bar; but Mr. Ellyot was ordered to be carried back to Newgate, the King's Council resolving to try Mr. Ashton by himself.

John Ashton, hold up thy Hand. (Which he did.) Those Men that you shall hear called, and personally appear, are to pass between our Sovereign Lord and Lady our King and Queen, and you upon your Tryal of your Life and Death. If therefore you will challenge them, or any of them, your time is to speak as they come to the Book to be Sworn, and before they be Sworn.

Mr. Ashton. Pray stay a little.

L. C. J. Holt. What say you, Mr. Ashton?

Mr. Ashton. My Lord, I humbly desire your Lordship will allow me the benefit of Pen, Ink, and Paper.

L. C. J. Holt. Pray let him have Pen, Ink and Paper.

Mr. Ashton. And likewise that you would give my Solicitor leave to be as near me as possibly he can, only to refresh my Memory, if I should forget any thing.

L. C. J. Holt. That is a thing you cannot of right demand, the other of Pen, Ink, and Paper you may.

Mr. Ashton. My Lord, I shall acknowledge it as a very great Favour.

L. C. J. Holt. That is an Innovation that ought not to be, the Court cannot allow it.

Mr. Ashton. I acknowledge it a Favour, but if the Court thinks it not fit to allow it, whatsoever your Lordship shall order I readily submit to.

L. C. J. Holt. You shall have Pen, Ink and Paper; and what is fit for the Court to do they will do it.

L. C. Baron. If the Witnesses say any thing that you do not hear, you must speak to the Court, and you shall have them say it over again.

Pen, Ink, and Paper was given to the Prisoner.

Cl. of Arraign. Sir William Hedges, Knight.

(He appeared)

Mr. Ashton. My Lord, I would not trouble your Lordship and my self with unnecessary Challenges; I intend to put my self with an intire dependance upon the first Twelve Men that

that appear, be they who they will.

L. C. J. Holt. What you please for that matter, you have your own choice.

Mr. Ashton. Whoever they are, I submit to them; I know them not.

Cl. of Arr. Swear Sir William Hedges.

Which was done.

And so were the Eleven next succeeding in the Pannel; and the Names of the Twelve Sworn follow.

Sir William Hedges, Knight.

John Wolfenholm, Esq;

James Boddington, Esq;

Thomas Johnson, Esq;

Ralph Bucknall, Esq;

Lucy Knightsley, Esq;

Thomas Cuthbert, Esq;

John Herbert, Esq;

John Tully, Esq;

Thomas Smith, Esq;

William Withers, Esq; and

Daniel Thomas, Esq;

Then the Jury were Numbred, and Proclamation made for Information and Evidence in the usual manner.

Mr. Asht. Gentlemen of the Jury, if you desire Pen, Ink, and Paper, I hope the Court will take care to provide them for you.

L. C. J. Holt. Ay, ay, let the Gentlemen of the Jury have Pen, Ink, and Paper.

(Which was done.)

Cl. of Arr. John Ashton, hold up thy Hand.

(Which he did.)

Gentlemen, you that are sworn, look upon the Prisoner, and hearken to his Cause: He stands Indicted by the Name of John Ashton, late of the Parish of St. Pauls Covent-Garden, in the County of Middlesex, Gent. For that he, together with Sir Richard Grabme, late of the Parish of St. Ann, in the Liberty of Westminster, Baronet, who stands Convicted of High Treason, and Edmund Ellyot, late of the Parish of St. James, in the said Liberty, Gent. For that they as false Traytors, &c. (Prout in the Indictment, *mutatis mutandis*,) and against the Form of the Statute in that Case made and provided. Upon this Indictment he has been Arraigned, and thereunto hath Pleaded Not Guilty, and for his Tryal hath put himself upon God and the Country, which Country you are; your Charge is, to enquire whether he be Guilty of the Felony and High Treason whereof he stands Indicted, or not Guilty; If you find him Guilty, you are to enquire, what Goods or Chattels, Lands or Tenements he had at the time of the Felony and High Treason Committed, or at any time since; If you find him Not Guilty, you are to enquire whether he fled for it; If you find that he fled for it; you are to enquire of his Goods and Chattels, as if you had found him Guilty; If you find him not Guilty, nor that he did fly for it; you are to say so, and no more, and hear your Evidence.

Mr. Knap. May it please your Lordship, and you Gentlemen of the Jury; This is an Indictment of High Treason against John Ashton, the Prisoner at the Bar, and the Indictment, Gentlemen, Charges him, That he as a false Traytor against their present Majesties King William and Queen Mary, his Supreme and Natural Lord and Lady, not weighing the Duty of his Allegiance, did upon the Twenty Ninth of December last past, together with Sir Richard Grabme, who stands Convicted, and one Edmund Ellyot, and divers others ill disposed Persons unknown to

the Jury, did Conspire, Imagine, and Intend to depose, and deprive the King and Queen, and to bring them to Death and Destruction, and to subvert and alter the Government; and to cause War and Rebellion within this Kingdom against their Majesties; and to bring these Intentions and Purposes to pass, the Prisoner, with the rest of them, did prepare divers Notes, Papers, Letters, and Memorandums in Writing, which were to instruct the French King, and other Enemies of the King and Queen, of the number of their Majesties Men of War, how they were Mann'd, and the Names of the Commanders of several of them, and to inform them how the Castles and Forts of Portsmouth, Southsea, and Gosport were fortified, and how they might be surpris'd by the King's Enemies, and of the Times, Ways and Means how they might invade the Kingdom, in order to depose the King and Queen; and to Procure and Incite such an Invasion, and further to bring these Purposes to pass, the Prisoner and the other Traytors did secretly conceal, and detain in their custody several Bills of Exchange for the payment of Money to the King's Enemies, and the several Letters, Notes, and Memorandums before mentioned, which were for the purposes I before opened to you; and further to bring these Purposes, and Treasonable Intentions to pass, they did for one Hundred Pound hire and prepare a Ship, which was to carry them secretly out of this Kingdom into France, with an intent there to deliver these Instructions, and Memorandums, and Bills of Exchange into the Hands of their Majesties Enemies; and did hire a Boat to carry them to the Ship, and did enter into it at St. Clement Danes, within your County, and rowed to the Ship, and went on Board the Ship; and there with the Bills of Exchange, Notes, and Memorandums, they set sail to go to France, in order to deliver them to the French King, and other Enemies of the King and Queen; and the Indictment does further set forth, that there hath, and still is a War between the French King and our King and Queen, and that he and his Subjects are Enemies to the King and Queen and their Subjects; and that during this War, the Prisoner, together with the rest that were before named, were adhering to the King and Queen's Enemies in this War; and in pursuance thereof, did prepare such Letters and Instructions before opened, and had, and concealed in their custody, and hired a Ship and a Boat, and went into the Ship, and set sail in order to go for France, to aid and assist the King's Enemies there with Money, Intelligence, and Counsel; and this is laid to be against the Duty of his Allegiance, against the Peace of the King and Queen, their Crown and Dignity, and against the form of the Statute in that case made and provided. To this he hath pleaded Not Guilty; if we prove him Guilty, you are to find him Guilty.

Mr. Serj. Thompson. May it please your Lordship, and you Gentlemen of the Jury, The Prisoner at the Bar stands indicted of a very heinous Offence, no less than High-Treason, the greatest Offence that can be committed against any Humane Law. You have heard the Particulars in the Indictment read. I will not trouble you with any Repetition, but go to open the Evidence according to the Steps that are obvious in the case. You have heard in general the Design was to depose this King and Queen, which the Law expounds

pounds to be to bring them to Death and Destruction: You have heard it was to alter the Government, and cause a Rebellion in the Kingdom, and to bring in Foreign Power; and these are laid to be the Heads of the Offences that the Prisoner stands charged with.

Gentlemen, the first step that was made in this matter was by the Prisoner at the Bar; for there was one Mr. *Burdett*, which it seems had been one of his Acquaintance, and had undertaken to bring him acquainted with a Person that could furnish him with a Ship; and in order to that, one Mrs. *Pratt*, that had the management of the Smack which belonged to her Husband, she by *Burdett's* means was brought to *Burdett's* House, where she met Mr. *Ashton*, the Prisoner at the Bar, and they had some Treaties about the hiring of a Ship; the purpose declared by the Prisoner then was to hire a Ship to go to any part of *France*, and he would give a considerable Reward for it; he said it was for himself and Three more. They did not come to any conclusion about the Ship; but there was an Appointment made to have the Master of the Ship to meet with them at the *Wonder Tavern* in *Ludgate-street*, and in order to that, *Paseley* that is the Master, and the Woman came there, and met with Mr. *Ashton*; but because Mr. *Burdett* was not there, they came only to this proposal, one Hundred and Fifty Pound was demanded for the Hire of this Vessel; but there being no conclusion then made, they thought it better to do it at *Burdett's* House, and about a day after they came to Mr. *Burdett's*, and then it hapned that *Elliot*, one of the Persons that is Indicted, but not one before you, came thither too; and at that time it was agreed to give one Hundred Pounds for the Hire of the Ship. Ninety Three Guineas were deposited in Mrs. *Burdett's* Hands; and there was a Token past betwixt them by the breaking of a Sixpence, one part whereof was to ly with Mr. *Ashton*, and the other with Mrs. *Burdett*; and whenever the Master of the Vessel brought back the broken piece of Six pence that Mr. *Ashton* had, then she was to pay the Money, that being the sign that they had attained their Ends, and were safely landed in *France*.

The next step they take, is this, they appoint to meet at the *Seven Stars* in *Covent Garden*, thither the Master of the Vessel and the Woman were to come, and that was near the time, that very day that they designed to go down, and there was Mr. *Ashton*, and Mr. *Elliot*, but the other Person did not appear as yet, there the Sea-men were ordered to go along with them, and thence they went down to the Water side, to *Surry-stairs*, and the Waterman was called, and in the mean time came my Lord *Preston* and his Man to them, and they four did go in that Boat, by the Direction of the Master, and were carryed on Board his Smack.

After they came on Board (for I would note the particular Circumstances) they were very apprehensive of Danger, for they knew what they went about, their own Guilt gave them Reason of Fear, and when they came near a Man of War, which lay at Anchor in *Long Reach* in the River, they desired the Master to hide them, that they might be safe from any Search, and they were hid and put clofe under the Hatches for some time; afterwards when they came to another place of Danger, it was by the *Block Houses* at *Graves-end*, (as they apprehended) there

they desired to be hid again, and so they were put in that place where they were in very difficult Circumstances under the Hatches, and there they remained till a Pinnace, that had been sent to enquire after them, came and Boarded this same Vessel.

Upon its Boarding of them, the Captain made a Search, and found these Gentlemen, my Lord *Preston*, Mr. *Ashton*, and Mr. *Elliot*, and I suppose his Man also, all hid under the Hatches.

Then the next thing which is obfervable, Gentlemen, and the great Matter that will shew where the Treason was, is this, there was a Bundle of Papers that was on Board, read prepared, if they had not been surprized, but could have had an Opportunity for it, to have been cast Over-Board, and there was Lead fixt to it, to have sunk it, and Mr. *Ashton* the Prisoner at the Bar, was the Person that concealed this Bundle of Papers, betwixt his Body and his Coat, and from thence it was taken by the Captain that took them.

When they were so taken, the Captain, according to his Duty, was bringing the Prisoners to *Whitehall*, they desired to go on Shore at *Graves-End*, but the Captain did not think that so fit, but carryed them on Board the *George Frigate*, and then you will hear these Gentlemen did fall into a Treaty with the Captain, to suppress these Papers, and one Instance I remember they did tell him, that since there were a parcel of Papers that he had taken out of my Lord *Preston's* Pocket, he might take off the Lead and fix it to those Papers, and sink the others; and what should he have for it? they promised him great Rewards, they told him he might be a great Man, he had an Opportunity of making his Fortune; and when that would not do, they used many Threatnings to him, all which will appear in the several Circumstances that the Witnesses will tell you of.

I come, Gentlemen, in the last place to shew you, That all the whole Conspiracy, all this Treason, did lye hid under this Bundle of Papers that were taken from Mr. *Ashton*, and so he might well be afraid of having them opened, for there you will find a formed Design, to alter this Government by a *French Power* and Assistance; and they contain so many Particulars, that in regard, I would not do the King's Evidence injury on the one hand, nor the Prisoner on the other, I will forbear repeating the Particular Instances.

Gentlemen, You will have all the Letters and Papers Read, but in the General, I must needs say, you will find it manifest, that there is a black and wicked Conspiracy to introduce a Foreign Power, to Establish the Protestant Religion, and that by a Popish Interest, and to settle our Laws, Liberties, and Properties, by a *French Army*. And let them pretend what they will for the Protestant Religion, when you hear these Papers read, no body will imagine it was to any other purpose, (if the Plot had taken Effect,) but to have what Religion, what Laws, the *French King* had pleased to impose upon us.

If the Prisoner be Guilty, Gentlemen, of these Matters, I know you will do your Duty; but if he be not Guilty, God forbid that you should find him Guilty.

L. C. J. *Holt*. Call your Witnesses, Brother.
Mr. *Serj. Thompson*. We begin with Mrs. *Pratt*.
She was Sworn.

Sir W.

Sir W. Wil. Look you, Mrs. Pratt, here is another Gentleman at the Bar to be Tried, against whom you are called as a Witness.

Mrs. Pratt. Yes, my Lord.

Sir W. Wil. Pray hear what we ask you. Pray do you give the Court and the Jury an account, what Treaty you have had with that Gentleman, about a Vessel to go to France, and what was done in it.

Mrs. Pratt. If it please you, my Lord, I was sent for to Mr. Burdett's House in Queen-street by Cheap-side, to know whether he could have a Smack to go for France; I told him yes, I could help him to one; he told me, there were two or three Gentlemen bound for France, as Merchants to fetch Silk, and I was at Mr. Burdett's two or three times, and at last Mr. Ashton met me there.

L. C. J. Holt. Look upon the Gentleman, is that he?

Mrs. Pratt. Yes, that is the Gentleman, and he met me there, and meeting with Mr. Ashton, he hired the Vessel; but first of all, he desired us to meet at the Dog Tavern upon Ludgate-Hill, to make the Bargain, and we did meet there, and were there about an hour, or an hour and a half, and Mr. Burdett did not come; and the next Morning, Mr. Ashton desired me to meet him at Mr. Burdett's again; and the next Morning I met at Mr. Burdett's, and there we made the Bargain for 100 l. and there was Sixpence broke in two pieces.

Mr. Serj. Tremain. Was the Hundred Pound paid?

Mrs. Pratt. Yes, but we agreed on the Tuesday Morning, and there was a Sixpence broken in two, and Mr. Ashton had both the Six-pences in his hand, and the Tuesday night the Hundred Pound was paid at Mrs. Burdett's.

Mr. Sol. Gen. Who was by?

Mrs. Pratt. There was one Mr. Elliot, and the Master of the Smack, and Mrs. Burdett.

Mr. Serj. Tremain. Did they pay the Money in Gold or Silver?

Mrs. Pratt. This Gentleman, Mr. Ashton, told the Money, there was 93 Guineas and a Six-pence, and Mr. Ashton gave one half of the broken Six-pence with the 93 Guineas to Mrs. Burdett; and when the Master of the Vessel brought the other half of the Six-pence, or I, either of us, we were to have the 100 l.

Sir W. Wil. Pray to what Place did they hire the Ship to go?

Mrs. Pratt. To France.

Sir W. Wil. Who hired the Ship?

Mrs. Pratt. That Gentleman.

Sir W. Wil. Who paid the Money?

Mrs. Pratt. That Gentleman, Mr. Ashton.

Sir W. Wil. To what hand was the Money paid?

Mrs. Pratt. It was paid in Mrs. Burdett's Bed-Chamber, into her Hand.

Sir W. Wil. Who broke the Sixpence?

Mrs. Pratt. Mr. Ashton, that day the Bargain was made.

Sir W. Wil. Who carried it away?

Mrs. Pratt. When the Money was paid, Mr. Ashton had one, Mrs. Burdett had the other part.

Mr. Serj. Tremain. To which part of France were you hired to go?

Mrs. Pratt. To any part where they could touch.

Mr. Serj. Tremain. Pray did they give you any Note about any thing?

Mrs. Pratt. Yes, they gave me one Note to meet at the Dog Tavern, and another to meet at the Seven Stars in Covent Garden.

Mr. Serj. Tremain. Who gave you the Notes?

Mrs. Pratt. Mr. Ashton and Mr. Elliot.

Mr. Serj. Tremain. Look upon that Note.

(Which she did.)

Mrs. Pratt. This to my best remembrance Mr. Ashton wrote, I cannot well remember the Hand.

Mr. Serj. Tremain. Did Mr. Ashton desire to meet at the Dog Tavern?

Mrs. Pratt. Yes, and he did meet at the Dog Tavern, but Burdett did not.

L. C. J. Holt. When did you meet at the Dog Tavern?

Mrs. Pratt. On the Monday Night before New Years Day.

L. C. J. Holt. When was the Money paid?

Mr. Pratt. On Tuesday Night, at Mrs. Burdett's.

Mr. Serj. Tremain. After the Money was paid, what did you do the next day?

Mrs. Pratt. Mr. Ashton Ordered a Note to be written, to meet at the Seven Stars in Covent Garden, at one Mr. Rigby's.

L. C. J. Holt. At what time were you to go to Rigby's?

Mrs. Pratt. A Wednesday Night.

L. C. J. Holt. But at what time?

Mrs. Pratt. Some time about Ten a Clock, and we came there accordingly.

Mr. Sol. Gen. Who was with you at Rigby's?

Mrs. Pratt. There was the Master of the Vessel, Mr. Ashton and Mr. Elliot, and two Gentlemen more, that I never saw before, nor since.

Sir W. Wil. I ask you again, who first Treated with you about Hiring this Vessel?

Mrs. Pratt. Mr. Burdett first treated with me about it.

Sir W. Wil. Who next?

Mrs. Pratt. Mr. Ashton.

Sir W. Wil. Who made the Bargain with you?

Mrs. Pratt. Mr. Ashton.

Sir W. Wil. Who paid the Money?

Mrs. Pratt. Mr. Ashton.

Sir W. Wil. What can you say more?

Mr. Serj. Tremain. Pray let me ask you, when you came to Mr. Rigby's, in what manner did you go away from his House, and what was said at parting?

Mrs. Pratt. Mr. Ashton was not there himself at first, but he and Mr. Elliot, and two other Gentlemen were there afterwards, and Mr. Ashton's Wife said something about Papers hove in a Hat at Court, and about some bodies being chosen; and one of the Gentlemen said there was nothing in that, I was one that was Chosen last Year.

Mr. Serj. Tremain. Did Ashton and Elliot go out together from Mr. Rigby's?

Mrs. Pratt. I did not see them go.

Mr. Trevor. Had you any directions from Mr. Ashton, to send for a Hamper or a Trunk?

Mrs. Pratt. Yes, that was at Mr. Burdett's House.

Mr. Trevor. When was that Hamper and Trunk to be sent for?

Mrs. Pratt. On the Wednesday Night before we went to Rigby's House.

Sir W. Wil. Do you know one William Pasely?

Mrs. Pratt. Yes.

Sir W. Wil. Was he with them?

Mrs. Pratt. Yes, he was with them.

Sir W.

Sir W. W. What occasion brought him thither?

Mrs. Pratt. I carryed him to Mrs. Burdett's House.

Mr. Trevor. Pray did the Prisoner desire to see the Master of the Vessel, or speak with him?

Mrs. Pratt. Yes, and when I brought him, he said he liked him very well.

Mr. Trevor. What is the Master's Name?

Mrs. Pratt. William Pafeley.

Mr. Serj. Tremain. Had you any Discourse with Mr. Ashton's Wife after they went away?

Mrs. Pratt. We had little discourse, only she gave me some Victuals and Drink; and she said she hop'd I would not tell of her Husband.

Mr. Serj. Tremain. What else did she say?

Mrs. Pratt. She hoped God would deliver them out of the Lyon's Mouth.

Mr. Serj. Tremain. Did she say any thing about Cock Crowing?

Mrs. Pratt. Yes, she said she thought she should have no good Luck for the Cock crowed.

Mr. Serj. Tremain. Who was by in the Chamber when the Money was paid?

Mrs. Pratt. There was the Master of the Vessel by, and Mrs. Burdett.

Juryman. My Lord, I heard her say somewhat of some Papers, which I do not very well understand. Does she know of any Papers that the Prisoner had?

Mr. Serj. Tremain. That was only about the Two Notes.

L. C. J. Holt. She talks of Papers being shaken in a Hat, but nothing can be made of it.

L. C. J. Pollexfen. If you would ask her any Questions before she goes, now is your time to do it.

Mr. Ashton. My Lord, I desire she may stand up again. Mrs. I ask a Question, not so much in kindness to my self, as Justice to another Gentleman. You say Mr. Ellyot writ one of the Notes.

Mrs. Pratt. Yes, as I remember, it was that to meet at Mr. Rigby's.

Mr. Ashton. I do it to justifie that Gentleman, I take that Note upon my self; and you say I hired the Ship, and Mr. Ellyot was by.

L. C. J. Holt. Look you, Mr. Ashton, Mr. Ellyot is not now upon his Tryal, it concerns you only to ask such Questions as relate to your self. What is said now concerning Mr. Ellyot, goes for nothing against him.

Mr. Ashton. My Lord, I do it only to do him Justice.

L. C. J. Holt. But you are to ask Questions only for your self.

Mr. Ashton. Remember, good Woman, you are upon your Oath; and have a care of forswearing your self; my Blood is at stake.

Mrs. Pratt. I am sure I say nothing but the Truth.

Mr. Ashton. Did I ever speak to you of going to France?

Mrs. Pratt. Yes, you did.

Mr. Ashton. As I hope for Salvation I did not.

Mrs. Pratt. And another thing you told me more; if I help'd this well away, you would help me to the earning of 1000l. before Lady-day.

Mr. Ashton. Gentlemen, as to what was said of that kind, of helping her to 1000l. is no great matter to the thing in Hand; for if I was minded to go out of the Kingdom, it was necessary to use all Arguments I could, to persuade her to help me to go away.

L. C. J. Holt. Mr. Ashton, you must stay your time before you speak to the Jury; make your Observations upon the Evidence to your self, you shall be heard at large all that you can say in your proper time.

Mr. Ashton. I do assure my self, my Lord, of all the favour that can be shewn to a Man in my Circumstances.

L. C. J. Holt. You shall have all that is just, I do assure you.

Mr. Ashton. My Lord, I am glad in the Circumstances I am in, that I am to be tryed before your Lordship. But, good Woman, by Vertue of the Oath that you have taken, did I ever speak to you directly or indirectly of going to France?

Mrs. Pratt. Yes, and you ask for a hie to hide what you might have occasion to keep secret.

Mr. Ashton. But I ask you about going to France; did I speak to you about going to France?

Mrs. Pratt. Yes you did.

Mr. Ashton. Then, as I hope to be sav'd, I never spoke directly or indirectly of going to France to her.

Mrs. Pratt. You were not to go for Holland nor Flunders, I am sure.

Mr. Ashton. Nay, I did take it for granted, that you did know before I met you, that we were to go to France; but I never spoke to you of it in my Life, that I am sure of; but I only urge this to let your Lordship know, that Woman has forgotten her-self.

L. C. J. Pollexfen. Mr. Ashton, You will have all lawful favour; but your time for arguing upon the Evidence is not come.

Mr. Serj. Thompson. You must ask your Questions now, and make your Observations afterwards; you must reserve your self for that, till after we have done.

Mr. Ashton. But then, my Lord, I shall have too many things for my Memory to retain; and therefore I beg leave, as they occur to my Memory now, and as the Witnesses go along, to make my Observations.

Mr. Serj. Tremain. Mrs. Pratt, Pray, when the Vessel was hired, and you were told it was to go to France, what Persons did Mr. Ashton say were to go with him?

Mr. Pratt. Three Persons he said were to go, but he did not name them.

Mr. Serj. Tremain. Then set up William Pafeley.

(Which was done.)

Sir W. Williams. What can you say of any for the hiring of a Vessel?

Pafeley. I did not know the Vessel was hired before I came thither.

Mr. Serj. Thompson. Prithce tell us what thou dost know?

Pafeley. The Woman came to me when I was at Billingsgate, and said I must go a little way along with her: and as we were going she told me it was to go to Mr. Burdett's in Queen-street; and when we came there, Ellyot and Ashton were not within: But by that time we had been there a little while, in came Mr. Ashton, and presently after him Mr. Ellyot; and Mr. Ashton bid the Woman give him the Money out of the place where it was.

Juryman. My Lord, we do not hear him.

Sir W. Williams. Pray begin again, and speak out.

Pafeley. I met with this Woman at Billingsgate,

and she told me I must go a little away along with her.

L. C. J. Holt. That Woman, name her.

Paseley. Mrs. Pratt; and I went along with her, and askt her where she was going; she said up into *Queen-street*: And coming to *Queen-street*, we went to Mr. *Burdett's* House, I was never there in my Life before. When I came there *Ashton* nor *Ellyot* were either of them there; after a little while in came *Ashton*, and presently after in came *Ellyot*, and he went up Stairs into the Bed Chamber; and being in the Bed-Chamber, they brought the Money out, rolled up in a half-Sheet of Paper, set up an edge, and told it out at the Window.

L. C. J. Holt. Who told it?

Paseley. *Ashton* told the Money out; and after the Money was told, he pulled out two pieces of a Six-pence, and when he had pulled out the two pieces of a Six-pence, he gives one half to this Mrs. *Burdett*, and the other half he kept himself; and he bid her pay this same Money, when the other half Six-pence that *Ashton* kept came to this Woman, to match that which she had; and after the Money was told, we stayed but a small while there, and came down Stairs; and when we came down Stairs we went down to *Billingsgate*. I think *John Fisher* was there, and we carried away with us a Trunk and a Hamper; *John Fisher* carried the Trunk, and another Man the Hamper; and after that we had carried the things on Board, I came up to the House again; and after I came up to the House, they directed us to go to the *Seven Stars* in the little *Piazza*, there was a Note written to direct us, which ordered us to go thither betwixt 10 and 11 at Night. When we came there, I think there was neither of them there present, but by that time we had been there a small space, in they both came, and sat down; and a Gentleman came in and said the Cock crowed; and therefore they should have no good luck. And then they talkt about Papers being tossed in a Hat, I dont know what, and in came two Gentlemen more, just before we went away, to see them; and after those Gentlemen had seen them, they staid but a little while. Says *Ellyot* to me, Master, come along with me; so I went along with him, and we came to *Surrey Stairs*; and on the Corner on the left hand, there was an Ale-house. He called the Waterman out of the Ale-house, and he bid me go before, and I went down; and by the time that I had gotten down, the Waterman came and halled his Wherry to, and I went in; and by that time I was gotten to the Stern, down came *Ashby* and *Ellyot*, and my Lord, and his Man.

L. C. J. Holt. You mean *Ashton*, not *Ashby*?

Paseley. Yes, my Lord, that is the Man. And after they had got into the Wherry, and were seated, they bid the Waterman put off from Land, and so we went through Bridge; and after we were through Bridge, we got on board the Smack, and they got into the Cabin; and when they were got into the Cabin, I called my Men, and bid them hale up the Anchor, and they did so; it proved to be but little Wind, but that Tide we got below half-way Tree, and were forc'd there to drop our Anchor, and stay till the next Morning: the next Morning we weighed Anchor, and by that time it was Nine a Clock, we got to *Long-Reach*,

where lay the *George* Man of War, and there they hid.

Mr. Sol. Gen. And how was the hiding, pray?

Mr. Paseley. It was down in the Quarters under the Hatches.

Mr. Sol. Gen. Why did they hide?

Paseley. We reckoned they would come on Board a Pressing, and they bid me show my Protection.

Mr. Serj. Tremain. Did they desire to be hid?

Paseley. Yes, and after we came by the *George* Man of War, they came up again, and remained afterwards in the Cabin, till we came almost to *Gravesend*: a little before we came to *Gravesend*, they all hid again; and when they were hid, remained hid all, I think, but only *Ellyot*; I think, he popt up; and they were resolved to go eat their Victuals; but then I told them, there was a Barge coming, and so he went down again, and there they remained, till they were taken, for the Barge was on Board presently, and found them there.

Mr. Serj. Tremain. What kind of place was it, that they were hid in?

Paseley. They could not sit, nor stand up right in it, but lay all along, or lean'd on their Elbows.

L. C. J. Holt. What did they lie upon there, pray?

Paseley. There was Ballast, and slit Deal a top of the Ballast.

Mr. Serj. Thompson. Well, what happened when the Captain came on board?

Paseley. When Captain *Billop* came on board, Master, says he, you have got a couple of stout young Men, I must press them, or to that effect. I hope not so, Captain, said I. Why, what have you to shew, says he? I told him, I had a Protection. Let me see it, says he. So I shews him my Protection, and he looks in it. Well, says he, Master, I must look farther; and went to rights to the Place where they lay, and found them lying all together. After they were taken, and were come out, Captain *Billop* commanded them into his Boat, and commanded me, and my two Men, to go into the Barge; afterwards he set his Man on shoar at *Hungerford Stairs*; and when we came to *Whiteball Bridge*, the Gate was not opened, and we stayed a little while at *Whiteball Bridge*; and when we came a shoar, *Ellyot* gave me half a Crown, and bid me say, when I came upon my Examination, that we were bound for *Flanders*, and not for *France*.

Mr. Serj. Tremain. Where were you bound for, pray?

Paseley. They examined me in the Chamber, when they paid the Money, if I knew they went to *France*; and I told them, yes, very well.

Mr. Serj. Thompson. Did they desire you to go to any particular Port in *France*?

Paseley. No, we were to touch at any Place we could.

Sir Willi. Williams. Did they mention any thing of *Flanders* to you?

Paseley. No, they did not.

L. C. J. Holt. Did any body mention going to *France* to you?

Paseley. Yes, they did. They askt me, whether I could carry them to *France* safe.

L. C. J.

L. C. J. Holt. Who did ask you that?

Pafeley. *Ellyot* or *Ashton*, one of the two, I cannot directly say which; but if I be not mistaken, it was *Ashton*.

Mr. Serj. Tremain. When you came from *Rgby's* at the *Seven Stars*, Who came away with you?

Pafeley. *Ashton* and *Ellyot*.

Mr. Serj. Tremain. Did *Ellyot* and *Ashton* both come out with you?

Pafeley. Yes, they did.

Mr. Serj. Tremain. And did they part, after they were come out?

Pafeley. Yes. *Ashton* did go away from us presently after we were come out.

Mr. Serj. Thompson. When you came on Board, had you any Discourse with *Ashton*, about going to *France*?

Pafeley. No, not that I remember.

L. C. J. Holt. Did you go on foot, from the *Seven Stars*?

Pafeley. Yes.

L. C. J. Holt. And did they part, after you came out?

Pafeley. Yes, they did.

L. C. J. Holt. And who went with you, did you say?

Pafeley. *Ellyot* came with me.

L. C. J. Holt. Whither went *Mr. Ashton* then?

Pafeley. I cannot tell, my Lord.

Mr. Sol. Gen. What did he say to you, when he went from you?

Pafeley. He bid me go along with *Ellyot*.

L. C. J. Holt. Was *Mr. Ashton* there as soon as you?

Pafeley. Not quite; but by that time the *Waterman* had got the Boat to the Shoar, and I in the Stern, they were all come down.

L. C. J. Holt. When *Ashton* came, who came along with him?

Pafeley. I saw them all upon the Stair-head; I was in the Boat when they came. I never saw my Lord, till he was upon the Stairs.

Juryman. My Lord, I desire to ask him, What the Sum of Money was, that was paid at *Burdett's*?

Pafeley. It was 93 Guineas and Six Pence.

L. C. J. Holt. Who brought it?

Pafeley. It was laid down in the Window.

L. C. J. Holt. But I ask you, who brought it?

Pafeley. I did see *Ashton* bring it, and lay it down in the Window, and he told it out, and put it up again, and gave it to *Mrs. Burdett*.

Juryman. My Lord, I desire to know what is the usual Rate to go to *Flanders*; What may a Smack and three Men deserve?

Pafeley. Truly I cannot tell, I never went upon my own account in my Life.

L. C. J. Holt. *Mrs. Pratt*, what say you, what is the usual Rate to go to *Flanders* or *Holland*?

Mrs. Pratt. I believe they may go for a matter of 20 l. or 30 l.

L. C. J. Holt. You hear them Gentlemen, what they say.

Juryman. Yes; but, my Lord, he says, he gave them notice the Barge was a coming. I desire to ask him. Did he know there was a design to search him or no?

Pafeley. Sir, I knew that there was a search for Seamen.

L. C. J. Holt. But did you know there was to be a search, in order to the taking these Gentle-

men on board you? For that is the Question, I believe, the Jury would ask you.

Pafeley. No, I did not know of it.

Mr. Sol. Gen. But you say, these Gentlemen desired to be hid?

Pafeley. Yes.

Mr. Sol. Gen. And you hid them according to their desire?

Pafeley. Yes.

Mr. Serj. Tremain. Before you went on Board, had you any discourse of hiding? did they ask you for a place to hide in?

Pafeley. Yes, they did.

Mr. Serj. Tremain. Who did?

Pafeley. *Ashton* and *Elliot* both askt if there were a place in the Ship to hide them, and I told them, yes, there was.

L. C. J. Pollexfen. *Mr. Ashton*, will you ask him any Questions?

Mr. Ashton. My Lord, I desire to ask him this Question. Did we desire you to come and hide us, or did you desire us to go down?

Pafeley. You desired this of us, that if we saw any Man of War's Boat we would tell you that you might be hid.

Mr. Serj. Tremain. Pray repeat that over again, did they desire you to give them Information when any Boat was coming, that they might hide, or did you desire them to hide your Self?

Pafeley. They desired it of me.

Mr. Serj. Thompson. Then set up *Charles Betsworth*.

Mr. Serj. Tremain. Before *Betsworth* is examined, I would ask *Pafeley* one Question? was there any Coat left on board you?

Pafeley. Yes, there were two Coats of the *Waterman's* left on Board, and I took them and lockt them up.

Mr. Serj. Tremain. Is that the Man that own'd the Coats?

Pafeley. Yes, it is:

Sir W. Williams. Then *Betsworth*, will you give an Account of what you know against the Prisoner at the Bar?

Betsworth. I cannot tell, my Lord, I never saw the Gentleman in my Life before, that I know of.

Sir W. Williams. Prethee hear, Friend, tell what you know of carrying any Gentlemen on Board the Smack.

Betsworth. If it please your Lordship, I was going home from our Stairs about 7 or 8 a Clock in the Evening; that is, from *Surrey-stairs*, and a Gentleman called *Sculler*. Said I to him, Sir, where do you go? says he, As far as the *Tower*; said I, 'tis against Tide, I cannot go; it will be ten a Clock before it be high Water. Says he, will you go with us at that time? Said I, what will you give me? Will you give me half a Crown? then I'll carry you down, for I cannot stay out so late for nothing. Yes, says he, I will give it you. Then I came and brought my Boat to the Shoar; he asked me then what my Name was; I told him *Charles Betsworth*. Says he, will you be sure to stay till we come? Yes, said I, if you will be sure to come; and if I be not here, I will be at such a House, an Ale-House, that was there by; the Sign of the *Swan*: So I staid, and carryed a Fare or two over the Water, and about 11 a Clock comes a Gentleman down, and calls *Charles*; and I went out a doors down towards my Boat, and there comes one Gentleman down, and a kind of a Seaman,

As I thought; and the Seaman went into the Stern, and the Gentleman sat down at the Back-board, and there was three Gentlemen more came down the Stairs into the Boat; one had a whitish Cloak, and the other a loose Coat; and they brought a Leather Bag that would hold about a Peck; so I put off with them, and rowed down the River, and all that I heard them say, was when we came under the Temple; says one of the Gentlemen, when do you hear the King goes away? Says another of them, he goes away a Tuesday; and when we got through Bridge, one of the Gentlemen askt where the Vessel lay, and a Man in the Stern said on Southwark side, over against the Tower, and when we came a little below Battle-bridge near Pickle Herring-Stairs, the Master said, there lies the Vessel, and it had a long-Pendant and a top Sail loose; so they paid me before they came on Board, and when they were got a Board away rowed I; and when I came to land to take out my Sculls and things, there I mist my Cloaths; and I rowed after them, thinking they could not be got far; but when I came to the place where they went on Board, the Vessel was gone, and I rowed down as low as Lime-house Reach, and in Black Hall Reach I overtook a Vessel, which I thought was the Vessel. I askt them who they belonged to, and they said they came from Hursleydown, and I made answer I brought two Fares on Board a Vessel at Pickle-herring-Stairs; and had forgot to take my Cloaths that they had; they made answer, I brought no Fare on Board them, so I rowed on farther beyond Barkinshelf, and because there was no Wind, I thought none could have gone beyond that Place, and therefore resolved to row back again when it was Flood; and I rowed up to Greenwich, but could not meet with the Vessel; and I heard nothing of my Cloaths, till last Friday was Seven-night I had my Cloaths brought to me.

Sir W. Williams. Can you say this Gentleman Mr. Ashton, the Prisoner at the Bar was one of them that you carryed on Board the Smack?

Betsworth. No, I know never a one of them.

Mr. Serj. Tremain. But you say the Persons that you took in at Surrey-Stairs carried away your Cloaths with them?

Betsworth. Yes, Sir.

Mr. Serj. Tremain. Then I ask you, Pasely, Is that one of the Persons that he brought on Board your Smack?

Pasely. Yes, he was.

Mr. Serj. Tremain. How many came on Board the Smack?

Pasely. Four; My Lord Preston, Mr. Ashton, Mr. Elliot, and my Lord Preston's Man.

Mr. Serj. Tremain. Did you take in your Pendant?

Pasely. Yes, I did.

Mr. Serj. Tremain. When did you take it in?

Pasely. As soon as we weighed Anchor.

Mr. Serj. Tremain. How came you to take it in?

Pasely. Elliot spoke to me to take it in.

L. C. J. Holt. Did they mention how many were to go in the Smack?

Pasely. He said, they were three of them, not four, as I remember, that were to go.

Sir W. Williams. Will you ask him any thing Mr. Ashton?

Mr. Ashton. No, Sir: But I desire the Woman may not go out of Court.

L. C. J. Holt. No, no; she shall stay.

Mr. Serj. Thompson. Then call John Fisher, and James Amonds. (Fisher stood up.)

Sir W. Williams. Pray do you acquaint the Court and the Jury what you know of this matter, whether you carried any things on Board the Smack, and what; and who came on Board, and what hapned.

Fisher. My Lord, a matter of six Hours before they came on Board, my Master carryed me a Shoar, and brought me to Mr. Burdett's House, and gave me a Trunk, and I went with it, and another Man with a Hamper, and brought them on Board; and about 11, or 12 a Clock, my Master comes and brings Mr. Ashton and the other aboard; and he bid me go forward, and heave up the Anchor, and so I did, and we went down the River; but we could go but a little way because there was no Wind; and when we came to Half way tree, the Tide Turning, we were forced to cast Anchor again, and stay till the Morning; and in the Morning we weighed Anchor again about 8 a Clock, and about 9 we came into Long reach, where lay the George Man of War, and then Mr. Ashton and they hid; and when we came below them again, they came up again till we came almost near the Block-House at Gravesend, and there they hid again; and Mr. Ashton I think came up afterwards, and bid me go down to the Hamper, and fetch them up some Victuals for their Dinner, and I went down and fetch'd up some Beef, and Mr. Ashton took hold of it; and I took a Bottle of Wine or two out; and just before I brought all the Victuals up, the Barge was spied a coming to us; and then he went down again: And there they hid, and the piece of Beef was a top of them. Captain Killep when he came near, waved his Hat, to bid us lie by; and we did lie by, till he came up to us; and when he came up to us, says he, Master, you have gotten a couple of good likely Men, worth the coming on Board for. Says the Master, I hope Captain, you wont press them. What have you to keep you clear. Says he, I have a Protection. Have you says the Captain? Let me see it. So he shew'd him the Protection, and he read both our Names in it. Then, says he, Master, I must look farther; and he went down to the Quarter Hatch- es, and took them up, just where they lay. First my Lord came out; and he searcht them all, as they came out. Mr. Elliot came out next, and Mr. Ashton stay'd within, being the last Man. And after he had searcht them, and done what he pleased; he got all the Papers and Writings: then he commanded us all to go into the Barge; and they came on Board the George Frigate in Long Reach. And at the Ship, Mr. Elliot came to us; and bid us say, we were going for Flanders. And after we came to Whitehall, Mr. Ashton gave me a half Crown Piece, and bid me say, we were bound for Flanders, and not for France.

L. C. J. Holt. Was that after they were taken, or before?

L. C. J. Pollexfen. When was the first time, that they would have you say, they were bound for Flanders?

Fisher. It was on board the George Frigate in Long-Reach.

L. C. J. Holt. Who was it that bid you say so?

Fisher. Mr. Elliot and Mr. Ashton both, in the Ship's Steerage, where they came to us.

L. C. J. Pollexfen. Where was the next Place, that they bid you say so?

Fisher.

Fisher. At Whitehall Bridge, *Ashton* gave me a half Crown Piece, and bid me say so.

Juryman. Did he speak that aloud, or softly at Whitehall?

Fisher. He whispered it in my Ear.

L. C. J. Holt. Did they ever say they were bound for Flanders, till after they were taken?

Fisher. No.

Mr. Serj. Tremain. What manner of Place was this that they hid in?

Fisher. An ugly hole, where a Man has no room to lie along at ease; he can neither stand upright, nor set upright.

Mr. Serj. Tremain. Did you see the Waterman that brought them on Board?

Fisher. No.

Mr. Serj. Tremain. Was there any Waterman's Coat left?

Fisher. Yes, there was two.

L. C. J. Holt. But didst thou see the Boat?

Fisher. We were asleep when they came on Board, and the Boat was put off as soon as ever they came on Board.

Mr. Serj. Tremain. Then as soon as ever they were on Board, you got up the Anchor, and pulled in the Pendant?

Fisher. Yes. We immediately hove up the Anchor; and took in the Pendant.

Mr. Serj. Tremain. Did any Sculler hale you afterwards, as you were going down?

Fisher. Yes, as we were going down there did.

Mr. Serj. Tremain. What did you say to him?

Fisher. I was not steering then: but this other Man made answer.

L. C. J. Holt. Mr. Ashton, Will you ask him any thing?

Mr. Ashton. When I gave you the Half Crown that you speak of, what did I say to you?

Fisher. You bid me when I came to be examin'd, say we were going to Flanders, and not to France.

Mr. Ashton. What did I say else?

Fisher. You bid me take that half Crown for to Night, to help to bear my Charges, and to Morrow you would take farther care of us.

Mr. Ashton. I told you you were Prisoners now, and I gave you that; and told you I would take farther care of you.

Fisher. You did not say we were Prisoners, but you said you gave me that to help bear Charges for that Night, and on the Morrow you would take farther care of us.

Mr. Serj. Thompson. Then set up James Amonds.

Sir W. Williams. Are you sworn Friend?

Amonds. Yes, Sir.

Sir W. Williams. Then let the Court and the Jury know what you can say in this matter.

Amonds. My Lord, they came on Board about 11 or 12 a Clock at Night, I was asleep in the Cabin, and heard a Boat coming aboard, and I turn'd out, and before I could get out of the Cabin, they were got aboard, and I see no Boat, nor nothing. So, says the Master, go forward and heave up the Anchor; and after we had heaved up the Anchor, I goes into the Ship to tow the Vessel down, because there was no Wind, and we would not let the Vessel go foul on the Ships that were in the River, and a little after we came on Board again; and when I came on Board again, they were all on Board, all four. After that comes a Waterman, and I was at the Helm steering, and he called out to us! Oh hoe, says he; did not I bring a Parcel

of Gentlemen on Board this Smack? Nor as I know of, said I. Says he, I carryed a Parcel of Gentlemen on Board some Smack, that had a Pendant out, and I know not where it is; they carryed my Cloaths on Board with them. Said I, I know nothing of it, nor I did not; for I saw neither Waterman, nor Boat; so away the Waterman goes, and we went down the River, and when we came to Half-way Tree, we came to Anchor, and my Miller went and laid himself down, the Tide being almost done, and there being no Wind, and Mr. Ashton and they lay in the Cabin; and says Mr. Ashton to me, take care of us now, and we will take care of you hereafter; says he, we shall help you to many a Freight, and many a Pound. Ay, ay, said I, you will be taken care of to be sure at Day break, or when the Day comes on; about 8 a Clock, we hove up the Anchor again, and fell down as low as Long Reach, where the George Frigate lay; and when we came there, they went down to hide in the Quarter Hatches. I steered it down still; and when we were got past that Man of War, the Hatches were taken up, and they came up again out of the Quarters, and sat in the Cabin again, and we had a fresh Gale of Wind, and run down to Gravesend quickly, and when we came near the Block Houses, said I, we are almost at the Block Houses; then said they we will go down and hide a while; and so they did till they were past there, then resolving to go to Dinner.

L. C. J. Holt. What time a day was this?

Amonds. About 11 a Clock, as near as I can guess.

Mr. Sol. Gen. Well, they did go down to hide then, did they?

Amonds. Yes, they did go down and hide, and came up again. I am sure some of them; I heard some of them in the Cabin.

Mr. Sol. Gen. Well, what followed?

Amonds. After they were gotten up, and past Gravesend, this Man was sent for Victuals for them, and so he fetch'd them some Roast Beef, and some other things; and just as the Roast Beef was going into the Cabin, said I, Here comes a Barge off to press. So when I cried, the Barge was a coming, they took the Victuals down into the Quarters, and there lay they; and the Victuals a top of them. And when the Barge came near us, the Captain waved his Hat, to command us to lie by. Said I, We must lie by, for the Barge is coming up to us. And we capp'd the Helm a lee, and lay by; and after we were laid by, the Barge came on Board us. Says the Captain of the Barge, You have got a couple of likely, good Men, Master, said he. Ay, says the Master; but I hope you won't press them. Says the Captain, Have you got any thing to keep you clear? Yes, if it please you, noble Captain, I have got a Protection. I am sorry for that, says he, and comes on Board, for he staid all this time in the Barge; and smiling upon him, he comes on Board, and says he, Come, let's see your Protection. And the Master shew'd it him, and he read it. Says the Captain, I must look a little farther. And he goes into the Cabin, and took up the Hatches, and there lay all these Gentlemen. They were something longer a coming up than he would have them; so says the Captain to his Men in the Barge, Come on Board and see who is here. And so some of his Men did come on Board; and to the best of my remembrance, my Lord was the

the first Man that came up: And when my Lord came up, the Captain run his Hands into his Coat Pockets, to feel for Papers, as I suppose; and my Lord desired the Captain to be kind, and take nothing away. Says he, *I'll take nothing but Papers; 'tis Papers I look for*: And he pull'd out a Watch, and gave it him again. After that, Elliot came out; and whether he found any thing upon Mr. Elliot, or no, I cannot tell. Mr. Ashton was the last that came up; and when he came up, a Waterman of the Captain's calls to him, and says, *That Gentleman that came up last has put something in his Bosom, but what I can't tell*. So the Captain took Mr. Ashton by the Arm, and turn'd him about; and, says he, *What did you put in your Bosom?* Says Mr. Ashton, *Nothing but my Handkerchief*; and pull'd out his Handkerchief, and shew'd him. Then the Captain put his Hand in, and pull'd out Papers, with a piece of Lead tied to them. And that is all that I saw.

Mr. Serj. Tremain. But tell us what happen'd afterwards.

Amonds. When that was done, the Captain commanded us all into his Barge; and I row'd, and some of the rest row'd, it being cold Weather, till we came up to London. After we came up to London, they did not say any thing to me, because I was a rowing till then. It seems they did give them some Money, but they gave me none, not till I came into Whitehall; and then my Lord's Man came to me, and call'd me a one side; says he, *Here's Half a Crown, will serve you to Night; and be sure, when you come to be examined, that you say, you were bound for Flanders, and not for France, and you will be taken farther care of to Morrow*.

Mr. Serj. Tremain. What manner of place is that Quarter-Hatches?

Amonds. They could neither sit, nor stand upright in it.

Mr. Serj. Thompson. What did they lie upon?

Amonds. There were three or four slit Deals that were laid over the Ballast, but it seems they had shuffl'd 'em on the one side when they were taken, for the Ballast lay open.

Mr. Serj. Tremain. Did the Waterman that brought these Men on Board you, leave his Coat there?

Amonds. I did not see the Boat, nor the Waterman; and therefore I am not able to say any thing about it.

Mr. Sol. Gen. How came the Pendant to be taken down?

Amonds. I can't tell that, I was in the Skiff when it was taken down.

Jury-man. My Lord, I do not well understand how the Papers came to be taken away from Mr. Ashton.

L. C. J. Holt. He tells you, Mr. Ashton was seen to put his Hand with something into his Bosom; and being tax'd with it, he said it was his Handkerchief; and the Captain put in his Hand, and pull'd out a Bundle of Papers.

Jury-man. Did he see Ashton take away the Papers from any other place?

Amonds. No, an't please your Honour, I did not see them till they were taken out of his Bosom.

L. C. J. Holt. Did you see Captain Billop take the Papers from out Mr. Ashton's Coat?

Amonds. Yes, I did.

L. C. J. Holt. Where were they before they spy'd the Barge a coming?

Amonds. If it please your Honour, I heard 'em talk; I thought they had been up, but it seems there was but one of 'em up when they said, the Barge was coming a-board: I was at the Helm, and heard 'em talk.

L. C. J. Holt. Then you knew nothing of these Papers, but when you saw 'em taken out of Ashton's Bosom?

Amonds. No, my Lord.

Sir Wil. Williams. If you will ask him any thing, Mr. Ashton, now you may.

Mr. Ashton. Pray, Friend, had not I been up first, and search'd before the Papers were taken?

Amonds. Not as I know of.

Mr. Ashton. Did not I go down into the Hold to take my Hat, and call to you, and desired that I might go down for my Hat?

Amonds. I can't tell; for when I saw the Papers taken from you, I was in the Stern; I was not down.

Mr. Ashton. Had not I been search'd first?

Amonds. Not that I know of, till you were in the Stern.

Mr. Serj. Thompson. Then swear Captain Billop.

Which was done, he standing up by the Sheriff.

Mr. Serj. Tremain. Captain, I suppose you may be heard from that place.

Mr. Ashton. My Lord, I desire the Witness may come down, else I shall not be able to distinguish what he says: It is the proper place for him I think.

L. C. J. Holt. Let him come down.

Mr. Ashton. I humbly desire, my Lord, that the Witnesses may all be obliged to stay in Court.

L. C. J. Holt. Let them all stay.

Sir W. Williams. You are sworn, Sir: Are you not?

Capt. Billop. Yes, I am.

Sir W. Williams. Then, pray, will you give an Account where you took these Persons, how you took 'em, what you found, and how you disposed of it.

Capt. Billop. Must I begin from the Beginning?

Sir W. Williams. Yes; Tell your whole Knowledge, in Order of Time, as it fell out.

Capt. Billop. What, from the Time I went out?

Mr. Serj. Thompson. Make it as short as you can.

Sir W. Williams. Yes, you must tell all; for you speak now to a new Jury, and here is another Prisoner at the Bar to be tried.

Capt. Billop. The last of December, about Two a Clock, or between One and Two, my Lord of Danby came to me at one of the Doors of the House of Lords, and told me, his Father must speak with me; and he carry'd me up to my Lord Linsey's Chamber; and in a little time my Lord President came there, and told me, he heard there were divers Persons that had Papers of dangerous Consequence, and were going to France, and desired me to use my Skill for my seizing and securing of the Papers. I began then to talk of what was proper for such an Undertaking; and I told my Lord, I thought the best way, was to go to Woolwich or Deptford, and to take a Man of War's Pinnace with us: Upon that, my Lord of Danby being by, said, he knew of a Boat that he could have, which was my Lord Duke of Grafton's; and my Lady Dutchess had

had lent it him, and he would go, and get it ready: Upon this my Lord *President* said, he would give me a Note of the Name of the Vessel, and where she went out; and likewise a Letter to another Person, that would instruct me farther, and shew me the Vessel; accordingly my Lord *President* gave me the Letter, and I went away to look for the Person, but could not find him. My Lord *Danby* came to *Tower-Wharf* himself with the Boat; and I left a Man there to bring me word, when the Boat came up at the Place where I was; and Captain *Stringer*, and Sir *Thomas Taylor* came there to me. After my Lord of *Danby* had told me what I had in the Boat, I told him, I thought there were not Arms enough; and therefore it were best to go to the Tower, to borrow some Arms from thence: When we came to the Tower, my Lord *Lucas* was not come in; and when I had staid a little time, he did come in: And when I had acquainted him with my business, he sent for an Officer of the Guard, and there we borrowed some Arms, a Blunderbuss of his, and a Carbine, and the like; and about Eleven a Clock, or somewhat past, we put off from *Tower-Wharf*. It was calm, and we rowed down towards *Gravesend*; and we went aboard a Vessel or two, but I was not willing to lose much time, because I was resolved to take them before they were gotten too far: So we rowed away for *Gravesend*, where I refresh'd my Men, and afterwards went down into the *Hope*; and I did judge that no Vessel that came from *London* that Tide could be a-head of me. I went on board several Vessels that lay in the River, in order unto the pressing of Men; and I went on board all sorts of Vessels, because I would give no Suspicion of what I was about; and having been on board of several, I pressed two or three *Rarkin* Men; and one particularly, that knew all the Vessels upon the River; and I made him row very near to me, that I might talk to him; I had got the Names of a great many Smacks, and gave it out that I would press a Smack to carry for a Tender to my Ship, when the Fleet went out; and naming this Smack that I was to go search, I told him, *I heard such a Smack sailed well, and I had Thoughts of pressing her*; he told me, *She was old*; but said I, *She will serve a Summer well enough; and that is it I intend to press, if I can find her*. Says he, *I'll shew you her, I know her when I see her*; so we went on board several Vessels as we went along. And as we were rowing along before, we came to the *Nest Point* by *Tilbury Fort*, we saw several Smacks coming down the River; and when we came about the Point, the headmost Smack of all, the Fellow lookt out, and said, *Tonder is the Thomas and Elizabeth*. Then I called to one of my Men to wave, and bring them to lie by, which they did, and they lay by till I came on board. When I came on board, I saw two lusty Men stand by the Master; said I, *Master, you have got two good lusty Fellows that would serve the King; but I'll be kind and civil to you, I'll take but one*. Says the Master, *I hope not so; for I have a Protection*; with that, I came on board, and took his Protection in my Hand, and read it. As soon as I had read it, I ask'd him, if he had no more Men upon Deck than what I saw. He said, *No*. Then, said I, *I must look a little farther*. And I went into the Quarters, and took up the Scuttle, and the Hatches, and I saw some Gentlemen lie. Oh, said I, *What a pretty*

Posture is this? Where are we a going? Gentlemen; you must turn out. The first that came to hand was my Lord *Preston*; but I did not know him then, nor some time after I was in the Boat with him: So I took hold of him, and help'd him up; and when he was up, said I, *Sir, I must search you*. Says he, *I hope you will take nothing from me. Nothing*, said I, *but Papers*: So I search'd all his Pockets; and as I found any Papers, I put them into my own Coat Pocket. And I took his Watch, and pull'd it out, and gave it him again: After that I had search'd him, came up Mr. *Elliot* the first Man, and the next was Mr. *Ashton*, who crouded up while *Elliot* came up, in his Night Cap. *I think, Mr. Ashton, you had your Night-Cap on*. So Mr. *Ashton* goes down again, and puts on a Perriwig, I think; but coming up again, one of my Sea-men sees him take something, and put it into his Bosom: He follows Mr. *Ashton* quick, and pulls me by the Coat; and, says he, *That Gentleman has got something in his Bosom*: So I took hold of him, and turned him round; said I, *Mr. Ashton, what have you got in your Bosom?* *Nothing*, says he *but a Handkerchief*; and immediately he put his Hand into his Bosom, and pluck'd out the Handkerchief, and shew'd me. As soon as he had pulled out the Handkerchief, I put my Hand into his Bosom, and there I met with the Pacquet that had the Lead affixed to't; and pulling it out, I clapp'd it into my own Pocket; for I thought that was the Matter of Moment that I was to secure. So I ordered them to go into the Boat, and the Master of the Vessel to let go his Anchor; and two Men I left in the Vessel, whom I ordered to search, and to secure what they found till farther Order; and I left two Muskets with them. And after we were in the Boat, they desired to have something handed in, which I gave Order for, a Hamper, and a Night bag; and away we put off from the Vessel, and rowed up; it was against Tide, and very cold Weather. In a little time Mr. *Elliot* called one of the Gentlemen, my Lord; then I whispered him, and ask'd him who that Lord was, and he told me, *It was my Lord Preston*. Then I saluted my Lord; and my Lord was pleased to say, he was very well satisfied they were fallen into the Hands of a Civil Gentleman. So rowing up against Tide, and it being a Westerly Wind, which blow'd very fresh, My Lord desired that I would let them stop at *Gravesend*, till the Tide turned, that they might refresh themselves. I begged his Pardon, and said, there was a Ship in *Long-Reach*, the *George Frigot*, and we would stop there; and I did not doubt, but I could command the great Cabin for his Accommodation; and there he might have any thing that he wanted. My Lord seem'd contented with it; but before we came on Board the Man of War, there happened a great deal of Discourse betwixt us of several things.

Sir *W. Williams*. Pray repeat it, as well as you can remember, what Discourse happened.

Capt. *Billop*. Truly my Lord *Preston* being cold, and the Hamper standing by, says he, *Captain Billop, we have not eaten, we will eat if you will*. And there was a piece of Beef at the top of the Hamper, and Bottles of Wine; and I opened the Hamper, sitting fairest for it, and handed out the Beef, the Bread, and the Bottles; and after we had eaten what we would, my Lord ordered the rest to be given to the Men that were

were the Boats Crew, and after we had done this, and taken out a Bottle or two, and shut up the Hamper again, my Lord Preston drank to me once or twice, and seem'd very well satisfy'd and pleas'd with his Usage. He told me he was sensible of my Civilities; and if ever it lay in his Power, he would not forget me. So we drank again, and talk'd again; but before we came to the Ship, my Lord Preston told me, that if ever it lay in his Power, he would be sure to make an acknowledgment of the Civility I had shew'd him. And to the best of my Memory, he had this Expression, *If there ever was any thing he could serve me in, he would do it with all his Heart, if I would but dispose of the Packet.*

Mr. Serj. Thompson. What would Mr. Ashton have had you done? What did he say to you?

Captain Billop. Mr. Ashton said, it would do me no good to injure so many Gentlemen; and desired me that I would throw the Packet over-board.

Mr. Serj. Tremain. What did he mean by so many Gentlemen?

Captain Billop. My Lord, I cannot tell, but that was his Expression.

Mr. Serj. Tremain. Who desired you to throw the Packet over-board?

Captain Billop. Mr. Ashton did several times.

Mr. Serj. Tremain. What did he say to you? What Arguments did he use?

Captain Billop. My Lord, it was so many times over, and so much mixture of Discourse we had; that I am not able to tell the Particulars.

L. C. J. Holt. But what Arguments did he use?

Captain Billop. I don't know that he used any more great Arguments, more than what I have told you already.

L. C. J. Holt. Say that again that you said before.

Captain Billop. He said, 'twould do me no good to injure so many Gentlemen. *Prethee, Captain Billop, says he, throw it over board.*

Mr. Serj. Tremain. What did he say farther?

Captain Billop. I'll tell you, if you'll give me leave. Mr. Ashton did say, a little after this, with a great deal of Insinuation, *Captain Billop, What if you should turn about, and go along with us?* No, Mr. Ashton, said I, *that I cannot do.* Says Mr. Ellyot, *Prethee, throw the Packet over-board.* This they did as we came up the River; and 'tis the most that I can remember, till we came on board the *George*; and when we came on board the *George*, Ellyot called me into the Steerage, and desired me, of all Love, that I would dispose of the Packet: And he said, that now I had an Opportunity to make my self as rich, and as great as I would, and no body could see it, if I did throw it away. While I was in the Ship, Mr. Ashton, my Lord, and Mr. Ellyot, were with me, in the Steerage. Said I, *I shall be taken notice of, to be whispering; pray forbear.* Ashton then spoke to me again, to desire me to throw the Packet over board; by this time the Victuals was handed in, and there we eat and drank, and my Lord smoked a Pipe of Tobacco, before the Tide turned; and when the Tide made, we went into the Boat again, and rowed up towards London, and they were using these sorts of Arguments over and over again. And once Mr. Ellyot, I think 'twas, to the best of my remembrance, told me, *Now you have it in your Power to make your Fortune, and may be as great a Man, and as rich a Man as you can desire.* And Mr. Ashton

said some Words something to the same purpose; *Prethee, said he, throw it over board: What good will it do you?* So I refusing of it, as I did many times, Mr. Ellyot told me, that I might take the Letters that were taken in my Lord Preston's Pocket, and tie the Lead to them, and throw the Packet over board. No, said I, Mr. Ellyot, *Sure, you would take the King's Council to be a very odd sort of Men, that they cannot find out such a thing as this.* *Prethee, dear Billop, said he, throw it over-board.* Many times whispering me in the Ear; and so did Mr. Ashton many times, saying, *You may do us a great Kindness in it.* And we drank, and had several Intermissions; and they at me again, and I denied them, and they desisted; and then they at it again: And Mr. Ellyot then told me, *Prethee, dear Billop, throw it over board.* Said I, Mr. Ellyot, *If I should be so great a Villain to do such a thing, if ever it was your Day would you trust me again? Put it to be your own Case.* Says he, *You have Gentlemen to deal withal.* But, said I, *I will never put it into your Power.* Mr. Ellyot seem'd to be angry at this, and said, *Every Dog had his Day.* Said I, *I hope never to see it your day: But I pray, forbear this Discourse; let me beg that of you; for I do not desire to be provoked to use you otherwise than as Gentlemen.* And after that, they never urged me more to throw the Packet over board: But Mr. Ellyot was angry, and very much disturbed, and wish'd a Thunderbolt might strike the Boat, and sink it. So I brought them up, through London-Bridge, and they said no more about the Packet; but Ellyot wish'd, that London-Bridge might have fallen on our Heads. At length, I brought them to Whitehall; and I put my Man a-shore at Hungerford Stairs, that he might get before, and give the Porter notice at Whitehall-Bridge, that he might open the Gate. I brought my Lord Preston, and the rest, to the Bridge; and while I was arming my Men to guard them up to my Lord Nottingham's Office, I suppose they then took the Opportunity to give the Men Money, getting near to them; I know nothing of that: But I carried them up to my Lord Nottingham's, and there I delivered them, and the Packet to my Lord. After some time, the Packet lay upon the Table, and my Lord Nottingham sends me for my Lord Preston. When my Lord Preston came in, I withdrew without bidding, and the Packet lay upon the Table unopen'd: And when my Lord Preston came out, I went in on my self, and the Packet lay in the same Place and Posture, and not opened. And I stay'd while Mr. Ashton was call'd in, and my Lord Nottingham ask'd him a great many Questions.

Mr. Ashton. Pray repeat those Questions, Captain Billop; and what Answers I made.

Captain Billop. Truly, my Memory does not serve me to remember all of them, and I was in a very uneasy Condition at that time, and would much rather have been in my Bed, than any where else: For the Night before I went down, I had a Plaister of Spanish Flies put to my Back, and they had rais'd a great Blister, and it had not been dress'd so long, that the Napkin that was applied stuck so to it, that the Flesh was jagged, and I was in a great deal of Pain, so that I did not mind so much as I should have done at another time, what was said.

Mr. Ashton. But pray, Captain, remember as much as you can what pass'd.

Captain

Captain Billop. But I'll tell you what I remember; I remember my Lord Nottingham ask'd, who I took the Packet from? And you owned, I took it from you.

Sir Will. Williams. Pray Mr. Ashton, give us leave to have done with him, and then you shall ask him what you please. Pray go on Captain Billop.

Captain Billop. Then my Lord Nottingham sent for Mr. Ellyot in, and ask'd him whither he was going? And he said for Flanders. My Lord asked him, what he was going there for? He said, he was going to seek his Bread; he was turned out of all at home, and he had rather go abroad to seek his Bread, than stay at home to starve.

Mr. Serj. Tremain. Was this the Lead, that you took fix'd to the Packet?

Captain Billop. Yes, Sir; that is the Lead.

Mr. Serj. Tremain. Did you take that Lead, with the Packet, out of Mr. Ashton's Bosom?

Captain Billop. This was tied fast to the Packet that was taken out of Mr. Ashton's Bosom. These honest Men saw me take it.

Sir Will. Williams. Now, if you have a mind to ask him any Questions, you may.

Mr. Ashton. Pray, Captain Billop, did not you search me before you took the Packet upon me?

Captain Billop. No, not that I remember.

Mr. Ashton. Had not you taken some other Papers from me before?

Captain Billop. No, Sir; I took none from you but the Packet.

Mr. Ashton. Pray recollect your self, for perhaps my Life may turn upon it: You are as much a Witness for me, as for the King; you are to swear the Truth, and the whole Truth.

Captain Billop. And I will do you all the Justice I can, I will assure you.

L. C. J. Holt. Answer his Question, Captain Billop.

Mr. Ashton. Was not I the first Man that spoke to you after we came up?

Captain Billop. No, Mr. Ellyot was the first Man that spoke to me, that I knew.

Mr. Ashton. Did not I ask you to give me leave to go down for my Hat?

Captain Billop. Truly, I don't remember that.

Mr. Ashton. Did not you reply, That the Man should go down and fetch my Hat?

Captain Billop. 'Tis likely I might, but I don't remember it.

Mr. Ashton. Had not you search'd me then, and taken my Papers from me?

Captain Billop. No, Mr. Ashton; for, upon the Oath that I have taken, I took no Papers that I remember, but the Papers that I took out of my Lord Preston's Pocket, and the Packet that I took out of your Bosom; for my Lord Nottingham ask'd me, if that Packet was all the Letters I took? I told him, no; and shew'd him the Papers I took out of my Lord Preston's Pocket, and they prov'd to be of no Consequence, and my Lord Nottingham gave them me again, and I carried them to my Lord Preston.

Mr. Ashton. Did not I go down into the Hole for my Hat?

Captain Billop. I believe you might.

Mr. Ashton. And was it not after that, that you took the Papers out of my Breast?

Captain Billop. Yes, I believe it was.

Mr. Ashton. Where is your Man that call'd to you, and said, I put something in my Breast?

Captain Billop. Here he is, by me, if you would ask him any thing.

Mr. Ashton. You say, I spoke to you about disposing of these Papers: Pray, from the Time that we came into your Boat, before we came on Board the George Man of War, did I speak to you?

Captain Billop. Yes, of the Packet you did: You said, *What Good would it do me to injure so many Gentlemen?*

Mr. Ashton. There pass'd no more than general Discourse before we came on Board.

Captain Billop. Yes, Mr. Ashton; I'll tell you another thing you put me in mind of. When you saw that, though you were so eager with me, nothing would prevail, you said, *I know Captain Billop, and have known him many Years; and nothing will prevail on him, if he have no mind to it: And I know, if he will serve us, he will serve us generously, and like a Gentleman.*

Sir W. Williams. Speak that again.

Captain Billop. He said, *I know Captain Billop; if he will serve us, he will do it generously, and like a Gentleman.*

L. C. J. Holt. Who said so?

Captain Billop. Mr. Ashton.

Mr. Ashton. Did I speak to you to dispose of the Papers after we came from on board the Ship? I suppose you remember it was cold, and the Tilt was call'd for, to be lay'd over us, and I fell asleep; and you know I never wak'd, nor spoke, till I came to London-Bridge.

Captain Billop. Yes, yes; we had the Tilt over us.

L. C. J. Holt. Pray speak your Questions out, that we may hear 'em, Mr. Ashton.

Captain Billop. Mr. Ashton did go to sleep a while, but he had many times urg'd me, and spoke to me to throw the Papers over board.

L. C. J. Holt. Who was it that told you, *Every Dog had his Day?*

Captain Billop. That was Ellyot.

Sir W. Williams. Was there any Discourse about Turning of the Tide?

Captain Billop. Mr. Ellyot said, *You have now an Opportunity to make your own Fortune, and you may be as great, and as rich as you please; for 'tis impossible the Tide can run long this way.*

Mr. Serj. Tremain. Did Mr. Ashton say any thing about going along with them?

Captain Billop. Yes: You may remember, Mr. Ashton, that you said, *Come, go along with us; you may do as well there, or better than you do here.*

Mr. Serj. Tremain. Did he tell you, where you were to go with 'em?

Captain Billop. No, Sir; nor I did not ask him the Question.

Mr. Ashton. Pray, When did you give my Lord Nottingham these Papers?

Captain Billop. Do you mean that Bundle that I took out of your Bosom?

Mr. Ashton. Yes.

Captain Billop. As soon as ever I follow'd my Lord Nottingham into his Room, I pull'd 'em out, and gave 'em him.

Mr. Ashton. Did not you go out of my Lord Nottingham's Room, and give my Lord Nottingham some loose Papers?

Captain Billop. Yes.

Mr. Ashton. After this, Was not my Lord Preston call'd in to be examin'd?

Capt. Billop. Yes.

Mr. Ashton. How long was my Lord Preston in the Room, while you were out?

A a a a a

Capt:

Capt. Billop. I can't tell very well.

Mr. Ashton. Pray, Sir, answer that Question.

Capt. Billop. I believe it might be half a quarter of an Hour: I do not think it was much more.

Mr. Ashton. I believe you must remember some sort of Discourse that was betwixt you and Captain Ellyot, even to a Quarrel almost. And did you not speak to my Lord Nottingham's Servants, to fetch your Hat out of my Lord Nottingham's Room.

Captain Billop. Yes, I do remember that.

Mr. Ashton. This must be a good considerable Time: It was all the time that my Lord Preston was within with my Lord Nottingham, that you were out?

Captain Billop. Yes, it was.

Mr. Ashton. And all that while was not the Bundle of Papers out of your sight?

Captain Billop. It lay upon the Table.

Mr. Ashton. Pray, answer my Question: Was it not out of your sight?

Captain Billop. Yes, it was.

L. C. J. Holt. Yes, yes; it must be, for he was out of the Room.

Mr. Serj. Tremain. When you came into the Room, did you find the Papers in the same Condition?

Captain Billop. Yes, they were unopen'd, except that my Lord had taken off the Lead and a little Paper fell loose from the rest.

Mr. Ashton. Pray, take notice of that, Gentlemen.

L. C. J. Holt. But pray don't infer more from thence than it will bear.

Mr. Ashton. It seems some of the Papers were taken out.

L. C. J. Holt. He does not say any such Thing, that some of the Papers were taken out.

Mr. Ashton. He says, something was cut, and some Papers fell out.

Captain Billop. There was a little Paper or two tied to the great Pacquet.

L. C. J. Holt. What became of them?

Captain Billop. They were cut loose, but not opened.

Mr. Ashton. How can you tell they were not opened?

Captain Billop. Because I stood by when they were cut.

Mr. Ashton. But how can you tell that; for you see the little Papers taken, and they were loose from the others?

Captain Billop. They were taken from the great Bundle before I went out.

Mr. Ashton. Had not my Lord opened those Papers before you came in?

Captain Billop. No.

Mr. Ashton. How can you tell that?

Captain Billop. I tell you, as near as I can judge, they lay in the same Posture that I left them in.

Mr. Ashton. Was the Pacquet sealed when you took it?

Captain Billop. No; but it was tyed. There were several Letters in it that were sealed; it was tyed up very hard.

Mr. Ashton. I do not Question but my Lord Nottingham will do me the Justice to say how long he was in the Room.

L. C. J. Holt. You must not Comment, nor make your Observations till your proper time.

Jury-man. Pray, my Lord, I desire he may

be asked who was with my Lord Nottingham when my Lord Preston was there.

Captain Billop. There was no Body else then.

Jury-man. Then 'tis not probable they were altered before Captain Billop came in.

Mr. Ashton. But I hope Probabilities shall not be Evidence to condemn any Man.

Jury-man. Those two little Papers you speak of, were they severed from the Pacquet?

Captain Billop. I cannot tell whether they were or no; they seemed loose upon untying the Bundle.

L. C. J. Holt. Were they cut in your presence?

Captain Billop. Indeed, my Lord, I cannot say that I did see them cut.

Mr. Ashton. Pray take notice of that, Gentlemen of the Jury.

L. C. J. Holt. They are Twelve honest Gentlemen, they will do you right.

L. C. J. Pollexfen. Observe what the Witness says; he says, That he does not remember that they were cut in his presence, but he does not say, they were not.

Mr. Ashton. If he does not swear they were, it is reasonable to conclude they were not cut in his presence.

L. C. J. Holt. He says, the great Pacquet was not opened, the two little Papers were loose from the rest of the great Bundle.

Captain Billop. There might be two or three of them, less or more, I cannot tell.

Mr. Serj. Thompson. You will be further satisfied in this Matter upon my Lord Nottingham's Evidence, I suppose.

Mr. Serj. Tremain. We have done with Captain Billop for the present. Pray call Johnson.

(Who was sworn.)

Sir W. Williams. Were you at the taking of that Gentleman, and the others in the Smack?

Johnson. Yes, I was.

Sir W. Williams. Then pray give an Account of the Matter how it was.

Johnson. We went down in a Pleasure Boat and went to the Tower, we set through Bridge against Tyde, my Lord of Danby was with us; and when we came to Tower Wharf there they went to the Tower for Arms, and we stayed till Ebbing Water, and Rowed to Gravesend; and when we came to Gravesend we went on board several Ships, and I thought we were going a Pressing; and we stayed at Gravesend the time of the writing of a Letter, and then we went both into the Boat again, and rowed after a Smack that had gained of us, but that not being the Smack, we turned back again, and then it was high Water: And when we came to the upper-end of the Hope we saw several Smacks coming, and there was a Fisher-man on board that said, that was the Smack the Captain enquired after, that was coming down there; and when they came on board, the Captain said there were two or three brave Men, and he hoped he could spare one of them; and the Master said he hoped he would take none of them because they had a Protection, which he shewed to the Captain. Then the Captain went in and bid me take some small Arms and go on board with him, and told the Master he must look a little further; and the Boards were taken up, and I saw a great piece of Roast-Beef, and under that my Lord Preston, and Mr. Ellyot, and this Gentleman Mr. Ashton: My

My Lord *Preston* came up first, and Mr. *Ellyot* next to him; and I see this Gentleman take up something and put it into his Bosom, and I told the Captain of it, and he asked him what it was, and he said nothing but his Handkerchief, and plucked out the Handkerchief; but the Captain put his Hand into the Bosom and pulled out something else.

L. C. J. Holt. What was it?

Johnson. It was a parcel of Papers tied up with a piece of Lead tied to it, for I came up close after him and see him take it up.

Sir W. Williams. What else were there found with the Papers, was not there some Seals?

Johnson. That was afterwards; but when the Captain asked him what he had gotten in his Bosom, he pulled out his Handkerchief, and said nothing but his Handkerchief; but the Captain took the other Papers out of his Bosom and so I went down and there were the two Seals, and I took them up; and when I came up, *Ellyot* had a pair of black Whiskers on, and he borrowed a pair of Scissers and cut them off, and said he should remember me again if ever he lived, he should know me by my Tooth being out. And coming up into *Long-reach*, *Ellyot* was a cold, and got to the Oar and Rowed, and said you row as if you were rowing to Prison; and he wished that a Thunder-bolt might drop into the Boat, and that *London-Bridge* might drop down upon his Head. And when we came up to *Whitehall* I stood a Guard over them.

Fury-man. Did you see Captain *Billop* take the Packet of Letters from that Gentleman's Breast?

Johnson. Yes, I did.

Fury man. Did you belong to Captain *Billop*?

Johnson. Yes, I was one of the Boats Crew.

Mr. Ashton. Had not I been up and searched before?

Johnson. Yes, I think you had been up before.

Mr. Ashton. And then you saw me take up the Pacquet off from the Ballast?

Johnson. Yes, I saw you take it out of the Ballast and put it into your Bosom.

Mr. Ashton. Gentlemen, I hope, you will be pleased to take notice of that.

L. C. J. Holt. No doubt of it they will.

Mr. Ashton. Did not that bundle of Papers that was taken out of my Breast, did not they lie near to the place where the Seals lay?

Johnson. Yes, it lay just by them.

Mr. Serj. Thompson. Pray set up Captain *Billop* again.

(Which was done.)

When you brought these Papers to *Whitehall*, Captain *Billop*, who did you deliver them to?

Captain *Billop.* To my Lord *Nottingham*.

Mr. Serj. Thompson. After he received them, what did he with them?

Captain *Billop.* After he had examined all these Gentlemen, he went to opening of the Papers, and he desired me to stay in the Room till they were opened, which I did; and my Lord looking on some of the Papers said, if this Pacquet had gone we had quickly been visited by the *French*. With that I took them up, and lookt into them. My Lord said, I might look into as many Papers as I pleased; but I was very uneasy and full of Pain, and had more mind to be gone, and be a Bed, than a looking into Papers; but several of the Papers I did look into, and several I put my Mark upon; and the next day at the Council, what of them I did know, I did put my Mark upon.

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Mr. Serj. Thompson. After my Lord *Nottingham* had perused them, what did he do with them?

Captain *Billop.* My Lord put them up in a Cover, and tyed them with a Piece of Twine and put his Seal upon them, and gave them me, and desired me to carry them to my Lord President; which I immediately did, and without stopping carried them to my Lord President.

Mr. Ashton. When was this, Sir? Was it that very Night that we were brought to *Whitehall*?

Captain *Billop.* Yes.

Mr. Serj. Tremain. Then we must desire my Lord *Nottingham* to be sworn.

The Earl of Nottingham Sworn.

Mr. Serj. Thompson. Will your Lordship please to give the Court an Account how these Papers came to your Lordship, and how your Lordship disposed of them.

Earl of Nottingham. Captain *Billop* came to my Office——

Mr. Ashton. I humbly desire your Lordship would please to speak louder; for I cannot hear your Lordship, and I fear the Jury cannot.

Earl of Nottingham. I speak as loud as ever I can, but I have a great Cold.

L. C. J. Holt. You may hear my Lord very well, if the Court be but silent.

E. Nottingham. Captain *Billop* brought to me a Pacquet tyed about with a Packthread, to which there was a Piece of a Leaden Pipe fixed, in which Pacquet there was stuck in another Paper; I think there was but that one besides the Cover but what it was particularly I do not remember, this Pacquet was laid upon the Table while he was by; and I called in my Lord *Preston*, not being willing to make him stay, and after I had some Discourse with my Lord to examine him what account he could give of these Proceedings; then I called in your self *Mr. Ashton*, and Captain *Billop* was by also, but the Pacquet so tyed with the Packthread I cut open in *Billop's* presence with a Pair of Scissers; the same Papers that were in that Pacquet, together with the little Paper that was stuck in, I tyed up, I am sure I sealed them in a Sheet of Paper, and gave them back again to Captain *Billop* to carry them to my Lord President.

Sir W. Williams. Captain *Billop*, you have already declared that all you received from my Lord *Nottingham* you carried to my Lord President.

Captain *Billop.* All the Papers that I received from my Lord *Nottingham*, just as I received them sealed with my Lord's Seal, I went directly to my Lord Presidents, and gave them him.

Sir W. Williams. Pray, my Lord, did your Lordship deliver to Captain *Billop* all the Papers that you received from him?

Earl of Nottingham. My Lord; all the Papers that Captain *Billop* brought to me that were in the Pacquet (for he brought some Letters that he took out of my Lord *Preston's* Pocket that were of no Consequence) but all the Papers that were in the Pacquet I delivered back to Captain *Billop* sealed as I received from him, and no more and no others; for the other Letters, they being from my Lord *Preston's* Children, and not relating to the Publick, I gave them to him to give my Lord *Preston* again.

Mr. Ashton. My Lord, I humbly beseech your Lordship to tell the Court how long my Lord *Preston* was with your Lordship in the Room.

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E. Nott. Truly I am not able to tell you particularly how long it was, I believe it might be about a quarter of an Hour, or scarce so much.

Juryman. Was there no body with your Lordship, when Capt. Billop was out, but only my Lord Preston?

E. Nott. No, not that I know of.

Mr. Ashton. My Lord, I have one Favour more to beg your Lordship, I humbly pray your Lordship will please to tell the Court and Jury what Answer I gave to your Lordship, when you asked me how I came by those Papers.

E. Nott. As near as I remember the Account that you gave of them was, That you went down again after you were come up, as you said, to fetch your Hat; and that when you did go down into the little Hole to fetch your Hat, you brought up these Papers with you.

Mr. Ashton. My Lord, this was the Account I did give. Now this very well corresponds with that Man's Evidence, that says he saw me take up the Papers and put them into my Breast.

L. C. J. Holt. He does say so, and this does all very well agree.

Mr. Sol. Gen. Now we desire my Lord President would be pleased to be Sworn.

The Lord President sworn.

Mr. Serj. Thompson. Pray, my Lord, will your Lordship please to declare to the Court what Papers Capt. Billop brought to your Lordship, and how your Lordship disposed of them.

L. President. Captain Billop did bring me a Pacquet tied with a Packthread, and that was sealed with my Lord Nottingham's Seal, I knew it to be his Seal; and he told me that my Lord Nottingham commanded him to bring the Pacquet to me. I opened the Pacquet, and perused all the Papers; it was very late and I locked them up till Morning, and I then carried those very Papers to the King, and in the King's Closet, at Kensington, the King read some of them, and in my sight, for I never parted from the King, but was by all the while: The King put up all the Papers again, and commanded me to call a Cabinet Council, and to let them be delivered there to the Council; accordingly I did deliver them Paper by Paper, and they were all marked there by my Lord Sydney, who is here present; and they were then delivered into the Hands of my Lord Sydney.

L. C. J. Pollexfen. Will you please to ask my Lord any Questions, Mr. Ashton?

Mr. Ashton. My Lord, if your Lordship will be pleased to pardon me, I would ask your Lordship, Did any of your Lordship's Servants, or Family read any of these Letters?

L. President. No, not one.

Mr. Ashton. Were they locked up where any of your Lordships Secretaries, or Servants could come to them?

L. President. No, I lockt them up in a strong Box in my Closet.

Mr. Ashton. My Lord, I only desire this Favour further of your Lordship. Your Lordship at the Committee of the Council was pleased to ask me, how I came by those Papers; I presume you may remember, and I pray your Lordship to declare, what answer I gave.

L. President. Truly Mr. Ashton, to tell you Truth, I do not remember the Particulars, I remember you denied every Thing; I can only say

that in the general, but what you said in particular I cannot remember.

L. C. J. Pollexfen. Do you put my Lord in mind, if you can; See whether he does remember it.

Mr. Ashton. My Lord, I only desire to ask my Lord President, whether I did not tell him I went down after I had been searcht into the Hold, and there I see the Papers lye, and brought them up, and put them into my Breast; they were no sooner in my Hands but Capt. Billop had them in his; for the Man called and said, This Gentleman has something in his Breast, and the Captain put in his Hand and pulled it out.

L. President. Truly, Mr. Ashton, I do not remember the Words that you used, but remember you said something to which I made answer, What makes it matter, They were found upon you, and taken out of your Bosom, do you look to it how you came by them. I do not remember what you said, for I cannot remember particular Words, but I believe you might say some such Thing.

Mr. Sol. Gen. Then, pray my Lord Sydney, will you be pleased to be Sworn.

The Lord Sydney sworn.

Mr. Sol. Gen. Will your Lordship be pleased to declare what Papers you received from my Lord President?

L. Sydney. At the Cabinet Council my Lord President delivered a Pacquet of Papers; I received them every one there, and markt them, and put them into my Pocket.

Mr. Serj. Tremain. Did your Lordship deliver them to any Person afterwards?

L. Sydney. The next Day, or the Day after, I gave them to Mr. Bridgman to Copy out, and he delivered them back to me again.

Mr. Sol. Gen. Pray, my Lord, give me leave to ask this Question —

Mr. Serj. Thompson. Your Lordship had markt them before you delivered them to Mr. Bridgman to Copy?

L. Sydney. Yes, I markt them at the Council Table, at my Lord Nottingham's Office.

Mr. Sol. Gen. My Lord, those Papers that you markt were the same Papers that my Lord President brought, and delivered in at the Council?

L. Sydney. Yes, the very same.

Juryman. My Lord, shall we have leave to ask my Lord Sydney a Question?

L. C. J. Holt. Ay; What is it?

Juryman. Pray, my Lord, did the Pacquet come to you Sealed? That which was taken from this Gentleman, was it Sealed when it came to you?

Mr. Sol. Gen. No, it had been opened by my Lord Nottingham, and my Lord President.

L. C. J. Holt. Sir, you are under a Misapprehension of the Matter. My Lord Nottingham after he had opened them sealed them up again, and delivered them to Capt. Billop; Capt. Billop carried them sealed to my Lord President, my Lord President opens them and lays them up, they were never out of his Possession, he carries them to the King, the King read some of them in his Lordship's presence, he delivers them at the Cabinet Council to my Lord Sydney, and my Lord Sydney swears he read them there, markt them, and, when he had done, put them in his Pocket.

Mr.

Mr. Sol. Gen. My Lord Sydney, will your Lordship be pleased to look upon these Papers, and see if these be part of them.

L. Sydney. I know them very well, I have read them Ten times, I mark them at the Council, and that is my Mark.

Mr. Sol. Gen. Pray, my Lord, are those two Papers that you have in your Hand, Two of those Papers that my Lord President delivered at the Cabinet?

L. Sydney. Yes, that they are.

Mr. Sol. Gen. My Lord President, will you please to look upon them?

(Which his Lordship did)

L. President. These are Two of the same Papers that Capt. Billop brought me.

Mr. Sol. Gen. Now we shall desire to have them read, but give me leave to observe to you, That one of them is a Copy of the other; only in the one some Words are written short, that are written out at length in the other:

Juryman. Pray, my Lord, I desire to ask, are they of the same Hand?

Mr. Sol. Gen. No, they are of different Hands.

Mr. Serj. Thompson. Pray, Gentlemen of the Jury, take notice, and observe these Papers, for there is a great deal of Matter of great Moment in them; for you cannot expect the King's Council should repeat every Thing that is in so many Papers as we shall read; it is impossible we should take notice of all.

L. C. J. Holt. Or I either; therefore pray, Gentlemen, observe what is read, for I shall be able only just to state the Evidence to you.

Mr. Ashton. My Lord, I hear them say one of those Papers is a Copy of the other; I desire the Original may be read, and not the Copy.

Mr. Serj. Thompson. Who knows which is the Original?

L. C. J. Holt. Look you, Mr. Ashton, we don't know which is the Original, or which is the Copy, they are both found together, they contain the same Matter and the same Words: It may be you can tell which is the Original.

Mr. Serj. Thompson. You may look upon them your self, and tell us which is the Original if you please.

Mr. Ashton. That is very well observed, Sir. That is throwing Water upon a dead Mouse. Then I desire both of them may be read.

Mr. Sol. Gen. Indeed, Mr. Ashton, I think there is a particular Reason why you should not desire to have the Copy read, because least it should prove to be your own Hand Writing.

Mr. Ashton. Pray let both be read.

Cl. of Peace Reads. The result of a Conference—

Mr. Serj. Tremain. Pray attend, for this is the Scheme of the whole Work.

Cl. of Peace Reads. The result of a Conference, &c.

And the other was likewise read as before.

L. C. J. Pollexfen. Pray let Mr. Ashton see that Paper.

The Paper was banded to Mr. Ashton, being one of the Papers before read.

L. C. J. Pollexfen. Mr. Ashton, look upon that same Paper a little, satisfy your own Mind a little whose Hand that Paper is in. Look upon it well, I would have you be satisfied about it. Look particularly upon the latter part of it.

Mr. Ashton. My Lord, I have look'd upon it, I have seen it all.

L. C. J. Pollexfen. Come then, give it me back again, and think of it a little in your own Heart.

Mr. Sol. Gen. My Lord Sydney, pray, will your Lordship look upon this Paper.

L. Sydney. This is one of the Papers that was among the rest, delivered by my Lord President at the Cabinet.

Mr. Sol. Gen. Pray shew it my Lord President; What says your Lordship to it?

L. President. This was one of the Papers I gave my Lord Sydney, and was brought to me in the Pacquet by Captain Billop.

Cl. of Peace reads. That the King would return with a Design of making an entire Conquest of his People—

Mr. Serj. Thompson. Pray, my Lord, give me leave, before it be read, to acquaint the Jury what this is, that they may make the better Observations upon it. This, Gentlemen, is the Heads of a Declaration that was intended to be Published when the French came; and you will see what it is when it is read. Pray observe it.

Cl. of Peace reads. That the King will return, &c. As before.

Mr. Serj. Tremain. The next Paper is an Account which they had taken with them of the Force of the Kingdom, of the Ships, particularly how many in Number, what Rates, what were in Repair, what out of Repair, and what a Building. Pray shew it my Lord Sydney.

L. Sydney. This is another of the Papers that I received from my Lord President, and mark at the Cabinet.

Mr. Serj. Thompson. Then shew it my Lord President.

L. President. This is one of the Papers that were in the Pacquet, that Captain Billop brought me.

Clerk of the Peace reads.

Mr. Sol. Gen. Pray, my Lord Sydney, look upon these Papers, and tell where your Lordship had them.

The Papers were Shewn both to the Lord President and the Lord Sydney.

L. C. J. Holt. My Lord President says he received them from Captain Billop, and gave them to my Lord Sydney; and my Lord Sydney says they are the same he received from my Lord President.

Juryman. Are those the Papers that have been read, my Lord?

Mr. J. Eyres. No, but they both say the same as to those that have been read.

Juryman. Then pray, my Lord, What are those Papers that are going to be read?

Mr. Serj. Tremain. These are Two Letters, Gentlemen, that are written, giving an account how the Affairs in England stood, with reference to the Persons Concerns that they are written to; and there is a particular Passage in one of them, How their young Master prevailed in his Interest, and got ground of his Adversaries. If you observe them, you will easily understand what is meant by them.

Clerk of the Peace reads. This is directed for Mr. Redding, New-years Eve, Though the Bearer of this, &c. As before.

Clerk of the Peace reads. This is directed for Mrs. Redding. As it is impossible for me to express, &c. As before.

Mr. Sol. Gen. Now we desire my Lord Sydney and my Lord President would look upon these Papers.

Juryman. My Lord, I desire the former part of that last Letter may be read again.

Which was done.

L. Sydney. These I had from my Lord President.

L. President. And I had them out of the Pacquet that Capt. Billop brought me.

Mr. Serj. Tremain. If your Lordship please I will open them to the Jury. Here are two Letters, in one of them there is an Account given that they were heartily sorry they were disappointed, and that they had not been here already, but hoped they will be here as fast as they can; that the Match was concluded, the Settlement prepared, and no doubt but the Daughters Portion would be well Secured, if they would come quickly.

Clerk of the Peace reads. Dec. 31. 1690. 'Tis directed for Mrs. Charlton. I must not let this Bearer depart Madam, &c. *As before.*

Mr. Serj. Tremain. That Letter tells you that the Daughters Portion would be well Secured; this that we now produce will tell you, how it shall be Raised. It says, the old Tenants are weary of their Master, and a little Matter, if he would but appear in Westminster-Hall, would redeem the Estate; and the Cause might be brought to a final hearing before the end of Easter Term, if they made haste, and it were well Solicited.

Clerk of the Peace reads. This is directed for Mr. Jackson. Dec. 31. 1690. The Bearer hereof will give you, &c. *As before.*

Mr. Sol. Gen. We must desire my Lord President and my Lord Sydney would be pleased to look upon these Papers.

L. President. I received these from Capt. Billop in the Pacquet, and gave it to my Lord Sydney.

L. Sydney. These are some of the Papers I had from my Lord President.

Mr. Serj. Tremain. The Letters we now produce to be read seem to be written by a Man that was involved in a great Trade, that had great Projects in his Head, and drawn many Schemes in his own Brain how to carry on the Trade, he directs what sort of Wares he would have sent, what was proper for their Markets, that he had got many a new Customer, and hoped they should not be disobliged; that all must be sent before the First of March, at least before the Tenth, or the whole Summer Profits would be lost.

Cl. of the Peace reads. 31 Dec ———

L. C. J. Holt. Read the Superscription first.

Cl. of the Peace. There is no Superscription, my Lord, at all.

L. C. J. Holt. Well, read on.

Clerk of the Peace reads. 31 Dec. The Interruption of the former Correspondence had a very ill Effect many ways, &c. *As before.*

Mr. Serj. Tremain. Gentlemen, doubting that that Letter might not be pressing enough, here is another to the same effect.

Cl. of the Peace reads. Dec. 31. It is a Presumption incident to those that are any ways upon the Spot, &c. *As before.*

Mr. Serj. Tremain. One would imagine this Letter were written by some Person that used to talk Cant, that he is so ready at it.

Mr. Sol. Gen. Pray, my Lord President, what says your Lordship to these Papers?

L. President. These Two Letters were in the Bundle that Capt. Billop delivered to me, and I delivered them to my Lord Sydney.

L. Sydney. These are some of the Papers I had from my Lord President, at the Cabinet.

Mr. Serj. Tremain. That first of these Papers is a Letter wherein the Party gives an Account of his own Condition here, and how he would venture to bring about what was desired.

Cl. of the Peace reads. 31 Dec. 1690. Was my Condition more desperate and uneasy than it is, &c. *As before.*

Mr. Serj. Tremain. This little Paper was inclosed in the other.

Clerk of the Peace reads. I beg, &c. *As before.*

Mr. Serj. Tremain. Now shew this Paper to my Lord President, and my Lord Sydney.

Which was done.

L. C. J. Holt. My Lord President, and my Lord Sydney, swear the same for this Paper, as for the rest.

Mr. Serj. Tremain. This Paper shews they were going about a Deed that they did not desire to have known; 'tis a Key how to explain their Meaning.

Cl. of the Peace reads. For Mrs. Anne Russel, &c. *As before.*

Then three other Papers were shewn to and sworn by the Lord President, and the Lord Sydney, to be part of the same Papers.

Mr. Serj. Tremain. The Papers that we are going to read are these. Gentlemen, here is a Letter of Recommendation in behalf of one Mr. Orbinet, which is a Name they pretended of some Person that was at Paris, or to go there, and 'tis written by one Mr. Dellivere to his Correspondent there, and he tells him, the Bearer had something to disclose to him, and that he might have an entire Confidence in him: But the Letter of Recommendation alone, without a Sum of Money, they reckoned would meet with a bad Welcome in France, and therefore they take sool with them, and here are Two Bills to pay it.

Then Mr. Humphrey Levermere was sworn to interpret them, being in French, (which he did) and read them as in the former Tryal.

Juryman. Were these Bills found in that Pacquet?

Mr. Serj. Tremain. Yes, Yes; they are sworn to by both those Lords.

Mr. Sol. Gen. Now, pray my Lord, will you please to look upon these Papers.

The Lord President, and Lord Sydney both testified, That those were part of the Papers.

Mr. Serj. Thompson. This next Paper that we give in Evidence is very short. It seems to be a Table for the Memory of the Person that was to carry it; They are short Heads for the Memory, consisting of a great many Particulars; You will make your Observations upon them, and what Judgment you think fit of them.

Mr. Serj. Tremain. My Lord, I desire to take Notice of these Papers that we are now going to read; you will observe these Things in them, which are worth your remarking, Gentlemen; because these Papers that we now read to you are of themselves sufficient to prove every Article in the Indictment: For these Papers give an Account of the Ships, their Number and Force, the Forts of the Kingdom, how they are Manned, how they may be Surprized, where the French Fleet should Fight, where they should Assault us, how they should hinder the Dutch and English Fleets from Joining, what Number of Soldiers would be sufficient, and what Number of Ships in Newcastle to plague the City of London,

don, how to manage this whole Affair; and it gives Characters of the Clergy of England; and particularly of the City of London, and says, they are the worst of Men.

Mr. Serj. Thompson. No Brother, 'tis the worst of all the Clergy.

L. C. J. Holt. Come read them.

Clerk of the Peace reads. Lady D. 2000 l. &c.
As before.

The Jury desired to see the last Papers, and had them delivered to them.

Mr. Sol. Gen. Then we rest it here, to see what the Prisoner will say to it.

L. C. J. Holt. Mr. Ashton, the King's Council have done their Evidence for the King, what have you to say for your self?

Mr. Ashton. My Lord, I humbly desire to know of your Lordship, whether all the Letters are read, that were read at the Tryal of my Lord Preston?

L. C. J. Holt. What is that material to you, whether they be or not?

Mr. Ashton. My Lord, I am informed that there were several Letters, that particularly name my Lord, implying him to be the Bearer, and I desire those Letters may be read.

Mr. Serj. Thompson. With all my heart, if you do desire it, it shall be read, we do not think it material.

Mr. Ashton. I do desire it, it will be plain, I believe, from hence, that I could know nothing at all of this matter; and if your Lordship please, my Lord, to observe it, three or four of these last Papers, as *Mr. Serj. Tremain* observed, were the Ground-work of all this Business, which refers to *Portsmouth* and *South Sea*, and some other Papers; these I think, with Submission, were proved to be the Hand of another Gentleman, and I desire it may be proved again to the Jury, by which I think it will be plain, that they do not affect me.

L. C. J. Holt. Look you, Mr. Ashton, it is not proved to be your Hand, nor pretended to be so.

Mr. Ashton. But positively proved to be another's Hand, as I am informed, and 'tis that which *Mr. Serj. Tremain* observed was the Ground-work for carrying on the whole Design, I presume the Witnesses are in Court that proved it then, and I hope your Lordship will be so kind as to let it be proved now; they did prove it to be another Persons Hand upon a Tryal not long ago.

L. C. J. Holt. If you have a mind to call any Witnesses to prove the Papers to be another's Hand, you may call them.

Mr. Ashton. I hope the King's Witnesses are now in Court that did prove them to be his Hand Writing, and they'll prove it now I suppose.

L. C. J. Holt. If you have a mind, you may call them, they have not a mind to produce them for the King.

Mr. Ashton. I know not where they are my Lord. Pray Mr. Aaron Smith, be you so kind as to call them.

L. C. J. Pollexfen. You should have sent and Subpcna'd them to be here.

Mr. Ashton. Mr. Warr is there, my Lord, I desire he may be ask'd the Question; and I believe Mr. Blane is in the Court, pray let him be ask'd.

L. C. J. Holt. Mr. Warr, you are called by the Prisoner, as a Witness, to prove my Lord Preston's Hand.

Mr. Ashton. Mr. Warr, Mr. Townsend and Mr. Blane, I desire may be all ask'd.

L. C. J. Holt. Mr. Ashton, you have insisted upon it, that these Papers were my Lord Preston's own Writing.

Mr. Ashton. My Lord, I do insist upon it, to know whether they were not proved to be his Hand.

Mr. Serj. Tremain. Yes, they were so, 'tis agreed.

Mr. Serj. Thompson. We do grant the King's Witnesses proved, that they did believe them to be my Lord Preston's Hand.

L. C. J. Holt. The King's Council do admit, that these three last Papers were not your Hand, but they admit them to be my Lord Preston's Hand, and 'tis very well done of them to admit it; so that now it is to be taken for granted, that those three last Papers were my Lord Preston's Hand.

Mr. Ashton. Then my Lord, I desire the Substance of those Papers may be the more press'd upon the Jury, because *Mr. Serj. Tremain* observed that the whole Design in the Scheme of it lay in those Papers, and they are not my Hand, but another's; and for what is in them, I know nothing, nor am concern'd.

L. C. J. Holt. What have you farther to say, Sir?

Mr. Sol. Gen. You mentioned another Letter which you did desire should be read.

Mr. Ashton. Ay; two or three where my Lord is nam'd.

Mr. Sol. Gen. This is the Letter I suppose you mean, the Clerk shall read it.

Clerk of the Peace reads. Sir, I vow to you, I do not repine at having lost all for your sake, &c.
(as before)

Mr. Ashton. Gentlemen, I hope you will observe, in that Letter my Lord is called the Bearer; and it tells that he brings Papers with him, by which it is plain, that you cannot imagine I could know any thing of these Papers. And Gentlemen, it has not appeared by any Evidence that has been given, that I knew any thing more, than that they were unfortunately found upon me: But with Submission, I believe there is another Letter, if I am inform'd right, wherein my Lord is named, and called, my Lord the Bearer.

Mr. Sol. Gen. Sir, I do assure you now, we have to my Observation, read every Letter, and every Paper, that was read on Saturday.

Mr. Ashton. Mr. Solicitor, I am satisfied, for I am confident you would not affirm it if it were otherwise.

L. C. J. Pollexfen. There is not any Letter that says my Lord the Bearer, but my Lord will give you an account, so and so; the Bearer will tell you these and these things; will you have it read again? You shall if you will.

Mr. Ashton. I am unwilling to take up your Lordship's time, unless the Jury desire to have it read again.

Jury man. Pray my Lord, when that Letter was read on Saturday, how was it construed by the Court? How did they take it then?

L. C. J. Holt. We did take it then, because my Lord was mentioned, that he might possibly be the Bearer.

L. C. J. Pollexfen. It is very probable, and so it was understood then, that the Lord mentioned in the Letters was my Lord *Preston*, and so that my Lord was the Bearer that could give an account of the Countess's Condition; and in the beginning of those Papers that are of my Lord's Hand, there is mentioned so much Money for the Lady *D*—which is my Lady *Dorset* I suppose, that is there meant, and that writ that Letter.

Mr. Ashton. No, my Lady *Dorchester*.

L. C. J. Pollexfen. *Dorchester* I cry your mercy; and it is probable the same reason is a reason still to make it believed that my Lord *Preston* was meant.

Mr. Ashton. I think my Lord Chief Justice was pleased to observe, as I have been informed, in giving his Charge to the Jury, that these Papers, some of them naming my Lord, must be meant of my Lord *Preston*, there being no other Lord but he; and he likewise gave another reason, says he, they lay by my Lord's Seals that were produced, and therefore it was plain, they could not be *Ashton's* nor *Elliot's*.

L. C. J. Holt. No not so, but my Lord might be concern'd, because my Lord's Seals were there where the Papers were found.

Mr. Ashton. I am wrong inform'd if those were not the words my Lord Chief Justice *Pollexfen* used.

L. C. J. Pollexfen. What do you say were the words? if you will repeat them, I'll tell you as near as I can.

Mr. Ashton. Your Lordship seem'd to infer, that my Lord being nam'd, and the Bearer in the same Paper, that of Consequence that must be my Lord *Preston*, and the Papers must be his; and you did give another reason for it, to enforce it, that the same Man that saw me take them up, saw them lye by the Seals, which were proved to be my Lord *Preston's*, from whence your Lordship did say, it is plain they were my Lord *Preston's*, and that *Ashton* or *Ellyot* could not be concerned in them.

L. C. J. Holt. You mistake that matter, sure there was not any such word said, for that Evidence that tended to convict my Lord *Preston*, did by no means tend to acquit you; the question then was, how far my Lord *Preston* was concerned; my Lord insisted upon it, says he, They were not taken from me but from *Mr. Ashton*; there the Question was not about you.

Mr. Ashton. I humbly hope, my Lord, you will forgive me for insisting upon these Matters, because I am for my Life.

L. C. J. Pollexfen. I would do you all the right I can, I assure you, *Mr. Ashton*; but certainly there was no such thing said as you have mentioned.

Mr. Ashton. My Lord, I do not question but you will do me right, and I thought so, when I chose the Jury out of the first that appeared, without challenging any.

L. C. J. Holt. Well, Sir, pray go on to your Defence.

Mr. Ashton. My Lord, my own Defence will be very weak upon the whole, for I am very illiterate and unskill'd in the Laws, but where I do fail of taking Advantage, to observe what may be for my Advantage, I hope your Lordships will be so kind to me, as well as just (I may call it) to your selves, being upon your

Oaths, as to take notice of it. My Lord, in the first place—

Mr. Serj. Tremain. Before *Mr. Ashton* proceeds, I would observe one word in a Letter that has been read, which is one of these Papers, it says, *I say nothing of another Gentleman that takes opportunity to see those parts, but he has shewn a Zeal and Sincerity in the affair equal to most.*

Mr. Serj. Thompson. You hear, Gentlemen, that there is notice taken of another Person besides the Bearer.

Mr. Ashton. Pray, my Lord, is it any Consequence that I must be the Person that must be meant, or that I must know what the Contents of the Letter was? There was another besides me, and so it is not plain who was meant, or if I were the Man meant in this Letter, it must not therefore follow that I must know of it.

Mr. Serj. Tremain. I did not mention it as a Proof that you were the Person meant, but only to shew that there was another Person besides, my Lord, taken notice of in them.

L. C. J. Holt. I must confess. I think *Mr. Ashton* observes right, it does not concern him, for as well as he was there, there was another, and it is uncertain whether it relates to him or the other, and so it signifies nothing at all; that's my mind. Pray go on *Mr. Ashton*.

Mr. Ashton. My Lord, upon the whole I have this to observe, first as to my business of going into *France*, I must ingenuously own it, though I protest to you I never own'd it or nam'd it to the Woman though she had Sworn it, but yet I do now. My design was to go to *France*, and I had very great and good Reason for it, I think, I had endeavour'd all ways I could in the World to procure a Pass to go to *France*, 'tis very well known, I did business under Lieutenant General *Worden* that died half a year ago, his Accounts are now depending, and such Accounts as may be prejudicial in some points to his Family, to whom I have always own'd and must a great Obligation, and would be very glad upon all occasions to serve it, and all the Branches of it; this was not the whole nor the only design I had in going thither, but I had likewise some business of my own, I have a considerable Sum of Money owing me, if it be necessary to prove it, I can prove it by a Bond from a Person that is there; a great Sum it is, a very considerable one to me at least. And, my Lord, I did think if I did not go my self it was impossible for me to do any thing in that Affair, and that was the true and only Reason of my design in going to *France*, having been out of hopes of getting any other Convenience otherways; this was not a Design just now formed, as if I were just now upon some Plot concerning the Publick, but it has been my design ever since Lieutenant General *Worden* died, and he upon his Death-Bed ingaged me to do it; and I once went down, hoping to have gone from *Dover*, and there I was apprehended and taken. And, my Lord, I have used all manner of Endeavours to go other ways, but they have always failed me, and this way I hoped would have taken: my Lord, I do own I did hire the Boat, and I did pay the Money, but with Submission, I think that is not any manner of Treasonable Act, my Lord; perhaps it is an ill Act, but it does not amount in the least to Treason going to the King's Enemies, suppose I went upon that account, that is no manner of Treason

in the World, carrying Papers to the King's Enemies, except it be proved that I was privy to them, and knew the Contents of them, if Lawyers inform me right, is not Treason; then what remains? 'Tis true, I must own the Papers were found upon me, and I believe there is no body that has heard the Evidence that has been given, but must readily conclude that I found them in the place where the Sea-man says I took them up; and besides, my Lord, there is not any manner of proof so much as aim'd at by the King's Council in all their Evidence, that I was privy to any one of these Papers; so that, my Lord, I think there is very little proved upon me at all; I had the misfortune to be taken in this Company that was going where these Papers were taken, it's true, but they have not attempted to prove that I was privy to or knew any thing of them at all, nor that I was more concern'd than that they were taken in my Stomach; this is all I have to observe upon the whole; as to the business of the Indictment there are great and grievous Aggravations in it, and such as I am not able to comprehend the meaning of, the Words confound me; and therefore I humbly desire your Lordship to tell me upon what Statute I am Indicted.

L. C. J. Holt. I'll tell you, Mr. Ashton, you are Indicted upon the 25th of Edward the Third, for conspiring, compassing and imagining the Death of the King and Queen, and for that purpose going to France, and endeavouring to incite the French King to invade the Kingdom, and telling him how he should do it, and letting him know in what State and Condition the Kingdom was, and how fit to be invaded.

Mr. Ashton. Pray, my Lord, is that at all proved upon me?

L. C. J. Holt. That is the Question that the Jury are to judge of upon the Evidence that has been given.

Mr. Ashton. As to that of compassing the Death of the King and Queen, I am ignorant of dealings in Law; but I conceive there are several Species of Treason mentioned in that Act of the 25 of Edward III. and as to the imagining the Death of the King, that's only to be proved by some Overt Act: Now I think nothing at all has been proved of any open Act conducing to prove the imagination or compassing the Death of the King or Queen, no manner of Consultation or Treasonable Act at all, and therefore, my Lord, I do not see that there is any great matter that is proved upon me, and I hope you are of that Opinion too.

L. C. J. Holt. Mr. Ashton, that you may not go away with a Mistake, any that design'd the Deposition of the King and Queen, and the Invasion of the Kingdom, which is proved by any Overt Act, is sufficient to prove that they compass and imagine the Death of the King and Queen.

Mr. Ashton. I presume it may be so, I believe that may be the Construction of the Law.

L. C. J. Holt. And I make no question but those that you have consulted with have told you as much.

Mr. Ashton. Truly as to Council my Tryal has been as hard as ever Man met withal.

L. C. J. Holt. Why do you say so, Mr. Ashton? the Court has not been hard upon you.

Mr. Ashton. My Lord, I do not complain of the Court, but as to the matter of time, I had

notice by that Gentleman, Mr. Bale, to prepare for my Tryal, and that was on Friday, and not before.

L. C. J. Pollexfen. Friday was Sevensnight, you mean, I suppose.

Mr. Ashton. Yes, I do mean Friday was Sevensnight, I was then a close Prisoner, I had not the opportunity or liberty of seeing any Christian Soul, I spake to him then, and told him, Mr. Bale, this is very short notice; pray be so kind as to move my Lord that I may have Council; truly he was Civil enough, and said, he would do all he could; says he, will you give me the Names of your Council? so I gave him the Names of four, and of a Solicitor; but I never heard more of him in the matter: I did with all my Industry and Skill give my Friends notice, but I was under great difficulty, for I had not the liberty of Pen, Ink, nor Paper, nor a Man to send upon a Message, on Saturday; I gave my Friends notice of it upon Sunday, which was no very good Day for business, they apply'd themselves to my Lord Sydney, whose Favour and Kindness I shall always own as long as I live, he gave me all the dispatch possible, and got me an Order to see my Wife that day, though it was Sunday; the next day I made Application to have my Council come to me, that was Monday; he with the same readiness procured that, but it was Tuesday in the Afternoon before I could see any living Soul but my Wife; and some of the Council that I desired would not readily come to me, and it was Wednesday before I did see any body of them, and so I had but Wednesday and Thursday to consult with them in. On Friday I was brought here, and I endeavour'd to procure a Copy of the Pannel, that I might inform myself of the Characters of the Men that were to be my Jury; and my Lord, I would desire you to give me leave to clear one Point, which through Inadvertency slipt from me about the time that I desir'd to send to enquire about the Jury. I did not mean as was apprehended, to send to them to take them off, but I only meant to enquire after their Characters; this was done upon Friday; I had not a Copy of the Pannel till last Friday, when we were Arraigned in Court, it was Two of the Clock before the Pannel was given us, it was between Three and Four when we came to Newgate; we were to come upon our Tryal the next Morning by Eight of the Clock; so that before the Copies could be transcribed for us, there were left but six Hours for us to enquire into the Morals of so many Men, of whom some liv'd eight, some ten, some fifteen Miles out of Town; for my part I was not able to enquire after any one, and that your Lordship may think by my taking the first Twelve that appeared, and believing my self Innocent of this matter, I resolv'd to put my self upon my Tryal by any twelve indifferent English-Men; I only beg if I have omitted any thing in reference to my self, or misbehaved my self, with respect to the Bench, that you would please to set me right, and consider that I stand here for my Life; and to grant me your Pardon for any thing wherein I have offended your Lordships, to whom, and to the Jury, I refer my Cause; only I beg leave to call two or three Witnesses, I know it hath been allowed before in such cases, to give some short account of my Life and Conversation, because it hath been reflected upon me that I was a Papist, because

cause I designed to go into *France*: but I believe there is not any Man, whose Devotion to the Protestant Religion established by Law, is greater than mine hath been, or to whom that Religion is Dearer than to my self.

L. C. J. Holt. You are not accused of any such thing, no body pretends you are a Papist, but call whom you will.

Mr. Ashton. Pray call *Dr. Bursh*, *Dr. Lake*, *Dr. Fitz-Williams* and *Dr. Davenant*. There is *Dr. Fitz-Williams*; I beg the Favour of you *Dr. Fitz-Williams* to give the Court an account of your Acquaintance with me, and particularly about my Religion.

Dr. Fitz-Williams. Will your Lordship give me leave, my Lord?

L. C. J. Holt. Aye; Come, what do you know of *Mr. Ashton*?

Dr. Fitz-Williams. I suppose, my Lord, that he calls me in as a Witness to his Religion, and to his Morality, I think so; with my Lord's Permission I will give the truest Testimony I can: I have known him for some time, he used to be frequently at the Service of the Church in the Protestant part of the Family, at *St James's*, where I was Chaplain; during the time I was there, I observed him to be a frequent Receiver of the Holy Communion; and as far I could observe, lived answerable to what he professed to be, a Sincere Member of the Church of *England*, and a Serious Christian. For his Sincerity and Zeal for the Protestant Religion, I can give this Instance he had an Aunt that had a Relation to that Family, one *Mrs. Du-pee*, who he thought did warp a little towards Popery, and he desired me, about five Years ago, to have recourse to her, and desired to know if she were dissatisfied with any Point of Religion in the Church of *England*, in Communion with which she lived visibly, and I would do my endeavour to satisfy her; as I do not doubt but I could. She was desirous to know who was the Person that sent me: I told her I came of my own Head in the greatest part; but I suppress'd the Interposition of *Mr. Ashton* for several Reasons, and told her, I had great Suspicion of her inclining the other way; and I had great reason for it, because of her Husband, who was a Papist, and the great Resort of Popish Priests to their Lodgings. She told me then, she was satisfied in every thing, and if she had any Dissatisfaction she would send for me to give me an account. Some Months after I came to *St. James's* to wait, and observing her to be more than usually before from Prayers in the Chappel, I went to her, and asked her the reason: She told me, it was because she was making some Linnen for her Master *King James*, which was to be made in haste: But she then design'd to go for *Flanders* quickly; and *Mr. Ashton* about that time, or two or three days after, told me his Aunt was gone to *France*, and spoke it with very great concern, and that he believed, under the Pretence of calling over her Younger Son, she was gone to declare her self a Papist, and he was very much troubled at it. This I know for his Zeal for the Protestant Religion.

L. C. J. Holt. When was this, Doctor?

Dr. Fitz-Williams. This was, my Lord, about five Years ago.

Mr. Ashton. That is, as to the business of my Aunt I suppose, I know not how he comes to mention it, but as to my Life and Morals, you can give a later account.

Dr. Fitz-Williams. My Lord, I have Administred the Sacrament to him.

L. C. J. Holt. What Questions do you farther ask him, *Mr. Ashton*? or can you say any more, Doctor?

Dr. Fitz-Williams. No, my Lord, I can say no more, but that he received the Sacrament about half a Year ago.

Mr. Serj. Thompson. We have not objected any thing, as to his Religion, at all.

Mr. Ashton. But I know it has been a Reflection that has gone about of me, that I am a Papist, therefore I beg leave to prove my Religion and Conversation.

L. C. J. Holt. Nay, call whom you will, you shall not be hindered, take what Course you please.

Mr. Serj. Tremain. Pray, Doctor, you say he has received the Sacrament lately; when was that, and where?

Dr. Fitz-Williams. It was at *Ely Chappel* within this six or seven Months.

L. C. J. Pollexfen. Have you been lately conversant with him?

Dr. Fitz-Williams. Truly, my Lord, I have not been very lately.

L. C. J. Pollexfen. Pray what have you heard him say concerning his Affection to *King William* and *Queen Mary*?

Dr. Fitz-Williams. I do not remember any thing at all of that.

L. C. J. Pollexfen. Have you heard him say any thing to the contrary?

Dr. Fitz-Williams. No, I cannot remember that.

Mr. Serj. Tremain. What have you heard him say about his Affection to *K. James*?

L. C. J. Holt. Do not ask him that, there may be a Snare in that Question.

Juryman. You say, Doctor, that he received the Sacrament six Months ago in *Ely Chappel*; Did you deliver the Sacrament to him there?

Dr. Fitz-Williams. No, I did not.

Juryman. Pray, Doctor, were the Prayers that were used at that time altered, as they are now in the Common Prayer-Book?

Dr. Fitz-Williams. I cannot say they were.

L. C. J. Pollexfen. Did you ever see him Drink *King James's* Health?

Dr. Fitz-Williams. I do not use to Drink Healths, I came here only to do an Office of Justice and Kindness to *Mr. Ashton*, to testify about his Religion and Conversation.

Mr. Serj. Tremain. But answer the Question, Did you ever see him drink *King James's* Health?

Dr. Fitz-Williams. I cannot remember I ever did.

Juryman. Was *King William* and *Queen Mary* Pray'd for in those Prayers?

Dr. Fitz-Williams. I cannot say they were.

Mr. Just. Eyres. But the *Juryman's* Question was, whether *King William* and *Queen Mary* were Pray'd for? and whether the Prayers were as they are now altered?

Dr. Fitz-Williams. My Lord, I say I don't remember there was any Names mentioned, as the Prayers are now altered.

Mr. Serj. Tremain. That's very well.

Dr. Fitz-Williams. I did neither read the Prayers, Sir, nor Administer the Communion at that time.

L. C. J.

L. C. J. Pollexfen. But you were not at the Prayers, as they are now altered, I perceive.

Dr. Fitz-Williams. Yes, I have, several times.

Mr. Serj. Thompson. Not with that Gentleman, *Mr. Ashton.*

Dr. Fitz-Williams. But I have been an hundred times at the Prayers as they are now altered.

Mr. Ashton. I desire *Dr. Lake*, who is there upon the Bench, that he may be asked what he knows of me.

Mr. Serj. Tremain. But I have one question to ask of *Dr. Fitz-Williams* before he goes.

L. C. J. Holt. What will you ask him?

Mr. Serj. Tremain. I would ask you, Sir, one question, Have you taken the Oaths to this King and Queen?

Dr. Fitz-Williams. No, I have not, Sir, that's my Unhappiness, but I know how to submit and live peaceably under them.

Mr. Ashton. But there is one *Dr. Lake* that has taken them, he'll give you an account what he knows of me.

Dr. Fitz-Williams. If any one can say I have done or acted any thing against the Government, I will readily submit to be punished for it.

L. C. J. Holt. Well, *Dr. Lake*, what say you?

Dr. Lake. My Lord, I have known *Mr. Ashton* above these sixteen Years, we liv'd together in the same Family several of them; I always observed him to be a Person of exemplary Piety and singular Devotion; he duly came to the Prayers of the Church twice a day, and to the Sacrament once a Month; he has taken occasion, that I know several times, both at *St. James's* and at *Edinburgb*, to testify his Zeal against Popery; and I am apt to think, that he has suffered sometimes for doing so.

Mr. Ashton. *Dr. Bursh*, Pray, as to my Religion, I beg you to give an account what you know of me, particularly something you may remember of me, of my perhaps over-heat against Popery.

Dr. Bursh. My Lord, I have long known *Mr. Ashton*, the Prisoner at the Bar, and till within these two years frequently conversed with him; and while I did so, I believed him a good Protestant, and I have so many Instances of it, and particularly before some upon whom his Fortune depended; but as to any thing of late, I can say nothing, because our Conversation has ceased.

Mr. Serj. Thompson. *Dr. Bursh*, have you known any thing of *Mr. Ashton's* Conversation for two Years past?

Dr. Bursh. No, Sir.

L. C. J. Holt. Have you any thing more, *Mr. Ashton*?

Mr. Ashton. No, my Lord, I have nothing more, unless your Lordship desire any thing more of this Nature.

L. C. J. Holt. Call whom you will.

Mr. Ashton. Here is one *Mr. Tomlinson*.

L. C. J. Holt. Come, what say you, Sir?

Mr. Tomlinson. My Lord, I waited upon Major General *Worden* when he was Sick, and there read the Prayers of the Church, and *Mr. Ashton* was a constant Attender upon the Publick Prayers at the Visitation of the Sick, and was very Devout; that's all I can say.

L. C. J. Holt. When was this?

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Mr. Tomlinson. It was in the Sickness of Major Gen. *Worden*.

L. C. J. Holt. How long ago was that?

Mr. Tomlinson. It was about half a year ago.

L. C. J. Pollexfen. Were those Prayers as they are altered now or not?

Mr. Tomlinson. It was only the Visitation of the Sick, and the Collect for the Morning and Collect for the Evening, because the General's Sickness was such, that he could not bear long Prayers.

L. C. J. Holt. Sir, have you been acquainted with the Prisoner any time?

Mr. Tomlinson. About eight Months.

L. C. J. Holt. Have you any more Witnesses, *Mr. Ashton*?

Mr. Ashton. No, my Lord.

L. C. J. Holt. Then I would have you to answer me this one thing; why were you so desirous, and used such Importunity, that the Papers should be thrown over Board.

Mr. Ashton. My Lord, that is a Point I ought to have spoke to, to clear my self.

L. C. J. Holt. It seems material, and I would not have it forgot, if you can answer it.

Mr. Ashton. I humbly thank your Lordship, and whatsoever my Fate is, I cannot but own I have had a Fair Tryal for my Life, and I thank your Lordship for putting me in mind.

L. C. J. Holt. And take this other thing with it, why did you desire Captain *Billog* to go along with you where you were going?

Mr. Ashton. He has Sworn it, my Lord, that I did so, but as I hope for Salvation, if I were to dye immediately, I do not know that I spoke to him of any such thing; how was it possible that I should prevail with him? or how was it likely that I should force him to go along with us, when he had about twelve or fourteen Men with him Armed, and we unarmed?

L. C. J. Holt. Nay, it was not Forcing, it was but Perswading him to go.

Mr. Ashton. My Lord, I do not know any thing of it, I'll assure you; but as for endeavouring to perswade him to throw the Packet overboard, I must own I did endeavour to perswade him to it; and I do presume there is no body in Court, that had been engaged with a Person so Unfortunate, that would not have done the same thing for any common Friend, not knowing what the Contents of those Papers were, seeing them in that Posture, especially when I saw some body else so near me, so uneasy and concern'd to have them seen.

L. C. J. Holt. Then, *Mr. Ashton*, there's another thing which you open'd, which I would have you prove; you say you were to go into France upon the Affairs of Col. *Worden's* Family; first you say Col. *Worden* had a great account to make up; how will you make that out?

Mr. Ashton. My Lord, if your Lordship please, I will prove here in Court, though it is a sort of surprise upon me; that there is a great Account depending, I believe I may appeal to *Mr. Solicitor* himself, who knows that there is a Petition in the House of Commons, now depending, from the Queens Tradersmen and Debtors, whom she owed 68000*l.* she did Assign the Arrears of some growing Rents for the Satisfaction of this Debt; but the King and Government have not thought fit to let it be applied to her use, or to the paying of those Debts she

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assign'd

assign'd it to. Nay it has gone farther, I can appeal to several Persons, there is one Man by chance in the Court, that I believe does know that I promised and engaged, and actually have paid a great part of this Debt; for believing that the Money was good upon the Assignment, I have actually paid some of these Men out of my own Pocket, and perhaps more than became me to venture; I think it may very well call my Discretion into question.

L. C. J. Holt. Who will you have called, Mr. Ashton?

Mr. Ashton. My Lord, here is Mr. Spalding.

L. C. J. Holt. That the late Queen does own People Money, that I believe is true.

Mr. Ashton. Pray, Mr. Spalding, will you give the Court an account, whether there is any Money due from the Queen to you.

Mr. Spalding. My Lords, and you Gentlemen of the Jury, I have a Debt due to me from the late Queen, as her Coach-Harness-maker, it is 470*l.* or something thereabouts, and Mr. Ashton has paid me part of this Debt; this I do own.

Mr. Serj. Tremain. Pray, how long have you been acquainted with Mr. Ashton, Sir?

Mr. Spalding. A dozen years, Sir.

Mr. Serj. Tremain. Have you any Intimacy with him?

Mr. Spalding. He and I have been very well acquainted.

Mr. Serj. Tremain. Have you seen Mr. Ashton write at any time?

Mr. Spalding. Yes I have.

Mr. Serj. Tremain. Do you know his Hand?

Mr. Spalding. Yes I think I do.

L. C. J. Pollexfen. Pray how came Mr. Ashton to pay you that part of your Money?

Mr. Spalding. I press'd Mr. Ashton, and told him my Necessities, and he did advance me this Money.

L. C. J. Holt. How much did he advance?

Mr. Spalding. Almost 400*l.*

L. C. J. Pollexfen. When was it he paid it you?

Mr. Spalding. Almost a Year ago.

L. C. J. Holt. Did he pay it out of his own Pocket?

Mr. Spalding. I believe so.

L. C. J. Holt. I believe so; or was it Money that he had returned to him?

Mr. Spalding. I believe it was out of his own Pocket, my Lord.

L. C. J. Holt. Why do you believe so?

Mr. Spalding. Truly I believe it was out of his own Pocket.

L. C. J. Pollexfen. Pray who was to repay him?

Mr. Spalding. About that very time we were Petitioning the House of Commons, that we might have our Debts secured, and our Money out of the Arrears of Rents due to the late Queen, according to her Assignment; and we so far press'd the matter, that there was a Clause inserted into the Bill for the securing of our Debt; but upon the next day, or the day following, the Parliament was Prorogu'd.

L. C. J. Pollexfen. Which way did he expect to be repaid?

Mr. Spalding. I'll tell you which way, I suppose, my Lord.

L. C. J. Pollexfen. Did he not tell you which way?

Mr. Spalding. No, he never told me.

L. C. J. Pollexfen. Mr. Ashton, did you never tell him how you should be repaid?

Mr. Ashton. My Lord, I hoped to be repaid, and concluded I should, out of the Arrears of Rent in the Tenants Hands.

L. C. J. Holt. But you were very kind to pay Money out of your own Pocket upon such Hopes.

Mr. Serj. Tremain. Pray Sir will you look upon that Paper; do you know the Hand?

Mr. Spalding. No, Sir, I do not.

L. C. J. Holt. I suppose he did compound with you.

L. C. J. Pollexfen. This does shew an extraordinary kindness towards some sort of People.

Mr. Ashton. If he Discounted the Interest to the time that we reckoned it would be paid, you know that Prejudice would be to him, and not to me; it may indeed prove a Prejudice at last, if the Debt be not paid, because the Receipt is Conditional: if it be not allowed him, the shall Discount to me again.

L. C. J. Pollexfen. Was there no Money return'd over from the Queen, K. James's Queen that was?

Mr. Ashton. No my Lord directly nor indirectly, not one Penny. I believe they are not in a Condition to return Money.

L. C. J. Holt. Well, Mr. Ashton, what have you more?

Mr. Ashton. I have nothing more to say, I submit my Cause to your Lordship.

L. C. J. Pollexfen. Look you Mr. Ashton, as to some things that you have mentioned: First, there's no body questions but you are a Protestant; nay, as far as I discern, so they are all that are concern'd in this Matter. The whole design shows that they are all so careful of the Protestant Religion, that they design to restore and establish it by the King of France; so that it appears they are all Protestants concern'd in this Project.

Mr. Ashton. Pray, my Lord, who is it that proposes that?

L. C. J. Pollexfen. The Papers that were carrying to France, Mr. Ashton, you have heard them read.

Mr. Ashton. I hope, my Lord, that no doubtful Insinuations or Suggestions are to affect me?

Mr. Serj. Tremain. There is a Gentleman that was called to by the Prisoner, it may be, he knows his Hand; pray Dr. Fitz-Williams look upon that Paper, you have been acquainted with him many years, do you know his Hand?

Dr. F. Williams. No Sir, I do not know his hand, I never did see him write, I cannot say I ever received a Letter from him.

Mr. Ashton. I entirely submit my Cause to your Lordship and the Jury.

L. C. J. Holt. Then you have done, Mr. Ashton?

Mr. Ashton. Yes.

Mr. Just. Eyres. Mr. Ashton, because you cannot reply again upon my Lord Chief Justice, after he has summed up the Evidence. There's another thing that I would put you in mind of, that you may give an Answer to it. Captain Billop swears before the Papers were found upon you (and it seems to stick upon you) when he was informed by the Sea-men, that you had put something in your Bosom, and he ask'd you what it was, you said nothing but your Handkerchief? Now, if you knew not what was in the Papers, how came you to deny you had any thing in your Bosom?

Mr.

Mr. Ashton. For the same Reason that I would have endeavour'd to have had them thrown over-board, out of kindness to the Person with whom I happened to be taken.

L. C. J. Pollexfen. Consider Mr. Ashton, what a strange many things you run upon: First, you would have it believed, That you had a mind to go into France upon your own account.

Mr. Ashton. I do own that.

L. C. J. Pollexfen. Next then, That you hired a Vessel for you and Ellyott. Why would you have Ellyott to go with you into France?

Mr. Ashton. I would not have him, he desired the Favour of going.

L. C. J. Holt. Who desired my Lord Preston to go, or did he desire to go with you?

Mr. Ashton. I had not seen Mr. Ellyot of Three Months before I went into the City to hire the Boat.

L. C. J. Pollexfen. Why would you have my Lord Preston go with you?

Mr. Ashton. Why would I have my Lord Preston go with me? My Lord, I hop'd to have got my Passage free with a Person of my Lord's Quality.

L. C. J. Holt. Then you hired this Vessel for my Lord Preston?

Mr. Ashton. No my Lord.

L. C. J. Holt. Was it my Lord's Money or your own that you paid?

Mr. Ashton. The Money I paid, but how I should be repaid I cannot tell.

L. C. J. Holt. Would you for your own Convenience pay a Hundred Pounds for a Boat to go to France, and yet hope to get your Passage free by taking in my Lord Preston.

Mr. Ashton. Truly my Lord, I cannot tell how it would have been; at the utmost, we could but have paid our share of it.

L. C. J. Holt. But you can tell me if you will, I ask you, how it was agreed among you?

Mr. Ashton. Truly my Lord, as I hope to be saved, I cannot tell.

L. C. J. Holt. Then there is another thing, why did you desire one of the Sea-men to say, That you were to go to Flanders and not to France, and give him Half a Crown to say so?

Mr. Ashton. I presume your Lordship knows that it is a Fault, though it be not a Treasonable Fault to go into France.

L. C. J. Pollexfen. But Mr. Ashton, Truth is the thing that we are enquiring after; and, that is the thing we would have prevail, and I hope shall in all Cases: If you are not Guilty, we hope it will prevail of your side, if you are Guilty we hope it will prevail on the other side. Now how likely is it that you should get into this same Company by chance without a Previous Agreement; you sent something from Burdet's, a Hamper and a Trunk, and afterwards some other things went from Rigby's, who is your Father-in-Law.

Mr. Ashton. No, There was nothing at all carried from Mr. Rigby's.

L. C. J. Holt. Yes, the Leather Bag, I believe. but another thing is this, That if it be possible you will do well to give an answer to, why did you enquire for a hiding Place? Why did you ask the Master of the Ship whether there was a convenient Place to hide in?

Mr. Ashton. As to that Matter, my Lord, I had heard of diverse People, that actually had Passes, and were going to Flanders, yet were stopp'd and brought to Town again. I believe my

Lord Nottingham has bail'd many a One, and your Lordship knows it to be so, and has bailed many your self; and therefore I had great reason upon that account to endeavour secrecy as much as I could.

L. C. J. Pollexfen. Mr. Ashton, as I remember, you said your self you were once before a going over, and had the Misfortune to be stop't; now to venture a Second time without a Pass, was something strange. Why had you not gone and applied your self to the Secretary for a Pass?

Mr. Ashton. I had made all the Application I could to my Lord Nottingham, I cannot say in my own Name, because I was sure before hand, I should be denied; but I did by other hands endeavour to have got a Pass to have gone into Flanders, because it was of extraordinary consequence to me, as I tell your Lordship, to go quickly.

L. C. J. Holt. If you had such an occasion to go, and had made it out to the Secretary, and given Security, you might have got it sure.

L. C. J. Pollexfen. One word further, Why should you be so much concerned to have these Papers thrown Over-board?

Mr. Ashton. Perfectly out of Friendship, and had I been Travelling with your Lordship or any Man else that had been so unfortunatel, would have done the same.

L. C. J. Pollexfen. Well, Have you any more to say for your self?

Mr. Serj. Thompson. Mr. Ashton, call what Witnesses you will, and speak as long as you will for your self, you shall be heard at large.

Mr. Ashton. Mr. Serjeant, I thank you heartily, I have no more at present.

L. C. J. Holt. Then the King's Council desire to speak a Word to the Jury.

Mr. Serj. Thomps. May it please your Lordship, and you Gentlemen of the Jury: It falls out to be my Duty to Sum up the Evidence that has been given. I opened the Cause at the beginning to you, and I opened it at large, and many Particulars there were mentioned, and truly, I do not think we have failed in the Proof of any one; I know you are Men of that Observation, that I need not, nor shall take upon me to repeat all the Particular Circumstances, but as near as I can, I shall touch upon the Heads of the Evidence, and do it with as equal regard to my Duty, and as much tenderness to the Prisoner as any one can do.

Gentlemen, In the First place, you see what the Indictment is for; 'tis for a High Treason of a very Great Nature, no less than the Deposing the King and Queen and Subverting this Government, and that by a French Power and Interest: If inviting an Invasion, and giving an Account of the Weakness, and where the Strength of the Government lay, carrying Papers to Sollicit the French to come and to incite this Nation into Rebellion, that so they might depose this King, and set up the late King James again. If these be High Treason, as doubtless they are, then Gentlemen, how far forth the Prisoner at the Bar had a share in it, I must refer to you from what we have proved.

He is the Man, it seems, that made the first step, for you may remember it was proved that he met this Woman at Burdet's in the City, for the hiring of this Ship, and after Two or Three Meetings more, they come to a Conclusion, and 93 Guineas and Six Pence are deposited to make

up 100*l.* which was the Price agreed upon, and that was actually paid by Mr. Ashton, this is Sworn to be so

The next thing is, to what purpose this Money was paid, and the Ship hired, that is directly Sworn, it was to carry Mr. Ashton and Two or Three more of his Friends, not naming of them, and they were to go for *France*, one of the Witnesses says, to any Port in *France*, it was not directly declared to what Part. This I say was the purpose, for which the Money was paid, and the Vessel hired, and this was to carry you Mr. Ashton and Two or Three more Friends of his into *France*.

It is true, Mr. Elliot afterwards did meet Mr. Ashton, and I think was by at the Bargain making, or at leastwise, when the Money is paid, I will not be positive in that, because I would do him no wrong, he being to make his Defence hereafter.

Mr. Ashton. No, he was not by, I made the Bargain my self.

Mr. Serj. Thompson. Then afterwards I remember one Circumstance when he hired this Ship, he was to hire a Ship that had a Place to hide in, and so he must needs know upon what Design, I say, by that he must needs know, that there was a Matter of great Moment which he was to transact, for he was to have such a Ship as he might hide in.

After this Ship was hired then they met in *Covent Garden*, and there they take Order with the Man to go down with them to the Stairs, where the Waterman was called, indeed Mr. Ashton did part from them in the Way, but presently after came to them at the Stairs, and there came my Lord Preston and his Man, who together with Elliot, that was there before, I think before, all Embark't in the Boat, and were carried to the Ship, and made all the hast away they could for *France*.

When they were there, and came to a Place of Danger, near a Ship of War, there was care taken, according as they had enquired of the Master of the Ship before, that they should be hid, and hid they were.

Afterwards, when they were past that Danger, when they came to the Block-House at *Gravesend*, there they thought fit to hide again, and did so, and there they concealed themselves, till they were surprized in that Place by Captain Billop.

My Lord, after such time as Captain Billop had surprized them, he tells you, how he came down after this Smack, you see what happened; my Lord Preston first came up, and after he had search'd my Lord Preston, Elliot came up and he was searcht, and after Mr. Ashton was once come up, he went down to fetch his Hat, and there was seen to take up this Bundle of Papers, and there the Papers upon search were found in Mr. Ashton's Breast.

This being so found in his Breast, you have heard what applications were made by this Gentleman, to get these Papers cast Over-board, and what Promises were made to the Captain, and what likelihood there was of making his Fortune, if he would go along with them or throw away the Packet.

You hear, Gentlemen, that after they came to *White-Hall*, one of the Men Swear, that this Gentleman gave them Money, that they should

say, they were not hired for *France*; but for *Flanders*.

These, Gentlemen, are the several Circumstances that do appear in this Case, which shew the mighty care and diligence that was used to get these Papers suppressed that had been thus taken, or to get them again into their own Custody, and that is a Matter that shews how far this Gentleman was concerned in this Design, and taking all these things together, I think there can no greater Evidence be given, that Mr. Ashton was in this contrivance, that he was concerned in the Message, that he was to be sent, and all this business that was to be done, was as much Guilty as my Lord Preston, who now stands convicted for it.

And the Court will tell you, Gentlemen, there are no Accessories, in Treason, all are Principals, though it be not actually proved, that this Gentleman did know all these Papers what they were, yet in Case he hired a Ship for himself, and the Lord whose Papers they were, to go in, and take such notice of the Papers as to take care of them, to suppress and conceal them, that is an Evidence of his knowledge of the Importance of them; and if so, he will be equally Guilty of the High-Treason.

L. C. J. Holt. I doubt that.

Mr. Serj. Thompson. My Lord, I would not willingly press any thing further, than the Nature of the thing will bear.

L. C. J. Holt. Pray go on, Brother, we are only talking among our selves.

Mr. Serj. Thompson. The next thing is this, that is to be considered, that after such time as these Papers came to be laid open, what is it that appears among them? Truly I shall not take upon me to repeat so much as the substance, much less the Particulars of the several Papers; but, I must say, that there does appear to be a Formed Design of Subverting the Government, of Deposing this King and Queen, and of bringing us all into War Rebellion and Blood-shed, all this under a pretence of Establishing the Protestant Religion, and our Legal Government again (tho I can see no means they had to depend upon for it) but by a Popish Interest and a French Power, and how far that is possible or probable to promote such an end by such means, I leave to your consideration.

Gentlemen, you have heard all the particular Papers read, here was the Resolution of a Consult and Conference, where this Project was designed, here were Heads of a Declaration, that was to be framed to make the Credulous believe, what mighty things should be done upon their New Revolution, you see, what Letters have been produced, and cannot but easily apprehend what is the Import and Meaning of them. I resolve, as I said, not to mention the Particulars, but there is scarce One Line among them, but what is Treason, for it all tends to this Purpose and Design, to depose the King and alter the Present Government.

Now upon the whole Matter, Gentlemen, what this Gentleman has said, I confess to me seems strange, he said indeed at first, that he had no defence at all, or that which was very weak, and so it should seem, the Truth was, for you see what his Defence has been.

He says, that he went into *France*, that he owns that he was going thither, but what it was

was it to do, it was to settle some Accounts with the Family of Colonel *Worden*, and to receive a Sum of Money that was owing to him by a Person there.

Gentlemen, if the Design had so much Innocency in it, certainly he might have had a Pass, at least, there was no need of hiring a Vessel at such an extravagant rate, there was no necessity of hiding in this secret manner, and no necessity of impossible suggestions, and proffering Great Rewards for the disposing of, and concealing, these Papers.

Gentlemen, You will remember many Particulars more, which have not slipt your Observation, I shall not take upon me to repeat them, but leave them to your consideration.

Only this I must say, That this is a Treason of a very high Nature, a Treason to depose a King that has ventured all he had, even his Life has been in Danger, and his Blood has been spilt to Establish this Government, and our Religion, and our Laws, and yet it seems there are Men that think this may be better done by a Popish Interest and *French* Power, which I think no body of either Wisdom or Honesty can imagine, or will engage in, and therefore I leave it to your determination.

L. C. J. Holt. Gentlemen of the Jury, you understand, that Mr. *Ashton* is now Trved for High Treason; it is mentioned in the Indictment, to be for Conspiring the Death, and Deposing of the King and Queen, and for that purpose, he did endeavour to go into *France*, and to carry divers Proposals in Writing, and several Memorials to shew how this Kingdom might be Invaded by the *French*.

To prove this, the Evidence that has been produced and given by the King's Council has been long, and consists of two Parts, Witnesses *Viva Voce*, they have told how Mr. *Ashton* designed a Voyage to *France*, and that he hired a Ship for that purpose, and several Papers were taken out of his Bosom.

In the first place, the Witnesses tell you, that about the latter end of *December* last, Mr. *Ashton*, and Mr. *Elliot* came to *Burdett's* House, where they met with Mrs. *Pratt*, and *Burdett* having before that spoken to her about a Smack that she called the *Thomas* and *Elizabeth*.

Then there was a Meeting appointed between her and Mr. *Ashton* at the *Wonder* Tavern, where they did Treat and Debate about the hire of it; afterwards they came back to *Burdett's* again, and there the Agreement was made betwixt the Woman and Mr. *Ashton*, the Prisoner at the Bar, to have a Hundred Pounds. Ninety Three Guineas and Six Pence was fetcht down by Mr. *Ashton* and told out, and deposited in the Hands of Mrs. *Burdett*, then there was a Six Pence broken, and one part Mrs. *Burdett* had, and the other part Mr. *Ashton* had, and when either the Master or Mistress *Pratt* should bring the part of the Six Pence that Mr. *Ashton* kept, to Mrs. *Burdett*, the Hundred Pounds was to be paid.

And this Agreement being made, 'tis positively Sworn, that they did ask, whether there was a Hiding Place in that Vessel? an Answer was made, There was one, and thereupon a Note was given, that the Master and Mistress *Pratt* should go to the Seven-Stars in *Covent-Garden*.

Upon *Wednesday* Night, they went there according to the Directions, where meets *Ashton*

and *Elliot*, but before that, there was a Boat hired at *Surrey Stairs* to carry them down to the Ship through Bridge, over against the *Tower*, but the Tide not serving till about Ten a Clock at Night, they had agreed with a Waterman for Half a Crown to carry them, and he was to stay till the Tide served. And when they went out from *Rigby's* they parted, *Elliot* and the Master went together, Mr. *Ashton* did not go with them, but came near about the same time to *Surrey Stairs*, where they took Water.

Being aboard, it was observed that all these Gentlemen were very timorous, and seemed to be much frightened at the sight of any Vessel, from which there was any apprehension of their being taken notice of; and, therefore they went down under the Quarter-Hatches, which is a Place very inconvenient for such Persons, where none could stand or sit upright, but they were forced to lye upon the Boards, or upon the Ballast.

It seems some intimation was given, that some Gentlemen had an intention to go into *France* to prosecute some Treasonable Design; And Captain *Billop* being employed to pursue them, which he did in a Pinnace, when he came near the Vessel where they were, he called to the Vessel, and under pretence of Pressing Seamen, he went on Board; The Master of the Vessel said he had a Protection from the Admiralty; so that there was no cause for them to fear pressing, nor indeed was there any for Gentlemen to fear it, they being not lyable to be pressed.

When the Captain came near the Ship, and declared his intent of coming on board, these Gentlemen were gone under the Quarter Hatches again, Captain *Billop* coming on board, and speaking about pressing of the Men, and saying, there was a Couple that would make good Seamen for the King; the Master shewed his Protection, and then the Captain said he would search further in the Ship, and so he did, and then he pulls up the Boards, and there he finds all these Gentlemen, who were called up one after another, and searcht by the Captain.

Gentlemen, There is one of the Witnesses tells you, that when they were come up, he saw a Packet that lay in this very place under the Quarter-Hatches, unto which was tyed a piece of Lead, which Mr. *Ashton* takes up and puts in his Bosom, with which the Captain being acquainted, Enquiry is made by him, what Mr. *Ashton* had there? Mr. *Ashton* said it was his Handkerchief, and nothing but that which he pulled out: But Captain *Billop* puts his Hand in his Bosom between his Coat and his Body, and takes out the Packet, and carried these Gentlemen on Board the *George* Frigate, where they stayed till the Tyde served to bring them to *White-Hall*.

But before they came on board the Frigate, Mr. *Ashton* was very importunate with him to throw this Packet into the Water; when they were on board the *George* Frigate, and in the Cabin alone, they continue their importunity.

Now, say they, we have you here, and you are alone, pray will you throw this Packet over-board; and particularly Mr. *Ashton* said it would do the Captain no good to injure so many Gentlemen, and Mr. *Elliot* would have perswaded the Captain to take the Lead that was tyed to the Packet, and tie it to some Letters that were taken out of my Lord *Preston's* Pocket, and throw the Packet over-board; and then have informed the

the King and Council, that those Letters was the Packet taken out of Mr. *Ashton's* Bosom: But the Captain very honestly rejected all their Motions of that kind.

Truly, Gentlemen, my Memory will not serve me to repeat all the Particulars, but I question not your Notes will bring them to your Minds. Mr. *Elliott*, it seems was so mightily concerned at their being taken with these Papers, that when they shot *London-Bridge*, he wisht the Bridge might have fallen upon them and knockt them on the Head; and, when they were got through, he wisht a Thunder-bolt would fall down into the Boat and sink them: That, indeed was Mr. *Elliott*, and not Mr. *Ashton*; but Mr. *Ashton* was as much concerned about disposing of the Packet as Mr. *Elliott*.

At *White-hall* this Packet is opened, and you have several Papers produced in Evidence and read to you, you have heard what Evidence has been given, that these are the very Papers that were in the Packet thus taken.

First of all Captain *Billop* tells you he carried them to my Lord *Nottingham*, and that they lay there in his Office; he withdrew indeed while my Lord *Nottingham* examined my Lord *Presfon*, but the Packet was not opened in the interim, but there was only a Paper stuck on the outside that my Lord had taken off before the Captain returned into the Room, and there the Packet remained intire. He says, my Lord *Nottingham* opened the Packet and put up all the Papers that were in the Packet in his presence into a Cover again, and sealed them up with his Seal. My Lord *Nottingham* says positively, he did put up all the Papers that were in the Packet again, all and no more, except the Cover, and that he sealed up and delivered it to Captain *Billop*.

Captain *Billop* says, he took these very Papers from my Lord *Nottingham*, and as he received them, carried them without opening to my Lord President.

My Lord President says he lockt them up unopen'd in a close Cabinet in his Closet-Room, where no body comes; there they were that Night, and the next Day he carried them intire to the King, and some of them were read by the King, in the Presence of my Lord President; and, they were all taken away again by his Lordship, no more nor no less; and, my Lord President brought them all to the Cabinet Council, where they were read, and were delivered to my Lord *Sydney*.

My Lord *Sydney* swears, these Papers now produced are the same Papers he had from my Lord President, and my Lord President swears, that they are the same he received by *Billop* from my Lord *Nottingham*, and my Lord *Sydney* markt them.

So that there can remain no doubt of these being the same Papers, that were contained in the Packet, that was taken out of the Bosom of Mr. *Ashton*.

Then, as to the Matter of the Papers, I think it is plain beyond all contradiction, that the Import of them is Treasonable: They shew a Design of invading the Kingdom by a Foreign Force, and of Deposing the King and Queen from the Government, and of setting the late King upon the Throne.

It is agreed, as it is mentioned, at a Conference, between several Noblemen and Gentlemen, that were of the Whig and Tory Party, as

they call them, that the late King was to be restored, though by a *French* Power.

It was impossible for them to effect it, by going plainly to work, and saying in plain Words, the *French* should invade us. It was to be done in this manner.

The *French* King must pretend by all means to be our Friend and a Mediator betwixt the late King and the People of *England*, and this was out of design plainly to get a Party of the Kingdom, to joyn with them; the most credulous and inconsiderate sort of People; who when they shall be seduced into a Belief of the *French* King's great Kindness, it was not doubted but there would be a Conjunction between them and the *French* Forces, to restore the late King.

And to procure such a Perswasion in the People; the *French* King was to shew himself kind to the *English* Protestants, to appear and act another part than he had formerly done; he was to permit them the Exercise of the Protestant Religion, thereby to perswade many, that his Persecution of his own Subjects, the Hugonots, was not out of any Aversion to the Protestant Religion, but only to their Antimonarchical and Resisting Principles.

Then an Inconvenience is to be removed; for they complain, that they are too full of Bigottry at *St. Germain's*, and too bare faced: For they make an open Profession of Popery, and speak truly what they do intend; but say they, if they will have the Design take effect, they must be more Close and Secret: For the Folly and Bigottry at *St. Germain's* was a very great Obstruction. Therefore, they proposed, that some Persons might be substituted as Agents to Correspond here, that understood the Temper of the Nation, and what would easiliest prevail with the People: And a Model was to be framed at *St. Germain's*, the Protestants are to be seemingly caressed, Seven or Nine to be of the late King's Council, that so we might believe, that he was ours in Interest again, and that we have a Relation to him.

And if things were carried with such cunning and subtilty, they hoped to delude a great many People over into the Interest of the late King; but, if they went bare-faced, it would cause such great Jealousies, that they must totally despair of Success.

Yet they did not hope by these Artifices to obtain so many Friends here, as might have been sufficient to accomplish their Design; and therefore they must have recourse to a Foreign Force, particularly a *French* Force. For says one of the Papers, *Use Foreigners to expel Foreigners*; that is, *Use French* to expel *Dutch* Foreigners, who are our Allies, and are falsely accused by them to have trampled upon the Rights and Liberties of the Nation.

There is one Argument used to encourage People to assist the *French* in the Invasion of their own Country, which I cannot omit, namely, *That as soon as the French, with a considerable Expence of Men and Money, had restored the Protestant Religion, the late King to the Crown, and the People to their Liberties, that he would withdraw all his Forces, and reap no Profit or Advantage by his Success.* I must confess, this carries so little of Persuasion in it, that it is ridiculous to think thereby to impose upon any number of Men. But notwithstanding the weakness of their Arguments, it is apparent they were in good earnest; the Papers give an account to the *French*, in what state and condition our Forts were, *Portsmouth* not
Mand

man'd with above 500, and Gosport how weakly fortified.

It was a happy juncture between this and the first of *March*, when Advice is given to make use of the Opportunity. For Men cannot give, but Men may use Opportunities, and something was to be done forthwith, and the Goods must be got in readiness, particularly Linnen and the Copper, are mentioned, which are mysterious and dark Expressions, and you may put a Construction upon them as well as I; for they are written in a style of Trade, as if there were a Correspondence between two Tradesmen, and the Linnen and the Copper are ordered to be brought before the 10th of *March*.

But however obscure some of these Expressions are, there are others that are more plain, *That the French Fleet must be cut in April at farthest, and are to come before the Conjunction between the English and the Dutch, and Jennings, Strickland, or Trevannian are to come from St. Mallo's in one Night, and to fight the English Fleet in the Chops of the Channel, and not to come so high as Beachy, where they came the last Year.*

And there is an account given, in what condition and state our Navy was, how many Ships, what Rates, how Man'd, and who the Officers; and then as the *French* were to be in readiness to come in *April*, so they say our Fleet was not to be out till *June*.

Gentlemen, There are a great many other Particulars; but these are enough, nay half of them were enough to make any Man Guilty of Treason, that was concerned in them, or that had a hand in carrying or making use of them.

Besides, there are other Letters which can import nothing, but the Writer was of the late King's Interest; one directed to Mr. Redding, the other to Mrs. Redding; and these were to go to *France* to let them know how zealous he was in his Duty, and how the Interest of the young Master increased. The Letters have these Expressions: *That though the Family were decreased, yet our Interest is increased, which is yours, and I speak in the Plural Number, because I speak the Sentiments of my elder Brother, and the rest of our Relations, and desire them to believe they were zealous and cordial in their Duty to Mr. Redding.* Now what Interpretation you will make of this, I'll leave to you.

Then there is another Letter to Mrs. Charlton, and another to Mr. Jackson, and divers other things that have been read, and amongst the rest, have been read the Heads of a Declaration at large, shewing what should be done, and what Methods should be taken in order to the restoring the late King, and deposing this.

And there is also mention made in a Paper, how divers Persons, who were to be pardoned, as particularly, *all Justices of the Peace actually in Commission are not to be excepted; Outlaws are to be pardoned; Chimney Money to be taken away; and all that come in within One and Twenty Days are to be forgiven.*

So that it is plain, these Letters import a Design to depose the King and Queen, and the Kingdom to be invaded by Foreigners, only a little to colour the matter, nor to lose the presence of a Protestant Interest altogether, there was to be 5 or 6000 *Swedes* to be made use of in the Invasion.

Gentlemen, if there was a Design of an Invasion, be it by Papists, or by Protestants, if any Act was done tending thereunto, it is High

Treason within the Statute of 25 E. 3. For purposing and intending to depose the King and Queen, manifested by any Overt-Act, hath been always held to be High Treason.

This, Gentlemen, is the Sum and Substance of the Evidence that has been given against the Prisoner at the Bar.

Mr. Ashton says for himself, it is true, saith he, my Design was to go to *France*, I was so unfortunate as to have the Papers taken about me. I did take them up; but, says he, it is not at all proved that any one of the Papers that are now produced are my hand: Which is true: There is no such Proof.

The next thing is, that Mr. Ashton being ask'd, what occasion he had to go to *France*? He says, he had formerly a Relation to Col. Worden, and did transact and had the Management of his Affairs, which were very great. Col. Worden died half a year ago, and he enjoind him upon his Death Bed to go into *France* about settling some Accompts of his, and he was desired by the Family of Col. Worden so to do.

This Mr. Ashton alledges; but he has not proved it. 'Tis very strange, that if Mr. Ashton was to go to *France* to negotiate that Affair for Col. Worden's Family, none of that Family should be produced to prove, that Col. Worden gave him such Directions, or that the Family desired him to go into *France* upon that account.

Then Mr. Ashton hath endeavoured to give another reason for his Voyage into *France*: he affirms, he had some Affairs of his own with relation to the late Queen, he was concerned for her, and she did owe Monies here, and he paid several Debts to Tradesmen, particularly 400 *l.* she owed to the Coach Harness Maker; and he having paid it, went over to reimburse himself: The Tradesman was produced, and he says, Mr. Ashton did pay the Money a Year ago; but whether Mr. Ashton had Effects from the late Queen, or paid it out of his own Pocket, does not appear; Mr. Ashton says, he paid it out of his own Pocket, which is very extraordinary, that he should be so kind to pay what he was not obliged to pay, and have no security to reimburse himself.

So that, Gentlemen, you had best consider whether there be any thing at all said or proved, that can justify Mr. Ashton's going to *France*, or whether there be any good reason offered for it.

Then Ashton has called Witnesses to prove, that he was always a Protestant, though he did live in a Popish Family, where they did encourage Papists and discountenance Protestants; for which he had the ill will of those he did depend upon.

Gentlemen, all that is agreed, and it is not a question in this Case; whether Mr. Ashton be a Protestant or a Papist; but the Question is, whether he be guilty of High Treason, from which the being a Protestant does not secure a Man.

But Gentlemen, if Mr. Ashton had no Knowledge upon what design the other Persons were to go into *France*, though he had actually gone into *France*, it had been a Crime in this Juncture of Affairs, yet not High Treason; but to go into *France*, and carry a Treasonable Scheme of a Design and Project of an Invasion, that is Treason.

Now the Question is, whether Mr. Ashton went with such a Purpose or not, you are to

consider; I would not lead you into any strain of the Evidence, but only state it how it stands. It is plain he was concerned all along in hiring the Smack, and as the King's Council observed to you, the Price was something extraordinary, they were to pay 100*l.* for the Voyage, to which was added some Encouragement to the Woman, that if she performed this Voyage well, she might get 1000*l.* before *Lady Day*, and the Money was paid by Mr. *Ashton*, and he was taken aboard the Vessel.

Mr. *Ashton* was much concerned to secure the Papers; by taking them out of the place where they lay, upon the Ballast under the Quarter-Hatches; and after they were taken out of his Bosom, he was very importunate, and so often with Captain *Billop* to throw them overboard.

And why should he be so earnest and concerned, unless he very well knew and was acquainted with the contents of those Papers?

And he gave one of the Seamen 2*s.* 6*d.* to say they were bound for *Flanders*: Unless it was a matter of great Importance he went about, and that was not fit to be known; why should he deny it, or labour to have it concealed? An 100*l.* to be paid for this Voyage, was, upon a joint Account, as well for my Lord *Preston* as for Mr. *Ashton* and *Ellyot*; Mr. *Ashton* did pay the Money, and he does not make it appear whose it was.

Gentlemen, it rests upon you to consider the Evidence you have heard, whether it is sufficient to induce you to believe Mr. *Ashton* was going into *France* with these Papers to carry on the Design of Deposing the King and Queen, and invading the Kingdom: If you are not satisfied in your Consciences that he is Guilty, then find him not Guilty: On the other side, if you are satisfied that he is Guilty, I do not question but you will find him so.

L. C. J. Pollexfen. Look you, Gentlemen of the Jury, My Lord has rightly repeated and stated the Evidence to you, I shall only say but a very few Words to it.

Mr. *Ashton*, as at first he did, so in his Defence has complained of a very speedy Tryal, and would insinuate something of Favour that he might find for that Reason. It does appear he had notice of his Tryal sufficient, and had Time enough to prepare for it: But there is one thing extraordinary has happened to his Advantage, which I would desire may be taken notice of. If he had been tryed on *Saturday*, perhaps he had had more reason to complain than now he has; for he has now (and you see he uses it, and wisely enough too) the Advantage that happened to him upon my Lord *Preston's* Tryal; and has had time since *Saturday* to prepare for this day's Work, so that there is no hard Point upon him as to that Matter, but he has had pretty good Fortune therein.

Next he does insinuate that he is a Protestant: Gentlemen, the Law does not distinguish between a Protestant Traytor and a Papist Traytor; if he has committed such an Offence, as by the Law is High Treason, the Law does not distinguish, nor may we. And Protestants may serve Papists Designs, though they do not directly intend it. Therefore the Evidence to prove him a Protestant is nothing before you; for the Matter is only whether he be guilty of this Crime or not.

In the Tryal of my Lord *Preston*, then the Labour was, that My Lord was not the Man that was concerned, as the Bearer of this Pacquet of Letters or Writings wherein the Treason is contained; but then it was Mr. *Ashton*, the Pacquets were found about him; but now it is not Mr. *Ashton*, but my Lord *Preston*, and this is now the Question before you, that he stands upon.

But if so be they were all concerned in the Carriage and transporting of this Business, then they are all alike guilty of Treason, and therefore they cannot shuffle it from one to another.

Now there appears some Reason why they would not all agree to be tryed together; for now it is but turning it from My Lord *Preston* upon *Ashton*, and Mr. *Ashton* upon my Lord *Preston*, and *Ellyot* upon either of them, and so by this means all might escape, if this were sufficient to serve their turn.

But the Question before you, is, whether all these Persons are not all in all equally concerned, and 'tis the Evidence that must be your Guide and ours; for it is not Mr. *Ashton's* Affirmation, that he had Business to go into *France*, and he happened unluckily to fall into these Mens Company, that will be a sufficient Excuse, unless he prove it.

It had been an easie matter for him to have proved, if he had been going into *France* upon Business for Colonel *Worden*; but at length that is turned off, and then the pretence for going is, to recover some Money he had owing to him there, and that he had payed for another Person. Had he Papers of Instructions of this kind? Had he any one Witness of this thing?

The Merchandize that he carryed out with him is of another import. Where were the Notes or Bonds that he was to recover? Where is the Accompt that he had to make up with any body beyond Sea? There is no manner of Evidence of any such thing.

Next Gentlemen, do but consider, if the Man were so innocent as he would insinuate, as if he had not gone with the rest upon this Errand, how came the Man to have so heavy a Concern upon him? Why should he go to take up these Papers, if they were not his Brats? Why should he clap them into his Bosom, if he knew nothing what was in them? Why was his concern so great to have them thrown overboard?

Gentlemen, if you expect that the Hearts of Men should be proved otherwise, than as Men guess by one anothers meanings by their Actions, 'tis impossible to convict any Man of a Crime; for if his own Affirmation shall be a Defence, he will never want a Defence to keep himself from being convicted: But that is not what the Law gives credit to; it must be Proof and Evidence that you are to judg upon. But of all he pretends to, he proves nothing.

How came he acquainted with my Lord *Preston*? Sure he was a Man sufficiently known in the World? Why should he go with him and Mr. *Ellyot*? Are they not all known? Are they not Persons of the same Disposition, and much in the same Employment?

He had been taken a little before, he says himself, and was hindred from going; and he had strange ill luck, if there was nothing else in the business than what he pretends.

Gentlemen, in short, if you do find by the Evidence, that he was going upon a good and an honest

honest design, and that he knew nothing of the Danger that was in these Papers, and that these Persons were in; by reason of these Papers, and yet would go about to have these Papers concealed, and endeavour to have them thrown away, without knowing what was in them: These are Evidences that will be good for you to go by, if you have any such; but to take his Affirmation, because he says it, when he proves nothing, that is no Evidence to go by.

I leave it to you, as my Lord has done. If you are satisfied upon the Evidence that he is guilty; I doubt not you know and will do your Duty, and will find him so; and if you have no such Evidence, or any to prove the contrary, that he is not guilty, then you ought to find him so too.

Mr. Ashton. I beg you pardon for one word.

L. C. J. Holt. What would you say?

Mr. Ashton. My Lord, I shall reckon it a particular Favor, if you will pardon me one word, after your Lordship has given the Charge.

L. C. J. Holt. Well, what say you?

Mr. Ashton. I think, with Submission, that there is no proof I knew or was privy to the Contents of any of these Papers.

L. C. J. Pollexfen. Pray Mr. Ashton, shew any Man any Reason, if you can, why did you go down and catch up these Papers, if you did not know what was in them; they might be for your Advantage to be shewn, for any thing you pretend to know.

Mr. Ashton. I did it for my L. Preston's Sake, whose Hand was proved, and he stands convicted as the Bearer of those Papers.

Mr. J. Eyres. But you forget one thing that was plainly proved, Mr. Ashton, that when you importun'd Capt. Billop to throw away the Papers, you used this as an Argument, *It would do him no good to injure three honest Gentlemen.*

Mr. Ashton. I did not say so, my Lord, that I know of, tho indeed he has sworn it.

L. C. J. Holt. Look you, Mr. Ashton, you have been heard as long as you did desire to speak, and were askt over and over again, whether you had any more: You are not now saying any new Matter; if you could urge any thing that had been omitted, which made for your Advantage, I believe the Court would indulge you, tho it be against the Course.

Mr. Ashton. My Lord, I say there is nothing under my Hand, there is no Privy proved; does Supposition condemn a Man? And is there any thing but Supposition against me? There is not my Hand proved in any of the Papers. I beseech your Lordship and the Jury to observe that.

L. C. J. Holt. Your being in the Company, and being so concerned, and importunately endeavouring to have them thrown overboard; the hiring the Vessel to go with these Treasonable Papers to an Enemies Country, and the Papers found about you, is Fact proved, and is left to the Gentlemen of the Jury to consider of.

Mr. Ashton. But does all this amount to more than Suspicion?

L. C. J. Holt. Look you, Mr. Ashton, if you speak after we have charged the Jury, you will give us an Occasion of speaking to answer you; the Gentlemen of the Jury are Men of Understanding, they have very well observed the Evidence, and I perceive they have been very extraordinary intent upon it, they will be able to make a right Judgment, no Question of it.

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Mr. Ashton. All that I desire, is; there is nothing proved upon me, of my knowing what was in these Papers.

Mr. J. Eyres. And there is that which is very considerable too, that 'tis plain, what you say about Col. Worden's Account, is but a Pretence, for when you were searcht, there was not one Paper, nor one bit of Account found about you, nothing but this Bundle of Treasonable Papers and Letters.

Mr. Ashton. My Lord, I humbly beg you will observe what is for me, as well as what is against me.

L. C. J. Holt. Gentlemen of the Jury, do you think you shall stay out any time, the Court desires to know it, because they will order themselves accordingly.

Juryman. My Lord we do not know till we come together.

L. C. J. Holt. Nay, take your own Time, only the Court would comply with your convenience in the Adjournment.

Then the Jury withdrew, and the Court adjourn'd for half an Hour, and when they were returned, the Jury came in to give their Verdict, and being called over, answered to their Names.

Cl. of Arr. Gentlemen, are you all agreed of your Verdict?

Jury. Yes.

Cl. of Arr. Who shall say for you?

Jury. Our Foreman.

Cl. of Arr. John Ashton hold up thy hand.

Which he did. Look upon the Prisoner; How say you? Is he Guilty of the High Treason whereof he stands indicted, or not Guilty?

Foreman. Guilty.

Cl. of Arr. What Goods or Chattels? &c.

Foreman. None that we know of.

Maj. Richardson. Look to him, he is found guilty of High Treason.

Cl. of Arr. Then hearken to your Verdict, as the Court hath recorded it. You say that John Ashton is guilty of the High Treason whereof he stands Indicted, but that he had no Lands nor Tenements. Goods nor Chattels, at the time of the High Treason committed, nor at any time since to your knowledge, and so you say all?

Jury. Yes.

L. C. J. Pollexfen. Gentlemen, I think truly you have gone according to your Evidence, which the Law requires you to do, and that it is which will preserve us all: And tho it be truly a thing that falls hard upon the particular Men that are concerned in such things; yet notwithstanding, we must have more consideration of the general Good, and Preservation, and the Support of the Government, and that the Law have its due Course, than of any particular Man's Case, as to the hard Point of it: We must look to these things, or there will be no living in the World.

Sir W. Hedges. My Lord, we humbly desire of your Lordship that we may be dismiss from further attendance this Sessions.

L. C. J. Pollexfen. Ay.

Cl. of Ar. Gentlemen, you are dismiss, and the Court thanks you for your Service.

Then the Court adjourned for an Hour, and then the Lord Mayor and Deputy Recorder, with several of the Justices and Aldermen returned into the Court, and after Proclamation for Silence, Order was given to bring the Lord Preston, and Mr. Ashton to the Bar. Which was done.

C c c c c c 2

The

The Lord Preston standing without the Bar, and Mr. Ashton within.

Cl. of Arr. Sir Richard Grahme, hold up your hand. *Which he did.*

John Ashton; hold up your hand. *Which he did.*

My Lord *Preston*, You stand convicted of high Treason, for conspiring the Death of the King and Queens Majesties, for adhering to the King's Enemies, and endeavouring to subvert the Government: What can you say for your self, why the Court should not proceed to give Judgment against you of Death according to the Law?

Lord Preston. 'Tis true, my Lord, the Jury have found me guilty of the Treason assigned in the Indictment. My Lord, it is a Treason of a very heavy and black Nature, 'tis of such a Nature, that if I had been conscious to my self to have deserved, I should be very willing to undergo, that Judgment that is like presently to pass upon me. It is to endeavour to bring in the King of *France* to Conquer and Invade this Kingdom; 'tis a thought I always abhorred; I love my Religion, my Family, my Country too well to attempt or endeavour any such thing; I must appeal to your Lordship, though now perhaps it is too late, whether the Treason that is laid against me has been perfectly proved; for in the Case of proving Hands, and particularly in the Case of Colonel *Sydney*, It was disallowed that comparifon of Hands should be Evidence; there ought to be at least one if not two Evidences to prove the writing of it. My Lord, I know this is too late, I should have offered this to the Jury before, but being in the Crowd and in great disorder by standing so long, I had not strength or ability enough to urge it as I should. I have nothing more to say in the Case but submit to that Judgment that the Law has assigned.

Mr. D. Recorder. My Lord *Preston*, Your Lordship knows the proceedings of the Law in such Cases; there is no averring against the Verdict of the Jury, they have found your Lordship guilty, and the Law says, that Judgment must be given upon you according to that Verdict.

Lord Preston. Mr. Recorder, I do not aver against the Verdict. I own it is too late, I should have offered it before, and I must submit to the Judgment of the Law.

Cl. of Arr. *John Ashton*, hold up thy hand. *Which he did.*

You are in the same Case with the Prisoner last before you. What can you say for your self, why Judgment should not be given against you, to die according to Law?

Mr. Ashton. My Lord, I would humbly desire I might have a sight of my Indictment; I have some reason perhaps to believe that I am found guilty upon an Erroneous Indictment, and if it be so, I would desire to have Council to argue the Errors of the Indictment.

Mr. D. Recorder. You have heard it twice read in *English*, and once in *Latin*, and that is all that is allowed to any one in your Case, I never knew the Record of any Indictment shewn to any Prisoner at the Bar.

Mr. Ashton. Suppose there be any Error in it.

Mr. D. Recorder. I am not to suppose any such thing, if there is any, it has been read to you, assign it and the Court will consider of it.

Mr. Ashton. If I can assign the Errors in the Indictment, may I have the advantage of it then?

Mr. D. Recorder. If there be Errors, you will have the Advantage of them: If you will assign them; if there be none, you can have none.

Mr. Ashton. Then I say, if there be words in the Indictment that there are no such Words in Nature, then, Sir, I am told it is a Vicious and Erroneous Indictment, and that is enough to viciate the Indictment.

Mr. D. Recorder. No such Words in Nature? It is hard to tell what you mean by that; perhaps there are terms of Art in the Law, which though you are not acquainted with, we are.

Mr. Ashton. Then there are such Words in Nature.

Mr. D. Recorder. That is an insensible Expression, *Words in Nature!*

Mr. Ashton. I am informed that even a Letter in an Indictment is enough to viciate it, or if it be false *Latin*, that will make it an Erroneous Indictment.

Mr. D. Recorder. No, that is not so; but if you will tell me what that Letter is, I'll tell you what I say to it; it may, or it may not be material.

Mr. Ashton. We know it was lately disputed in a Case of this Nature at this Place, and I am informed the Court were of Opinion, if it had been in the Body of the Indictment, it had been an Error.

Mr. D. Recorder. If you please to tell me wherein the Error in your Indictment consists, I may be able to give you a good Answer to it, or you will have the advantage of it.

Mr. Ashton. I say it consists in this, the Word *Cymba* is written with an S in the Indictment, whereas it should be with a C.

Mr. D. Recorder. How do you know it?

Mr. Ashton. It is no matter how I know it, I have some reason to know it, it may be.

Mr. D. Recorder. Mr. *Hardesty*, look upon the Record.

Mr. Ashton. With Submission, that is an Error, for there is no such word as *Cymba* with an S.

Cl. of Arr. It is a long Indictment; will you please to ask him where about it is?

Mr. D. Recorder. Mr. *Ashton*, will you tell me where 'tis written?

Mr. Ashton. In the Indictment when you come to speak of *Cymba* a Boat.

Mr. D. Recorder. By the Sound I cannot distinguish whether it be S or C.

Mr. Ashton. Sir, I hope you will do me the Justice to examine the Indictment it self.

Mr. D. Recorder. The Clerk is looking upon it; how is it Mr. *Hardesty*? Is it with an S or a C?

Cl. of Arr. It is with a C.

Mr. D. Recorder. The Clerk has read it, and he certifies me it is in both places with a C, which is true *Latin*.

Mr. Ashton. Is it in all places with a C?

Cl. of Arr. I have lookt in two places, and 'tis right; I'll look further, if you please.

Mr. Ashton. Pray do. *Which he did.*

Cl. of Arr. It is with a C in all places.

Mr. D. Recorder. The Clerk tells me it is the same, and right in every place, and he has lookt over all the Indictment, as to the matter.

Mr. Ashton. Then Sir I submit to it.

Mr. D. Recorder. Make Proclamation for Silence; *Which was done.*

Mr.

Mr. D. Recorder. My Lord Preston, or rather Sir Richard Grabme, and Mr John Ashton, Ye have been Indicted, Arraigned and Convicted of High Treason against their present Majesties King William and Queen Mary, whom God preserve. Ye have had a long, a fair, and favourable Tryal as any Persons that ever have been tryed at this Bar.

The Jury that has passed upon your Lives and Deaths has convicted you; and the Court are now to do their last Act, which is to pronounce that Sentence that the Law does inflict upon such Crimes as ye stand Convicted of.

It is a great trouble to me to pronounce a Judgment that is so heavy upon you; but I must say, the Evidence that has been given against you, was so clear, and I suppose not only convincing to the Twelve Men that tryed you, but to all By-standers, that I can do it with that satisfaction that becomes one who is intrust-

ed with the King's Justice, that the Law may obtain, and that there should be no Interruption of Justice. And the Sentence that the Law has declared should be pronounced in this Case, is this:

That Ye do respectively go to the place from whence Ye came; from thence to be drawn upon a Sledge to the place of Execution, to be there hang'd up by the Neck, to be cut down while Ye are yet alive, to have your Hearts and Bowels taken out before your Faces, and your Members cut off and Burnt, Your Heads severed from your Bodies, Your Bodies divided into four Quarters; Your Heads and Bodies respectively to be disposed of according to the King's Will and Pleasure; and the Lord have mercy upon your Souls.

Then the Prisoners were convey'd away to Newgate, the Place from whence they came.

The Tryal of Henry Harrison, Gent.

Die Mercurii Sexto die Aprilis, Anno Regni Domini Gulielmi & Dominae Mariae Regis & Reginae Angliae, &c. Quarto.

Judges present } Lord Chief Justice Holt.
 } Lord Chief-Baron Atkins.
 } Mr Justice Nevil.

THE Keeper of the Prison of Newgate did, according to Order of the Court being then late, bring up the Body of Henry Harrison, Gent. to the Sessions-House in the Old-Bailly, London, who being at the Bar, was Arraigned upon an Indictment of Felony and Murther, found that Day by the Grand-Jury for the City of London, in manner following:

Ch. of Arr.



Henry Harrison, hold up thy Hand. Which he did. You stand Indicted by the Name of Henry Harrison, late of London, Gent. for that you not having

the fear of God before your Eyes, but being moved and seduced by the Instigation of the Devil, the Fourth Day of January, in the Third Year of the Reign of our Sovereign Lord and Lady, King William and Queen Mary, of England, &c. about Eleven of the Clock in the Night of the same Day, with Force and Arms, &c. at London, viz. in the Parish of St Peter Cornhil, in the Ward of Limestreet in London aforesaid, being in a certain Coach with one Andrew Clenche Doctor of Physick, and a certain Man yet unknown, in and upon the said Andrew Clenche in the Peace of God, and of our Sovereign Lord and Lady the King and Queen, then and there being, Violently, Feloniously and of your Malice before-thought, did make an Assault. And that you the said Henry Harrison, with the Help and Assistance of the said Man unknown, with a Poc-

ket Handkerchief with a Coal in the same, being put, of the value of Two Pence, about the Neck of him the said Andrew Clenche; then and there Feloniously, Voluntarily and of your Malice before-thought did put, fasten and bind; and that you the said Henry Harrison with the said Handkerchief with the Coal aforesaid in it, by you the said Henry Harrison with the Help and Assistance of the aforesaid Man unknown about the Neck of the said Andrew Clenche then as aforesaid, put fastened and bound him the said Andrew Clenche then and there with Force of Arms, &c. Feloniously, Voluntarily and of your Malice before-thought did choak and strangle, by Reason of which choaking and strangling of the said Andrew Clenche by you the said Henry Harrison, with the Handkerchief aforesaid, with the Coal as aforesaid put in it, he the said Andrew Clenche instantly died: So that you the said Henry Harrison with the Help and Assistance of the said Man unknown, him the said Andrew Clenche the said Fourth Day of January in the Year aforesaid at the Parish and Ward aforesaid in manner and form aforesaid, Feloniously, Voluntarily and of your Malice before-thought, did Kill and Murther against the Peace of our Sovereign Lord and Lady the King and Queen now, their Crown and Dignity.

How say you, Henry Harrison, are you Guilty of this Felony and Murther whereof you stand Indicted, or not Guilty?

Mr. Harrison. Not Guilty in Thought, Word nor Deed.

Ch. of Ar. Culpresst, How will you be Tryed?

Mr. Harrison. By God and my Country.

Ch. of Ar. God send you a good Deliverance!

Then the said Mr Harrison was taken away from the Bar by the Keeper of Newgate.

And afterwards the same Day, about Eleven of the Clock in the Morning, the said Henry Harrison was brought to the Bar, and he desired the Court that he might then be Tryed, which was granted, and those Persons who were return'd upon the Jury were called over twice, and their Appearances recorded.

Cl. of Arr. You Henry Harrison, These Men that you shall hear call'd, and personally do appear, are to pass between our Sovereign Lord and Lady the King and Queen, and you upon Tryal of your Life and Death; if therefore you will challenge them, or any of them, your time is to challenge them as they come to the Book to be Sworn, and before they be Sworn.

L. C. J. Holt. Mr. Harrison, you may challenge such of the Jury as you shall think fit before they be Sworn.

Then the Jury was called and sworn, and then were counted; and the Twelve sworn were these whose Names follow:

J U R O R S.

John Roll	}	John Lawford
Nathaniel Houlton		Nicholas Wildeboare
Michael Pindar		Robert Williamson
James Hulbert		William Merriden
Joseph Howe		Thomas Simpson
Richard Chewne		Thomas Pakeman

Then Proclamation for Information and Evidence was made as is usual.

Mr. Harrison. My Lord, I have made no Challenges, because I do believe the Jury to be honest Men.

Cl. of Arr.—Henry Harrison, Hold up thy Hand.

(Which he did.)

Gentlemen, you that are sworn, look upon the Prisoner, and hearken to his Cause. He stands indicted by the Name of Henry Harrison, late of London, Gent. &c. [he reads the Indictment.] Upon this Indictment he hath been Arraigned, and thereunto hath pleaded not Guilty; and for his Tryal hath put himself upon God and his Country, which Country you are. Your Charge is to inquire whether he be Guilty of this Felony and Murder whereof he stands Indicted, or not Guilty. If you find that he is Guilty, you are to enquire what Goods or Chattels, Lands or Tenements he had at the time of the Felony and Murder committed, or at any time since. If you find him not Guilty, you are to enquire whether he fled for it. If you find that he fled for it, you are to enquire of his Goods and Chattels, as if you found him Guilty. If you find him not Guilty, nor that he did fly for it, you are to say so, and no more; and hear your Evidence.

Mr. Darnell,—My Lord, Mr. Harrison's Agents or Friends have, since the last Sessions, made or conveyed away a young Man that was a Principal Evidence against him.

L. C. J. That is a very ill thing, and if it be prov'd, it will no way conduce to Mr Harrison's Advantage.

Mr. Harrison. My Lord, I know nothing of it. But my Lord, one of my Witnesses that would have been material for me, is lately dead, Sir Edward Hungerford's Son.

Mr. Darnell. May it please your Lordships, and you Gentlemen that are sworn. I am of Council for the King and Queen against the Prisoner at the Bar, who stands Indicted for the Murther of Dr Andrew Clenche, which was as barbarous a Murder as any that hath been committed in this Age. And considering it was done in the Dark, I think there will be given as clear an Evidence of it against Mr. Harrison the Prisoner, as can be expected. And that is was upon this occasion; one Mrs Vanwicke a Widow (between whom and Mr. Harrison there was a great Kindness) prevailed with Dr Clenche, to whom she was indebted twenty Pounds, to lend her so much more as would make it up one hundred and twenty Pounds, and to take a Mortgage of a House of hers in Buckingham Court near Charing-Cross for his Security; and Mr. Harrison was present with Mrs Vanwicke at the lending of the rest of the Money, and executing of the Mortgage, as he was wont to be at the Management of her Affairs; but when the time came that it was to be repaid, the Dr could not get his Money. and Mrs Vanwicke having but an Estate for Life in the House, and having long delayed the Doctor, he brought an Ejectment for the recovering of the House, upon which the Prisoner came to Dr Clenche, and abused him with very scurrilous Language, and his Passion growing higher, he laid his hand upon his Sword, and would have drawn it, and if it had not been for one Mr. Johnson, 'twas thought he would have kill'd the Doctor at that time; so that the Doctor desired Mr. Johnson to take the business upon himself, and to act in his own Name, he was so much afraid of him. And it will be proved further to you, that at another time the Prisoner said, That Dr Clenche was a Rogue and a Villain, and deserved to have his Throat cut. And sometime after this, Mrs Vanwicke would have borrowed some more Money of the Doctor, but he refused to lend it her, whereupon she acquainting the Prisoner with it, he said, leave him to me (Madam) I'll warrant you, I'll manage him, he is a Rogue, and deserves to have his Throat cut. And afterwards about St. Thomas's day last, the Prisoner went to Mrs West the Tennant, who dwelt in the House mortgaged to Dr Clenche, and desired of Mrs West to have some Money for Mrs Vanwicke, and it should be discounted in part of the then next Christmas Rent. But the said Mrs West refused to pay him any, telling him that she and her Husband were forbid by Dr Clenche and the Ground Land Lord, to pay any more to Mrs Vanwicke, and thereupon the Prisoner expressed his further Malice against the Doctor, and said he is a great Rogue, and a Villain, and deserves to have his Throat cut, and will not dye in his Bed. And, Gentlemen, soon after the Prisoner began to put his malicious Design against the Doctor in Execution, and the Method he took was first to change his Lodgings, for on the day before Christmas Eve last, he took new Lodgings at one Mr. Garways in Thread-Needle-street, near the Old Exchange, attended by a Foot-boy, pretending himself to be a Parliament Man, and that he was just then come out of the Country, and lay in his Lodging there every Night, until the first day of January following, but lay out that Night, and the two next Nights following. And whilst he lodged at this Mr. Garways this matter hapned, which does conduce somewhat towards the discovery of this Murther. One Even-

Evening the Prisoner being in his Chamber there, and one Mrs Jackson, the Daughter of Mrs Garway, making a Fire for him, he did take out his Handkerchief, and held it before the Fire to dry it, which she took great notice of, because it was coarse and dirty, and not fit for his Quality (as she thought) it being made of ordinary Indian stuff, like her Mothers Maids Apron. And, Gentlemen, this very Handkerchief was the same with which the Murder was committed, and this Mrs Jackson will swear it to be the same, for it is a very remarkable one, and it will be produced to you. And we shall shew you further, that on the Third Day of January (being the Day before this Murder was committed) he caused a sham Letter to be left for him at his Lodgings at this Mr. Garway's, as written from a Friend of his that was Sick in the Country, earnestly pressing him to come quickly down to him: And we shall prove that the same Evening he being with Mrs Vanwick in Woodstreet-Counter, did again threaten Dr. Clenche, and said that he was a Rogue, and he would have his Blood. And upon the Fourth Day of January last he again changed his Lodgings, and took new ones at one Mr Jones's a Cane Chair-maker in St Paul's Church-yard, and there he pretended himself to be a Country Gentleman, just then come out of Cumberland, and brought in a Portmanteau Trunk thither. And the same Day he sent a Letter to Mrs Garway where he had lodged before, acquainting her that he was gone out of Town for a Week or ten Days. And, to give you farther Satisfaction, we shall prove that upon the same Fourth Day of January in the Night of which this unfortunate Gentleman was Murder'd, the Prisoner was at one Mr. Robert Humston's Lodgings at the Golden Key in Fleetstreet over against Fetter-lane End, at near Nine of the Clock at Night, and being ask'd by Mr. Humston to stay and Sup with him, he said he could not, for he had been about earnest Business that Day, which was to be done that Night, and that a Gentleman stayed for him in the Street to go with him about it, and so he went away. And soon after, about Nine of the Clock the same Night, two Men standing in Fleetstreet at Fetter lane End, call'd for a Coach, and ask'd the Coachman if he knew Dr. Clenche who dwelt in Brownlow-street in Holborn; and the Coachman reply'd, he did know the Street, but not the Doctor, whereupon they went into the Coach, and ordered him to drive to the End of Brownlowstreet, and when they came thither, one of them called to the Coachman and bad him go to Dr. Clenche's and tell him, that two Gentlemen in a Coach at the End of the Street desired him to go with them to a Patient that was very Sick, which the Coachman did. And he found the Doctor, in his Night-Gown and Slippers, and just a going to Bed; but he immediately dressed himself, and went to them into the Coach. And it fell out very happily for the further Discovery of this Murther, that while this Coach stood at the End of Brownlowstreet, a Young Gentlewoman standing at her own Door near it, and fancying that while the Coachman went on the Errand, the Gentlemen would slip out of the Coach (I think they call it Bilking) she watch'd them. And a Lamp that lighted cross Holborn over against Brownlowstreet End, and another about the middle of Brownlowstreet, gave such a light into the Coach that she plainly saw one of the Men that sat in it, and see him look out

of the Coach after the Coachman, and heard him swear at the Coachman, because he made no more haste in going to the Doctor's House, and she is very certain that the Prisoner at the Bar is the same Person that look'd out of the Coach, and that did swear at the Coachman, and is more confident of it from the remarkable-ness of his Voice. For the hearing of this Murther and remembering these Circumstances, she went to Newgate to see the Prisoner, and hearing his Voice in another Room, before she saw him, she declar'd to the Persons that were then with her, that the Voice she then heard was the Persons Voice that she saw look out of the Coach, and that did swear at the Coachman; and afterwards when she came into the Room where the Prisoner was, though with several other Men, she pointed to him as the Person, and she hearing him then speak again, declared to the Persons with her, that both by his Voice and by his Countenance she knew him to be the same Man. And, my Lord, after those Gentlemen had gotten the Doctor into the Coach, one of them called to the Coachman, and bad him make haste and drive them to Leaden Hall Market, and when they were come within Holbourn-Bars, one of them called to the Coachman, and bad him drive faster; whereupon the Coachman drove them very fast through Holbourn to Leaden-Hall-Market-Gate, and when he came there, one of them bad him drive to the Pye without Aldgate (before which time, without doubt, the Murther was committed upon the Doctor, for his Hat was found next Morning in Holborn near Fetter-lane End, but the driving so long about after is supposed to be done least the Doctor might recover) and when they were come without Aldgate, one of them ordered the Coachman to ask there for one Hunt a Chyrurgeon; which he did, and being answered that no such Person was there, he ordered the Coachman to drive back again to Leaden Hall, and when they came there, one of them called the Coachman and gave him three Shillings and Six Pence, and bad him go into the Market there to one Hunt's a Poulterer, and buy them a couple of Fowls, but the Coachman could not find any Hunt a Poulterer, but however he bought a couple of Fowls for three Shillings, and when he came with them to his Coach, the two Gentlemen were gone and the Doctor left in the Coach murder'd with a Handkerchief tied fast about his Neck with a Coal in it (which will be proved to be the Prisoner's Handkerchief.) Besides, there was a Boy in the Street there who took notice of the Coachman's being sent of an Errand, and saw the two Persons come out of the Coach in great haste, and he going towards the Coach before they went out of it, one of them did swear at him to be gone, and of him the Boy took most notice, and was as positive as any Man can be to the Person of one that he never saw before, that the Prisoner now at the Bar was one of them, and was the Person that did then swear at him. But this Witness is spirited away, and cannot be heard of, although he hath been described in the Gazette, and diligent search and inquiry has been made after him. But we have his Examination upon Oath before the Coroner; and we must submit to the Court how far that shall be admitted as Evidence.

Gentlemen, We will call our Witnesses, and if they prove all this matter, I believe every Man here will be satisfied that the Prisoner at the Bar is guilty of this base murther.

Mr.

Mr. Darnell. Pray call and swear Mr. George Wigmore. (*Who was sworn with others.*)

Mr. Darnell. Pray Mr. Wigmore tell my Lord and the Jury what you know of any Money that was lent by Dr. Clenche, and to whom.

Mr. George Wigmore. May it please your Lordship, there was a Draught of a Mortgage from Mrs. Vanwicke to Dr. Clenche, made by a Gentleman of Grays-Inn for the Sum of one hundred and twenty Pounds, and I ingross'd it; and I paid by the Doctor's Order above threescore Pounds of the Money, and the rest of it was satisfied before; and upon sealing of the Mortgage for the Money, Mr. Harrifon, and one Mr. Rowe fell out about their Dividend of the Money, and called one another ill Names; and Mr. Rowe produced a Bill of what he had done and laid out for Coach-hire and other things for Mrs. Vanwicke, and Mr. Harrifon and he had high words about it, and called one another Rogues; so I told them if they could not agree, I would put the Money up again, and carry it home; but Mrs. Vanwicke and they did agree at last, and sealed the Mortgage, and I paid the Money; and Mrs. Vanwicke and Mr. Harrifon took out twenty Pounds of the Money, and paid it to Mr. Rowe; and after Mr. Rowe was gone, they desired me to go with them to the *Young Devil Tavern*, and they both used hard Expressions there against Mr. Rowe.

L. C. J. Who was the Mortgage made to?

Mr. Wigmore. My Lord, it was made to Dr. Clenche for one hundred and twenty Pounds.

Mr. Harrifon. Pray, Sir will you tell the Jury how much Money the Gentlewoman had, and if Mr. Rowe had not stept between me and her, I had not been in Question.

Mr. Wigmore. Mrs. Vanwicke acknowledged that the Money I paid her, made up one hundred and twenty Pounds.

L. C. J. What did you hear the Prisoner say against Dr. Clenche?

Mr. Wigmore. My Lord, I do say that he was very troublesome to the Doctor.

L. C. J. Were there any Reproaches cast upon the Doctor at that time?

Mr. Wigmore. No my Lord, only upon Rowe, because he was a Trustee.

Mr. Darnell. Did you hear him say any thing against the Doctor?

Mr. Wigmore. Indeed I cannot particularly say.

L. C. J. He is upon his Oath, and he is sensible and understands the Question.

Mr. Wigmore. He did say very ugly Words, and when I met him afterwards in the High-way, he was very huffy, and I thought he would have drawn his Sword upon me.

L. C. J. What did he say of the Doctor?

Mr. Wigmore. I cannot say particularly what he said.

L. C. J. Stand down.

Mr. Darnell. Call Mr. Thomas Johnson. (*Who was sworn and stood up.*)

Mr. Darnell. Sir, Pray give the Court an account what you know concerning this Matter.

Mr. Johnson. My Lord, I believe I shall say nothing that Mr. Harrifon will contradict, I was Attorney for Dr. Clenche between him and Mrs. Vanwicke, and I sued Mr. Rowe that was bound with Mrs. Vanwicke in a Bond to perform Covenants for re-payment of the Money lent her by Dr. Clenche upon Mortgage; and I advised the Dr. and told him, don't let us trouble the Te-

nant, but let us take Rowe first; and I sued Rowe, and had him arrested, and after some time, I saw that the Mortgage must do our business, for Rowe could not pay the Money, whereupon I caused a Declaration in Ejectment to be delivered against Mrs. Vanwicke's Tenant of the House Mortgaged by her to Dr. Clenche, and then Mr. Harrifon came to me, and he expressed himself against the Doctor after a strange rate, and laid his Hand upon his Sword; so my Lord I said to him, what a Fool do you make of your self? must none go to Law, but they must ask you leave, I suppose Mr. Harrifon cannot deny this. Then Mr. Harrifon preferred a Petition to the Lords Commissioners of the Great Seal for Mrs. Vanwicke, and thereby suggested to their Lordships that she was wronged in the Purchase and in the Mortgage Money, and that twenty Pounds of it was a former debt of her Husbands; and he finding she could have no Relief before them without payment of the Mortgage Money, he grew troublesome; yet says I, Mr. Harrifon, What she hath done, I cannot help, but if she would pay the rest, I told him I would abate her twenty Pounds, and the Interest Money also.

Mr. Darnell. Pray, Sir, did the Doctor desire you to act for him in your own Name, because he had no mind to meet with Mrs. Vanwicke and the Prisoner?

Mr. Johnson. The Doctor did find himself too deeply concerned with them, and he did not care to have to do with them, whether it was that he was afraid of his Life, I cannot say; but he said to me, Pray, Sir, go on, I will put all into your Hands, and I will trust you with all the Affair, and let them come to you, and not trouble me, own it to be your own; and I told him, I feared none of them, and the Doctor gave out that he had made over all to me, although he had not, and upon this I fear, comes this unfortunate Business, and the Doctor's Lady must look after it her self.

L. C. J. What did he say when he had laid his Hand upon his Sword in your Study?

Mr. Johnson. He said the Dr. had cheated the Widow, and he said that he would be revenged on him, as near as my Memory will serve me, I suppose he will not deny it; whether he did this in a Passion, or to affright the Doctor or no, I cannot tell.

L. C. J. Was that before you offered to abate the twenty Pounds?

Mr. Johnson. It was before I offered to abate it.

Mr. Harrifon. How long was it before Dr. Clenche was murdered?

Mr. Johnson. I think it was about a Fortnight or three Weeks, or a little more.

Mr. Harrifon. I never threatned the Doctor in my Life, but I said Rowe had been a Villain and a Cheat, and he and Rowe were the Men, and I shall make it appear that the Dr. never wrong'd the Widow.

L. C. J. How came Rowe to be intrusted or concerned with the Money?

Mr. Johnson. My Lord, Mr. Cornelius Vandianker, a Merchant, gave a Legacy of five hundred Pounds to the Widow Vanwicke and her Children, and Mr. Rowe was a Trustee on the Purchase, and had by that the management of the Affair.

Mr. Darnell. Call Mr. George Howard. (*Who being Sworn stood up.*)

Mr. Darnell. Mr. Howard, Give the Court an account of what you know concerning the Prisoner's threatening Dr. Clenche.

Mr. Howard. My Lord, I was at Joe's Coffee-house near Warwick-House in Holbourn, some considerable time before Dr. Clenche was murdered, where Mr. Harrison used several very virulent Expressions against Dr. Clenche; amongst others, one was, That he was a Rogue and a Rascal, and deserved to have his Throat cut. Mrs. Vanwick was then in Company, and they both said, That they then came from Dr. Clenche's.

Mr. Darnell. You are sure he said that Dr. Clenche deserved to have his Throat cut.

Mr. Howard. Yes: He said, That Dr. Clenche deserved to have his Throat cut.

Mr. Harrison. Who was I talking to?

Mr. Howard. You were talking to Mrs. Mary Sheriff.

Mr. Darnell. Call Mrs. Mary Sheriff.

(Who was sworn and stood up)

Mrs. Sheriff. My Lord, Mrs. Vanwick came to my House with Mr. Harrison, and desired me to go with her to Dr. Clenche's House; and when we came there, she desired him to let her have Twenty Pounds more; and he said, no. If his House were full of Money, he would not lend her any more, so long as she kept Mr. Harrison Company, for he would spend it; and he advised her to be a Gentleman's House-keeper, and he would help her to a Place; and told her withal, That she owed him one hundred and twenty Pounds, for which he would take one hundred Pounds; and we left Mr. Harrison behind us at my House, and did not take him with us, because we were afraid he might anger the Doctor, and fall out with him; so when we came back, Mr. Harrison asked Mrs. Vanwick, what Dr. Clenche said; Why, says she, he saith, That he will not lend me any more Money while I keep you Company, for you will spend it, and that I must go to Service. To Service! said Mr. Harrison. God damn him, have a Person of your Quality go to Service! he deserves to have his Throat cut; let me alone, I'll manage him as never any Man was managed, and so away they went together.

Mr. Harrison. Did not you say, that as you hop'd to be sav'd, that I was innocent of the Thing?

L. C. J. She does not accuse you of doing the Fact, but gives an account of some Expressions that passed from you.

Mrs. Sheriff. You were always talking against Dr. Clenche, and you said, God damn him, he was an old Rogue, and that Mrs. Vanwick was almost starved to Death.

Mr. Harrison. Rowe, Rowe, I meant, my Lord.

(The Prisoner being then in a Passion.)

L. C. J. Mr. Harrison, do not fall into a Passion, it may be more to your advantage, in the making your Defence, if you keep your Temper.

L. C. J. Witness, What were the Words that he said against Doctor Clenche?

Mrs. Sheriff. Why, he speaking of Doctor Clenche, said to Mrs. Vanwick, God damn him, would he have a Person of your Quality go to Service! he deserves to have his Throat cut; well, Madam, says he, be contented, I'll manage him as never any Man was managed.

Mr. Harrison. What had you for your Swearing?

Coroner for the King and Queen. Witness, he asketh you, if you had any thing for your swearing against him.

Mrs. Sheriff. No, I had nothing, neither have I need of any thing; I had not so much as my Coach hire.

Mr. Darnell. Call Mrs. Elizabeth West.

(Who was sworn.)

Mr. Darnell. Mistress, give an account to the Court, what you know about the Prisoner's coming to demand Rent of you, and what passed.

Mrs. West. May it please your Lordship, this Gentleman, the Prisoner, came to me two or three Days before St. Thomas's Day last, and desired me to give him some Rent for Mrs. Vanwick, and I told him, I had no Power to pay him, because I was warned by Dr. Clenche, to pay no more; says he to me again, Dr. Clenche and Rowe, are great Rogues and great Villains. Sir, says I to him again, I believe that the Doctor is a very honest Man: No, says Mr. Harrison, he is a great Villain, and he will never die in his Bed; which of them he meant, Mr. Rowe or Dr. Clenche, I cannot tell. And Mrs. Vanwick, and Mr. Harrison, a little time before that, pressed me, to let them have some Shop Goods in part of her Rent, to grow due, and she made great Complaint, that her Children were ready to starve, and I then told them, that Mr. Johnson had fore warned me to pay any more Rent to Mrs. Vanwick, and if I did, I should pay it again; and therefore I would not pay any more Rent to her, or deliver her any Goods, until she had agreed with Mr. Johnson, and then Mr. Harrison said, that Mr. Johnson was a great Villain, and a great Rogue, and that they had all combined together to cheat the Widdow. And Mr. Johnson being at my House, Mrs. Vanwick fell upon him in a great Rage, and said she would tear his Throat out, and laid hold on him, and Mr. Johnson got from her, and went away in great haste. And the last time I saw Dr. Clenche, I pressed very hard upon him, to let Mrs. Vanwick have more Money; and the Doctor said, that she would never do any good with it, for she spent it all upon Mr. Harrison; and I wished him to let her have twenty Pounds more, and he said, that he advised her to go to Service, and that he had wished her to a Service of Twenty Pounds a Year, and she abused him for it.

L. C. J. What Cloaths had the Prisoner on?

Mrs. West. My Lord, he had an old Threadbare black Cloth Suit of Cloaths on, which looked very shabby.

Mr. Harrison. What Religion are you of, Mistress?

Mrs. West. I was born and bred a Protestant.

Mr. Harrison. I believe you are a Papist, and will Swear any thing, you keep Roman Catholicks in your House, they have murdered Dr. Clenche, for ought I know.

L. C. J. Did Mr. Harrison ever lodge in your House?

Mrs. West. No, my Lord, I have none but Persons of Quality lodge in my House, and they belong to the present Government.

Mr. Darnell. Call Ann Watson.

(Who was sworn.)

Mr. Darnell. Pray, tell my Lord and the Jury, what you know of Mr. Harrison's taking of Lodgings at Mr. Garway's House, and when it was?

D d d d d

Ann

Anne Watson. He came about six a Clock at Night, the Day before *Christmas-Eve* last, to my Master's, Mr. Garway's House, and told us, that he was newly come out of the Countrey; and lodged there that Night, and so he did until, and upon the last Night of *December*; and on the first Day of *January*, he went out, and staid out that Night; and on the *Sunday*, the third of *January* last, at Night, he came again with a Person with him, and fetch'd away his Portmanteau-Trunk and things, and paid for his Lodging; and in his absence, there was a Letter left for him, which I gave him, and he said, it came out of the Countrey, and that he had a Friend sick in the Countrey, and did intend to go down to see him, being one from whom he expected a Legacy, and he left that Letter on the Kitchen Window, and on the *Monday* after, being the fourth Day of *January* last, he sent a Letter, signifying he was gone out of Town.

(Then the Letter was produced, Marked with the Penny-Pist Mark.)

Mr. Darnell. Who knows Mr. Harrifon's Hand? Mr. Johnson, take that Letter and look upon it, and tell the Court if you think it to be Mr. Harrifon's Hand.

(Mr. Johnson takes the Letter and looks upon it.)

Mr. Johnson. My Lord, I believe it to be Mr. Harrifon's Hand.

Mr. Darnell. My Lord, I desire that the Letter may be read.

L. C. J. Mr. Clerk of the Peace, read the Letter; and the Subscription first.

(Clerk of the Peace reads.)

To Mrs. Garraway, at the Hand and Apple in Thread-Needle-Street, near the Royal-Exchange, Present.

Mrs. Garraway,
I am sorry it should be such an inconveniency to you, as it is. I have left with your Maid, Three Half Crowns, and if it is not enough, I will give you more. I am gone out of Town, for a Week or Ten Days, and as soon as I come again, I will wait on you, which is all till I see you, from

Your Friend,

4th of Jan. 1691.

and Servant,

H. Harrifon.

Mr. Darnell. Call Mr. Henry Garway and his Wife.

(Who were called and sworn.)

Mr. Darnell. Mrs. Garway, take that Letter, and look upon it, and tell the Court, when you received it.

(Then she takes the Letter, which was produced and read as before, and looked upon it.)

Mrs. Garway. My Lord, I received this Letter on *Monday* the 4th Day of *January* last.

L. C. J. Watson, when did he leave the Lodgings, say you?

Anne Watson. He went away the first of *January* last, about nine a Clock in the Morning, and returned not that Night, but on the second of *January* last, he was at my Mistress's Shop again (as my Mistress told me) and he came about five a Clock on the next *Sunday* Night (being the third of *January* last) with a Person with him, to my Master's House, and fetch'd away his Portmanteau-Trunk and things, and

left three Half Crowns with me for his Lodgings, which I gave to my Mistress.

Mr. Darnell. Call Mrs. Catharine Jackson.

(Who was sworn.)

Mr. Darnell. Pray, tell my Lord and the Jury, what you know concerning Mr. Harrifon's coming to lodge at Mr. Garway's, and when he went away, and what you know of any Handkerchief he had.

Mrs. Jackson. He came on the Day before *Christmas-Eve*, to lodge at my Father's, Mr. Garway's House, and lodged there several Nights, and went away the third of *January* at Night, with his things, but was absent some Nights between his coming and going away, and whilst he lodged there, I observed a Handkerchief in his Hand, as I was making a Fire for him in his Chamber, and the more, because he had said, he was a Parliament Man, and I thought it more like a Sea man's Handkerchief, than a Parliament man's, and our Maid had an Apron of the same kind of Stuff.

(Then the Handkerchief was produced in Court, by the Coroner, and the Coal in it, wherewith Dr. Clenche was strangled.)

Mr. Darnell. Mrs. Jackson, I desire that you would look upon that Handkerchief, and tell the Court what you know of it.

Mrs. Jackson. This is the Handkerchief that I saw Mr. Harrifon hold to the Fire, when I was making of it in his Chamber, or very like that Handkerchief, for I observed it to be very like my Mother's Maid's Apron.

(Then a piece of the Maid's Apron was produced, and they being compared, were very like.)

Mr. Harrifon. Did you hear me say, I was a Parliament Man.

Mrs. Jackson. Yes, I heard you say so.

Mr. Harrifon. Perhaps, you might hear my Boy say so.

Mrs. Jackson. Your Foot-Boy said, you were a Parliament Man: And you said so your self.

Mr. Darnell. Call Mr. Garway again.

(He appeared.)

Mr. Darnell. Where is the Letter you receiv'd from Mr. Harrifon, since he was a Prisoner?

L. C. J. What do you say about a Letter that came to your House from the Prisoner?

Mr. Garway. My Lord, I had this Letter from him last *Saturday*, directed to my Wife, and I believe it to be his Hand.

(He produceth the Letter.)

Mr. Darnell. My Lord, I desire that the Letter may be read.

L. C. J. Read the Letter, Mr. Tanner.

(Clerk Peace reads.)

To Mrs. Garway, at the Hand and Apple in Thread-Needle-street, behind the Royal Exchange, Present.

Mrs. Garway,
I was informed Yesterday, that you are to appear against me, at next Sessions. I am sure, you never heard me mention Dr. Clenche, in all your Life; and if you do, it will look like Malice. My Lord Chief Justice is sensible of the Wrong done me. This is all from

Your Servant,

Henry Harrifon.

L. C. J.

L. C. J. Mr. Harrifon, Did I ever tell you, That I was fenfible of it?

(To which he made no Reply.)

Mr. Darnell. Call Mr. John Cartwright.
(Who was fworn.)

Mr. Darnell. I would have you declare, what you heard Mr. Harrifon fay, concerning Doctor Clenche.

Mr. Cartwright. My Lord, upon the Third of January laft, Mr. Harrifon came to Woodftreet Compter; it was on a Sunday in the Evening, about Five or Six a Clock, I was ftanding in the Gate, and I let him in. Afoon as he came in, he asked, how poor Mrs. Vanwick did; fays he, ſhe hath been wronged of Five Hundred Pounds within this 12 Months: Then I let him into the Court, and he went into her Chamber; and about half an hour after, I was ſent by my Maſter, to require ſome Chamber-rent of Mrs. Vanwick, and I heard Mr. Harrifon and ſhe at high Words, and in a great Paſſion, and I heard Mr. Harrifon ſwear, God damn his Blood, he would be reveng'd of that Rogue, and named Clenche or Winch, I cannot tell which, and he would have his Blood, e're it were long.

Mr. Harrifon. Where were you?

J. Cartwright. My Lord, I was at the Chamber-door, and there was no Body on that ſide of the Houſe, but Mr. Harrifon, Mrs. Vanwick, and my ſelf.

Mr. Darnell. Call Mrs. Mary Jones.
(Who was fworn.)

Mr. Darnell. Now, my Lord, I will call one to prove, where he took a new Lodging, the very Day the Murther was done.

L. C. J. Cartwright, was that in Mrs. Vanwick's Chamber that you heard him ſwear ſo?

Mr. Cartwright. Yes, my Lord, in her Chamber, and none was with her, but he only.

Mr. Darnell. You, the laſt Witneſs Mrs. Jones, when did Mr. Harrifon come to Lodge at your Houſe?

Mrs. Jones. He came on a Monday.

Mr. Darnell. What Day of the Month was it?

Mrs. Jones. I can't tell what Day of the Month, for I did not ſet it down.

Mr. Darnell. Was it the Monday before he was taken?

Mrs. Jones. Yes, it was the Monday before;

Mr. Darnell. Whence did he pretend to come?

Mrs. Jones. He ſaid, that he was come out of the Country, and had formerly lodged in Fleet-ſtreet, and that where he had lodged formerly, they had left off Houſe-keeping, and were gone into the Country.

L. C. J. Where is your Houſe?

Mrs. Jones. In St. Paul's Church-Yard, at the Sign of the Golden Ball.

Mr. Darnell. Call James Howſeman.
(Who was fworn.)

Mr. Darnell. Do you tell what you know, about Mr. Harrifon's being at Mr. Jones's Houſe.

Howſeman. My Lord, he came in about Eight a Clock at Night, and brought a Porter with him, and a Portmanteau Trunk; and after that, the Porter went out a little before him, and then he followed him, and went out after.

Mr. Darnell. Did you hear him ſay, from whence he came?

Howſeman. No, I did not.

Mr. Darnell. Call Anne Evans.
(Who did not appear.)

Mr. Darnell. Then Call Mr. Robert Humſton.
(Who was fworn.)

Mr. Darnell. Mr. Humſton, I deſire you will give the Court an Account of Mr. Harrifon's being at your Houſe, that Night Dr. Clenche was murdered.

Mr. Humſton. My Lord, I met Mr. Harrifon on Monday the 4th of January laſt, and he told me, he was going to the Compter, to a Gentlewoman that was much oppreſſed, and that he wanted Money to get her releaſed; upon which, I gave him ſome Money, and after ſome Diſcourſe, I deſired him to bring home my Gown, that I formerly lent him, and ſeemed angry with him, for that he had ſeveral times promiſed me to bring it home, but had failed therein; and thereupon he promiſed, that I ſhould have it that Night: And that Evening about Nine of the Clock, he came to my Lodgings, and brought home my Gown, and when he came, I aſked him, if he had gotten Mrs. Vanwick Releaſed: And Mr. Harrifon answered, No. Upon which, I blamed him for neglecting an old Friend, and Mr. Harrifon excuſed it; telling me, that he had met with ſome Perſons upon earneſt Buſineſs which prevented him. And then I aſked Mr. Harrifon to ſtay and Sup with me, but he refuſed it, ſaying, that he had been about extraordinary Buſineſs that Day, which muſt be done that Night, and that a Gentleman ſtayed in the Street for him, and they two were going to do it.

L. C. J. Where do you live? And how long ſtayed he at your Houſe?

Mr. Humſton. I lodged then at the Golden Key in Fleet-ſtreet, over againſt Fetter-lane End: He came to my Lodgings about Nine of the Clock at Night, and ſtayed there but a little time.

L. C. J. What manner of Cloaths had he on?

Mr. Humſton. My Lord, he had a Cloak on, but I cannot tell what Cloaths he had under it, he brought my Gown up under his Cloak.

Mr. Darnell. Swear Eſther King.
(Who was fworn.)

Mr. Darnell. Do you know what time Mr. Harrifon was at Mr. Humſton's Lodgings.

Eſther King. It was on Monday the Fourth day of January laſt, about Nine of the Clock at Night, as near as I can gueſs, the Shop was ſhut up, and I let him out.

Mr. Darnell. Where was it?

Eſther King. At the Golden Key in Fleet-ſtreet over againſt Fetter lane End.

Mr. Darnell. What Cloaths had he on?

Eſther King. I cannot tell well, but he had a Cloak on, I do not know what Cloaths he had on beſides.

Mr. Harrifon. Was it Eight or Nine a Clock.

Eſther King. It was near Nine, as near as I can gueſs.

Mr. Darnell. Swear John Sikes the Coachman.
(Which was done.)

Mr. Darnell. Give an Account to the Court, what you know about carrying two Men in your Coach, and how you found Dr. Clenche murdered.

John Sikes. My Lord, on the 4th of January laſt, being Monday, I was at the Play-Houſe, and there I took up a Man and a Woman, and carried them into the City; ſo I brought the Gentleman back again, to the Green Dragon Tavern in Fleet-ſtreet; and then, he ſaid, he would pay me by the hour; he ſaid, that it was but much about nine a Clock. Then I left him, and was driving up the Street towards the

Temple, and two Men stood in Fleet-street about Fetter-lane End, and they asked me, if I knew Dr. Clenche, who dwelt in Brownlow-street in Holbourne: I told them, that I did not know Dr. Clenche, but I knew the Street. So they went into my Coach, and one of them bad me drive thither, and I did, and stopt at the Streets End; because the Gate at the other End was shut, so that I could not turn my Coach: And one of them bid me go and tell the Dr. That there were two Gentlemen in a Coach at the Streets End, that would desire him, to go with them, to see one that was not well. The Doctor asked me, if I could tell, Who they were? Or, who it was, that he was to go to? I told him, that I could not tell. The Doctor was in his Night Gown and Slippers, and he dressed himself: And when he came to the Coach, one of them removed from his Place, and gave him the hinder part of the Coach, and told him, That they had a Friend, that was not Well: And one of them bad me Drive to Leaden Hall Market; and when I came about Holbourn Bars, one of them called to me, and asked me, Why I drove so slowly? And bid me drive faster; so I drove fast, and came to Leaden Hall. And then one of them, bid me drive to the Pye Tavern without Aldgate, and there Ordered me to stop. And when I had stopped there, one of them called to me, and told me, that I need not stir out of my Coach Box; but call to the Boy at the Tavern, and ask for one Hunt a Chyrurgeon, which I did do: And when the Boy came to me again, he said, there was no such Man. Then one of them bad me drive back again to Leaden-hall; and in the time I stay-ed there, and turned my Coach, Aldgate was shut; and when I came to the Gate, one of them gave Six Pence to the Watch, and the Gate was opened, and I drove to Leaden-hall Gate. And when I came there, I stopped again, and one of them gave me Half a Crown, and bad me go and buy a Fowl of one Hunt a Poulterer; but after I had gone a little way from the Coach, he called me again, and said, here Coachman, you had as good take another Shilling, and buy a Couple: so I went, and bought a couple of Fowls, but could find no such Poulterer as Hunt, so I bought them of another, and I gave three Shillings for them. And when I came back to the Coach side, I found Dr. Clenche, (as I thought) sitting against the Fore-seat, with his Head against the Cushion: I pull'd him and cried, Master, Master, for I thought he had been in Drink; but I could not get one word from him; and then I went to the Watch, who were near; and when they came, we found him Strangled with a Handkerchief about his Neck, and a Coal in it, plac'd just upon his Wind Pipe, but the other two Men were gone.

L. C. J. Had one of the two Men a Cloak on?

J. Sikes. I cannot remember that.

L. C. J. What kind of Habit had he? Had he black Cloaths on?

J. Sikes. My Lord, I cannot tell justly, what Cloaths he had.

L. C. J. You have heard him speak. What said he?

J. Sikes. My Lord, he never spoke to me; it was the other Man.

Mr. Harrifon. What kind of Man was the other? Was he less than I, or taller?

J. Sykes. He was taller than you, with his own Hair.

Mr. Darnell. Can you be positive, that the Prisoner at the Bar is one of those two Persons?

J. Sykes. My Lord, one of those two Persons, had a Perriwig on, of a Light coloured Hair: And I do verily believe, that the Prisoner at the Bar, is the same Person; I cannot be positive he is one of them, but as near as I can judge of a Man, whom I have seen but once, he is one of them.

Mr. Harrifon. My Lord, I desire your Lordship to observe the time, that he took the two Men up, and what time it was they ran out of the Coach.

L. C. J. Coachman, what time was it, that they left your Coach?

J. Sykes. About half an hour past Ten, and it was about a quarter of an hour past Nine, when I took them up.

Mr. Darnell. Pray let's ask the Coachman one thing more. Coachman, Look upon that Handkerchief, do you know it, and where did you see it?

The Handkerchief was produced by the Coroner.

J. Sykes. I do believe that it is the same Handkerchief, that was about Dr. Clenche's Neck, when he was found Murdered.

L. C. J. Call the Coachman again. Hark you, In what Posture did you find Dr. Clenche, when you came back to your Coach?

J. Sykes. My Lord, he was sat in the Bottom of the Coach, leaning on one side, with his head against the Cushion.

L. C. J. Was a Handkerchief then about his Neck?

J. Sykes. Yes, my Lord, I untied this Handkerchief, and this is the same; and here is the Coal that was lapt in it: it was lapt in the middle of it, and it laid just against the Doctor's Wind Pipe.

Mr. Darnell. Call Mr. Rebone and Mr. Marriot.

Who were Sworn.

Mr. Darnell. Mr. Rebone, tell what you know, concerning the Handkerchief, and how you found the Doctor.

He takes the Handkerchief, and looks on it.

Mr. Rebone. This Handkerchief was about the Doctor's Neck, and the Coal in it, and it lay just upon his Wind Pipe, when I saw him Dead in the Coach. The Coachman came to Mr. Marriot's House, and ask'd for a Constable, and we went to the Coach side, and there we found him laying along; and we took him, and carried him to the Bull Inn, and there he was let Blood on the Arms, and the Chyrurgeon took about half a Spoonful of Blood out of his Right Arm; and he was let Blood on the other Arm, but that did but just trickle down, and we could not get him to life again; and we found a Silver Ink horn in his Pocket, and that, and the rest of his things, were secured. That is all I can say to the Matter.

Mr. Darnell. Call Mrs. Elianor Ashbolt.

Who was Sworn.

Mr. Darnell. Pray tell my Lord, and the Court, what you know of any Persons you saw in a Coach at Brownlow-street End, that Night Dr. Clenche was Murdered.

Mrs. Ashbolt. May it please your Lordship, I went out of an Errand for one Madam Anwell, a Gentlewoman who Lodges at my Mothers house,

house; and coming home again, I saw a Coach stop at *Brownlowe-street* End, between Nine and Ten a Clock at Night, and the Coachman went to the side of the Coach: And one in the Coach bad him go to *Dr. Clenche's*, and tell him, That there were two Gentlemen stayed for him in a Coach; and as he went up the Street, he went slowly, and looked back two or three times: Whereupon, one of the Persons leaned out of the Coach, and did Swear at the Coachman to make hast, and I went round the Coach, and could discern *Mr. Harrifon's* Face; and I stayed, and saw *Dr. Clenche* go into the Coach, and one of them gave his Place to the Doctor.

Mr. Darnell. Why were you so curious, Mistress, and what did you observe further?

Mrs. Ashbolt. I thought they might give the Coachman a flip. I well observed *Mr. Harrifon*, but do not know the other Man; there were two Lamps burning; one in *Brownlow-street*, and the other in *Holbourn*, over against the End of *Brownlow-street*; and they lighted quite through the Coach, and the Men pulled themselves backwards, when they saw me look on them; it was that Night that the Doctor was Murdered. I went to *Newgate* afterwards, *Madam Clenche* desired me to go and see *Mr. Harrifon*; and when I came to *Newgate*, it seems, he was writing Letters, so I staid before I went into the Room; and there were two Men with me, and *Mr. Harrifon* was talking very loud, said they to me, Who is that speaks now? Why, says I, it is one of the Persons that was in the Coach when *Dr. Clenche* was Murdered.

L. C. J. Who are those two Men that were with you?

Mrs. Ashbolt. One of them was one *Mr. Jones*, a Coachmaker in *Holbourn*, and the other was *Madam Clenche's* Coachman.

L. C. J. Did you know the Prisoner, when you saw him in *Newgate*, to be one of them that were in the Coach?

Mrs. Ashbolt. Yes, I did, I knew him to be the same Man, as soon as I saw him, and he changed Countenance as soon as he saw me.

Mr. Harrifon. My Lord, this Woman is certainly hired by the Villains that are against me. Pray, ask her, my Lord, Why she did not make a Discovery sooner?

L. C. J. Mistress, What say you to that?

Mrs. Ashbolt. I acquainted *Madam Anwell*, what I had seen and observed, and she told *Madam Clenche*, after last Sessions, and then she desired me to go to *Newgate*, to see *Mr. Harrifon*, and I went accordingly; and I would have told it to *Madam Clenche* sooner, but my Mother was loath I should be concerned about such a thing.

Mr. Darnell. My Lord, we have some Witnesses who can give your Lordship an Account, that one of our Witnesses, whom I mentioned to your Lordship before, is spirited, or withdrawn from us, by a Gentleman that said he came to him from the Prisoner, and desired him to be kind to the Prisoner, which Witness is since absent, and not be found; his Name was *Andrew Bowfell*, a Youth, and an Apprentice to one *Mr. Tims*, a Shoo-maker.

L. C. J. You must prove upon him, that he made him keep away.

Mr. Darnell. Call *Barnabas Smith*.

Who was Sworn.

Mr. Darnell. Give my Lord, and the Court an Account, what you know of this matter.

Mr. Smith. My Lord, this *Andrew Bowfell*, which the Council for the King speaks of, was sent to *Leaden-Hall-Street*, of an Errand, to the *Bull-head* Ale-house there, and as he was going along, a Gentleman met him, and asked him, if he was not an Evidence against *Mr. Harrifon*, and being told by the Boy that he was, he desired him to be kind to him, and pull'd out a piece of Money; and offered it him, desiring him to be kind to *Mr. Harrifon*, upon which the Youth replied, That he owed him nothing, and nothing he would take; then the Gentleman told him, That he would come again another time, and send for him near to his Master's; so the Boy said, and told me: And said further, That if he could have gotten him to have gone to the *Bull-head* Ale-house, he would have seized him.

Mr. Darnell. What is become of the Boy?

Mr. Smith. Truly, we do not know what is become of him, we never heard of him since the Sixth Day of *March* last.

Mr. Darnell. Call his Master; *Mr. Richard Tims*.

Who was Sworn.

Mr. Darnell. Tell my Lord, and the Court, what you know of this matter, and what is become of your Apprentice, *Andrew Bowfell*.

Mr. Tims. My Lord, he went away from me on the Sixth Day of *March* last, he was enticed away by three Soldiers that Night, and on the morrow Morning, one of them came and demanded his Coats, Shirts and Neckcloths; says I to him, who sent you, and who is your Captain? and he answered, why, Captain *Harris*; he huffed and said, That if I would not give him the Cloaths, he would send his Officer; and then I told the Soldier, I would have him before a Justice of the Peace; so he went away, and never came to me again; and I could never hear of my Apprentice since, tho' I have made great Inquiry after him.

L. C. J. Did your Servant tell you of any Money that had been offered him by the before mentioned Gentleman?

Mr. Tims. No, my Lord; he did not tell me, but he told *Mr. Smith*, the Witness that was last Examined, as he told me.

Mr. Darnell. My Lord, I desire that *Andrew Bowfell's* Examinations before *Mr. John Brown*, the Coroner of *London*, upon Oath, may be read.

Which being proved by the Coroner, were directed to be read.

Clerk of the Peace Reads. 12. Januarii, 1691.

Andrew Bowfell, Servant to *Richard Tims* Shooemaker, Sworn and Examined touching the Death of *Andrew Clenche* Doctor in Physick, deceased; saith, that he, this Informant being sent to *Mr. Parker's* at the *Bull-head* Ale-house in *Leaden-hall-street*, on *Monday* last was Seven night, being the fourth of this instant *January*, between the hours of Ten and Eleven of the Clock in the Evening, saw a Coach standing against *Leaden-hall* Market, and heard some Person that was in the Coach say, make hast. And this Informant says, that according to the best of his remembrance he heard him talk of a Poulterers; and this Informant says, that soon after the Coachman was gone into the Market, this Informant saw two Persons go out of the Coach, one whereof had, as this Informant believes, a black Coat on; and that this Informant saw the same Person as soon as he came out of the Coach sling a Cloak over him, and then both the Persons went through the

the Market on the West part. And this Informant saith, that this Informant going to look into the Coach, the Person that had the Cloak on him, cry'd Dam him; and this Informant saith, that he, this Informant, thereupon going away, went to Mr. Parker's, and told them that two Persons had cheated a Coachman, or to that effect.

And, *Bowseil* being further Examined the 23^d day of *January*, 1691. touching the Death of *Andrew Clenche*, saith, that he hath seen *Hen. Harrifon*, now a Prisoner in Their Majesties Goal of *Newgate*, and belives he was one of the Persons that came out of the Coach at *Leaden-hall*, a little after ten of the Clock at Night, on *Munday* the 4th of this Instant *January*; and believes he knows him by his Voice. And soon after, this Informant understood that the said *Andrew Clenche* was murder'd in a Coach, being the same Coach which the said *Harrifon*, and another Person unknown a little before went out of.

L. C. J. Mr. *Harrifon*, What have you to say against that which hath been proved against you, what defence can you make?

Mr. *Harrifon*. My Lord, I did attend Dr. *Clenche* about a Mortgage that was made him by Mrs. *Vanwick*, and Dr. *Clenche* did pay one Hundred Pounds, but this Gentlewoman would pay or allow *Rowe* but Fifteen Pounds, and we did not know how to get the Money from *Rowe*, so we Petition'd the Lords Commissioners about it, which was above Six Months before Doctor *Clenche* was Murder'd; and Mr. *Fairbeard* wonder'd that I would put Doctor *Clenche's* Name into a Petition with such a Rogue as *Rowe*; and I do positively say, that I had not seen Doctor *Clenche* in a Month before, and if Doctor *Clenche* had died in his Bed, it had been the same thing to me; and, my Lord, Mr. *Johnson* and I had never any angry words between us; and I have the Report in Chancery which I had from Sir *John Hoskins*, which I will read, if your Lordship pleases.

L. C. J. Let's see it.

Which was handed to the Lord Chief Justice sitting on the Bench.

Mr. *Harrifon*. My Lord, that is the Original, which if your Lordship pleases to remember, I had *Rowe* before you twice about it, and it is *Rowe* that hath been the Rogue, and therefore what occasion had we to be angry with Doctor *Clenche*?

Then the Report was perus'd by the Lord Chief Justice, and return'd to him.

L. C. J. Mr. *Harrifon*, this will do you no good, not being to the present purpose, therefore proceed in your defence.

Mr. *Harrifon*. Now, my Lord, I have some Witnesses to prove where I was at the time that the Coachman says the Murder was done. Cryer, call *Thomas Turner* a Porter, and Mr. *Maccaffee*.

Who appeared, but were not Sworn, and Examined apart, at the Request of Mr. *Darnell*, the Kings and Queens Council.

Mr. *Harrifon*. My Lord, I shall prove by these Witnesses, that I was elsewhere when the Coachman said he took up those two Men, a little after Nine a Clock. Pray Mr. *Turner*, give an Account to the Court, what time it was I called you to carry my Trunk.

Tho. Turner. My Lord, I was, about Seven of the Clock in the Evening, the 4th Day of *January* last, at the *Two Kings and Key* in *Fleet-street*,

over against *Salisbury-Court*; and I was told, that a Gentleman at *Joe's Coffee-house* in *Salisbury-Court* wanted a Porter; and I presently went to him thither, and it was this Mr. *Harrifon*: and he bad me take up his Trunk, which I did, and carried it to the *Two Kings and Key*, and he went with me: And he asked me to get some Linnen wash'd for him against the next Day at Noon: and he gave me some Linnen, which I carried to my Wife to Wash for him, and return'd to him again presently; and I went with him from thence, and carry'd his Trunk to his Lodgings in *Paul's Church Yard*; and when I had deliver'd his Trunk, I left him there; and then it was about Eight of the Clock at Night.

L. C. J. At whose House was it you deliver'd the Trunk?

Thomas Turner. My Lord, it was at Mr. *Jones's* House in *Paul's Church Yard*.

L. C. J. And did he stay within?

Thomas Turner. No, my Lord, he went out presently after me.

L. C. J. Were you any where else with him that Night, besides at the places you have mentioned?

Tho. Turner. No, my Lord.

Mr. *Harrifon*. My Lord, I will prove that Mr. *Humfston* mistakes an Hour.

Mr. *Humfston*. I cannot mistake an Hour, because the Shop is shut up about Nine a Clock, and it was shut when you came first to my Lodgings.

Mr. *Harrifon*. My Lord, there stands in Court one *Thomas Johnson*, Apprentice to Mr. *Pemmel*; he can tell what time a night it was I came to Mr. *Humfston's*, he let me in; I desire he may be call'd.

Mr. *Darnell*. Swear *Thomas Johnson*.
Who was Sworn.

L. C. J. What time of the Night was it that Mr. *Harrifon* came to speak with Mr. *Humfston*, on that Night Dr. *Clenche* was murder'd?

Tho. Johnson. My Lord, on the 4th of *January* last at Night, Mr. *Harrifon* came to my Master's House, and knock'd at the Door; and I went to the Door, and open'd it, for I had shut up the Shop; and he ask'd me if Mr. *Humfston* was within? And I told him, he was: And he came in, and went up to Mr. *Humfston's* Chamber; and it was then about Nine of the Clock, as near as I can guess.

L. C. J. Where is your Master's House?

Tho. Johnson. My Lord, it is the *Golden Key* in *Fleet-street*, over against *Fetter-lane* end.

Mr. *Harrifon*. Pray call *Adam Maccaffee*, Mr. *White*, Mr. *Carden*, and *John Allen*.

Who appear'd. And Mr. *Maccaffee* stood up.

Mr. *Maccaffee*. Upon *Monday* the 4th Day of *January* last, the Prisoner was at my House, and stay'd from Nine a Clock till past Eleven, and play'd at Cards with one Mr. *Baker*, and one Mr. *White* and his Wife; and he stay'd till it had struck Eleven a Clock.

L. C. J. Where is your House, Sir?

Mr. *Maccaffee*. My House is in *Chancery Lane*, over against *Serjeant's-Inn*.

L. C. J. Did he tell you where he had been before?

Mr. *Maccaffee*. He said, that he had been towards the City, and was very cold.

L. C. J. Did he say any thing of Mr. *Humfston*?

Mr. *Maccaffee*. No, my Lord.

Mr.

Mr. Darnell. Pray, what Room were you in?
Did you play at Cards in the Kitchen?

Mr. Maccaffee. Yes.

Mr. Darnell. Where they up Stairs?

Mr. Maccaffee. No, my Lord.

Lord Mayor. At what time a night did they come in?

Mr. Maccaffee. Betwixt Nine and Ten a Clock, my Lord.

L. C. J. What made you take notice of the Day of the Month, and Hour of the Day?

Mr. Maccaffee. My Lord, I heard that Doctor Clenche was murder'd, and that Mr. Harrison was taxed with it; and that made me take notice of the Day.

L. C. J. Call Mrs. Maccaffee. *Who stood up.*

L. C. J. Mistress what time did Mr. Harrison come to your House on the 4th of January last at Night?

Mrs. Maccaffee. My Lord, it was near Nine a Clock as any thing can be, when he came in first.

L. C. J. How long did he stay there?

Mrs. Maccaffee. I cannot tell how long he stay'd, but there were two Accidents happen'd; one was, our Playing at Cards; and the other was, that there was a Pick-Pocket carried by to be pump'd at *Lincolns-Inn*; it was from Nine to Eleven before he went away, and there were Mrs. White, Mr. Baker, and one Mrs. Fairleffe.

L. C. J. Did any one come with the Prisoner, to your House; in what Humour did he seem to be?

Mrs. Maccaffee. No, my Lord, there was no one came with him, and he never stirr'd out, neither did he seem to be disorder'd; he was neither too merry, nor too melancholy.

L. C. J. Where did he say he had been?

Mrs. Maccaffee. He said, that he had been in the City.

L. C. J. Did he use to frequent your House?

Mrs. Maccaffee. Formerly he did; but I had not seen him in half a Year before.

Mr. Darnell. How many were there, do you say?

Mrs. Maccaffee. There was one Mrs. Fairleffe, and one Mrs. White, and my self, and my Husband was upon the Bed, and Mr. White came for his Wife about Ten a Clock, to come home.

Mr. Darnell. Do you remember that Mr. Baker was there?

Mrs. Maccaffee. Yes, he was there.

L. C. J. Pray, Mistress, did Mr. Harrison come in, and find them at Cards?

Mrs. Maccaffee. No, we went to Cards, afterwards.

L. C. J. Where was your Husband?

Mrs. Maccaffee. He was upon the Bed in the Kitchen.

L. C. J. Call Mr. Baker. *[Who stood up.]*

Mr. Baker. This Gentleman the Prisoner, is a Stranger to me; but here is a Letter that he sent me two or three Days afterwards. I came into Mrs. Maccaffee's House about half an Hour after Nine a Clock, with two Women more: Mrs. Maccaffee owed me Money, and I had been in *Lincolns-Inn*; for I do some Work there for Sir Thomas Cook, and the Women ask'd me to play at Cards; and I said, that I did not care to Play, because I had been abroad, and could not get any Money, which made me out of humour. My Lord, I never saw the Man in my Life before.

L. C. J. Who were they that play'd at Cards?

Mr. Baker. It was one Mrs. Fairleffe, the Woman of the House, and Mr. Harrison, and my self.

L. C. J. Who were together?

Mr. Baker. Mrs. Fairleffe and I, and the Woman of the House and Mr. Harrison the Prisoner, and we play'd for a Penny a Corner, I cannot say any more to it, my Lord.

L. C. J. How long did he stay?

Mr. Baker. I left him there after Ten a Clock, and as I hope for mercy, I never saw him but once before, and I had not known him again, but by a particular Token.

Mr. Harrison. Were there not some Accidents happen'd at that time?

Mr. Baker. Yes, there came a Vintner's Boy to ask for a Woman, one Mrs. Frances, and he was in great haste, and a Pick pocket was carried up the Lane to be Pump'd at *Lincolns-Inn Pump*.

Mr. Harrison. Call Mrs. Fairleffe, call Mrs. Whipple. *[neither of which appear'd]*

Call Mr. Sutton. *[Who appeared.]*

L. C. J. Where do you live, and what is your Name?

Mr. Sutton. My Lord, my Name is Sutton, and I live in *Stone custer street*.

Mr. Harrison. Mr. Sutton, what time was it that I was coming by, when one Mr. Russel and you were Drinking?

Mr. Sutton. My Lord, it was about Eleven a Clock at Night, at the *King's Head-Tavern* at *Chancery-Lane end*.

Mr. Harrison. What had I on, a Cloak and a Muff?

Mr. Sutton. Yes, I think you had a Cloak on.

Mr. Darnell. What time was it before or after Eleven a Clock?

Mr. Sutton. It was about a quarter before Eleven.

Lord Mayor. What day of the Month was it?

Mr. Sutton. It was the fourth of January.

L. C. J. Where was he going, which way went he?

Mr. Sutton. He was going towards *Fleet-Bridge*, my Lord, and I called after him, but could not make him hear me at first, but afterwards he came to us.

Mr. Harrison. Pray call Mr. Russel.

[who appeared.]

Mr. Russel. I can't hear, my Lord, but if you please to permit Mr. Sutton to speak to me, I can hear his Voice better than any Man's.

L. C. J. Speak as loud as you can, Sir, and we will let you hear us, Mr. Sutton must not speak for you.

Mr. Harrison. Pray Mr. Russel what time of Night was that you saw me go by you, when you were drinking at the *King's-Head-Tavern*?

Mr. Russel. I can't tell, my Lord, I have not heard a Clock these three years.

L. C. J. Where were you going at that time of Night?

Mr. Russel. I was going to *Wild-street*, to the *Chyrurgeon's-Arms*, to Receive some money.

L. C. J. How came Mr. Sutton to go with you?

Mr. Russel. He had been with me all that day, and I desired him to go with me; and, my Lord, I did expect that the money would have been brought to me, but it was not, so I went for it.

L. C. J. Well, and what then?

Mr. Russel. While we staid at the *King's-Head-Tavern*

Tavern door to drink Wine, *Mr. Sutton* sent the Drawer to call *Mr. Harrifon*.

L. C. J. What had you been doing before that time?

Mr. Ruffel. We had (I fuppose) been drinking together.

L. C. J. Where had you been before you came to the *King's Head Tavern*.

Mr. Ruffel. We had been at the *Horfeshoe Tavern* in *Chancery-Lane*.

L. C. J. Did you request *Mr. Sutton* to go with you?

Mr. Ruffel. Yes, I did, my Lord.

L. C. J. You fay your business was to go to *Wild-street*, to receive some money?

Mr. Ruffel. Yes, it was, my Lord, and I did receive it.

L. C. J. When was it that you met *Mr. Harrifon*, the Prisoner?

Mr. Ruffel. My Lord, I can't pofitively fay, but by computation of the Night, I believe it was about Eleven a Clock.

L. C. J. Did you meet *Mr. Harrifon* before you went to the *Horfeshoe-Tavern*, or after?

Mr. Ruffel. Afterwards, my Lord, I saw *Mr. Harrifon* turn at the Corner of *Fleet-street*, towards *Fleet-Bridge*.

L. C. J. At the time when *Mr. Sutton* and you went first out, did you agree of your going to the *Horfeshoe-Tavern*?

Mr. Ruffel. We went thither to fend for the Gentleman out of *Wild-Street*.

L. C. J. When you had been Drinking all the Afternoon, how came you to stop your Coach at the *King's-Head*?

Mr. Ruffel. We ftopt there, whilst *Mr. Sutton* fent for fome body to come to him.

L. C. J. You fald juft now that *Mr. Sutton* fent for *Mr. Harrifon*.

Mr. Ruffel. No, my Lord, I do not remember that, but *Mr. Sutton* fald *Harry*, or *Harrifon*, where art thou going, when he went by us.

Mr. Harrifon. My Lord, this Man is a ftranger to me. Call *John Allen*, Drawer at the *King's-Head Tavern*. [*Who appeared.*]

Mr. Harrifon. *John Allen*, what time of Night was it that *Mr. Sutton* and *Mr. Ruffel* came to your Houfe in a Coach?

J. Allen. I believe it was about Eleven a Clock.

L. C. J. How much Wine had they?

J. Allen. Two Half Pints of Canary.

L. C. J. What Night was it? what Day of the Month was it?

J. Allen. My Lord, I can't remember what Day of the Month, but it was that Night that *Doctor Clench* was murther'd.

L. C. J. Did you fee *Mr. Harrifon* there?

J. Allen. I can't tell that, I never faw him, till I faw him in Prifon.

Mr. Harrifon. Did not you go to *Mr. Maccaffee's Houfe*?

J. Allen. Yes, I did.

Mr. Harrifon. Did not one ftrike you with a Muff?

J. Allen. Yes, but I can't remember who it was.

Lord Mayor. Look upon that Man, do you know him to be the Perfon?

J. Allen. No, my Lord, I do not know him to be the Perfon.

Mr. Darnell. Who fent you to *Crown-Court*?

J. Allen. *Mr. Ruffel*.

Mr. Darnell. For what?

J. Allen. For a Servant Maid, and he bid me tell her that he had a defire to fpeak with her.

Mr. Darnell. How long did you tarry at the Houfe?

J. Allen. I did not ftay at all.

Mr. Harrifon. Call *Mr. Carden*, Drawer at the *King's-Head Tavern*. [*Who appeared.*]

Mr. Harrifon. What time did *Mr. Sutton* come to your Houfe, did you fee any one ftand at the Coach fide? and what Cloaths had he on?

Carden. I faw one ftand at the Coach fide, and he had a Hanging-Coat or a Cloak on, it was about the Hour of Eleven, to the beft of my knowledge, and I faw a Man go into the Coach, and come out again.

Mr. Coroner. What time of Night do you fhut your Doors, efpecially on *Monday Nights*; and were they fhut when *Mr. Sutton* called in the Coach?

Carden. We fhut them commonly about Eleven a Clock at Night, but on *Monday Nights* ufually later; they were fhut when *Mr. Sutton* called, and I opened them for him.

L. C. J. Can you fay that the Prisoner was the Man that drank with *Mr. Sutton*?

Carden. To the beft of my knowledge (*looking on the Prisoner*) that is the Man, I can't be pofitive, my Lord.

L. C. J. Well, have you any more Witneffes?

Mr. Harrifon. No, my Lord, unlefs *Mr. Effington* be here, he promifed to be here to give an account of me. My Lord, there is a Gentleman that is in the *Preff-Yard*, one *Mr. Butler*, I defire he may be fent for, if your Lord- fhip please.

L. C. J. Let him be fetch'd down.
[*Which was done.*]

L. C. J. But, in the mean time, it behoves you to give an account of thefe things. Firft, why did you fay that you were a Parliament-Man. Secondly, why did you leave your Lodgings and take other Lodgings in *Paul's-Church-Yard*? Thirdly, why did you fay that you had extraordinary business? Give fome account what your business was, and who that Gentleman was, that ftaid for you in the Street, when *Mr. Humfton* defired you to ftay and Sup with him, what hinder'd you from accepting his Invitation? Now we would have you to Confider of thefe things, and give an answer to them, for it much concerns you fo to do.

Mr. Harrifon. My Lord, firft as to the firft, I do declare that I never went for a Parliament Man, nor never fald fo: Secondly, that Night I was to go out of Town, I had left word at feveral Coffee-Houfes that I was going out of Town upon earneft Business, and with above twenty People besides, that I was going out of Town, and I was about to go to *Bafing-Stoke*, to a Gentleman that owed me Money, one *Mr. Bulling*, but I could not get money to go.

L. C. J. Prove that you were to go into the Country.

Mr. Harrifon. My Lord, I can't prove that now, except I could have fent to *Bafing-Stoke*.

L. C. J. That you fhould have done before now; why did you not ftay with *Mr. Humfton*, when he Invited you to Sup with him? You might have been better entertained there, than by going among ftrangers to Play at Cards for a Penny a Corner, at an Ale-houfe.

Mr. Harrifon. My Lord, I was unwilling to ftay, becaufe he had Strangers with him.

L. C. J.

L. C. J. What if he had, you are not such a bathful man, that you could not Sup with Strangers.

Mr. Harrifon. My Lord, Mr. Rowe was accused with me.

L. C. J. What if he was? he was under some Suspicion, and he hath made it appear where he was at the time the Fact was Committed, and now he is Discharged.

Then Mr. Butler was brought into Court from Newgate, attended by a Keeper.

Mr. Harrifon. Mr. Butler, Pray tell the Court what Mr. Fairbeard said to you about me?

Mr. Butler. My Lord, Mr. Fairbeard asked me what I could say about what Mr. Harrifon had said to me concerning the Murder of Doctor Clenche? I told him I could not tell what to make of his broken and rambling Speeches and Discourses, they being most of them spoken when he was in his Drink. This is all that I know, my Lord.

L. C. J. This is not a Witness for your turn.

Mr. Darnell. Call Mrs Anwell.

Who was sent for from her Lodgings in Brownlow-Street in Holborn, and appeared, and was Sworn.

Mr. Darnell. Madam, pray give an account what Mrs. Ashbolt told you concerning any Man's being in a Coach at Brownlow-Street end?

Mrs. Anwell. I know nothing of my own Knowledge, but the Night that Doctor Clenche was Murthered, I sent Mrs Ashbolt of an Errand, and at her return, I blam'd her for staying so long; and she told me, that as she was returning home, a Coach stop'd at Brownlow-Street end, with two Men with Cloaks on in it, and that one of them bad the Coachman go for Doctor Clenche, and desire him to come to them, and in his going several times look'd back as if he suspected the men would leave the Coach, and so she stayed until Doctor Clenche came and went into the Coach, and that one of the men gave the Doctor his Place; and that one of them had a fair Perriwig and a sanguine Complexion.

Mr. Darnell. What discourse had you with her when you heard that those men had murdered Doctor Clenche?

Mrs. Anwell. She told me that one of those men had a fair Perriwig and a sanguine Complexion, and that one of them had a Cloak on.

L. C. J. Did she say that she observed either of their Faces?

Mrs. Anwell. Yes, my Lord, she said that one of them had a round Face, and a big Voice.

L. C. J. Did she say, she could know him again?

Mrs. Anwell. No, my Lord, she did not say so, but she said that she could know his Voice again. And after the last Sessions I told Mrs. Clenche of it, and that if she would send for the young Woman, she would inform her further of it.

L. C. J. Madam, Pray what was the reason, that she did not discover it sooner to Mrs. Clenche?

Mrs. Anwell. Why truly because Mrs. Ashbolt, her Mother, was unwilling she should concern her self in such a matter.

Mr. Darnell. Call another Witness, Mr. Jones, Coach-maker. (Who was sworn.)

Mr. Harrifon. Pray, my Lord, take notice, that now she says that those Gentlemen

had Cloaks on, that came in the Coach to Brownlow-Street-end.

L. C. J. Yes, we heard her what she said.

Mr. Darnell. My Lord, I will ask this Witness, Mr. Jones, a Question.

Mr. Darnell. Pray Sir, tell my Lord and the Jury, what Mrs. Ashbolt did at Newgate?

Mr. Jones. My Lord, I went with her to Newgate, together with Doctor Clenche his Coachman, and when she came to Newgate, before she saw Mr. Harrifon (only stood at the Chamber Door and heard him speak) she said, that to the best of her Thoughts, he was the Man that put his Head out of the Coach to look after the Coachman, and swore at him, for she knew his Voice. And when she came to see him, she said that she knew his Face, and declared that was the Man that put his Head out of the Coach.

L. C. J. Did he look out of the Coach, Mrs. Ashbolt?

Mrs. Ashbolt. Yes, my Lord, he put his head out of the Coach, and look'd after the Coachman, to see if he went right to Doctor Clenche's Door, and did swear at him, because he went no faster.

L. C. J. How could you discern his Face?

Mrs. Ashbolt. By the Light of two Lamps, that were near, which did shine into the Coach.

L. C. J. Can you take it upon your Oath that the Prisoner is the same Person?

Mrs. Ashbolt. Yes, my Lord, I can both by his Voice and Face.

Mr. Darnell. Now, my Lord, we shall shew your Lordship somewhat in Relation to the Credit of those Witnesses, that the Prisoner hath brought here; particularly, as to Mr. Baker, we shall prove that he hath been convicted for a Cheat. And as for Maccaffee, he keeps a very disorderly House, where ill People commonly resort.

Mr. Darnell. Cryer, call Mrs. Martha Wheelstead, and Mr. Thomas Cole.

L. C. J. Mrs. Jones, what time did Mr. Harrifon come to your House, to his Lodging that Night that the murder was committed?

Mrs. Jones. I think it was about eleven a Clock, or a little before eleven.

L. C. J. What time on the Monday did he hire the Lodging of you?

Mrs. Jones. It was sometime after Dinner.

L. C. J. It was before Night, was it not?

Mrs. Jones. Yes, my Lord, it was before Night.

Mr. Darnell. My Lord, I desire that Mr. Tanner may read the Record against Mr. Baker, whereby it will appear that he was indicted and convicted at Hicks's-Hall, for cheating the Parish of St. Giles in Middlesex, when he was Scavenger there, by altering the Figures in the Book, and rateing the Sums of Money higher upon divers of the Parishioners, than they were in the Parish Book, and then collecting and extorting the Money, so by him increased, from them.

Mr. Tanner reads the Indictment aforesaid, by which it did appear to the Court, and to the Jury, that the said Mr. Baker was indicted for the Offence aforesaid, and confessed the Indictment, and was fined for it twenty Shillings.

Mr. Baker. My Lord, I was wrongfully indicted, and traversed the Indictment, and was acquitted.

L. C. J. Mr Tanner, give me the Record.

(Lord Chief Justice peruses the Record.)

Mr. Baker, I have read the material parts of the Record, and do find that you were indicted for that Offence, and that you confessed the Indictment, and were fined for it.

Mr. Baker. My Lord, I was acquitted of it, and can prove it by Captain Cannon, who knows me, and my Reputation, and he is in Court.

L. C. J. Mr. Baker, the Record testifieth the Truth, and cannot err, therefore you have great Confidence to aver against it, yet I will hear what Captain Cannon saith.

Mr. Baker. Call Captain Cannon.

(Who appeared.)

L. C. J. Captain Cannon, do you know this Mr. Baker?

Captain Cannon. Yes, my Lord, very well.

Mr. Darnell. My Lord, I desire that Captain Cannon may be sworn.

L. C. J. Mr. Tanner, swear Captain Cannon.

(Who was sworn.)

L. C. J. Sir, do you know that Mr. Baker was indicted for falsifying of the Scavenger's Book when he was Scavenger, and acquitted or convicted, and what do you know about it?

Captain Cannon. My Lord, I am an Inhabitant of the Parish of St. Giles in the Fields, and so I was when Mr. Baker was Scavenger, and do well remember that some of the Inhabitants of that Division where he was Scavenger, were troubled and complained, that they were charged more than usually they had been to the Scavenger's Rate; and it was discover'd that several Figures of the Book by which Mr. Baker collected the Money to the Scavenger's Rate, were blotted and altered, and did not agree with the Parish Ledger-Book, but the Sums in his Book so blotted and altered were rased; whereupon it was ordered that he should be indicted for it, and it was done accordingly, and he was fined for it, and to the best of my Remembrance he confessed that Indictment.

L. C. J. Captain Cannon, Pray tell the Court and the Jury, of what Reputation Mr. Baker is now.

Captain Cannon. My Lord, he is now of none of the clearest Reputations.

Captain James Partrich, of the same Parish, being in Court, offered himself, and gave the same account of Mr. Baker that Captain Cannon did.

Mr. Darnell. Cryer, call Mr. Francis Brampton, Mrs. Martha Whelstead, and Mr. Thomas Cole.

(And Mrs. Whelstead and Mr. Cole appeared, and were sworn.)

Mr. Darnell. Mrs. Whelstead, pray give the Court and Jury an account what disorderly House Mr. Maccaffee keeps?

Mrs. Whelstead. My Lord, I dwell in Crown-Court in Chancery-lane, over against Mr. Maccaffee's House; and he and she are very ill People; and keep a very evil and scandalous House, and such as are reputed to be House-breakers, Pick-Pockets, and Lewd Women, do use and frequent the House; and there is commonly at late hours in the Night, Persons calling out murder, and Whore and Rogue, and such sort of Language, disturbing their Neighbours; and their House hath been several times searched by several Constables for stolen Goods, and for the Persons that have stolen them; and upon such Searches, there have been stolen Goods found there: And

I have seen great Lewdness there between Men and Women; and the Neighbours do account it a House of an ill Fame, and do avoid going thither.

Mr. Tho. Cole. My Lord, I do know Mr. Maccaffee and his Wife; I do dwell over against his House, and they are reputed to keep an ill House, and most Persons that frequent it, are reputed to be Persons of lewd and evil Lives and Conversations; and it is amongst the Neighbourhood noted for a scandalous House, and several Constables have several times searched there for stolen Goods.

L. C. J. What have you more to say, Mr. Harrisson?

Mr. Harrisson. I cannot say any thing more; you may deal with me according to my Deserts in this matter.

L. C. J. You may assure your self, that we will do you no wrong; have you any more to say?

(He made no Reply.)

Mr. Darnell. My Lord, we have another Witness come now, who was not here before: Cryer, call Mr. Charles Whitfield.

(Who was sworn.)

Mr. Darnell. My Lord, this Gentleman can give your Lordship an account what the Prisoner said of his being just come out of the Country, upon the fifth of January last. Pray tell my Lord what you know, Sir.

Mr. Charles Whitfield. My Lord, upon the fifth day of January last, being the Day day after Dr. Clenche was murdered, I went to Joe's Coffee-house in Salisbury-Court, and there Mr. Harrisson, sitting by the Fireside, says I to Mr. Harrisson, where have you been for a long time that I have not seen you? Says he, I have been in the Country: Where says I? Says he, about twenty Miles off, in Kent; and I want a Landress, and a Lodging. Says I, do you hear the News, Sir? What News, says he? Why, said I, of Dr. Clench's being murdered: I cannot tell the Occasion, said I, but he was found dead in a Coach last night in Leadenhall-street. Then, says he, I did love him very well once, but of late he hath been a barbarous Rogue to a Gentlewoman, a Friend of mine, and she is in the Compter now: And Mr. Harrisson said it was a just Judgment of God upon the Doctor for being so great a Villain to the Gentlewoman; therefore I will write to her presently, and give her an account of his Death. And my Lord, the Contents of his Letter were these, as near as I can remember.

Madam,

I Am just now going to Lambeth, but hearing of Dr. Clench's murder, I do hereby give you an account of it, and can impute it to no less than a just Judgment of God upon him for his Baseness shewed to you. And if you think fit to send to Madam Clenche, it may be she may send somewhat towards your Relief, she now being a Widow as well as you.

Madam,

I am yours to command,

Henry Harrisson,

My

My Lord, after this came into the same Coffee-House another Person one Mr. *Ravenscroft*, of whom Mr. *Harrifon* asked some Question about Dr. *Clenche*; who reply'd, That he heard that Dr. *Clenche* was murdered, and that it was committed by a Bully of the Town that belonged to a Gentlewoman in the Compter who was laid in there upon Dr. *Clenche's* account; at which, he was much startled: Says he again, There is no Person familiar with that Gentlewoman but my self; for I know, and am concerned in all her Affairs: Perhaps then I may be taken up about it: Or, my Lord, he used Words to that effect.

Mr. *Harrifon*. My Lord, this Woman was not in the Compter upon Dr. *Clenche's* account.

L. C. J. No, the Witnels don't say so; but that it was the Discourse of the Town that she was, and the Town did suppose her so to be. What did he say further, Sir?

Mr. *Whitfield*. My Lord, he said that he had been in *Kent* about twenty Miles off; and he said, that he wanted a Landress, because he had some foul Linnen to wash; which he produced. This was on the *Tuesday*, and the Murder was committed on the *Monday*-night before: And, my Lord, there were two more Gentlemen that heard him as well as I, that he said, That he had been about twenty Miles off in *Kent*, and that he was newly come to Town. Now, my Lord, I could not imagine for what Reason this Man should say, that he had been out of Town about a Fortnight or three Weeks, when he was in that House but the *Monday* night before; that is, the Night the Murder was committed.

Mr. *Darnell*. Cryer, call Mr. *Bishop*.

(Who appeared and was sworn.)

Mr. *Bishop*. About three Years ago the Prisoner came to my Master's Shop to cheapen some Linnen, and when —

L. C. J. Hold, what are you doing now? Are you going to arraign his whole Life? Away, away, that ought not to be; that is nothing to the matter. Have you done, Prisoner?

Mr. *Harrifon*. Yes, my Lord, I have done, I refer my Cause to your Lordship.

L. C. J. Gentlemen of the Jury; The Prisoner at the Bar, *Henry Harrifon*, stands indicted for the wilful murder of Dr. *Andrew Clenche*, who was barbarously murdered on the fourth day of *January* last: You have heard the Witneses that have been sworn; and upon their Testimony, it doth appear that two Persons came to *Brownlow-street* End in a Coach after nine a Clock at Night, and sent the Coachman to the Doctor's House, under pretence to get him to a Patient, a Friend of theirs, that was sick. By this Contrivance, they got him into their Coach, which they had brought for that purpose, and then they ordered the Coachman to drive to *Leadenball-street*; and when they came about *Holbourn-Bars*, one of them ask'd the Coachman why he drove so slow, and bad him drive faster. When they came to *Leadenball-street*, then they bad him drive to the *Pye-Tavern* without *Aldgate*; where one of them bad the Coachman ask for one *Hunt*; but he not being there, one of them bad the Coachman return back, and gave six Pence to the Watch to come through the Gate, which was shut in the mean time; and when they came to *Leadenball-Market*, one of them

gave the Coachman three Shillings and six Pence, and sent him to buy a couple of Fowls; which the Coachman did buy, and brought them to the Coach; but when he came back, he found the Doctor in the body of the Coach leaning against the fore Seat of the Coach, a Handkerchief being tied about his Neck with a Coal in it, placed upon his Wind-pipe; which Handkerchief and Coal have been produced in Court.

The Question is, Gentlemen, Whether the Prisoner at the Bar be guilty of this base and barbarous Murder? To prove which, there hath been a very long Evidence given, some Positive, some Circumstantial. It has been proved that Dr. *Clenche* had some Dealings with a Woman named *Vanwicke*, and had lent her one hundred and twenty Pounds, and had taken a Mortgage for it. This Prisoner, Mr. *Harrifon*, was a great Acquaintance, and very intimate with this Woman; and did concern himself in the Management of her Affairs: and because Dr. *Clenche* did refuse to lend the Woman more Money, therefore he had an Animosity against Dr. *Clenche*. The Money not being paid to the Doctor as he did expect, he did call it in; and therefore this Gentlewoman did oftentimes repair to Dr. *Clenche* to desire farther Time or Forbearance, because she could not raise or procure the Money elsewhere. That about *Michaelmas* last it seems she came to a Coffee-house near *Watwick-house* in *Holborn*, and there was Mr. *Harrifon*; where they consulted what to do. And it was agreed, that the Mistress of the House and Mrs. *Vanwicke* should go to Dr. *Clenche's*; but Mr. *Harrifon* should stay behind, for it was not thought convenient that he should go, lest he should provoke the Doctor. When they came to the Doctor, Mrs. *Vanwicke* was very importunate to have more Money; but the Doctor would lend her no more. And when they returned to the Coffee-House again, Mr. *Harrifon* enquired what passed between the Doctor and Mrs. *Vanwicke*. She told him, that the Doctor would not furnish her with any more Money, although she had pressed him to do it, and urged her great Necessities, but advised her to go to Service. Damn him, says *Harrifon*, does he say that a Woman of your Quality should go to Service? He is a great Rogue, and deserves to have his Throat cut, but let me alone, I will manage him.

At another place there was a Discourse betwixt Mr. *Harrifon* and one Mr. *Johnson*; and that the Prisoner did then speak very hard and ill Words of Dr. *Clenche*: And that Mr. *Harrifon* came frequently to him; and one time laid his hand upon his Sword, using some menacing Words, but what they were he cannot tell: But he likewise says, that at several times he did expostulate with him, and told him, That he would not do any good with such Discourses as these are, &c. That the Mortgage-money not being paid, it was thought fit, That there should be a Prosecution made to get Possession of the mortgaged Estate, and that the Tenants should be forbid to pay their Rents. And Mr. *Harrifon* went to Mrs. *West* the Tenant, some few days before St. *Thomas's* Day last, and demanded the Rent of her. To which she made answer, That Dr. *Clenche* had forbid the Payment of the Rent to Mrs. *Vanwicke*. Thereupon Mr. *Harrifon* grew very angry, and answered, That Dr. *Clenche* was a Rogue and a Villain, and bid her

that she should not pay him any Rent. And the Witness saith further, That the Doctor being prest to let her have some more Money, refused to do it, because she would spend it all upon Harrison.

Then the Council for the King called some Witnesses, who gave you account of the Prisoner's shifting his Lodgings the day before the murder was done. He takes a Lodging at Mr. Garway's in *Threadneedle street*, on the twenty third day of *December*, and there he continued till about the first of *January*. The second of *January* he was at Garway's Shop; and on the *Sunday* night he came and fetcht away his Things. The *Monday* after, being the day that this barbarous Fact was committed, he sent a Letter to Mrs. Garway, to acquaint her that he was gone out of Town; but he left three Half Crowns with her Maid to pay for his Lodging. But as to his going out of Town, it was false, for he never went into the Country, but took a Lodging at Mr. Jones's in *St. Paul's Church yard*. It's observable also, that he went for a Parliament-man when he lodged at Mr. Garway's, and had his Footman to attend upon him, &c. There it was that he was seen to have an ordinary Handkerchief, and to hold it to the Fire; which was taken notice of by Mrs. Jackson, the Daughter of Mrs. Garway, which was not suitable, as she thought, to a Parliament-man's Quality, but rather fit for a Seaman, for it was like the Apron of the Maid in the House: which hath been shewed in Court, and compared with the Handkerchief that was tied about Dr. Clenche's Neck. She saith it is the same, or very like that which she did see Mr. Harrison hold in his hand.

Cartwright the Officer at the Compter, he tells you, that the *Sunday* night, the day before the murder, Mr. Harrison came to *Woodstreet* Compter, and enquired for Mrs. Vanwicke, and that he only was in her Chamber, and no other Body on that side of the House but Mrs. Vanwicke, the Prisoner, and this Cartwright the Keeper, who stood at the Door, and heard Harrison say, That he would have the Blood of that Rogue, and named Clenche or Winch.

Mr. Harrison. My Lord, he was not in the Room.

L. C. J. No, he was not; but there were none on that side the House but you, Cartwright, and Mrs. Vanwicke.

Now, on the *Monday* on which this Fact was committed, he having taken a Lodging at Jones his House, he came thither with a Porter, who brought his Portmantua-Trunk about eight a Clock at night; and after he had been there a little while, he went away.

And you are told, by a Gentleman that lodges at the *Golden-Key* against *Fetter-lane* end; That he had some Acquaintance with the Prisoner, that he had lent him a Morning-Gown; and that about nine a Clock that very night, he came to his Lodging in a Cloak; and then the Gentleman asked him for his Gown; and he told him, that he had brought it with him. Thereupon the Gentleman invites Mr. Harrison to stay and sup with him. Mr. Harrison said, he could not stay, for he was engaged; he must be gone, for that a Gentleman staid in the Street for him to go about extraordinary Business.

The Coachman tells you, That near about that time two Men in *Fleet street*, near *Fetter-lane* end, hired his Coach of him to go to *Brownlow*-

street to Dr. Clenche's; but he can't positively say, that the Prisoner at the Bar was one of them, but he swears, he does verily believe that he was one of them.

Mr. Harrison. He said before your Lordship, That he could not remember what I had on.

L. C. J. Well, well, he doth not remember it now; but being hired to go to Dr. Clenche's, he drove to the Street end and no further, because the Gate at the lower end was shut up, and he could not turn his Coach in the Street; but he was sent by them to the Doctor's, to desire the Doctor to come out to them, and they sat in the Coach in the mean time. The Doctor made haste, and went to them immediately, and they drove away to *Leaden-hall*, and then to *Aldgate*; and they called at the *Pj Tavern*, and enquired for one Mr. Hunt a Chirurgeon, as I mentioned to you before: He not being there, they returned to drive through *Aldgate*, gave the Watch sixpence, and passed through the Gate without any manner of notice taken: but if the Watch had done their Duty, it might have been better discovered. But further, the Coachman tells you, that when he came to *Leaden hall* Street, they called to him, and directed him to buy one Fowl; and after that he had been gone a little way from the Coach, they called him back, and bad him take some more Money and buy two Fowls. So he went and bought the Fowls; but when he came back, the two Gentlemen were gone, and he found the Doctor still in the Coach; and he not stirring, he thought he had been in Drink: but upon further Examination, and calling the Watchman with his Candle, it appeared that the Doctor was strangled with a Handkerchief and a Coal.

There is one Mrs. Elianor Ashbolt, who lives in *Brownlow street* with her Mother, and had been sent of an Errand; and between nine and ten of the Clock at Night, she saw the Coachman in *Brownlow street*, and thought that those men in the Coach might have put a Trick upon him, by going away without paying him his Fare. And she says further, That by the help of the Lamps she did discern the Face of this Harrison in the Coach; he had a Cloak on, with a light Perriwig, and looked out of the Coach, and did swear at the Coachman; and by this means she knew him when she saw him again, to be the same Man, both by his Face and Voice. This Woman indeed was not before the Coroner, and she gives you this reason for it, because her Mother was not willing she should be concerned in such a matter as this was; and what she could say, was not known to Mrs. Clenche until after the second Sessions: And when he was in *Newgate*, she saw him there, and declared he was the same Man.

There was another piece of Evidence. viz. That of the Boy's, who does not appear, he was examined before the Coroner. There has been Evidence given of ill practice to take him out of the way, and therefore his Affidavit is read for Evidence: He swears he saw two Gentlemen come out of the Coach when it stood in *Leaden hall street*, and that having seen the Prisoner in *Newgate* since, doth believe him to be one. This, Gentlemen, is the sum and substance of the Evidence for the King, to prove that the Prisoner was one of those that committed the Murder.

You have heard likewise what the Prisoner says for himself; he does undertake to prove that he was in another place, (that is) that he should come into *Maccaffee's House* in *Crown-Court* over against *Serjeants-Inn* in *Chancery-lane*: and *Maccaffee*, he tells you, that there were some other Company there, and that *Harrifon* came in very cold, and that they went to Cards, and plaid for one Penny a Corner at Whisk; and that he did continue there from nine till eleven a Clock; and if he was there then, it is impossible he should be guilty of this Fact, for the Fact was done between the same Hours.

Maccaffee's Wife tells you the same, and they both tell you who were there besides, and who plaid together, and are positive that the Prisoner was there.

Baker says, That he went away about half an hour after ten at Night, and left *Harrifon* behind him. To confirm this Evidence, they have called two other Witnesses besides the Drawers at the *King's-Head Tavern*, viz. *Mr. Sutton* the Surgeon, who lives in *Stone-Cutter's street*, and *Mr. Ruffel*: *Mr. Sutton* says, they had been at the *Horse-Shoe-Tavern* in *Chancery-lane*, and called for half a Pint of Sack at the *King's-Head-Tavern* when they came by: and as they sat in the Coach, *Mr. Harrifon* came by accidentally, and one of them looking out of the Coach, cries *Harry*, or *Harrifon*; and he went to them, and they drank together another half Pint of Sack.

As to their meeting with *Harrifon*, and as to other Passages there, *Ruffel* says the same; but as to the time of night he is not positive. And they sent one of the Drawers to a House in *Crown Court* to enquire for some body there.

The Drawers of the *King's-Head-Tavern*, say, That *Mr. Sutton* and *Mr. Ruffel* did call there about that time; and that they drank two half Pints of Wine: and that when they were drinking, a Man came by with a Hanging-Coat or Cloak on, and drank with them. And one of the Drawers went to call some Body in *Crown-Court*; and one of the Company up with his Muff and gave him a slap in the Face.

Now this is the Sum and Substance of the Evidence that you have heard on the behalf of the Prisoner, to induce you to believe that he was not the Person that was concerned in the Murder of *Doctor Clenche*.

To which Evidence an answer hath been offered;

First, As to those Witnesses, *Maccaffee* and his Wife, divers Witnesses have been produced to prove, that they are People of doubtful Credit; it seems they keep an House of ill Fame.

Mr. Harrifon. I am glad, my Lord, that I was there.

L. C. J. Well, well. Gentlemen, the People of the House are not of very good Reputation, they keep a naughty and a disorderly House, (if you believe the Witnesses) you may consider of their Credit.

And as to *Mr. Baker*; about nine Years since he was convicted of an arrant Cheat, which is no less than Forgery, for altering the Scavenger's Rate for *St. Giles's Parish*, and therefore the less Credit is to be given to his Evidence; for now it appears that he is a Knave upon Record: and the very Record it self was produced against him, which is true without doubt, notwithstanding his pretence of Innocency. What is said by

Mr. Ruffel and *Mr. Sutton*, I must leave to your Consideration; they had been a drinking, and the Drawer says they were at the *King's-Head Tavern* at eleven of the Clock at Night. *Mr. Harrifon* the next day after the Murder, met a Gentleman at *Joe's Coffee-House* in *Salisbury-Court*; and though he had taken a Lodging in *Paul's Church-Yard*, yet he said that he was newly come to Town, and had been in *Kent*, and had remained there about three Weeks; and that he wanted a Laundress and a Lodging, although he had not been out of Town, and had taken a Lodging but the day before: And then he told the Witness who discoursed with him about the Death of *Dr. Clenche*, That he had formerly loved him, but he said he had been of late a barbarous Rogue to a poor Gentlewoman a Friend of his; and that the just Judgment of God had fallen upon him for so doing, and that he would write to her to give her an account of it; and advise her to write to *Mrs. Clenche*, and to tell her that she was a Widow now as well as *Mrs. Vanwicke*; and he thought by that means to move *Mrs. Clenche* to pity her, being a Widow as well as her self: And that whilst they were talking thus, one *Mr. Ravenscroft* tells him, that *Dr. Clenche* was murdered, and that a Bully of the Town, that belonged to a Gentlewoman in the Compter, one *Mrs. Vanwicke*, was suspected. At which *Mr. Harrifon* was much startled, and said, That no one was concerned with that Gentlewoman but himself; and for ought he knew, he might be taken up for it. This is that which he said.

Now what said *Mr. Harrifon* farther for himself? Why, says he, this Gentlewoman is not in Prison at the Prosecution of *Dr. Clenche*, and was not so affirmed, but so reported; and whether it were so or no is no great matter. Gentlemen, you ought to consider of the Evidence that you have heard against him, and also to weigh well the Evidence he hath brought for himself.

It is most plain, if you believe the Witnesses, that *Mr. Harrifon* was concerned for this Woman *Vanwick*, and hath threatened *Dr. Clenche*, called him Rogue and Rascal, and said, that he deserved to have his Throat cut; that *Harrifon* went under a Disguise for some time before the Murder. You have had an Account of the Handkerchief, what kind of Handkerchief *Harrifon* had, and what Handkerchief was taken about *Dr. Clenche's* Neck, you have seen: And you heard what Evidence was given by *Mr. Humston*; how the Prisoner was with him about nine a Clock that Night; and how he refused to stay and sup with *Mr. Humston*. If *Mr. Harrifon* had no earnest business, one would have thought he might have staid with *Mr. Humston* better than to have gone to an Ale-House in *Crown-Court*, and plaid at Cards at one Penny a piece a Corner; he might have had better Fare no doubt.

The Witnesses for the Prisoner say for him; That he came to *Maccaffee's House* about 9 a Clock at night, and staid till eleven: That is contrary to that Evidence given for the King, viz. That he was in the Coach at *Brownlow-street End*; for if he was at *Maccaffee's House* all the time they mention, it is impossible he should be guilty. All these things are under your serious Consideration. You had best go together, and if you are not satisfied upon the Evidence you have heard, that he is guilty, then you ought

to acquit him; but if you are satisfied that he did not commit this Murder, then you ought not to find him guilty.

Then the Jury withdrew, and the Court adjourned for half an hour; and when they were returned, the Jury came to give their Verdict; and being called over, answered to their Names; and Mr. Harrison was brought to the Bar.

Cl. of Arraign. Gentlemen, Are you all agreed of your Verdict?

Jury. — Yes.

Cl. of Arraign. Who shall say for you?

Jury. — Our Foreman.

Cl. of Arraign. Henry Harrison, Hold up thy Hand.

[Which he did.]

Look upon the Prisoner; How say you? Is he guilty of the Felony and Murder whereof he stands indicted, or not guilty?

Foreman. Guilty of wilful Murder.

Cl. of Arraign. What Goods or Chattels? &c.

Foreman. None that we know of.

Major Richardson Look to him, he is found guilty of wilful Murder.

Cl. of Arraign. Then hearken to your Verdict as the Court hath recorded it.

You say that Henry Harrison is guilty of the Felony and Murder, whereof he stands indicted, but that he had no Lands, nor Tenements, Goods nor Chattels, at the time of the Felony and Murder committed, nor at any time since to your Knowledge: and so you say all?

Jury. — Yes.

Then the Prisoner was remanded to Newgate untill the last Day of the Sessions, and then he was brought to the Bar to receive Sentence of Death.

Cl. of Arraign. Henry Harrison, Hold up thy Hand.

[Which he did.]

Henry Harrison, You stand convicted of Felony and Murder, for the Murder of Dr. Andrew Clench: What can you say for your self why Judgment should not be given against you, to die according to Law?

Mr. D. Recorder. Mr. Harrison, You have been Indicted, Arraign'd and Convicted of Felony and Murder, for the Murder of Dr. Andrew Clenche. You have had a long, and a fair and favourable Tryal, as any Person that ever hath been Tried at this Bar.

The Jury that has passed upon your Life and Death hath Convicted you, and the Court are now ready to do their last Act, which is to pronounce that Sentence that the Law does inflict upon such Crimes as you stand Convicted of.

Mr. Harrison. I expect no Mercy here, therefore I humbly desire you would interceed to the Queen, that I may have twelve Days allowed me, in order to my better Preparation for Death.

Mr. D. Recorder. — Well.

Mr. Harrison. I must needs acknowledg, that I was Tried before the best of Judges, my Lord-Chief-Justice Holt, but one thing I think strange, that my Witnesses should be examin'd singly, and not the King's.

Mr. D. Recorder. That is no more than what is usual, the Council for the King and Queen requested it, and you did not.

Mr. Harrison. I beg'd that I might have timely notice of my Tryal, and I had not; there were seven People in my Company at that time when this black and bloody Murder was done, and I could not get them to be here.

Mr. D. Recorder. You have had a long time to get them ready, and you pressed on your own Tryal, which you should not have done if you had not been ready.

Mr. Harrison. I humbly submit.

Then the usual Sentence of Death was pronounc'd against him, and he was Remanded to Newgate.

The Examination of Henry Harrison this 6th. Day of January, 1691.

THIS Examinant being ask'd where his Lodgings are, answereth, That he Lodgeth at the Golden-Ball in Paul's Church-Yard, and came to Lodge there on Monday Night about Eleven of the Clock or half an hour after, but took the Lodgings in the Morning, the Master of the House being one Mr. Jones a Cane-Chair-Seller; and before that time this Examinant lodged at the Hand and Apple near the Exchange, which said Lodging he left on Saturday last in the Morning, and paid for them on Sunday Afternoon. And this Examinant saith, That on Saturday Night last he lodg'd at the White Balcony in Old Southampton-Buildings, the Mistress of the House being one Mistress Pitts: And this Examinant Lodged there on Sunday Night also. And this Examinant saith, That he was at the King's Head in Crown-Court in Chancery-Lane upon Monday last, from between Seven and Eight of the Clock at Night, and stayed there until Eleven, playing at Cards with the Man and Woman of the House, and other Persons unknown. And being ask'd where he Dined on Monday, and how he spent his Time on Monday in the Afternoon, he saith, he cannot give an Account. And this Examinant saith, that on Tuesday last Mr. Hartly of Old Southampton-Buildings, discoursing concerning the Murder of Doctor Clench, said, That this Examinant was suspected to be guilty of that Murder. And this Examinant further saith, That he wore the same Cloaths he hath now on upon Monday last, and hath worn them a great while having no other Clothes to wear.

Capt. & Cognit. 6. die
Jan. 1691. Coram
J. Holt.

Hen. Harrison.

The Tryal of John Cole, 4 W. & M.

At the Sessions of Goal-Delivery of Newgate, holden for the City of London, at Justice-Hall in the Old-Bayly, on the 31st day of August, and on the first and second days of September, in the Fourth Year of their Majesties Reign.

Judges present { Mr. Justice Dolben,
and
Mr. Justice Powel.

THe Keeper of Newgate did, according to Order of the Court being fate, on Friday the 2d day of September, bring up the Body of John Cole to the Sessions House in the Old-Bayly, London; who being at the Bar, was Arraigned upon an Indictment of Felony and Murther, found against him by the Grand-Jury of the City of London, for the Murther of Dr. Andrew Clenche.

Cl. of Arraign-
ment.



Obn Cole, hold up thy Hand.

(Which he did.)

You stand indicted by the Name of John Cole, of London, Labourer, for

the Murther of Dr. Andrew Clenche, &c. and the Indictment is in such manner as that against Mr. Henry Harrison.

How say you, John Cole, are you guilty of the Felony and Murther whereof you stand indicted, or not guilty?

John Cole. Not Guilty.

Cl. of Ar. Culprist. How will you be tryed?

John Cole. By God and my Country.

Cl. of Ar. God send you a good Deliverance.

And afterwards the said John Cole was brought to the Bar upon his Tryal; and those Persons who were returned upon the Jury, were called over twice, and their Appearances recorded.

Cl. of Ar. You, John Cole, These Men that you shall hear call'd, and personally do appear, are to pass between our Sovereign Lord and Lady the King and Queen, and you upon Tryal of your Life and Death; if therefore you will challenge them, or any of them, your time is to challenge them as they come to the Book to be Sworn, and before they be Sworn.

Then the Jury were call'd and Sworn, and then were counted; and the Twelve Sworn were these whose names follow.

John Clay
Edward Sherlock
John Ruddyer
Benj. Evans
George Bestow
Archibauld Wilson

{ Cuthbert Lee
Thomas Watson
Thomas Milburne
Thomas Applebury
Nicholas Harris
Ralph Cates.

Then Proclamation was made for Information and Evidence as usual.

Cl. of Ar. John Cole, Hold up thy Hand.
(Which he did.)

Gentlemen, You that are sworn, look upon the Prisoner, and hearken to his Cause. He stands indicted by the Name of John Cole, late of London, Labourer, &c. as in the Indictment. Upon this Indictment he hath been arraigned, and thereunto hath pleaded not guilty; and for his Tryal hath put himself upon God and his Country, which Country you are. Your Charge is to enquire whether he be guilty of this Felony and Murther whereof he stands indicted, or not guilty. If you find that he is guilty, you are to enquire what Goods or Chattels, Lands or Tenements he had at the time of the Felony and Murther committed, or at any time since. If you find him not guilty, you are to enquire whether he fled for it; if you find that he fled for it, you are to enquire of his Goods and Chattels as if you found him guilty; if you find him not guilty, nor that he did fly for it, you are to say so, and no more; and hear your Evidence.

Cl. of Ar. Cryer, Call Mary Milward, Joseph Dudley, John Dudley, Jane Warren, Sarah Dudley, Anne Gunn, Anne Giffon, Anne Warren, Elizabeth Harper, Mary Edwards, John Gamble, John Sikes, Robert Rebone, Richard Eades, Richard Marriot, Samuel Revet, Henry Milward, Squire Dalley, William Brown, Francis Hobbs. Who were all sworn.

Cl. of Ar. Set Mary Milward up.

Mr. Justice Dolben. What have you to say, Woman, against Cole the Prisoner, concerning the Murther of Dr. Clenche?

Mrs. Milward. My Lord, my Husband declar'd to me, that he and Mr. Cole were in the Coach with Dr. Clenche, and that they two kill'd Dr. Clenche.

Mr. Justice Dolben. That's no Evidence at all what your Husband told you; that won't be good Evidence if you don't know somewhat of your own Knowledge.

Mrs. Milward. My Lord, I have a great deal more that my Husband told me, to declare.

Mr. Justice Dolben. That won't do; what if your Husband had told you that I kill'd Dr. Clenche, what then? That will stand for no Evidence in Law: We ought by the Law to have no Man call'd in question, but upon very good Grounds and good Evidence, upon Oath, and that upon the Verdict of Twelve good Men. Have

Have you any body that can prove any thing against *Cole*, or does it all arise barely from your Husband's Report?

Mrs. Milward. My Husband declared that he and *Mr. Cole* were to go under a pretence to rob the Doctor, and so to take their Opportunity to kill him; and the first time they call'd at Doctor *Clenche's*, he was not within, but the second time they went he was within, and then they did the Murther.

Mr. Just. Powell. When dy'd your Husband Mistrils?

Mrs. Milward. The 23^d of May last, Sir,

Mr. Just. Dolben. Here hath been two or three Sessions since that time, why did not you take up *Cole* about it before now?

Mrs. Milward. I did not know where to find him.

Mr. Just. Dolben. Why, then you should have gone to a Magistrate, and told him of it, and taken some advice about it.

Mrs. Milward. I did as soon as I had found *Mr. Cole*

Mr. Just. Dolben. Your business had been to have discover'd this to *Mrs. Clenche*, and she should have look'd after *Cole*; is *Mrs. Clenche* here?

Sir William Ashurst. Here is her Brother-in-Law.

Mr. Just. Dolben. Do you prosecute *Cole* upon this Indictment?

Mr. Wise. No, my Lord, I do not. *Mrs. Milward* is the Prosecutor, and she charged *Mr. Cole* with the Murther of my Brother *Dr. Clenche*; and she told my Sister *Clenche*, that *Mr. Milward* her Husband confessed and said sometime before his Death, that he and *Mr. Cole* murder'd *Dr. Clenche* in a Coach; and *Mrs. Milward* said, That she had sufficient Evidence against *Mr. Cole* for it, and my Sister *Clenche* told *Mrs. Milward* that *Mr. Harrison* murder'd Doctor *Clenche* in a Coach, together with another Person, which my Sister *Clenche* said, she believed was the said *Mr. Milward*, Husband of the said *Mrs. Milward*; and that she had a Warrant against him, the said *Mr. Milward*, upon Suspicion for it, but could not take him, and that she suspected that there were other Persons contrivers or concerned in it; who were set down at the *Blue-Boars-Head* Ale-House near *Clements Inn*, by *Mr. Gamble* a Coachman out of his Coach, together with the said *Mr. Milward* in their return from *Dr. Clenche's* House that Night he was murder'd; and my Lord, by my Sister *Clenche's* Order, I went with *Mrs. Milward* to all her Witnesses, and took Notes of their Evidence, and I went with several of them to my Lord Chief Justice *Holt's* Chamber, before whom they gave in their Informations upon Oath about it, and when I had done it, I told *Mrs. Milward* I could find no Evidence that she had against *Mr. Cole*, more than that he was at *Dr. Clenche's* House, and at the said *Blue-Boars-Head* Ale-house with *Mr. Milward*, and another Person, that night *Dr. Clenche* was murdered, and so he might be concern'd in the contrivance of it; whereupon *Mrs. Milward* was dissatisfied, and said, she was not able to Prosecute him for it; so my Sister said to *Mrs. Milward*, that she might if she would prefer an Indictment against him for it, and that she would pay for it, and other Charges about it, which she did; and *Mrs. Milward* hath a Note of the Names of all her Witnesses, and may call them.

Sir Rob. Clayton. Did not you lie at *Cole's* House, Mistress?

Mrs. Milward. Yes, Sir, I did.

Mr. Just. Dolben. Why did not you take him then?

Mrs. Milward. Because he absconded himself, and gave out that he was gone to Sea.

Mr. Just. Dolben. Was there no Quarrel betwixt *Cole* and you about your Goods?

Mrs. Milward. No, my Lord, I had no Quarrel with him.

Mr. Just. Dolben. Because you did not do it sooner, have you not been troubled with your Husbands Ghost? Tell the Jury the Story; we have heard on't, but I am afraid they will Laugh at you.

Mrs. Milward. That was very true, my Lord.

Mr. Just. Dolben. Well if you have any thing else to say, that is material, speak: otherwise my Brother and I are of Opinion, that what you have already offer'd is no Evidence.

Mrs. Milward. My Lord, here is a Coachman or two, that can acquaint your Lordship of the matter of Fact, better than I can.

Cl. of Ar. Cryer, call *John Gamble* the Coachman. *(Who stood up.)*

Mr. Just. Dolben. You, Coachman, do you know the Prisoner?

Mr. Gamble. No, my Lord, I do not know him.

Mr. Just. Dolben. Look upon him, do you know him or no?

Mr. Gamble. No truly, my Lord, I do not know him.

Mr. Just. Dolben. Why! Look you, Woman, he does not know him; you Coachman, the Story is well known, therefore I ask you again upon your Oath, if that Prisoner at the Bar be one of the three Persons, that you carried to the *Blue-Boar's-Head* on the back-side of *St. Clements*, that Night *Dr. Clenche* was murder'd.

Mr. Gamble. Indeed, my Lord, I cannot be positive whether he be one of them or no. I took up in *Cheapside* three Men into my Coach, and set one of them down at *Grays-Inn*, and drove the other two to *Dr. Clenche's* House that Night he was murder'd, and he was not at home, and afterwards the Man I had set down, came in again, and I set them all down at the *Blue-Boar's-Head* Ale house near *Clement's-Inn-Gate*, about Eight a Clock at Night.

Cl. of Ar. Set up *William Brown*, Servant at the *Blue Boars Head*.

Mr. J. Dolben. Hark you, is this one of the three Men that the Coachman set down at your Master's House that night *Dr. Clenche* was murder'd?

Will. Brown. Yes, my Lord, it is.

Mr. Just. Dolben. What time did they come to your House?

Will. Brown. They came about Eight a Clock at Night, and this Man and the other stay'd till after a Eleven a Clock; only *Milward* went out and returned presently, and then immediately he went out again, which was before Nine a Clock, and return'd not until Eleven a Clock after.

Mr. Just. Dolben. What time was *Dr. Clenche* kill'd?

Will. Brown. About Ten a Clock, or betwixt Ten and Eleven as I think.

Mr. Just. Dolben. Who went out first, only *Milward*?

Will. Brown. Only *Mr. Milward*, my Lord, but this Man stay'd all the time, till Eleven a Clock at Night, and another who went by the Name of *Harper*, as I am since informed.

Mr.

Mr. J. Dolben. Why then this Man could not be in the Coach when *Dr. Clenche* was Murdred, so *Harrison* and *Milward* kill'd the Doctor in all probability, for he says, this Man at the Bar, and another, stay'd at his Masters House till after Eleven a Clock.

Will. Brown. My Lord, when *Milward* came back he brought a Couple of Men with him in Soldiers Habit about Eleven of the Clock at Night.

Mrs. Milward. My Husband told me, that *Mr. Cole* and he went out of the House, and left *Mr. Harper* behind.

Mr. J. Dolben. But this Man Swears, that the Prisoner did not go out of the House till Eleven a Clock at Night, and they were set down about Eight of the Clock, and *Dr. Clenche* was found kill'd a little after Ten at Night, and that *Milward* went out, and then came in again about Eleven a Clock, and brought two men with him; 'tis to be fear'd he had been killing *Dr. Clenche* in that time; have you any more to say? If this man says true, nothing can be said more.

Mrs. Milward. Speak what was done, when they came to drink the Pot of Ale, *Mr. Brown.*

Mr. J. Dolben. I would fain know, Mistress, who set you upon this business? Is there not some Money promis'd you? It was not the fear of your Husband's Ghost that put you upon it, I am afraid.

Mrs. Milward. I am much wronged, my Lord, I know nothing of any Money offer'd me.

Mr. J. Dolben. What say you more?

Will. Brown. My Lord, *Mr. Milward* being at my Master's House that Night *Dr. Clenche* was kill'd; desired me to make a Fire in the same Room the next morning, and that he would come again then; and I made a Fire accordingly, but he came not then, nor afterwards at any time to my knowledge, but on a Sunday Night about a Fortnight after came the Two Persons, that came with *Mr. Milward* in the Coach to my Masters House that Night *Dr. Clenche* was Murdred, and my Master being above stairs, I sent him word, that the Two men were there who were there that Night that the Doctor was Murdred, and they Inquired for *Mr. Milward*, saying he promised to meet them there, and he not being there, before my Master could come down, they paid for the Pot of Drink and went away.

Mr. J. Dolben. When they came together to the Blue-Boar's-head they had some evil design, no doubt, but if it be true that those Two men staid from Eight a Clock till Eleven, then it could not be this Man that Murder'd *Dr. Clenche*; but hark ye, Fellow, you say, there were Three Persons, whereof *Cole* was one, and *Milward* the other, who was the Third?

Will. Brown. I do not know his Name, my Lord, otherwise than as I have since heard.

Mrs. Milward. The other Man's Name was *Harper*.

Mr. J. Dolben. You know nothing but what your Husband told you, and 'tis most probable that *Harrison* and he did the Murder, for that it appears that the Prisoner at the Bar is not the Man that Kill'd the Doctor, that's plain. Have you any more?

Mrs. Milward. About a Fortnight after the Murder was done, they came to inquire for my Husband at the Blue Boar's-head, and whilst the Tapster went to tell his Master, they left their

Money for the Drink and went away, and would not be seen.

Mr. J. Dolben. What if they had run away, what then? If they were at the Blue Boar when *Dr. Clenche* was Kill'd, they could not Kill him.

Mrs. Milward. His Master says, that they were in the House, and out of the House, very often. Call *Mr. Dalley* the Master. Who appear'd and stood up.

Mr. Dalley. My Lord, Two of them were not out of the House all the Night, I am not positive that this is the Man that came in with *Milward*, but those Two Men that came in with him, never went out at all until after Eleven a Clock at Night, but only *Milward* went out between Eight and Nine, and returned about Eleven a Clock.

Mr. J. Dolben. What do you say to this, Woman? your Husband told you that the Prisoner was one of the Two, this Witness cannot say he was one, but says positively those Two men never went out till Eleven a Clock, and from *Sr. Clement Danes* to *Leaden ball street* is not to go in and out, they must take a great deal of time to go thither and back again. Hark you, *Mr. Dalley*, you say that those Two men that *Milward* left, never went out of your House till after Eleven a Clock, you are sure on't.

Mr. Dalley. No, my Lord, they did not go out.

Mr. Wife. *Mrs. Milward* hath two Witnesses that can tell somewhat more of the matter, concerning her Husband's being concern'd in the Murder.

Mrs. Milward. My Husband told me, that the Coach-man took them up not far from *Chancery Lane* end, and that *Mr. Cole* laid hands upon the Dr. in the middle of *Holbourn*.

Cl. of Ar. Cryer, Call *John Sykes* the Coachman; who stood up.

Mr. Sykes. My Lord, I took up Two men in *Fleet Street*, about *Fetter Lane* end.

Mr. J. Dolben. What manner of men were they? What Cloths had they on?

Mr. Sykes. My Lord, one of them had a Light Coloured Periwig on, and the other was in Sad Colour'd Cloths, and Lank Hair, but I cannot be positive that this is one of them; They Asked me if I knew *Dr. Clenche* of *Brownlow street*? I told them, that I did not know the Dr. but I knew the Street; and they bid me Drive thither; and when I came to the Street's end, they sent me to the Doctor's House and bid me tell him, that Two Gentlemen were at the Street's end in a Coach, who desired him to go with them to one that was not well, so the Doctor came presently after me, and when he was in the Coach, they bid me Drive to *Leaden-ball-street*, and when I came about *Holbourn-Bar* they bid me Drive faster, and when I came to *Leaden-ball-market*, they bid me Drive to *Aldgate*, and I drove through the Gate to the *Pye-Tavern*, and when I had turned my Coach, they bid me ask for one *Hunt* a Chyrurgeon, but he was not there; and then I told them the Gate was shut, and one of them put his Hand out of the Coach and gave the Watch-man Six Pence to open the Gate, and then I drove back again to *Leaden-ball-market*, and theré they bid me stop again, and one of them gave me Half a Crown to Buy a Fowl, and I went a little way from the Coach, and one of them call'd me back again, and gavé me a Shilling more, and bid me bring a Couple, and he bid me Ask for one *Hunt* a Poulterer; I went all

over the Market, but I could find no such man, so at length I bought the Fowls of another man, and would have had the man gone with me to my Coach, but he would not; then I came to my Coach side, and found the Door open, and I found the Doctor sitting at the bottom of the Coach with his Head against the Cushion, and the Two men gone, and one of them seemed to be in drink when I took them up, and I thought him to be that man fallen asleep, and that the Doctor and the sober man were gone to the Person that was not well, so then I call'd the Watch, and found the Doctor dead, and then it was about half an Hour after Ten a Clock at Night.

Mr. J. Dolben. Then I Ask you, was that one of the men?

Mr. Sykes. I cannot say it, my Lord, I don't know him.

Mr. J. Dolben. What time of Night was it that you took them up at Fetter-Lane end?

Mr. Sykes. It was about Nine a Clock, somewhat after.

Mr. J. Dolben. Why then, they say, that this man never stir'd out of the House from Eight a Clock till Eleven, this man can't be concern'd.

Ch. of Ar. Set up John Dudley, which was done.

Mrs. Milward. Mr. Dudley, What did my Husband say concerning the Doctor to you in the Country?

Mr. Dudley. He came into the Country presently after the death of the Doctor, and he sent for me, and was very much concerned, I Ask'd him what was the matter with him, and he told me, that he was come out of Town about the Murder of Dr. Clenche; I told him, that I hoped he was not concerned in it; he told me, No, but there was a Warrant out against him upon account that he Quarrell'd with the Coachman that Night that he carried him to Dr. Clenche's; and he said, that Mr. Harrison had sent to him from Newgate, and told him, that he would give him Twenty Pounds, if he could make his Tryal easie.

Mr. J. Dolben. Mistrifs, this makes it out, that he told you one Story, and to this Witness another, which contradicts your Story fully; he told him, that he came away for fear, and that he was Innocent of the Murder; and since that he told you, that he was Guilty. Well, what else did he say to you, Mr. Dudley?

Mr. Dudley. He was much concerned to enquire after the Gazettes, and Letters, if he were in them, about the Doctor's Murther, and to enquire if Mr. Cole and Mr. Harper were taken up about it.

Mr. J. Dolben. You hear what is said against you; what do you say to it Mr. Cole?

Mr. Cole. My Lord I know nothing of it.

Mr. J. Dolben. No, I doubt you do, you were one of the Three that was set down on the backside of St. Clement's Church, at the Blue-Boar's-head, where all things were Consulted.

Mr. Cole. My Lord, there was not one word spoke about Killing of Dr. Clenche in my Company.

Mr. J. Dolben. Were not you Acquainted with Milward?

Mr. Cole. Yes, my Lord.

Mr. J. Dolben. Were you not with Harrison?

Mr. Cole. No, my Lord, I never saw him with my Eyes.

Mr. J. Dolben. Well, have you any more to say?

Mrs. Milward. Call Mr. Hobbs, who stood up.

Mr. Hobbs. I met Mr. Milward in York Buildings, and he Asked me how I did, and he went from me a little way, and then came to me again, and ask'd me if I would drink. So we went to the George in York-Buildings and there we drank a Pot or Two; and he ask'd me if I heard that he was accused about the Murder of Dr. Clenche; I told him, No, but he never told me any thing of this Man at the Barr.

Mr. J. Dolben. What was Milward?

Mr. Hobbs. I do not know how he got his Living.

Mr. J. Dolben. Have you any Body else, Mistrifs?

Mrs. Milward. No, my Lord, I know no more.

Mr. J. Dolben. Gentlemen of the Jury, Cole the Prisoner at the Bar stands Indicted for Murthering Dr. Clenche, who, as it now appears, was Murther'd in a Coach by two Persons that were therein together with the Doctor. The question now before you is, whether Cole was one of these two?

Gamble, the Coachman, swears, That the Night Doctor Clenche was killed, he took up Three Men in Cheapside, set one of them down at Gray's-Inn, and drove on to Doctor Clenche's House, the Doctor was not at home, then the third Man came in again to the Coach and he drove to the Blew-Boar's-Head an Alehouse by Clement's-Inn, and set those Three Men down there, and 'twas then about Eight of the Clock.

Sykes the Coachman, swears, he took up Two Men at Fetter-lane End in Fleetstreet, and by their directions drove to Brownlow-street, where the Doctor lived, whom they got into the Coach, and he drove as far as Aldgate, and through the Gate, and then came back to Leaden-Hall, was sent by the Two Men in the Coach to buy a Fowl, when he returned they were gone, but the Doctor found Dead in the Coach; and 'twas now half an hour past Ten.

The Question now, as I said before, is whether Cole the Prisoner at the Bar, was one of these two men.

The Woman tells you, Milward her Husband told her, that he and Cole were in the Coach with Doctor Clenche, and that they Two Kill'd Doctor Clenche.

She likewise tells you, her Husband told her, that Cole and her Husband went out from the Blew-Boars-Head near Clement's Inn, and left only Harper behind.

The Court hath already declar'd to you, that her Evidence, being only what her Husband told her, is no Evidence in Law to take away a Man's Life, especially when it is single without any Circumstance to confirm it, as here 'tis. But that is not all, there is a very great Evidence, that what she says her Husband told her, is false.

He told her, she says, that he and Cole went from the Blew-Boars-Head and Kill'd the Doctor, leaving only Harper behind.

The Master of the House and his Servant (Witnesses which she produceth) both swear, That her Husband went out alone, and left Two Men behind, who both staid in the House till Milward return'd, which was about Eleven of the

the Clock. The Master, 'tis true, cannot say that *Cole* is one of the two, but the Servant is very positive he is, and both are positive, that two Men, that *Milward* left behind, continued in the House till *Milward* returned at Eleven of the Clock. These Two Mens Depositions do plainly contradict her Story, and if they swear true, *Cole* the Prisoner was not one of the Persons that Kill'd the Doctor.

You have all heard, I am sure, that one *Harrison* hath been Convicted by a Jury in this

Place for the Murther of Doctor *Clenche*: If he was one of the two, then *Milward* by his own Confession (if his Wife swear true) was the other; but this you cannot take notice of, the Record is not produced, neither hath the Prisoner taken notice of it. The Question is only whether *Cole* be Guilty of the Murther? which I leave to you upon the Evidence you have heard.

*The Jury having consider'd their Verdict, returned,
That the Prisoner was not Guilty.*

The Tryal of Charles Lord Mohun for the Murder of William Mountford, 1692. 4 W. & M. Published by Authority.

Die Martis 31. Januarii, 1692.



IN the Court Erected in *Westminster-Hall*, for the Tryal of the Lord *Mohun*, for the Murder of *William Mountford*.

About 12 a Clock this Day, the Lords came from their own House in their Robes, in Procession in this manner into the

Court.

First, the Lord High Stewards Gentlemen Attendants, two and two.

Then the Clerks of the House of Lords, with the two Clerks of the Crown in the *King's-Bench* and *Chancery*, two and two.

Then the Masters in Chancery, two and two.

Then the Judges Eight of them, two and two.

Then the Peers Eldest Sons, and Peers Minors, two and two.

Then four Serjeants at Arms with their Maces, two and two.

Then the Yeoman Usher of the House.

Then the Peers according to their Seniority, beginning with the youngest Baron, two and two.

Then four Serjeants at Arms with their Maces, two and two.

Then *Garret King* at Arms, and the Gentleman Usher of the Black Rod: *Garret* on the Right Hand, and Black-Rod on the Left, carrying the white Staff before the Lord High Steward.

Then his Grace the Marquess of *Carmarthen*, Lord High Steward, alone.

When the Lords were Seated on their proper Benches, and the Lord High Steward upon the Wooll-Pack, the two Clerks of the Crown standing before the Clerks Table, and the Clerk of the Crown in Chancery, having their Majesties Commission to his Grace the Lord High Steward in his Hand, they both made three Reverences to his Grace, and at the third coming up before the Wooll-Pack, they did both kneel down, and the Clerk of the Crown in Chancery on his

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Knee, presented the Commission to his Grace, who deliver'd it to the Clerk of the Crown in the Kings Bench; and then with three Reverences, they returned to the Clerks Table, where the Clerk of the Crown in the Kings Bench opening the Commission, Commanded Proclamation of Silence to be made in this manner.

Clerk of Crown. Serjeant at Arms; make Proclamation.

Serjeant. Oyez.

Clerk of Crown. Again.

Serjeant. Oyez.

Clerk of the Crown. Again.

Serjeant. Oyez.

Clerk of the Crown. My Lord High Steward of England his Grace, does straitly Charge and Command all manner of Persons to keep Silence, and to hear the King and Queens Majesties Commission to his Grace my Lord High Steward of England directed, openly Read upon pain of Imprisonment.

Which words the Serjeant at Arms repeated aloud.

Lord High Steward. My Lords, pray be pleased to stand up, and be uncovered whilst their Majesties Commission is Reading.

Which his Grace himself did, and all the Peers.

Clerk of the Crown Reads.

WILLIAM R.

GUilielmus & Maria, Dei Gratia Anglie, Scotie, Francie & Hibernie Rex & Regina, Fidei Defensores, &c. Charissimo Consanguineo & Consiliario nostro Thome Marchioni Carmarthen Presidenti Consilii nostri, Salutem. Sciatis quod cum Carolus Dominus Mohun nuper de Parech' St. Clement Dacor. in Comitatu nostro Middlesex coram dilectis & fidelibus nostris Lanceloto Johnson Arm' Carolo Lee Milit. Samuele Buck, Andrea Lawrence, Willielmo Allystrey, Thoma Harriott, Theophilo Eyton, Nich Grice, Arm's, & aliis Sociis suis Justiciariis nostris ad inquirend. per Sacrament' probor' & legalium hominum de Comitatu nostro Middlesex

FFFFF 2

Middlesex predict. ac aliis viis modis & mediis quibus melius sciverint aut poterint tam infra Libertates quam extra per quos rei Veritas melius sciri poterit & inquiri de quibuscunque Proditionibus Misprisionibus Proditionum Insurrectionibus Rebellionibus Contrafacturis Tonsuris loturis falsis fabricationibus & aliis falsitat. Monetæ hujus Regni nostr. Angl. & aliorum Regnorum siue Dominiorum quorumcumque ac de quibuscunque Murdris Feloniis homicidiis Interfectionibus Burglariis Raptibus Mulierum Congregationibus & Conventiculis illicitis verborum Prolationibus Coadunationibus Misprisionibus Confederationibus falsis Alleganciis Transgressionibus Riotis Routis Retentionibus Escapiis Contempt. falsitat. negligentis Concelamentis manutement. Oppressionibus Cambiparciis Deceptionibus & aliis Malefactis Offensis & Injuriis quibuscunque Necnon accessariis eorundem infra Comitatus predict. (tam infra Libertates quam extra) per quoscunque & qualitercunque habit. fact. perpetrat. siue Commiss. & per quos vel per quem cui vel quibus quand. qualiter & quomodo & de aliis Articulis & Circumstantiis præmiss. seu eorum aliquod vel aliquem qualitercunque concernend. plenius veritat. & ad easdem Proditiones & al. præmiss. audiend. & terminand. secundum Legem & Consuetudinem Regni nostri Angl. nuper assignat. de Felonia & Murdro per ipsum Carolum Dominum Mobun Commiss. & perpetrat. per sacrum proborum & legalium hominum Comitatus nostri Middlesex predict. indictat. existit. Nos Considerantes quod Justitia est Virtus excellens & Altissimo complacens Volentesque quod predict. Carolus Dominus Mobun de & pro Felonia & Murdro unde Ipse ut prefertur indictat. existit coram Nobis in presenti Parlamento nostro secundum Leges & Consuetudines hujus Regni nostri Angl. Audiatur, Examinetur Sententietur & Adjudicetur, Ceteraque omnia que in hac parte pertinent debito modo exercentur & exequantur. Ac pro eo quod Officium Seneschall. Angl. (cujus præsentia in hac parte requiritur) ut accepimus jam vacat. Nos de Fidelitate Prudentia provida Circumspectione & Industria vestris plurimum Confidentes Ordinavimus & Constituimus Vos ex hac Causa Seneschall. Angl. ad Officium illud cum omnibus eidem Officio in hac parte debitis & pertinent. (hac vice) gerend. occupand. & exercend. & ideo Vobis Mandamus quod circa præmissa diligenter intendatis & omnia que in hac parte ad Officium Seneschall. Angl. pertinent & requiruntur (hac vice) faciatis Exerceatis & Exequamini cum effectu. In cujus rei Testimonium has Literas nostras fieri fecimus Patentes. Testibus Nobis ipsis apud Westm. tricesimo primo die Januarii Anno Regni nostr. Quarto.

Per ipsum Regem propria Manu Signat.

CHUTE.

GOD Save King William and Queen Mary.

Then Proclamation was made for all Persons but the Peers to be uncovered.

After which, their Majesties Writ of Certiorari, directed to the Commissioners of Oyer and Terminer for the County of Middlesex, to remove the Indictment found before them against the Lord Mohun, with the return thereof, and the Record of the Indictment, were Read by the Clerk of the Crown in the Kings-Bench: Thus,

Clerk of the Crown. **G**ulielmus & Maria, Dei Gratia Angliæ, Scotiæ, Franciæ & Hiberniæ Rex & Regina, Fidei Defensores, &c. Dilectis & Fidelibus nostris Lanceloto Johnson Armigero, Carolo Lee Militi, Samueli Buck, Andrea Lawrence, Willielmo Allestree, Thomæ Harriot, Theophilo Eyton & Nicholao Grice Armigeris, Salutem. Vobis Mandamus quod Indictamentum de Felonia &

Murdro unde Carolus Dominus Mobun nuper de Parochia Sancti Clementis Dacorum in Comitatu nostro Middlesex coram Vobis in Comitatu nostro Middlesex predict. & penes vos jam remanen. indictatus existit ut dicitur, cum omnibus illud tangentibus nobis in presenti Parlamento nostro sub sigillis vestris vel unius vestrum deliberetis indilate una cum hoc brevi. Testibus nobis ipsis apud Westmonasterium vicesimo Octavo die Januarii Anno Regni nostri Quarto.

CHUTE.

Virtute istius brevis mihi & aliis directi Indictamentum in eodem brevi mentionatum cum omnibus ea tangentibus Domino Regi & Domine Regine in presenti Parlamento sub sigillo meo in isto brevi contenta in quadam Scheda huic brevi annexa mitto prout interim mihi precipitur.

Responf.

Lanceloti Johnson Armigeri unius Justiciariorum dictorum Domini Regis & Domine Regine ad inquirendum, &c. infra scripti.

L.A. JOHNSON.

Middlesex ss. Memorandum quod per quandam Inquisitionem captam pro Domino Rege & Domina Regina apud Hicks Hall in St John street in Comitatu Middlesex Die Martis (scilicet) decimo septimo die Januarii Anno Regni Domini & Domine nostrorum Gulielmi & Mariæ Dei Gratia Angliæ, Scotiæ, Franciæ & Hiberniæ Regis & Regine Fidei Defensorum, &c. Quarto, coram Lanceloto Johnson Armigero, Carolo Lee Militi, Samueli Buck, Andrea Lawrence, Willielmo Allestree, Thomæ Harriott, Theophilo Eyton & Nicholao Grice Armigeris, & aliis Sociis suis Justiciariis Dictorum Domini Regis & Domine Regine ad inquirendum per Sacramentum proborum & legalium hominum Comitatus Middlesex predicti ac aliis viis modis & mediis quibus melius sciverint aut poterint, tam infra libertates quam extra per quos rei veritas melius sciri poterit & inquiri de quibuscunque Proditionibus Misprisionibus Proditionum Insurrectionibus Rebellionibus contrafacturis tonsuris falsis Fabricationibus & aliis falsitatibus monetæ hujus Regni Angliæ & aliorum Regnorum siue Dominiorum quorumcumque ac de quibuscunque Murdris Feloniis Homicidiis & interfectionibus & aliis Articulis & offensis in Literis patentibus Dictorum Domini Regis & Domine Regine eis & quibuscunque quatuor vel pluribus eorum inde directis specificatis, necnon accessariis eorundem infra Comitatum predictum tam infra libertates quam extra per quoscunque & qualitercunque habitis factis perpetratis siue commissis ac de aliis Articulis & circumstantiis præmissa & eorum aliquod vel aliquem qualitercunque concernentibus plenius veritatem & ad easdem proditiones & alia præmissa audiendum & terminandum secundum legem & consuetudinem hujus Regni Angliæ assignatis per Sacramentum Samuelis Philipps, Thomæ Head, Georgii Sparkes, Thomæ Lunn, Johannis Waterman, Willielmi Keyte, Johannis Usher, Willielmi Pangborne, Arthuri Alliborne, Willielmi Deverell. Jacobi Garrison, Anthonii Hartley, Roberti Rogers, Thomæ Knight & Thomæ Long proborum & legalium hominum Comitatus predicti ad tunc & ibidem juratorum & oneratorum ad inquirendum pro dicto Domino Rege & Domina Regina & pro corpore Comitatus præd. presentatum existit modo & formâ prout patet in quodam indictamento huic Schedule annexo.

L.A. JOHNSON.

Middlesex ss. Juratores pro Domino Rege & Domina Regina super Sacramentum suum presentant quod Richardus Hill nuper de Parochia Sancti Clementis Dacorum in Comitatu Middlesex Generosus & Carolus Dominus Mobun nuper de Parochia predicta in Comitatu predicto,

predicto Deum præ oculis suis non habentes sed instigatione Diabolica moti & seducti nono die Decembris Anno Regni Domini & Domine nostrorum Gulielmi & Mariæ Dei Gratiæ Angliæ, Scotiæ, Franciæ & Hiberniæ Regis & Reginiæ, Fidei Defensorum &c. Quarto vi & armis, &c. apud Parochiam predictam in Comitatu predicto in & super quendam Willielmum Mountford Generosum in pace Dei & dictorum Domini Regis & Domine Regine nunc ad tunc & ibidem existentem Felonice voluntarie & ex malitiis suis precogitatis insultum fecerunt. Et quod predictus Richardus Hill cum quodam Gladio Anglice (a Rapier) de ferro & Chalybe confecto valoris quinque Solidorum quem ipse idem Richardus Hill in manu sua dextra ad tunc & ibidem extractum habuit & tenuit præfatum Willielmum Mountford in & super dextram partem corporis Anglice (the right side of the Body) ipsius Willielmi Mountford prope dextram Mammillam Anglice (the right Pap) ejusdem Willielmi ad tunc & ibidem Felonice voluntarie & ex malitia sua precogitata percussit & pupugit (Anglice did strike and thrust) dans eidem Willielmo Mountford ad tunc & ibidem cum Gladio extracto predicto in & super predictam dextram partem corporis ipsius Willielmi Mountford prope dictam dextram Mammillam ejusdem Willielmi unum Vulnus mortale latitudinis unius pollicis & profunditatis viginti pollicum, de quo quidem vulnere mortali predictus Willielmus Mountford à predicto nono die Decembris Anno supradicto usque decimum diem ejusdem Mensis Decembris Anno supra dicto apud Parochiam predictam in Comitatu predicto languēbat & languidus vixit, quo quidem decimo die Decembris Anno supra dicto predictus Willielmus Mountford de vulnere mortali predicto apud Parochiam predictam in Comitatu predicto obiit. Et quod predictus Carolus Dominus Mohun tempore Feloniæ & Murdri predicti. per præfatum Richardum Hill Modo & formâ predictis Felonice voluntarie & ex malicia sua precogitata factorum & perpetratorum ad tunc & ibidem Felonice voluntarie & ex malitia sua precogitata fuit presens auxilians abettans confortans assistens & manutenens præfatum Richardum Hill ad predictum Willielmum Mountford in formâ predictâ Felonice voluntarie & ex malitia sua precogitata interficiendum & murdrandum. Et sic Furatores predicti super Sacramentum suum predictum dicunt quod predictus Richardus Hill & Carolus Dominus Mohun præfatum Willielmum Mountford modo & formâ predictis Felonice voluntarie & ex malitiis suis precogitatis interfecerunt & murdraverunt contra pacem dictorum Domini Regis & Domine Regine nunc, coronam & dignitates suas, &c.

Then his Grace remov'd from the Wooll-Pack to the Chair, which was placed upon an Ascent just before the uppermost step of the Throne, and Seated himself in the Chair.

Cl. of Cr. Serjeant at Arms, make Proclamation.

Serjeant. Oyez.

Cl. of Cr. Chief Governor of the Tower of London, return the Precept to you directed, together with the Body of Charles Lord Mohun your Prisoner forthwith into the Court, upon Pain and Peril will fall thereon.

Then the Deputy Governor of the Tower, brought the Lord Mohun to the Bar, having the Ax carried before him by the Gentleman Jaylor of the Tower, who stood with it at the Bar, on the Right Hand of the Prisoner, turning the Edge from him.

The Prisoner at his Approach to the Bar, made three Bows, one to his Grace the Lord High Steward, the other to the Peers on each Hand, and his Grace and all the Peers returned the Salute to him.

Lord High Steward. My Lords, my Voice will not serve to speak at such a Distance, so as to be heard, and therefore I must beg leave of your Lordships to come down to the Wooll-Pack again.

Lords. Ay, Ay.

Then his Grace came down, and Seated himself on the Wooll-Pack.

Lord High Steward. My Lord Mohun, I am to let your Lordship know, you are not to hold up your Hand upon your Arraignment; and I am to let you that are Council at the Bar likewise know, that both you and the Witnesses, are to Direct your selves to the Court, in the Style of my Lords, speaking to the Court.

Then there was a little Pause, after which his Grace Addressed himself to the Prisoner thus.

Lord High Steward. My Lord, you are brought here before this Supream Court in Order to your Tryal.

The Charge against you is, for the Murther of one of the Kings Subjects, which is a Crime the King will at no time pass over in the meanest Mans Case, without making a strict inquiry into the Offence, and causing due Punishment to be inflicted on the Offender.

This my Lord is charged upon you, not by any slight Information; but by the Grand Inquest of this County, made up of Gentlemen of good Worth and Consideration. It is true, that this Inquest does not amount to much more than a bare Accusation; and therefore it ought not to be made any use of, so as to prejudice your Lordships Tryal; but it is that which is the Ground of presenting this Black Crime before my Lords your Peers, who cannot receive it without some trouble, to find any one of their Body suspected to be Guilty of an Action so Dishonourable as this is represented to their Lordships.

My Lord, you are a very young Man, and therefore it is to be hoped, you cannot so early have had your Hands in Blood. And the same Reason, because you are so young, may perhaps make you conceive, that you are under some greater Disadvantage in making your Defence, than you would be if your Experience had been longer.

But to remove any Misapprehension you can have of that kind, it is very proper to put your Lordship in mind, that you have the good Fortune now, to be Tryed for this Fact in full Parliament, where no Evidence will be received, but such as must be manifest and plain, beyond all Contradiction; so that you have nothing to fear here, but your own Guilt.

In the next place, My Lord, you need not be discourag'd for the want of Council, for the Honour of this Court is such, as will take Care to inform you of any Advantage that the Law can give you. And you may be farther assured, that no Art or Skill in Arguing, can take any place here, either against your Innocency, or to Divert my Lords from doing you exact Justice. Nay, I dare presume to say on the part of my Lords, that if there be room for any Abatement of Severity, you may reasonably expect to find it from their Lordships.

These Considerations, my Lord, cannot but give you great Consolation under your unhappy Circumstances, it being most certain, that nothing but your own Crimes can hurt you.

But

But at the same time I must tell you, that your Lordship is not to flatter your self with an Expectation or Hope, that any Favour will be shewed you beyond what Honour and Justice can allow: And I hope you have well considered, that it is no less than your Life, your Honour, and your Estate, that you are now to Defend, insomuch, that I cannot doubt but your Lordship has recollected and prepar'd your self, for the Defence of what so very much concerns you.

I will not therefore detain you any longer than to give you some Directions in the Order and Method of your Tryal; and those are, that your Lordship do give Attention carefully to the Reading of your Indictment. That you give no Interruption to the Council or Witnesses when they speak against you; and when the proper time shall come for your Witnesses to be Examined, and that you are to be heard in your own Defence, I will give you due notice of it.

Your Lordship may also be certain that when it shall come to your turn to speak, you shall be heard with all the Patience and Favour that the Matter will bear; and at last, when all hath been heard that can be said on both sides, your Lordship needs not doubt, but that My Lords will give such a Judgment as will be Suitable to the Honour, Justice and Equity of this great Court. Clerk Read the Indictment to my Lord.

Clerk of the Crown **C**harles Lord Mohun, You stand Indicted by the Name of Charles Lord Mohun, of the Parish of St. Clement Danes in the County of Middlesex, For that you together with one Richard Hill of the same Parish and County Gentleman, who is fled, and withdrawn from Justice, not having the Fear of God before your Eyes, but being moved and seduced by the Instigation of the Devil, the 9th Day of December, in the 4th Year of the Reign of our Sovereign Lord and Lady William and Mary, by the Grace of God of England, Scotland, France and Ireland, King and Queen, Defenders of the Faith, &c. with Force and Arms, &c. at the Parish aforesaid, in the County aforesaid, in and upon one William Mountford Gent. in the Peace of God, and our said Sovereign Lord and Lady the King and Queen, then and there being, feloniously, wilfully, and of your Malice aforethought, did make an Assault. And that he the said Richard Hill, with a certain Rapier made of Iron and Steel, of the Value of 5s. which he the said Richard Hill, in his Right Hand then and there had and held drawn, the said William Mountford, in and upon the Right side of the Body of him the said William Mountford, near the Right Pap of him the said William, then and there feloniously, wilfully, and of his Malice aforethought, did strike and thrust, giving unto him the said William Mountford then and there, with the Sword drawn aforesaid, in and upon the aforesaid Right side of the Body of him the said William Mountford, near the said Right Pap of the said William, one Mortal Wound of the breadth of one Inch, and of the depth of twenty Inches, of which said Mortal Wound the aforesaid William Mountford, from the aforesaid ninth Day of December, in the Year aforesaid, unto the tenth Day of the same Month of December, in the Year aforesaid, at the Parish aforesaid in the County aforesaid, did languish, and languishing did live, on which said tenth Day of December in the Year aforesaid, the aforesaid William Mount-

ford of the Mortal Wound aforesaid, at the Parish aforesaid, in the County aforesaid, died. And that you the said Charles Lord Mohun, at the time of the Felony and Murder aforesaid, by the aforesaid Richard Hill, in manner and form aforesaid, feloniously, wilfully; and of his Malice aforethought done and committed, then and there feloniously, willfully, and of your Malice aforethought, were present, aiding, abetting, comforting, assisting and maintaining the aforesaid Richard Hill, the said William Mountford in form aforesaid, feloniously, wilfully, and of his Malice aforethought to kill and murder. And so that you the said Charles Lord Mohun, and the said Richard Hill, the said William Mountford in manner and form aforesaid, feloniously, wilfully, and of your Malice aforethought, did Kill and Murder, against the Peace of our said Sovereign Lord and Lady the King and Queen, their Crown and Dignity.

How say you Charles Lord Mohun, Are you Guilty of this Felony and Murder, or not Guilty? Lord Mohun. Not Guilty, my Lords.

Clerk of the Crown. How will your Lordship be Tried?

Lord Mohun. By God and my Peers.

Clerk of the Crown. God send your Lordship a good Deliverance.

Lord High Steward. Will your Lordships please, that the Judges may be Covered?

Lord Ay, Ay.

Then the Judges put on their Caps.

Clerk of the Crown. Serjeant at Arms make Proclamation.

Serj. O Yes.

Clerk of the Crown. If any one will give Evidence on the behalf of our Sovereign Lord and Lady the King and Queens Majesties, against Charles Lord Mohun the Prisoner at the Bar, let them come forth, and they shall be heard, for now he stands at the Bar upon his Deliverance.

Lord High Steward. You Gentlemen that are of the Kings Council, will you begin.

Mr. Serj. Thompson. May it please your Lordships, I am of Council for the King and Queen, against my Lord Mohun the Prisoner at the Bar, who stands Indicted for the Murder of one William Mountford.

Lord Mohun. My Lords.

Lord High Steward. My Lord Mohun, what does your Lordship say?

Lord Mohun. Do not your Lordships think it proper, that I should have Pen, Ink and Paper?

Lords. Ay, by all means.

Lord High Steward. Yes, give my Lord Pen, Ink and Paper?

Which was carryed to him by one of the Clerks.

Lord High Steward. Go on Sir now.

Mr. Serj. Thomson. My Lord Mohun stands Indicted here before your Lordships, for the Murder of one William Mountford, and the Indictment sets forth, that one Richard Hill, who is since fled from Justice, did upon the 9th. of December last, make an Assault upon this same William Mountford, and that the said Lord Mohun, did likewise make that Assault. The Indictment particularly sets forth, that this Hill by a Sword or Rapier which he had in his Hand, did give this William Mountford a Wound on his Right Side, and that Mountford did Languish of that Wound till the next Day, which was the 10th. of December, when he Dyed; and that at the time of the giving the Wound,

Wound, My Lord *Mohun* was present, and was Aiding, Abetting, Assisting and Comforting of *Hill*; and thereupon we do say, he is Guilty of this Murder, and for this he stands Indicted. It is my Duty to open the Indictment to your Lordships, we shall call our Proofs, and give you the Evidence, and then leave it to your Lordships Judgment.

Mr. Attorney General. My Lords, the Indictment has been opened, and by that your Lordships see, the Noble Lord at the Bar stands Charged with the High Crime of Murder.

My Lords, his Peerage gives him a Right to be Tryed in this Great and Noble Court; and as my Lord has Just Reason to put a High Value upon this Privilege, so on the other Hand, their Majesties who are making Inquisition for the Blood of one of their Subjects have a full Assurance, that no Compassion for my Lords Youth, no Consideration of his Quality, or Regard for one of your own Order, will make your Lordships unmindful of the Heinous Nature of the Crime, or cause any Variation in the Steadiness of your Justice.

It is true, my Lords the difference between the Tryal of a Peer and a Commoner is very great, but there is no difference in the Crime, whether committed by one or the other: It is the same Law by which they must be Tryed and Judged; and that Fact which would be Murder in the meanest Subject, is no less than Murder if committed by the greatest Peer.

My Lords, it is not insisted upon, that the Noble Lord at the Bar gave the Mortal Stroke with his own Hand; Nor is it so alledged in the Indictment: The Indictment findeth the Wound to have been given by the Hand of *Richard Hill*; but if my Lord the Prisoner was of his Party, if he Concurr'd with him in the Thing, if he was Present and Abetting to the Fact, though he did not strike a stroke, though he was no more than a looker-on, when the thing was done, the Law saith, he is a Principal in the Murder.

Whether my Lords Case will fall within this Rule, is the Point for your Lordships to Determine, when the Witnesses are heard.

My Lords, it is my part to give an Account of the Nature of the Evidence, to the end, that your Lordships may more easily go along with the Witnesses, as they are Examined, and more readily make your Observations upon what they say.

This I shall do as shortly, and as exactly as I can without pretending to Aggravate any thing, which I could never think did become any one in my Station; and I am sure, would be to very little purpose before such a Judicature as this; for after all, your Lordships will found your Judgments upon the Fact, not as it is Represented by us, but as it appears upon the Oaths of the Witnesses.

The time when the Fact for which my Lord is to be Tryed was Committed, was the 9th. Day of December last.

The Occasion of it, was this.

Captain *Hill*, the Person mentioned in the Indictment, had for some time before made Addresses of Courtship in the way of Marriage, to one Mrs *Bracegirdle*, an Actress in the Play-House; But these Proposals were totally Rejected. This put Mr. *Hill* in a very great Rage, and he Declared, that Mr. *Mountford* (the Person Slain) was the only Man that stood in his way,

and with man Execrations, expressed his Resolution to be Revenged upon him: This he did at several times, and before several Persons.

The same Day the Fact was Committed, in the Morning; My Lord who is now at the Bar, and Captain *Hill* went together to Hire a Coach to go to *Totteridge*, and Directed the Coachman to have six Horses Ready, but to be waiting for them in *Drury-Lane* near the Play-House, with only two Horses in his Coach, about nine a Clock the same Night. My Lord and Captain *Hill* Dined together that Day, at a Tavern in *Covent Garden*; and there much of their Discourse was about Mrs. *Bracegirdle*; and both of them did freely declare their Opinion, that Mr. *Mountford* lay with her. But the Principal of their Discourse, was in Relation to a Design which they had formed for the Seizing upon Mrs *Bracegirdle*, and forcing her into a Coach, and carrying her away some where into the Country.

This was to be executed that Night; and accordingly they were then providing Arms for that purpose, Mr. *Hill* did acquaint my Lord, that the Soldiers would be ready by the time; and my Lord took notice, that the carrying her off, would stand Mr. *Hill* in 50*l.* at least. Thereupon (as your Lordships will hear from the Evidence) Mr. *Hill* used this Expression, If the Villain Resist, I will Stab him; and then my Lord was pleased to say, That he would stand by his Friend.

After they had Continued there some time, being about to part, Mr. *Hill* told my Lord, that unless he was at the Play-House by six a Clock, the thing could not be Effected, and he should be undone: But my Lord promised to be there at the time.

Accordingly they both met at the Play House, and after they had been behind the Scenes, and informed themselves that Mrs. *Bracegirdle* would not be there that Night, they left the Play-House.

But it seems they had got Intelligence, that she was to Sup that Night at one Mr. *Page's* House in *Drury-Lane*; and therefore they planed themselves with their Soldiers near that place, over against my Lord *Cravens* House.

Lord High Steward. They; who do you mean?

Mr. Attorney General. My Lord the Prisoner at the Bar and Mr. *Hill*. After they had continued there for a Considerable time (I think till towards Nine a Clock) they began to have a Jealousie, that they might be under some misinformation; and therefore ordered the Coachman to Drive them into *Howard-Street*, the place where Mrs. *Bracegirdle* lodged, and observing some Persons Walking near her Lodging, they said, they doubted they were deceived, and had been betrayed.

But they soon came back again to *Drury Lane*; and fixed themselves in their former Station. About Ten a Clock, Mrs. *Bracegirdle* accompanied with Mr. *Page* (at whose House she had been) and with her Mother, and (I think) her Brother going Home; when they came to the Place where the Coach stood, with the Door open, and my Lord at the Bar placed in the Coach; and several Cases of Pistols by him, the Soldiers together with Captain *Hill*, came up to Mrs. *Bracegirdle*, Seized upon her, and would have forced her into the Coach: Mr. *Hill* endeavoured with Violence, to force away Mr. *Page*, who was then leading her, and struck him; but Mrs.

Brace-

Bracegirdle's Mother holding her about the middle, they could not readily get her into the Coach, and during this struggle, there was an Opportunity given to *Mr. Page* to call for help, and several Persons coming presently from the Houses near, and the People in the street beginning to rise upon them, they found it impracticable to effect their Design at that time.

Thereupon the Soldiers were Dismissed; but my Lord and *Mr. Hill*, would not be denied the Liberty to wait upon *Mrs. Bracegirdle* to her Lodging, and accordingly together with *Mr. Page* and her Mother and other Persons, they went together to *Mrs. Bracegirdle's* Lodging, at one *Mrs. Brownes* House in *Howard Street*. *Mr. Mountford's* House was in *Norfolk Street* below *Howard Street*. *Howard Street* is a Cross Street, which leads from *Arundel Street*, and through *Norfolk Street* to *Surry-Street*; and so it was not possible for *Mountford* to come to his own House, but whoever should fix themselves in *Howard Street* must have the Opportunity of seeing him.

As they were going along, *Hill* swore he would be Reveng'd; but nam'd no Body.

After that *Mrs. Bracegirdle* and the Company were come to her Lodging, she and her Mother, and *Page* went into the House: My Lord *Mohun* and *Mr. Hill* staid in *Howard street*, and there continued for near two Hours together, and for the most part of that Time, with their Swords drawn.

Mr. Mountford, as it hapned, did not come Home till late that Night; so that their Stay being long, my Lord and *Mr. Hill* thought fit to send for Wine, and had one or two Bottles, which they drank in the Street, near *Mrs. Bracegirdle's* Lodgings.

During this Time, they were heard to say (that is, one of them was; but which of them, by reason of the Darkeness, we cannot tell) that if he could not be revenged that Night, he would the next Morning; upon which, a Boy, who was there with them; (but who the Boy was we cannot discover) said, good my Lord, do not do it, alter your Resolution. I did observe before, that *Mrs. Bracegirdle* Supped that Night at *Mr. Pages* House, and *Mrs. Page* having heard of the great Outrage and Tumult in the Street, and that her Husband was gone home with *Mrs. Bracegirdle*, and being under a great Concern for his Safety, thought fit to follow him thither. As she entred into the House, she saw my Lord *Mohun* and Captain *Hill* near the Door; and presently after, before she could have a full Relation of what had happened in *Drury Lane*, *Mrs. Brown*, the Owner of the House where *Mrs. Bracegirdle* lodged, came into the Room, and told them, that my Lord *Mohun* and *Hill* were waiting for *Mr. Mountford*, and that she was apprehensive it was with no good intention. Thereupon *Mrs. Page* thought it requisite to go to *Mrs. Mountford's* House, to give her Notice of it, and to desire her to find out where her Husband was, and to caution him not to come Home, unless he brought a good Guard with him.

As she went out, she saw them both with their Swords drawn, and she acquainted *Mrs. Mountford* with it, who sent to several Places in search of her Husband, but she was so unfortunate, that the Messengers could not find him.

Whilst this was doing, the Watch came into *Howard-Street*, being allarm'd at the Report that two Gentlemen were Drinking in the Street,

and walking there with their naked Swords. The Watch demanded of my Lord *Mohun*, why he had his Sword drawn. My Lord was pleased to return them this Answer, That he was a Peer of the Realm, and bid them touch him if they durst. They then asked *Hill* why his Sword was out, and my Lord made the Excuse for him, That *Hill* had lost his Scabbord.

The Watch observing the Drawer who attended upon them, and knowing that he lived at a Tavern in *Surry-Street*, went to inform themselves, who these Persons should be, that were walking in such a Manner at that time of Night. But they were hardly got into the House before they heard the Cry of Murder.

The Witnesses will inform your Lordships, that as *Mr. Mountford*, about 12 a Clock, was coming Home, my Lord *Mohun* met him, and saluted him. *Mr. Mountford* said, My Lord *Mohun*, What does your Lordship do here at this time of Night? And my Lord made answer, He supposed *Mr. Mountford* had been sent for. No, No, says *Mountford*, I came by chance. My Lord said to him again, I suppose you have heard about the Lady. *Mr. Mountford* answered, I hope my Wife has given your Lordship no Offence. No, says my Lord *Mohun*, It's *Mrs. Bracegirdle* I mean. To this, the Reply of *Mr. Mountford* was, *Mrs. Bracegirdle* is no concern of mine, but I hope your Lordship does not countenance any ill Action of *Mr. Hill*.

Upon this *Hill* came up to them, and said to my Lord, it was not a time to discourse of those Matters; and as my Lord continued to talk with *Mountford*, *Hill* struck *Mountford* first, and in a manner, at the same instant made a Pass at him, and run him clean through the Body, and this before *Mr. Mountford's* Sword was drawn. Immediately upon this there was a Cry of Murder, and the Watch came with what haste they could, and took my Lord *Mohun*, but *Hill* was fled; when my Lord was taken, his Sword was not drawn.

As soon as my Lord *Mohun* was taken, the first Question he asked was, if *Hill* was apprehended; and when he was told he was not, he said he was glad of it, and he did not care if he were hang'd for him. And he said, adding at the same time, That he was sorry that *Mr. Hill* had so little Money about him, and wished him all that he had in his own Pocket; and he did then also own to the Watch, that he had changed Coats with *Mr. Hill*, and had *Hill's* Coat on him at that time.

My Lords, this is the Substance of the Evidence, and in this Order, with your Lordships Leave, we shall offer the Proofs to your Lordships; I do not doubt, but your Lordships will attend to the Evidence with all Care, and will determine upon it according to Justice and Honour. I will detain your Lordships no longer, but proceed to call the Witnesses to prove what I have opened.

L. H. Steward. Pray call your Witnesses together, and let me know who you begin with.

Mr. Att. Gen. My Lords, We do not know what Place is designed for the Witnesses; but if they are to be on the other side, and this Croud do interpose between us and them, it will be impossible for us, who are the King's Council, to hear what they say, or know how to proceed.

L. H. Steward. There must be Room made there

there for the Witnesses, where are your Witnesses Mr. Attorney?

Clerk of the Crown. If you please to name them Sir, we will call them.

Mr. Att. Gen. Call Mr. John Hudson, and Mr. George Powell.

Lord High Steward. I know not how this is ordered, but way must be made there by the Bar, that the Prisoner may see the Witnesses, and they him.

Mr. Att. Gen. Yes my Lord, by all means.

Mr. Serj. Tremain. If your Lordships please, the Witnesses will be most conveniently heard if they come and stand by us.

Mr. Att. Gen. If your Lordships please, it will not be possible either for my Lord at the Bar, or for us to hear what the Witnesses say, unless they be brought into this place to stand between us.

L. H. Stew. My Lord Great Chamberlain, be pleased to give order for them to be brought in thither.

Then the Lord Great Chamberlain went down to the Bar.

L. Gr. Cham. The Witnesses must be brought to this place.

And accordingly, way was made for the Witnesses, as called to stand at the Bar between the Prisoner and the Kings Council.

L. H. Stew. Give me the Name of him that you begin with.

Mr. Att. G. We begin my Lords, with Mr. John Hudson. Who came to the Bar, and one of the Clerks held the Book to him, upon which he laid his Hand.

Cl. of the Cr. Hearken to your Oath Sir, the Evidence that you shall give on the behalf of our Sovereign Lord and Lady the King and Queens Majesties, against Charles Lord Mohun the Prisoner at the Bar, shall be the Truth, the whole Truth, and nothing but the Truth: So help you God.

Then he kissed the Book.

Mr. Att. Gen. Mr. Hudson, Do you give my Lords an account what you know of any Applications of Courtship made to Mrs Bracegirdle by Mr. Hill, and what became of it; and what you heard Hill say about her, or about any one else relating to that matter.

Hudson. My Lord, I had the Honour to be invited to Supper with my Lord Mohun, at the Rose-Tavern in Covent-Garden, where I found Captain Hill with his Lordship.

Mr. Att. Gen. When was this Sir? tell the time.

Hud. This was three Nights before this unfortunate Accident happen'd, there I found Captain Hill, and we supped together; and after Supper, Captain Hill rais'd a Discourse of Mrs. Bracegirdle and Mr. Mountford, says He, I should not doubt the Success of my Amour with Mrs. Bracegirdle, if I were not obstructed by Mountford whom I design to be the Death of: This is Truth upon my Oath. My Lord Mohun was in the Company; but I cannot say that my Lord made any Reply to the thing, or took any notice of it: But this Captain Hill did say, not only then, but several times before.

Mr. Att. Gen. Did he say it at any other time in your Hearing?

Hud. Yes, several times before.

Mr. Att. G. Do you know any thing more of this matter?

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Hud. No more, than that my Lord Mohun that very Night that Mr. Mountford was killed, and Captain Hill came into the Scene Room of the Play-House, and my Lord Mohun had Captain Hill's Coat on, and Captain Hill had my Lord Mohun's Coat on, and they changed their Cloaths in the Play-House. I saw them change their Cloaths; but what their Design was, I cannot tell.

Mr. Att. G. When was that Sir?

Hud. That very Night that the Gentleman that is Dead, Mr. Mountford, was killed.

Mr. Att. G. You say, that my Lord Mohun was present, when that Discourse of Hill was, about Mountford at the Tavern.

Hud. Yes, but I cannot say my Lord took any notice of it, for he made no Reply that I heard.

L. H. Stew. Have you done with this Witnesses?

Mr. Att. G. Yes, my Lord,

Hud. This is all that I know of the matter.

L. H. Stew. My Lord Mohun, have you any thing to say to this Witness?

L. Mob. No my Lord.

Mr. Att. G. Then our next Witnesses Name is George Powell.

Who was Sworn in like manner.

Mr. Att. G. Mr. Powell, you have heard the Questions that have been ask'd Mr. Hudson. Pray will you make Answers to them; and give my Lords an Account what you know of this matter.

Powell. May it please Your Lordships, about 5 or 6 days before Mr. Mountford was Wounded, I was in Company with Captain Hill, and he began Mrs Bracegirdles Health. I told him I would pledge it. Says he, I am sure there is no Bar between me and Mrs. Bracegirdle, but Mountford; and I am Resolved to be Revenged on him, one way or another. About 3 Days afterwards I was at Supper with my Lord Mohun and Captain Hill, and another Gentleman, and the same Discourse arose again, and Captain Hill whispered me in the Ear, says he, I am resolved to have the Blood of Mountford. I told him I did not think it fit for him to speak so behind a Gentleman's back, and to me who was his Friend. I said I would acquaint Mr. Mountford what he said, and I did not doubt but he would give him the satisfaction of a Gentleman for any Injury he did him. I heard no farther Discourse at that time, nor do I know more of that matter, till the Night that Mr. Mountford was Wounded, when I saw him lying upon the Parlor Floor, and afterward saw him laid to Bed, and sat up all Night with him, and about four a Clock in the Morning I asked Mr. Mountford how the thing happened. He told me Captain Hill killed him basely; I asked him if his Sword was drawn; Yes, says he, but it was after I had received my Wound, for whilst my Lord Mohun talked to me, Hill run me through.

Mr. Att. G. At that time, when those Words were spoke at Supper, that he designed to be the Death of Mountford, was my Lord present?

Powell. Yes my Lord Mohun was present, but he was talking to Colonel Tredenham.

Mr. Att. G. Did my Lord Mohun say any thing to what Hill said?

Powell. I did not hear him make any Answer to it at all.

Mr. Att. G. Do you know any thing else in relation to this Fact?

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Powell

Powell. Nothing else but that Captain Hill did give a Letter to be delivered to Mrs. *Bracegirdle*, but I know not whether it was delivered or not, and he often told me he would marry her with all his Heart.

Mr. Att. G. You say you had that Discourse with *Mountford*, when he lay a Dying.

Powell. It was about four a Clock, and he died about One.

Mr. Att. G. Was there any thing said about my Lord *Mobun* at that time?

Powell. Nothing but that my Lord *Mobun* was talking to him, whilst the other ran him through.

L. H. Stew. If I understand you aright, you say nothing against my Lord *Mobun*, but his being by one time at Supper when *Hill* said some Words about *Mountford*; and then the other thing you say is what *Mountford* told you after he was Wounded: that my Lord was Talking to him, when *Hill* gave him the Wound.

Powell. Yes, My Lord, That is all that I heard.

L. H. Stew. Has your Lordship any thing to say to this Witness?

L. Mobun. No, my Lord.

Mr. Att. G. The next Witness that we shall desire to call is Mrs. *Knight*.

Who was S W O R N.

Mrs. Knight. I have nothing to say to my Lord *Mobun*; but what I have to say, is to Mr. *Hill*. About 4 days before Mr. *Mountford* was Killed, Mr. *Hill* came to me, and spoke to me about Mrs. *Bracegirdle*: He told me he was satisfied she hated him. I told him I did not believe she hated any body, or loved any Body: Yes, he said, she did love some body, but he had thought of a way to be even with that Body. Upon the Wednesday Night before Mr. *Mountford* was killed, he came to me as I was coming out of the Dressing Room; saith he, Mrs. *Knight* let me speak a Word with you, says he, you are very great with Mrs. *Bracegirdle*, and I desire you to be so kind, as to speak to her for me, and I would beg of you if you would give me leave to give her this Letter from me: No, said I, Mr. *Hill*, I beg your Pardon; you say she hateth you, and if she hateth you, she will not love any body that speaketh for you; and I am not fond of creating my self Enemies in the House, knowing I have some already. What Enemies, saith Mr. *Hill*, *Mountford* do you mean? And then repeating a great Oath, I shall find a way with him speedily.

L. H. Stew. A way, with what?

Mrs. Knight. A way with him speedily, *Hill* said it of Mr. *Mountford*.

L. H. Stew. What do you call this Witness for, Mr. Attorney, what use do you make of her Evidence against my Lord *Mobun*?

Mr. Att. G. My Lord, the use that we would make of these Witnesses is to give an Account of the whole Fact from the Beginning to the End, *Hill's* Malice, and what was the Occasion of it, his Design in coming there that Night, and what he did, and to leave it to your Lordships, to judge what influence this will have, how far it will affect my Lord *Mobun*. The next Witness is Mrs. *Sandys*.

L. H. Stew. What is this Womans Name?

Mr. Att. G. Mrs. *Elizabeth Sandys*.

She was S W O R N.

Mr. Att. G. Mrs. *Sandys*, give my Lords an Account, whether you were present with my

Lord *Mobun* and Mr. *Hill* at the Tavern that day, that Mr. *Mountford* was killed, and what passed there.

Sandys. I Dined with my Lord *Mobun* and Captain *Hill*, at the *Three Tuns* in *Shandois-street*, and there arose a Discourse about Mrs. *Bracegirdle* and *Hill*, and my Lord *Mobun* asked me, if I thought *Mountford* had lay with her or no. I said I could not tell; presently after says my Lord *Mobun*, it will cost *Hill* 50 Guineas this Design. Saith Mr. *Hill*, if the Villain offers to resist I will Stab him; saith my Lord *Mobun*, I will stand by my Friend. When this was done, Mr. *Hill* desired Mr. *Brough* to borrow a Case of Pistols of Captain *Leister*, and he said he would not borrow them himself, for he doubted, if he knew of the Design he would not lend them. When that was done, Captain *Hill* told me had a Coach and Six Horses in *Witch Street*, to seize Mrs. *Bracegirdle*, and carry her away into the Country; and my Lord *Mobun* said, he would stand by his Friend: And when my Lord *Mobun* went away, *Hill* said to him; my Lord, if you be not there by Six a Clock, I am ruined. Saith my Lord *Mobun*, upon my Word and Honour I will be at the Play-House by Six.

L. H. Stew. My Lord *Mobun*, have you any thing to say to that Witness?

L. Mobun. Yes, my Lord, I desire to have her asked, whether she is a Maid or a married Woman.

L. H. Stew. You hear the Question, but I do not know what use my Lord will make of it.

Mr. Att. Gen. You can easily answer, whether you are married or unmarried.

L. H. Stew. That Question is very fair; are you a married Woman, or a single Woman?

Sandys. I am a single Woman, my Lord.

Mr. Att. Gen. Pray Mrs. *Sandys* repeat the Words that my Lord *Mobun* said, when *Hill* said if the Villain resisted he would Stab him.

Sandys. My Lord *Mobun* said nothing in the World, but that he would stand by his Friend.

L. H. Stew. Have you any further Questions, Mr. Attorney, to ask this Witness?

Mr. Att. Gen. I have nothing more to ask her my Lord.

L. H. Stew. What say you my Lord *Mobun*; would you ask her any thing else?

L. Mobun. No, my Lord.

L. H. Stew. Then withdraw.

(Which she did.)

Mr. Att. Gen. The next Witness we call is Mr. *Rogers*.

(Who was sworn.)

L. H. Stew. What is this Witnesses Name?

Mr. Att. Gen. *Rogers*, my Lord.

L. H. Stew. What is his Christian Name?

Mr. Att. Gen. *John*. If your Lordships please to remember, that the last Witness Mrs. *Sandys* said, That Mr. *Hill* desired my Lord *Mobun*, not to fail of being at the Play-House by Six a Clock, and that he was undone if he did not come; and my Lord promised upon his Word and Honour that he would come: Now we call this Witness to prove, that they met at the Play-House according to the Appointment on the 9th of December.

Rogers. My Lord, all that I know of this matter was, That my Lord *Mobun* and Captain *Hill* were at the Play-House that Night, and that which made me take particular Notice of their being then at the Play-House, tho' they had been

been frequently there before together, was, that Captain Hill had my Lord Mohun's Coat on, and my Lord Mohun had Captain Hill's Coat on.

Mr. Att. Gen. Did you observe any thing else, when they were at the Play-House?

Rogers. Nothing but only some Words that passed between Captain Hill and my Lord Mohun, when I went to ask them for the overplus of the Money for coming in, because they came out of the Pit upon the Stage; he said he would not give it me, but if I brought any of our Masters, he would slit their Noses, or something to that Effect.

Rogers. I asked them for Money, that they ought to pay more than the rest that were in the Pit, because they came upon the Stage, and they would not give it me, but he said if I brought any of our Masters, he would slit their Noses, or cut their Faces, or to that Effect.

L. H. Stew. My Lord, will your Lordship ask him any Questions?

L. Mohun. No my Lord.

L. H. Stew. Call another Witness then.

Mr. Att. Gen. My Lords, with your Lordships Favour, the next Witnesses that we shall call, is the Coach-man, William Dixon.

(Who was sworn.)

Mr. Att. Gen. Mr. Dixon, do you remember the Day when Mr. Mountford was killed?

Dixon. Yes, Sir.

Mr. Att. Gen. Pray acquaint my Lords, what Persons you carryed in your Coach that Day, whether you carryed my Lord Mohun and Mr. Hill, and to what place, and where you waited for them.

Dixon. If it please your Lordships, Captain Hill and my Lord Mohun came in a Hackney Coach to my Gate, where I live, and I was just a going to set my Coaches into the Street for Hyre: They Bargained with me for Six Horses, and I was to have Thirty Shillings to set them down at Totteridge on this side Barnet. I ask'd them whether they would have me bring all the Six Horses with the Coach. No they said, a pair would serve to the Play-House, and the other four should stand at the Pounds end. So I went accordingly to the place appointed, over against the Horse-Tavern in Drury Lane, and a Foot-man came, and Mr. Hill and he bid me drive down lower. So I drove to my Lord of Clare's Door, or thereabouts; and there was some Soldiers that would have had me go in, and Smoak and Drink with them: I told them, I did never Smoak, and I did not care for drinking any thing at that time. With that, my Lord Mohun and Mr. Hill came into the Coach, and as they bid me, I carry'd them into Norfolk-street, below the Watch house that stood there; they bid me turn about, and stand there; and then they went to the White-Horse-Tavern, so I did turn about, and stay'd as they bid me, and they tarry'd a pretty while before they came again, and then they bid me drive back to the place from whence I came, so I drove into Drury lane, and they bid me stop next to my Lord Craven's House, this was about Ten a Clock, and it being so late, I went Home, and sent a Postillion down, to take care of the Coach, so that what passed afterwards, I cannot tell.

L. H. Stew. What Day or Night, was all this you speak of?

Dixon. Truly my Lord, I cannot tell what Day it was, it was in December, as I take it, the

9th, and it was Friday I believe, I do not know justly.

L. H. Stew. Did you hear of the Death of Mr. Mountford?

Dixon. Yes, I did.

L. H. Stew. Was it the same Day that you heard Mr. Mountford was killed.

Dixon. No, I did not hear it till the next Morning.

Mr. Att. G. You say, you went with my Lord Mohun and Mr. Hill into Norfolk-street, and there you stayed for them, whilst they went elsewhere.

Dixon. Yes, I did so.

Mr. Att. G. Do you know to what Houses they went?

Dixon. They went to the White Horse-Tavern, to the hithermost House on this side the Strand, and they went below to a Door on this side of a House that is not finished yet.

Mr. Att. G. Did you hear them use any Expressions there?

Dixon. I heard Hill say to my Lord Mohun, I think there is a Man and a Maid talking, it was at the Corner House; saith Hill, we are Betrayed, Damn me saith he, my Lord, let us go and thresh him.

Mr. Att. Gen. What did they do then?

Dixon. I did see them do nothing.

Mr. Att. G. Whither did you carry them from thence?

Dixon. To the place from whence they came, in Drury-lane.

L. H. Stew. Will your Lordship say any thing to this Man?

L. Mohun. I desire he may be asked, whether he had not Orders to go out of Town with us, as soon as Mrs. Bracegirdle was put into the Coach.

Dixon. If it please you, Sir, I had Order thus, that when we were to go out of Town, I must drive down into the Strand, and then round about any way that was readiest and clearest to get to the Pound, that Order I had, and no other Order I had.

L. H. Stew. Who is your next Witness?

Mr. Att. Gen. My Lords, the next Witness we shall call, will give you an Account what was done in Drury-lane, upon their endeavouring to carry her away, and for that we have here Mrs. Bracegirdle her self.

L. H. Stew. What is this Gentlewoman's Name?

Mr. Att. G. Mrs. Ann Bracegirdle.

(Then she was sworn.)

Mr. Att. Gen. Mrs. Bracegirdle, Pray give my Lords an account of the whole of your Knowledge of the Attempt that was made upon you in Drury lane, and what followed upon it.

Mrs. Bracegirdle. My Lord, I was in Prince's-street at Supper at Mr. Page's, and at ten a Clock at Night, Mr. Page went Home with me; and coming down Drury-lane, there stood a Coach by my Lord Craven's Door, and the Boot of the Coach was down, and a great many Men stood by it; and just as I came to the Place where the Coach stood, two Soldiers came and pulled me from Mr. Page, and four or five more came up to them, and they knocked my Mother down almost, for my Mother and my Brother were with me. My Mother recovered, and came and hung about my Neck, so that they could not get me into the Coach, and Mr. Page went to call Company to rescue me. Then Mr. Hill came with his Sword drawn, and struck at Mr.

Page and my Mother; and when they could not get me into the Coach, because Company came in, he said he would see me Home, and he led me by one Hand, and my Mother by the other. And when we came Home, he pulled Mr. Page by the Sleeve, and said, Sir, I would speak with you.

Mr. Att. G. Pray Mrs. Bracegirdle, did you see any Body in the Coach when they pulled you to it?

Mrs. Bracegirdle. Yes, my Lord Mohun was in the Coach; when they pulled me to the Coach, I saw my Lord Mohun in the Coach. And when we came Home, Hill pulled Mr. Page by the Sleeve, and he said he would speak with him. As they led me along Drury-lane, my Lord Mohun came out of the Coach, and followed us, and all the Soldiers followed them, but they were dismissed, and, as I said, when we came to our Lodging, then Hill pulled Mr. Page by the Sleeve, and said, he would speak with him. Saith Mr. Page, Mr. Hill, another time will do, to Morrow will serve; with that, when I was within Doors, Mr. Page was pulled into the House, and Mr. Hill walked up and down in the Street with his Sword drawn. He had his Sword drawn when he came along with me.

Mr. Att. Gen. Did you observe him to say any thing whilst he was with you?

Mrs. Bracegirdle. As I was going down the Hill he said, as he led me, he would be revenged.

Mr. Att. Gen. Did he name of whom he would be revenged?

Mrs. Bracegirdle. He did not name of whom then, but when I was in the House, several Persons went to the Door, and afterwards Mrs. Brown went to the Door, and spoke to them, and asked them what they staid and walked there for; at last, they said, they staid to be revenged of Mr. Mountford, and then Mrs. Brown came in to me, and told me of it.

L. H. Stew. Who said that?

Mrs. Bracegirdle. Mr. Hill.

Mr. Att. Gen. Were my Lord Mohun and Mr. Hill both together when that was said, that they staid to be revenged of Mr. Mountford?

Mrs. Bracegirdle. Yes they were. And when Mrs. Brown came in and told me, I sent my Brother and the Maid, and all the People we could, out of the House to Mrs. Mountford, to desire her to send, if she knew where her Husband was, to tell him of it, and she did. And when they came in a Doors again, I went to the Door, and the Doors were shut, and I listened to hear if they were there still, and my Lord Mohun and Mr. Hill were walking up and down the Street; and by and by, the Watch came up to them, and when the Watch came, they said, Gentlemen, Why do you walk with your Swords drawn? Says my Lord Mohun, I am a Peer of England, touch me if you dare.

L. H. Stew. Repeat that again, for I could not well hear you: Do you speak of what you heard from Mrs. Brown, or what you observed your self?

Mrs. Bracegirdle. My Lord, I was within Doors, but I was listening at the Door, and heard this my self; they came up to them, and said, Gentlemen, Why do you walk with your Swords drawn?

L. H. Stew. Who asked that Question?

Mrs. Bracegirdle. The Watch, and says my Lord Mohun, I am a Peer of England, touch me

if you dare. Then the Watch left them, and they went away, and a little after there was a Cry of Murder, and that is all that I know, my Lord.

L. Mohun. My Lord, I desire this Witness may be asked, how long after this Passage that she speaketh of, was it that she heard Murder cried in the Street.

L. H. Stew. You hear the Question, Mrs. Bracegirdle, What say you to it?

Mrs. Bracegirdle. My Lord, I believe it was about a quarter of an Hour after, to the best of my Memory.

L. H. Stew. What do you mean, a quarter of an Hour after, the Watch asked the Question?

Mrs. Bracegirdle. Yes, my Lord.

Then the Earl of Mulgrave stood up.

L. H. Stew. My Lord Mulgrave.

E. of Mulgrave. My Lord, I desire to ask this Witness a Question. If I heard her aright, I think she said, they threaten'd to be revenged of Mr. Mountford, I desire to know of her, whether my Lord Mohun did threaten him.

Mrs. Bracegirdle. I do not know indeed; but when Mrs. Brown asked them what they staid there for? They said to be revenged of Mr. Mountford. I did not hear them my self, but Mrs. Browne came in and told me so.

Mr. Att. Gen. Mrs. Bracegirdle, I think, if I did not mistake, you said, when the Watch came came up, they asked them, why their Swords were drawn?

Mrs. Bracegirdle. Yes, and my Lord Mohun made answer, he was a Peer of England, and bid them touch him if they durst, and they went away.

Mr. Att. Gen. My Lord, the next Witness that we call, shall be Mr. Gawen Page, at whose House Mrs. Bracegirdle supped that Night.

(He was sworn.)

Mr. Att. Gen. Mr. Page, I suppose you remember the Night, when Mrs. Bracegirdle supped at your House.

Mr. Page. Yes, my Lord.

Mr. Att. Gen. I pray give an account of your whole Knowledge about this Matter, what happened that Night.

Mr. Page. About Ten a Clock at Night, on Friday the Ninth of December last, going down Drury-lane, with Mrs. Bracegirdle, whom I led just against my Lord Craven's House.

L. H. Stew. Pray, Sir, speak out, and tell us what time it was.

Mr. Page. About Ten a Clock at Night, on Friday the ninth of December last, going down Drury-lane, and leading Mrs. Bracegirdle, right against my Lord Craven's Door, stood a Coach, where two Soldiers pressed in between me and Mrs. Bracegirdle, and parted us: I asked what that was for? But they took hold of Mrs. Bracegirdle, and immediately they would have forced her into the Coach; Captain Hill, whom I saw there with his Sword drawn, made several Blows at me.

L. H. Stew. Who would have forced her into the Coach?

Mr. Page. The Soldiers would.

Mr. Att. Gen. Pray go on, Sir, what follow'd after that?

Mr. Page. I say, Captain Hill made several Blows at me, and cry'd, you Villain, Stand. I received several of them upon my Cane, but there was none that hurt me; then I got help, and they were prevented of carrying Mrs. Bracegirdle away. My Lord Mohun was in the Coach; I saw him in the Coach.

Mr. Att. Gen. Did you see any Arms in the Coach?

Mr. Page. I saw no Arms, but I saw a Bundle in the Coach, tho' I could not tell what it was; and there was one in the Coach, that I saw was my Lord Mohun. So when we had got Help, we went down the Lane to Convey her Home, and Captain Hill was with us, and my Lord Mohun followed at a distance. Captain Hill said to the Soldiers, *Be gone, I have nothing more to do with you now.* When we came to the House, and Mrs. Bracegirdle was entring in, Captain Hill pull'd me by the Sleeve, and said he would speak with me. Said I, to Night is not a fit time, to morrow is better, therefore pray stay till to morrow Morning. But said he, *God Damn me, you will not go home to Night.*

L. H. Stew. You speak so low, that I cannot tell what you say; I did not hear that last that you said.

Mr. Page. My Lord, I say, when Captain Hill pull'd me by the Sleeve, and said he would speak with me, I told him, that Night was not a fit time, to morrow would do better: Well, said he, *To Morrow then; but, God Damn me, you will not go out to Night:* I went in a Doors, and there my Lord Mohun and he staid for an Hour and a half, as I was told; I saw them not my self: But Mrs. Browne came in and said, that they said, they waited to be revenged.

Mr. Att. Gen. Whom did they mean, your self that they would be revenged of?

Mr. Page. Mrs. Browne said, they waited for Mr. Mountford.

Mr. Att. Gen. Did you continue in that House till after the Murder was committed?

Mr. Page. Yes, Sir, I did.

L. H. Stew. How long after you came into the House was the Fact done?

Mr. Page. About an Hour and an half.

L. H. Stew. Did you your self hear or observe any thing to be said or done, from the time you came into the House, to the time the Fact was committed?

Mr. Page. No, my Lord, I was in the Back-Room of the House.

Mr. Att. Gen. Pray, Mr. Page, did you see Mr. Mountford after he was wounded?

Mr. Page. Yes, I did.

Mr. Att. Gen. Then give my Lords an account what passed at that Visir.

Mr. Page. Upon the Out-cry of Murder, I came into the Street, where I found my Lord Mohun just surrendring himself to the Constable; and immediately I went to Mr. Mountford's House, and I found him lying all along in his Blood upon the Floor; he seeing me, desired me to lift him up, which I did, and thinking he had been dying, I ask'd him whether he knew me. He said Yes. Said I to him, Had you time to draw your Sword in your Defence? He said, *He was barbarously run through before he could draw it.*

Mr. Att. Gen. Is this all you have to say, Sir?

Mr. Page. Yes.

L. H. Stew. Will your Lordship ask this Witness any Questions?

L. Mohun. My Lord, I desire he may be ask'd whether my Sword was drawn when I surrendred my self to the Constable.

Mr. Page. No my Lord, your Sword was in the Scabbard when you surrendred your self, but I cannot say that your Sword was drawn before, or not.

Mr. Att. Gen. The next Witness that we desire to call, is Mrs. Page.

(She was sworn.)

L. H. Stew. What is the Name of this Witness?

Mr. Att. Gen. Mrs. Mary Page. Pray Mrs. Page, do you remember the night when Mrs. Bracegirdle supped at your House, and Mr. Mountford was killed? Acquaint my Lords with all you did observe that night.

Mrs. Page. Mrs. Bracegirdle supped at my Lodging, and my Husband went home with her, and staying something longer than ordinary, I sent my Servant to know what was the reason of it: He brought me word back, that my Husband had like to have been murdered, and Mrs. Bracegirdle carried away. With that I went down my self towards Mrs. Bracegirdle's Lodgings, and there I found my Lord Mohun and Mr. Hill walking, Mr. Hill with his Sword drawn before Mrs. Bracegirdle's Door; my Lord Mohun's not. So I went in, into the House; and after I had staid a while there, Mrs. Browne came out to them, and asked them why they staid there? They made answer, they staid for Mr. Mountford.

Mr. Att. Gen. Who made that Answer?

Mrs. Page. Mr. Hill.

Mr. Att. Gen. Who was with Mr. Hill at that time?

Mrs. Page. My Lord Mohun.

Mr. Att. Gen. Was there any body besides those two, that you observ'd?

Mrs. Page. No, there was no body else that I saw.

Mr. Att. Gen. Were their Swords drawn?

Mrs. Page. Mr. Hill's then was, my Lord Mohun's at that present was not: But Mrs. Bracegirdle hearing that they waited for Mr. Mountford, desired me to go over to Mrs. Mountford's House, and speak to her to send to her Husband, and desire him to keep where he was, or come home with a good Guard. Whilst I was telling Mrs. Mountford what I was desired to tell her—But I should have told your Lordships, that when I came out to go to Mrs. Mountford, my Lord Mohun had then his Sword drawn.

Mr. Att. Gen. Were they there when you went out of Mrs. Bracegirdle's Lodgings?

Mrs. Page. Yes, they were.

Mr. Att. Gen. And are you sure, that at that time when you went out of Mrs. Bracegirdle's House, my Lord Mohun had his Sword drawn?

Mrs. Page. I am sure of it, that when I went out, my Lord Mohun had then his Sword drawn; that was the second time.

L. H. Stew. Out of whose House was that you went?

Mrs. Page. Out of Mrs. Bracegirdle's Lodgings.

L. H. Stew. Where were they when you saw his Sword drawn?

Mrs. Page. They were walking before Mrs. Bracegirdle's Door, from one end of the Street to the other.

Mr. Att. Gen. What Street is that?

Mrs. Page. Howard-Street.

Mr. Att. Gen. Pray describe to my Lords that Street.

Mrs. Page. They that stand in that Street, can see who goeth down to Mr. Mountford's House, and who goeth up Surry-Street.

Mr. Att. Gen. Well now go on.

Mrs.

Mrs. Page. Whilst I was desiring Mrs. Mountford to send away to her Husband, I heard Murder cry'd out; immediately I open'd Mr. Mountford's Door, and he came in, and fell with his Arms round about my Neck to support himself, I suppose, and he said, *Hill* had Murder'd him. I helped him as far as the Parlor Door, and there down he fell. I went up the Street and called out Murder, and my Lord Mohun came to me, and bid me take notice, he had no hand in the Murder, for his Sword was not Drawn. I told him, I could not tell that, for to my knowledge he had been in Mr. Hill's Company with his naked Sword just before.

Mr. Att. Gen. Call Mrs. Browne.

L. H. Steward. You have nothing to say to that Witness my Lord, have you?

L. Mohun. No, my Lord.

Mr. Att. Gen. Is this all you have to say, Mrs. Page?

Mrs. Page. After this, my Lord Mohun resign'd himself up to the Constable, the Constable standing by me, I bid him secure my Lord Mohun, which he did.

L. Mohun. My Lord, I desire to ask this Witness, whether I Surrendred my self, or made Opposition, or offered to run away?

Mrs. Page. No my Lord, the Constable laid hold on you.

L. H. Steward. What Answer do you make to my Lord's Question?

Mrs. Page. I say, my Lord, the Constable laid hold upon my Lord Mohun.

L. Mohun. I desire to ask her, whether I did not Surrender my self?

Mrs. Page. Not till I had desir'd the Constable to secure your Lordship.

L. Mohun. Did I make any Opposition, or offer to run away?

Mrs. Page. No, for the Constable presently took hold of your Lordship.

L. Mohun. I desire she may be asked whether Hill run away.

Mrs. Page. That I know not; I suppose he was gone away out of the Street before I came forth.

Mr. Att. Gen. Swear Mrs. Browne.

Which was done.

Mr. Att. Gen. Mrs. Browne, you are upon your Oath, pray declare to my Lords what you know happen'd upon that Night that Mr. Mountford was Killed.

Mrs. Browne. If it please your Lordships, when Mrs. Bracegirdle came Home, I found her Crying; I asked her what was the matter? She said, my Lord Mohun and Mr. Hill, had run her into a Coach, with six or seven Soldiers, and lifted her into the Coach, and she said they were at the Door. Upon which, I went to the Door, and saw my Lord Mohun and Mr. Hill walking along. Said I, are you the Gentlemen that have used Mrs. Bracegirdle in this manner? my Lord Mohun answered, Madam, said he, *I protected her; if it had not been for me, the Rabble would have torn her a pieces; for if we had a mind to carry her away, we had six or seven Pistols Charged in the Coach, and could easily have suppressed the Tumult.*

L. H. Steward. I do not hear what the Witness saith, she speaketh so low.

Mrs. Browne. My Lord Mohun said, they had Six or Seven Pistols in the Coach, and could easily have suppressed the Rabble, if they would have carried her away; but he had no Design

upon her for his own part, but only to serve his Friend; and that Mr. Hill's design was to take her out of Town, and keep her a Week, and see if he could perswade her to marry him; and saith Mr. Hill, *I shall light on this Mountford.* Why said I to him, What hurt hath Mr. Mountford done you? Saith he, *I have been Abused, and I will be Revenged.*

L. H. Steward. That was Hill that said so.

Mrs. Browne. Yes. So I went and told Mrs. Mountford of it.

Mr. Att. Gen. Pray acquaint my Lords what my Lord Mohun said to you about this Matter.

Mrs. Browne. My Lord Mohun said, he protected her, for if it had not been for him, the Mob had torn her in pieces; but if they had a mind to carry her off, they could easily have suppressed the Mob, for they had six or seven Pistols in the Coach: But saith my Lord, *I had no design upon her my self, but only to serve my Friend.* So saith Mr. Hill, *I shall light upon this Mountford.* Why, said I, what hurt hath Mr. Mountford done you? Saith he, *I have been Abused, and I will have my Revenge.* So I went and told Mrs. Mountford of it. About half an Hour after, or more, Mr. Mountford came down, and when he came down, I saw him a little before he came to them, and went to him, and would have fain have spoke to him, but he would not stay to let me speak what I had to say to him, but going on, presently he met my Lord Mohun. Saith he, *Your Humble Servant, my Lord.* Saith my Lord again, *Your Servant Mr. Mountford.* Saith my Lord, *I have a great Respect for you, Mr. Mountford, and would have no Difference between us; but there is a thing fallen out between Mr. Hill and Mrs. Bracegirdle.* Saith Mr. Mountford, *My Lord, has my Wife disoblighd your Lordship? if she has, she shall ask your Pardon; but as for Mrs. Bracegirdle, she is no concern of mine; and I hope your Lordship will not vindicate such an ill Man as Mr. Hill in such a matter as this.* Upon that I heard Mr. Hill bid Mr. Mountford draw, Mr. Mountford said, *that I will;* and drew his Sword; but whether he received his Wound before he drew his Sword, or after, I cannot tell.

L. H. Steward. Speak that last again.

Mrs. Browne. Mr. Mountford and my Lord met, saith Mr. Mountford, your Servant; my Lord; saith my Lord, Your Servant Mr. Mountford, I have a great respect for you, and would have no difference be between us; but here has been a thing fallen out between Mrs. Bracegirdle and Mr. Hill; saith Mr. Mountford presently again, Has my Wife disoblighd your Lordship? If she has, she shall ask your Pardon. But Mrs. Bracegirdle is no concern of mine: I know nothing of this matter, I come here by accident.

Mr. Att. Gen. Who said they came there by accident?

Mrs. Browne. Mr. Mountford said, I know nothing of this matter, I come here by accident. But, I hope your Lordship will not vindicate Hill in such Actions as these are: Upon that, I heard Mr. Hill bid Mr. Mountford draw, Mr. Mountford said he would, and drew his Sword; but whether he received his Wound before or after, I cannot tell; it was in the Night.

Then the Lord Godolphin stood up.

L. H. Steward. My Lord Godolphin.

L. Godolphin. My Lord Steward, I desire this Witness may be asked, whether my Lord Mohun's Sword was drawn when he talked with Mountford, because the Council opened it before, that the Watch

Watch came to them, and saw them with their Swords drawn when they were walking in the Street.

L. H. Steward. Mrs. you heard my Lord's Question: Was my Lord Mohun's Sword drawn whilst he talked with Mountford, or no?

Mrs. Browne. I do not remember I did see my Lord Mohun's Sword drawn.

Mr. Att. Gen. Were they near together?

Mrs. Browne. They were near together.

L. Mohun. I desire she may be asked whether I went up the Street to meet Mr. Mountford, or he came down to me?

L. H. Steward. You heard the Question, Mistress, what say you?

Mrs. Browne. Mr. Mountford came down to him.

L. Mohun. I desire she may be asked whether she did not go to hinder Mr. Mountford from coming that way?

Mrs. Browne. Yes, I did go to speak to him, but he did not hear me speak, or did not hearken to me; I took him by the Hand, and told him I would speak with him, but he did not hear me, but went on.

Mr. Att. Gen. You did not tell him upon what account you would have spoke with him?

Mrs. Browne. No, I had no time.

L. Mohun. I desire she may be asked, whether Mr. Mountford's Sword was within his Arm, or by his Side.

Mrs. Browne. I believe it was by his Side.

L. Mohun. I desire she may be asked one Question more, whether he could not have went home, without coming to Mr. Hill and me?

Mrs. Browne. He did come out of his way, his way was not by my House; he did come down the Street towards them.

L. Mohun. I desire your Lordships to take notice, that he came out of his way to me. I desire to ask her: Did he come as if he was going to his own House or yours?

Mrs. Browne. As if he was coming to mine.

L. Mohun. I desire to ask her, whether I had any hand in killing Mr. Mountford, or went to hold him, or meddled with him?

Mrs. Browne. Not that I did see.

L. H. Steward. Have you any more to say to is Witness?

Mr. Att. Gen. No, my Lord.

L. H. Steward. Nor your Lordship?

L. Mohun. No, my Lord.

Mr. Att. Gen. Then the next Witness we desire to call, is Richard Row.

Who was sworn.

Mr. Att. Gen. Richard Row, where do you live?

Row. In Surry-street.

L. H. Steward. Where doth he Live, saith he?

Mr. Att. Gen. In Surry-Street, my Lord. Pray how near is that to the Place where Mr. Mountford was kill'd?

Row. About ten or twelve Pole.

Mr. Att. Gen. Did you observe my Lord Mohun and Mr. Hill that Night, and where were they?

Row. All that I can say to the matter in that Case is, I was in my own House about a quarter after Ten a Clock, and I heard a noise in the Street, and I went out, and saw two Gentlemen and two Lads about the middle of the Channel; one of the Lads had one of the Gentlemen by the Arm, just by the Channel, and said, Pray my Lord, good my Lord, don't do it, alter your Resolution.

There was an Answer made, that they would be revenged that Night, or to Morrow.

Mr. Att. Gen. Do you know who the Boy was that used that Expression?

Row. No, my Lord, it was very dark.

Mr. Att. Gen. Do you not know neither who returned the Answer?

Row. No indeed.

Mr. Att. Gen. But you are sure you heard those words pass?

Row. Yes indeed, and I went to the Door afterwards, whilst they went to the upper end of the Street and returned again; and I saw Captain Hill's Boy following him. My Lord, I knew Capt. Hill, though he was not in the Cloaths he formerly used to come to my House in, and the Boy I knew to be his Boy.

Mr. Att. Gen. Were those Persons together that you heard speaking so?

Row. Yes, all four together, in a Confusion they seemed to be, for they were Pushing to and again, and the Boy had hold of one of the Gentleman's Arms when he bid him alter his Resolution.

Mr. Att. Gen. Repeat those Words again that you heard him say.

Row. Pray my Lord, good my Lord, do not do it, alter your Resolution.

L. H. Steward. Has your Lordship any thing to ask this Witness?

L. Mohun. No, my Lord.

Row. I spoke of this same afterwards, and so they have brought me here to give Evidence: That is all that I can say. I cannot Swear to my Lord Mohun, that he was one, I do not know that ever I saw him to my knowledge in my Life.

E. of Mulgrave. My Lord Steward, I desire he may be asked, whether he knoweth who that Boy was that made that Answer.

Row. There was no answer made by any Boy, but begging and praying, That my Lord would not do it.

E. of Mulgrave. Do you know who that Boy was?

Row. No, I do not know what Boy it was. But when I heard Mr. Mountford was Killed, and my Lord Mohun was concerned, I told what I had heard and seen, and so they bring me here to Evidence it. That is all I can say to the matter.

Mr. Att. Gen. My Lord, we desire next to call some of the Watch, and shall begin with Merry.

Who was sworn.

L. H. Steward. What is his Name?

Mr. Att. Gen. William Merry. Mr. Merry, I think you are Beadle of the Parish.

Merry. Yes, I am.

Mr. Att. Gen. Pray acquaint my Lords what you observed that Night Mr. Mountford was killed, when you saw my Lord Mohun and Mr. Hill, the first time and the second time, when my Lord Mohun was Taken.

Merry. When I first came down the Street, walking the Rounds between Eleven and Twelve a Clock, as I turned at the Corner out of Surry-street into Howard-Street, I saw my Lord Mohun and Capt. Hill Walking, that is, upon the Paved Stones; my Lord was walking towards me, and I asked, Who comes there? Saith my Lord, a Friend. Said I, What is the meaning of your Swords being Drawn? Return your Swords, and stand off. With that, he returned his Sword immediately. Saith he, I am a Peer of the Land; here, will you have my Sword? and he proffered me

me his Sword; but the Constable was not there then, and I did not take his Sword; but, said I, God Bless your Honour my Lord, I know not what you are, but I hope you are doing no harm; No, saith he. With that, the Constable came immediately, and he proffered the same to him; there were two Candles in some Maids, or Womens hands at a Door hard by, and I went to ask them if they knew the meaning of it; and there being a Neighbours Man leaning with a Bottle and a Glass against the Wall, whom I knew. I think they told me one of them had a Sweet-heart there; and my Lord said, he was drinking a Lady's Health, and as soon as his Bottle was out, he would be gone. That is all I heard of the matter.

Mr. Att. Gen. Was Mr. Hill there?

Merry. Yes, he was.

Mr. Att. Gen. Was his Sword Drawn?

Merry. Yes, his Sword was drawn, and I asked what made that Gentleman with his Sword Drawn? and my Lord Mohun said, he had lost his Scabbard; but seeing this Neighbour's Man stand there, I went to the House.

Mr. Att. Gen. Were both their Swords drawn at first?

Merry. Both their Swords were Drawn when I came first into the Street; but my Lord put up his Sword, and the other continued Drawn, by reason as they said, he had lost his Scabbard. And so seeing, as I said, my Neighbour's Man standing there, we went to that House to enquire if they knew what their Business was; we were not got into the House, I am sure not a Stone's cast within the House, but Murder was cry'd out, and we came back again, and my Master being nimbler of Foot than I, because he was a younger Man, came first into the Place, and seized my Lord before I came; how the Seizing was I do not know.

Mr. Att. Gen. Our next Witness is Thomas Fennell.

Who was Sworn.

Mr. Att. Gen. Fennell, you was one of the Watch that night when Mr. Mountford was Killed.

Fennell. Yes, Sir.

Mr. Att. Gen. Give my Lords an account what you observed that Night, in relation to my Lord Mohun and Mr. Hill.

Fennell. The Constable and his Watch going the Rounds, divided themselves into two parts; I went down Surrey-Street with one Party; the Constable he went down Strand-Lane with the other Party. We were four or five that came down Surrey-Street, and when we came down, my Lord Mohun and Capt. Hill's Swords were both Drawn; my Lord Mohun put up his Sword just as we came down.

L. H. Steward. Speak out Man, that my Lords may all hear you.

Fennell. I say, the Constable and his Party went down Strand-Lane, and another Party down Surrey-Street, four or five of us, and my Lord Mohun and Capt. Hill had both their Swords Drawn: When we came down, my Lord put up his Sword just as we came down, but the Constable not being come, I went and called him.

Mr. Att. Gen. You say both their Swords were Drawn when you came down.

Fennell. Yes, but my Lord put up his Sword just as we came down.

Mr. Att. Gen. What time of Night was that?

Fennell. It was between Eleven and Twelve.

Mr. Att. Gen. How long before the Murder was committed?

Fennell. A quarter of an Hour.

L. H. Steward. Do you not say, they put up their Swords as soon as you came down?

Fennell. My Lord Mohun put up his Sword, but Hill said he had never a Scabbard.

Mr. Att. Gen. Did you ask them why they had their Swords drawn at that time of Night?

Fennell. No, I went to call the Constable.

L. H. Steward. Have you any more to ask of this Witness?

Mr. Att. Gen. I have not my Lord.

L. H. Steward. Nor you my Lord?

L. Mohun. No, my Lord.

L. H. Steward. Pray go on then; whom do you produce next?

Mr. Att. Gen. Our next Witness is James Bassit. *Who was Sworn.*

Mr. Att. Gen. Were you one of the Watch that Night Mr. Mountford was Killed?

Bassit. Yes.

Mr. Att. Gen. Did you see my Lord Mohun and Capt. Hill that Night?

Bassit. Yes.

Mr. Att. Gen. Acquaint my Lords where it was, and in what manner you found them.

Bassit. In Howard-street; I came along with the Constable, and I walked before them that went down Surry-street with my Lanthorn, and there was my Lord Mohun with his Sword Drawn, and Captain Hill with his the like: We asked them, what they did there? They said they were drinking of a Bottle of Wine: Hill said to me, you may knock me down if you please: Nay, said I, we never use to knock any Gentlemen down, unless there be occasion; and then we went into Norfolk street to the Tavern to examine what they were, and what they were doing; and in the mean time the Murder was done.

Mr. Att. Gen. Did you not ask them why their Swords were drawn?

Bassit. Yes, I did.

Mr. Att. Gen. What did they say?

Bassit. Hill made answer that he had lost his Scabbard.

Mr. Att. Gen. What said my Lord Mohun?

Bassit. My Lord Mohun had put up his Sword by that time we came up to him: That is all I can say to it.

L. H. Steward. If you have nothing more to ask him, call another.

L. Mohun. My Lord I desire he may be asked whether he came with the Constable when I surrendered my self?

Bassit. Yes, and I took hold of your Sleeve, and you shook and quak'd and trembled, as if you would tear it to pieces.

L. Mohun. I desire he may be asked whether my Sword was in the Scabbard when I surrendered my self.

Bassit. Yes, it was, he surrendered it.

L. H. Steward. That was after the Murder was done.

Mr. Att. Gen. With your Lordship's Favour, I desire he may answer my Lord Mohun's first Question again, so as to be heard by your Lordships; What was that you were saying when my Lord surrendered himself?

Bassit. I took him by the Arm when he surrendered himself up.

Mr. Att. Gen. What then?

Bassit. Then he quaked, and I had him to the Round-House.

L. H. Steward.

L. H. Steward. Hear my Question, you say you took him by the Sleeve, when he surrendred himself; what do you mean by that? is it that he had surrendred himself before you laid hold on him, or afterwards?

Bassit. I took hold of his Arm, when he surrendred himself.

L. H. Steward. But was it before he surrendred himself to the Constable?

Bassit. No, it was afterwards, my Lord; to have him away.

L. H. Steward. Then you did see him surrender himself to the Constable?

Bassit. Yes, my Lord.

Mr. Att. Gen. Then call Mr. Charles Knowles; But he did not appear.

L. H. Steward. Whom do you call next, Sir?

Mr. Att. Gen. My Lords, we call'd Mr. Charles Knowles; but they say, he is not come, therefore with your Lordships favour, we will call Mrs. Brewer.

[Who was sworn.]

Mr. Att. Gen. Mrs. Brewer, I think, you live at the next Door to Mrs. Bracegirdle's Lodging?

Mrs. Brewer. Yes, I do so.

Mr. Att. Gen. Pray give my Lords an account what you saw and heard that Night Mr. Mountford was kill'd.

Mrs. Brewer. I was at Mrs. Bracegirdle's House, and I went to the door with them; and just as I went to the Door, my Lord Mohun came up to me; just as he came to the Door, Mr. Mountford came down the Street, and my Lord went to him, and imbraced him, and said Mr. Mountford, Your humble Servant, I am glad to see you. Who is this said Mr. Mountford, My Lord Mohun? Yes said my Lord. What makes your Lordship here at this time a night, saith Mr. Mountford? Saith my Lord again, I suppose Mr. Mountford you was sent for. Sent for, for what saith he? You have heard of the business of Mrs. Bracegirdle, I suppose, saith my Lord: No my Lord, saith he, I come by chance.

Mrs. Att. Gen. Who said that?

Mrs. Brewer. Mr. Mountford, Sir.

Mr. Att. Gen. Well, go on and speak aloud.

Mrs. Brewer. My Lord, Mr. Mountford.— And there she hesitated, and seemed to be in a Confusion.

Mr. Att. Gen. She is not used to such publick Examinations: If your Lordships will please to allow her to begin, because she is in some Confusion, she will be the better able to give you what account she can of this matter.

L. H. S. Let her recollect her self, and begin again.

Mrs. Brewer. When Mr. Mountford came down the Street, I stood at the Door, and my Lord Mohun was come to the Door, and my Lord Mohun went to him and said, Mr. Mountford, your Humble Servant, I am glad to see you, and Embraced him. Saith Mr. Mountford, Who is this, my Lord Mohun? Yes, saith he, it is. What makes your Lordship here at this time of night? saith my Lord Mohun, I suppose you are sent for Mr. Mountford. No indeed, said he, I came by chance. Saith my Lord, You have heard of the Business of Mrs. Bracegirdle. With that, after he had said this, Mr. Hill cometh up, and saith, Pray my Lord hold your Tongue, this is not a convenient time to discourse this Business, and would have drawn my Lord away. Saith Mr. Mountford, I am very sorry my Lord, to see that your Lordship should assist Capt.

Hill in so ill an Action as this; pray let me desire your Lordship to forbear. Upon this, as soon as he had said so, Mr. Hill came up and struck Mr. Mountford a Box on the Ear. Saith Mr. Mountford, Damme, what's that for? And with that, he whipped out his Sword and made a Pass at him, and I turned about and cry'd out Murder, Murder.

Mr. Att. Gen. But you say, you saw Hill draw his Sword, and make a Pass at him.

Mrs. Brewer. No, his Sword was drawn before; but he immediately after the Box on the Ear, made a Pass at him, and I turned about and cry'd Murder.

Mr. Att. Gen. Had Mr. Mountford his Sword drawn at that time?

Mrs. Brewer. No, he had not.

Mr. Att. Gen. Are you sure he had not?

Mrs. Brewer. Yes, I am sure he had not, for as soon as he struck the Blow, he made a Pass at him.

Mr. Att. Gen. Was my Lord present at that time?

Mrs. Brewer. He stood just by on the Right-hand.

Mr. Att. Gen. How near to them?

Mrs. Brewer. They were all close together as well as I could discern.

L. H. Stew. My Lord, have you any mind to ask this Witness any Questions?

L. Mohun. No, my Lord.

L. H. Stew. Have you done with her?

Mr. Att. Gen. Yes, my Lord. The next Witness we desire to call is Mr. Davenport, the Constable.

[Who was sworn.]

L. H. Stew. Well, what saith this Man?

Davenport. The Ninth of December last at Night, as I was walking my Rounds between Eleven and Twelve a Clock, I divided my Watch into two Parts, one was to go down one Street, and the other another, and coming into Howard-street, my Beadle happened to be there before me, and he had spied them as he told me, with their Swords drawn: As soon as I came up, my Lord Mohun very Civilly (his Sword not being then drawn) proffered to Surrender his Sword to me, and said, he was a Peer of the Realm. I asked the other Man what he did with his Sword drawn? and he made answer, he had lost his Scabbard in Drury-lane. With that I found them very Civil, and I heard some Women at the Door, and they said they were Serenading them with a Bottle of Wine. There was a Drawer there that I knew, who formerly lived overagainst me, and then lived at the White-Horse Tavern; so I left them, (finding them Civil) and went to the White-Horse Tavern to examin what the Business was; they told me they were there a Drinking, and before I had spoken three words almost to the Man of the House, the Watch was called, and when we came, Mr. Hill had made his Escape, and so I Secured my Lord Mohun.

Mr. Att. Gen. What was the occasion of calling the Watch?

Davenport. They cried out Murder in the Street; So I took my Lord Mohun and carried him to the Round-House, where we kept him all Night.

Mr. Att. Gen. I think you say, when you first came, my Lord Mohun's Sword was not Drawn.

Mr. Davenport. It was put up then, but

the Beadle said they were both drawn before.

Mr. Att. Gen. You did not see them so soon as your Beadle.

Davenport. No, he was there before me.

Mr. Att. Gen. Then acquaint my Lord what was done, after you had secured my Lord Mohun.

Davenport. After I had taken him, I carried him to the Round House, and when we came there, he asked me if Hill was taken? I said no; and said I, my Lord, this is a bad Misfortune you are happen'd into; and he said, *God Damn me, I am glad he is not taken, but I am sorry he has no more Money about him; I wish he had some of mine; and, I do not care a Farthing if I am hang'd for him.*

L. Mohun. My Lord, I desire he may be asked whether I offered to Fly?

Davenport. No, my Lord, I do not say you did, but you know my Lord, you said this to me.

L. H. Steward. But Mr. Davenport, did not my Lord Surrender himself to you?

Davenport. Yes my Lord, mighty Civilly.

Mr. Att. Gen. Did my Lord say any thing to you about changing of Coats?

Davenport. He said, they had changed Coats three or four several times that day, and at the same time he had Hill's Coat upon his Back; and I asked him if he knew where Hill's Lodging was, and he told me; and I went to his Lodging with my Watch; and when we came there, we searched the House, but did not find him there; but Captain Hill's Boy came in whilst we were there; so with that, I secured the Boy and searched him, and found Gunpowder and Ball about him; and I have Hill's Sword in the Court, and Mr. Mountford's and my Lord's.

L. Mohun. I desire he may be asked, whether Mountford's Sword was not broke in the Street, or whether he carried it away.

Davenport. I took up a piece my self, and a Servant Maid took up another in the Street.

L. Mohun. I desire he may be asked, whether Mr. Mountford's Sword when it was found, was in the Scabbord or not?

Davenport. No, it was not, I saw no Scabbord.

L. H. Steward. My Lord, you ask the Questions so fast, that we do not hear the Answers. Was not your first Question, whether Mountford's Sword was not Broken?

L. Mohun. Yes, my Lord.

L. H. Steward. What Answer giveth he to that?

Davenport. I do not know when it was Broken; but by the report of People that were there by, it was said, Mr. Mountford made a Pass, and at the first Pass, his Sword was Broken; and I went with a Lanthorn, and according as they said, I found a piece of a Sword, and I took it up my self.

L. H. Steward. What is your next Question, my Lord?

L. Mohun. I would ask him in what part of the Street he found the piece of the broken Sword.

L. H. Steward. You heard the Question, what say you?

Davenport. It was in the High-way in the Street.

L. H. Steward. My Lord Mohun, what do you mean by that Question?

L. Mohun. Whether it was in the middle of the Street towards Surry-street, or Norfolk-street, or

near Mrs. Bracegirdle's Lodging, or upon the Pavement?

Davenport. It was over against the Door where you stood.

L. Mohun. How far might it be from where I stood? I desire he may be asked that.

L. H. Steward. You hear my Lord's Question, answer it.

Davenport. He was walking up and down when I came to Take him; and I took the piece of the Sword up in the Highway; he was walking on the Pavement, the Broad-Stones.

L. H. Steward. Have you done with that Witness?

Mr. Att. Gen. Yes, my Lord. Is Mr. Charles Knowles come? *He did not appear.*

Mr. Att. Gen. Then we desire to call Mr. Bancroft the Chirurgeon, and Mr. Hunt.

L. H. Stew. Who do you examin first?

Mr. Att. Gen. We begin with Mr. Bancroft. *(Who was sworn.)*

Mr. Att. Gen. You attended upon Mr. Mountford, Mr. Bancroft, when he was wounded.

Bancroft. Yes, my Lord.

Mr. Att. Gen. Pray acquaint my Lords what you know of this matter.

Bancroft. My Lord, upon the ninth of December last at Night, between the Hours of twelve and one, I was knocked up to go to Mr. Mountford, whose Servant came for me, and told me he was a dying of a Wound he had received. So I came to his House, and found him very desperately wounded; it went in and out by his back-Bone, behind his left Side. I told him what he must expect, that he was a dead Man. I attended him that Night, till about four a Clock in the Morning, and then I took my leave of him, and went home: About eight a Clock in the Morning I came thither again, and met Mr. Hobbs there, and he was of the same Opinion. He lived till about one, and then he died.

Mr. Att. Gen. What Discourse had you with Mr. Mountford?

Mr. Bancroft. About ten a Clock I was sent for by the Constable to come to Hick's-Hall, to be examined there before the Justices; and being then with Mr. Mountford, and some Company being there, Mr. Powell (as I take it) was one; I said to Mr. Mountford, I suppose where I am going, I shall be asked some Questions about what you may have said to me, you are now upon the brink of Eternity, and pray answer me truly, who gave you this Wound, was it Mr. Hill, or my Lord Mohun? Said he, *My Lord Mohun offered me no Violence, but whilst I was talking with my Lord Mohun, Hill struck me with his Left-Hand, and with his Right Hand run me through before I could put my Hand to my Sword.*

Mr. Att. Gen. Did he tell you his Sword was drawn?

Bancroft. He did not say, it was or not, but that Hill struck him with his Left-Hand, and at the same time run him through with his Right, before he could put his Hand to his Sword.

Mr. Att. Gen. Did he tell you my Lord Mohun's Sword was drawn?

Bancroft. The words were these as near as I remember, my Lord Mohun offer'd me no Violence, but whilst I was talking with him, Hill with his Left-Hand struck me, and with his Right run me through, before I had time to put my Hand to my Sword.

Mr. Att. Gen. Did he tell you he had his Sword drawn at all afterwards?

Bancroft. No, not a word of that, that I heard.
L. H. Stew. My Lord *Mobun*, have you any thing to say to him?

L. Mobun. No, my Lord.

(Then Mr. William Hunt was sworn.)

Mr. Att. Gen. Mr. *Hunt*, you have heard what Mr. *Bancroft* was examined to, do you give an account what you know in relation to this Business.

Hunt. I was sent for to Mr. *Mountford* when he lay very ill; and I then asked him the manner of his being hurt, he said, My Lord *Mohun* spoke to me, but Hill run me through before my Sword was drawn. I asked him, whether he had time to draw his Sword? And he said, Hill was in me and was through me, before my Sword was out; and this he repeated again, about twelve a Clock, about half an Hour before he died the next day.

L. H. Stew. Will you ask him any thing else, Mr. Attorney?

Mr. Att. Gen. We shall ask him no more Questions, my Lord.

L. H. Stew. Will you ask him any, my Lord *Mobun*?

L. Mobun. No, my Lord.

L. H. Stew. Then have you any more Witnesses?

Mr. Att. Gen. My Lord, I do not hear that Mr. *Knowles* is come yet; and if he be not come, we have no more Witnesses to examin; if he does come, we must beg leave that we may examin him.

L. H. Stew. You know that the Court cannot stay, for after you have done on both Sides, my Lords are to withdraw, and we are not to sit here in Expectation of your Witnesses.

Mr. Att. Gen. My Lord, we do not expect that; if my Lord *Mobun* please to examin any Witnesses on his part, and it happen that the Witness should come before my Lord has made an end, we hope your Lordships will favour us so far, as that we may examin him.

L. H. Stew. My Lord *Mobun*, if you have any Witnesses to be examined, now is your time to call them.

L. Mobun. I desire first, Mr. *Hill's* Foot-Boy may be called.

L. H. Stew. Name him. (He came to the Bar.)

L. Mobun. My Lords, if you please, I desire Mr. *Brereton* may be called first, because I would prove to your Lordships and shew you I had no Malice to Mr. *Mountford*.

L. H. Stew. I thought you had called that Boy first.

L. Mobun. That was a Mistake, my Lord, this Gentleman Mr. *Brereton*, I desire may be first examined.

Mr. Brereton. My Lord, I know nothing as to this matter of Fact, for I had not seen my Lord *Mobun* of two or three days before.

L. H. Stew. What do you examin this Witness to, my Lord?

L. Mobun. To shew that I had no Malice against Mr. *Mountford*, but spoke kindly of him several times.

Mr. Brereton. I had not seen my Lord *Mobun* for two or three days before this Fact was committed, and therefore can give no account of what happened then; but the Friday before, the Play of *Alexander the Great* was acted, and my Lord *Mobun* and I were at the Play-house, and he and I went to Supper together, and we were talking of the Play, and he said it was a good

Play, and commended several Parts in it, and particularly the acting; and he commended Mr. *Mountford's* acting extremely: I said, I thought he never acted so well in his Life before; but my Lord spoke particularly very kind things of Mr. *Mountford*, that he thought him a very good Actor. I answered, as to Comedy he did use to act very well, but I thought he would never make so good a Tragedian as Mr. *Betterton*, or some others. But my Lord before this, had used to commend Mr. *Mountford* and speak kindly of him: And he said, that several of the Players had been very rude to him, more than their Business did require of them; but Mr. *Mountford* had been more civil than any of the rest. Upon this my Lord *Mobun* was pleased to ask me, whether I was acquainted with Mr. *Mountford*; I told him I never was in his Company but once with Mr. *Bludworth*. Saith my Lord, I have a great mind to drink a Bottle of Wine with him. Said I, I do not think him worth your Acquaintance, but you may do what you will. Several things more my Lord said, and spoke more kindly of him than of any of the rest of the Players; but there was no time fixt for drinking with him. Upon Tuesday after, my Lord *Mobun* came to my Lodgings, and told me Mr. *Mountford* had been very civil to him the Night before at the Play-house, when the rest were very rude to him; and he had a mind to drink a Bottle of Wine with him. Saith he, I am going about some Business to *Kensington*, but within a day or two you shall certainly hear of me, and we will fix a time for it, and if I do not like his Company, I will never trouble you nor my self more with it.

L. H. Stew. When was this Sir?

Mr. Brereton. This was the Tuesday before, the first Discourse was upon the Friday before.

(Then the Boy was Examined.)

L. Mobun. Was you along with me and Mr. *Hill*, that Night Mr. *Mountford* was killed?

L. H. Stew. My Lord, you must propose your Questions to me, and I will ask them.

Mr. Att. Gen. I desire to know what the Boy's Name is, and who he is.

L. Mobun. His Name is *Thomas Lake*, and he was Mr. *Hill's* Foot-Boy.

L. H. Stew. What do you ask him, my Lord?

L. Mobun. Pray, my Lord, ask him, if he was with Mr. *Hill* and me that Night that Mr. *Mountford* was killed.

L. H. Stew. You hear the Question; what say you to it?

Boy. Yes, my Lord.

L. H. Stew. I do not hear you what you say.

Boy. I was with them my Lord, and all I heard was, they had a Design to rake away the Woman, Mrs. *Bracegirdle*, and they had provided Night-Cloaths and a Coach for her; to go to *Totteridge*, which was the Place where they design'd to carry her.

L. H. Stew. I do not hear one word this Boy saith.

L. Mobun. My Lord, shall I repeat to your Lordship what the Boy saith?

Lords. No, no, no.

L. H. Stew. No, my Lord, you are not to repeat what your own Witness saith.

Boy. They had a Design to carry away the Woman, Mrs. *Bracegirdle*.

L. H. Stew. I do not hear one Word. That Boy can speak out if he pleaseth; I warrant him, he would make Noise enough if he was in

another Place. Speak out, that my Lords may all hear you.

Boy. I cannot speak any louder than I do; I say, they had a Design to carry away the Woman.

L. H. Stew. I may as well be at the other end of the Town as in this Place, as for hearing what he saith. Some body should repeat what he saith.

L. Mohun. If your Lordship please to allow it, that one of the Officers of the Court may come down to the Bar, and repeat from his Mouth to the Court what he saith.

Lords. Ay, ay.

L. H. Stew. *Mr. Walker,* Then do you go and stand by him, and tell us what he saith.

Mr. Walker, the Clerk went and stood by the Boy at the Bar, and repeated his Evidence aloud.

Mr. Walker. My Lord, he saith, they had a Design to take away the Woman, and they had Night-Cloaths in the Coach for the Woman to put on, and they enquired at the Woman's Lodging where she was, and there they were told that she was at *Mr. Page's* at Supper, and her Brother came to the *Horshee-Tavern* and drank with them, and he was to go to tell them when she came out, and which way she was to go Home; and there was a Man that was to give Notice, and they went down before her, and the Coach stood almost at the lower end of *Drury lane*, where there were some Soldiers to put her in, and the Soldiers went and took hold of her.

L. H. Stew. Is this my Lord Mohun's Witness?

Mr. Walker. Yes, my Lord; and he saith, when they went to take hold of her to put her in, *Mr. Page* struggled with them, and would not let them, and she cry'd out, and was very much troubled at it.

L. Mohun. My Lord, I desire he may be asked whether he was in *Howard-street* when *Mr. Mountford* was wounded, and what passed in *Howard-street* before *Mr. Mountford* was wounded?

Mr. Walker. He saith, he was in *Howard-street*, and saw *Mr. Mountford* come down in *Norfolk-street* towards them, and turn into *Howard-street*, but out of his way to his own House; he saith, he came down, and there met my Lord Mohun and his Master, *Mr. Mountford* did; and he came to my Lord Mohun, and bowed to him, and said, *He had a Kindness for his Lordship.* And my Lord Mohun replied, *He had a Kindness for him.* My Lord Mohun said to him, *He hoped he was not come to vindicate any thing of Mrs. Bracegirdle.* *Mr. Mountford* said *Not*, and asked if his Wife had done any thing to him, and said, *He was very sorry his Lordship should have any thing to do to vindicate Mr. Hill in such Rudeness.* He saith, *Captain Hill* was at the lower end of the Street, and *Captain Hill* heard him say so, and came up and said to him, *Mr. Mountford, if you have any thing to say to me, I can vindicate my self, and pray now draw;* and he went into the Street, and *Mr. Mountford* drew and met him, and made three or four Passes, and in the Passes, the Sword was broke. He cannot tell which Sword it was that was broke, he supposeth it hit against the Hilt, and snapped in two.

L. Mohun. I desire he may be asked, where I was when they fought?

Mr. Walker. My Lord stood upon the flat Stones, he saith, by the House side all the while, and they were in the middle of the Street.

L. Mohun. My Lord, I desire he may be asked, whether *Mr. Mountford* had his Sword by his side, and where it was, and whether I meddled with him?

Mr. Walker. He saith my Lord Mohun did not meddle with him, but stood upon the flat Stones, nor did offer to draw his Sword, and when *Mr. Mountford* came down, he carried his Sword in his Hand.

L. Mohun. My Lord, I desire he may be ask'd, whether *Mr. Hill* did not stay in the Street to ask *Mrs. Bracegirdle's* Pardon.

Mr. Walker. He saith, he desired to see *Mrs. Bracegirdle*, and to beg her Pardon, and as soon as he had seen her, he would be gone?

L. H. Stew. How can he tell that? Where was he?

Mr. Walker. He was just by my Lord Mohun and *Mr. Hill* in the Street, and *Mr. Hill* said, he would but stay and beg *Mrs. Bracegirdle's* Pardon for what he had done, and he would go Home.

L. Mohun. I desire he may be asked, whether I offer'd to fly when his Master went away?

L. H. Stew. What is it you ask my Lord?

L. Mohun. Whether I offer'd to run away, or make my Escape?

Mr. Walker. He saith, my Lord did not offer to run away, but stood still and said he had done no hurt, nor drawn his Sword.

L. Mohun. I desire to ask him, whether I could not have run away as well as *Mr. Hill*, if I had had a mind?

Mr. Walker. He saith, he might have run away as well as his Master *Mr. Hill*, but he stood still a great while, till the Watch came and took him, and he gave himself up.

Mr. Att. Gen. My Lord, before the Boy goeth away, I desire to know of him whether he has not been already Examined upon his Oath elsewhere?

Mr. Walker. Yes, my Lord, he was examined at *Hick's-Hall*, and was kept in Prison two Days.

Mr. Att. Gen. Were you examined before the Coroner?

Mr. Walker. He saith, he was examined before the Coroner.

Mr. Att. Gen. Which was the first Place he was examined at?

Mr. Walker. He saith he was examined at *Hick's-Hall* first.

Mr. Att. Gen. When he was examined before the Coroner, did he give the same Evidence as he does now?

Mr. Walker. He gave the same Evidence before the Coroner that he doth now, as near as he can remember.

Mr. Att. Gen. When you did make Oath before the Coroner, was it read to you what you swore?

Mr. Walker. He saith, his Evidence was not read to him.

Mr. Att. Gen. Did you subscribe the Evidence you gave before the Coroner your self?

Mr. Walker. Yes, he did.

Mr. Att. Gen. Did not you write your Name your self?

Mr. Walker. Yes, he saith.

Mr. Att. Gen. Did you not know what it was you subscribed your Name to?

Mr. Walker. He saith, it was not read to him afterwards, he knoweth what it was he gave in.

Mr.

Mr. Att. Gen. Are you sure it was not read to you?

Mr. Walker. He saith, he is sure it was not read to him.

L. H. Stew. Was it not read to him before he subscribed it?

Mr. Att. Gen. That I did ask him, my Lord.

Mr. Walker. He doth not remember that it was read to him at all.

L. H. Stew. Can he read himself?

Mr. Att. Gen. He writes a very good Hand my Lord.

Mr. Walker. He saith, they bid him put his Hand to it; and as soon as he had put his Hand to it, they put him out, and bid him call another Woman.

Mr. Att. Gen. I would have him consider of it, before he makes answer; because there are several Persons present here, who were present when it was read to him before he subscribed it.

Mr. Walker. He cannot remember that it was read to him.

Mr. Att. Gen. Do you remember you swore at that time, that when Mr. Mountford and Mr. Hill were pushing at one another, my Lord Mohun said, he would stand by his Friend, and Mr. Hill was his Friend?

Mr. Walker. He saith, my Lord said, he would not go, he would stay by his Friend, for Mr. Hill was his Friend.

E. of Carlisle. My Lord Steward.

L. H. Stew. My Lord of Carlisle.

E. of Carlisle. I desire that he may be asked, whether he was the Boy that said to my Lord Mohun, Pray my Lord, good my Lord, do not do it, alter your Resolution.

L. H. Stew. Call the Boy agen (*which was done*) was you by when those Words were spoken; Pray my Lord, will you repeat your own Question?

E. of Carlisle. Whether he was the Boy that said to my Lord Mohun, Pray my Lord, good my Lord, do not do it, alter your Resolution, or defer it to another Day.

Boy. No my Lord, I did not hear him.

L. H. Stew. Did not you say so your self?

Boy. I said no such thing, nor heard no such thing said by any body.

L. H. Stew. Do you bring any more Witnesses my Lord?

L. Mohun. Yes my Lord, Mrs. Elizabeth Walker, Mrs. Bracegirdle's Maid.

Elizabeth Walker. Here my Lord, I am she.

Mr. Att. Gen. My Lord, before my Lord Mohun proceedeth to examine any other Witness, I have one thing humbly to offer to your Lordships.

(Then Proclamation was made for Silence.)

Mr. Att. Gen. Of what Consequence it will be to my Lord Mohun, I must submit to your Lordships; when you have heard it, that is, whether it may not be proper now, since this Boy has given an Evidence, so very different from what he gave upon his Oath before the Coroner, to have his Deposition that he made before the Coroner, read in his Presence.

L. Mohun. My Lord, I think I ought to conclude, and give all my own Evidence before Mr. Attorney maketh his Remarks.

L. H. Stew. Then reserve that till the last, Mr. Attorney.

Mr. Att. Gen. My Lord is certainly in the right of it, there ought to be no Observations made upon his Evidence, and we shall be sure to keep exactly to the usual method in this matter; but I take it to be the Course of Evidence, where there is an Objection to what the Witness delivers now, which does arise from what the same Witness has sworn before, it is proper to make the Objection, as soon as he has delivered such Evidence, whilst the matter is fresh in your Lordships Memories.

L. H. Stew. Mr. Attorney, let the Boy stay, he shall be called upon afterwards; but let my Lord go on now with the rest of his Witnesses.

L. Mohun. Here is Elizabeth Walker, my Lord.

H. H. Stew. What is that Woman's Name?

L. Mohun. Elizabeth Walker, did you live with Mrs. Bracegirdle.

Elizabeth Walker. Yes, I did my Lord.

Mr. Att. Gen. This Person has conceal'd herself, we have been endeavouring to find her out all this while, but could not.

L. H. Steward. What do you ask her my Lord?

L. Mohun. I desire she may be asked, whether she lived with Mrs. Bracegirdle, and what she saw and observed that Night Mr. Mountford was killed.

El. Walker. If it please you, I lived then with her.

L. H. Stew. I cannot hear what she said, Mr. Walker, I think you must go thither agen, speak out Woman.

El. Walker. I was her Servant at that time, when Mr. Mountford was killed. And may it please you my Lord, that Night, old Mrs. Bracegirdle and her Daughter, were invited to Supper at one Mr. Pages in Drury-lane, and coming home about Ten or Eleven a Clock out of Drury-lane, my Mistress desired me to go to Mr. Mountford, to see if Mr. Mountford was come home. I went, and they said, he was not come home: She desired me then to go again, and tell Mrs. Mountford, that if he was not come Home, she should send to see where he was, and desire he would not come Home without a good Guard; for my Lord Mohun and Captain Hill were walking about the Street, and she did not know their Design, by reason Mr. Hill had his Sword drawn in his Hand, out of the Scabbord. I asked the Reason why he had his Sword drawn; and the Answer was made; he had lost the Scabbord in a Skirmish in Drury-lane; but that I know nothing of. Mrs. Mountford said, she would send her Maid to see where her Husband was, and I told her, if my Mistress would give me leave, I would go along with her, to bear her Company. And when I returned to my Mistress, she did give me leave, and I went along with her to several places; but we could not find Mr. Mountford; so coming home, I went to my Mistress, and I saw them two stand at the Door, and they staid there above an Hour, and in the mean time our Landlady Mrs. Brown, heard the Watch come into the Street, and she said, she would go to the Door, and bid the Watch seize them; and she did go out, and I was kept within Doors, and heard her talk to the Watch, but what she said, I cannot tell; but presently the Watch went away and left them. And I stood at the Door, and heard Mrs. Brown say, there cometh Mr. Mountford, and she would go speak with him; and with that, she went as fast as she could to meet

meet him, and came to him a good way before he came down to them, and took him by the Arm thus to stay him, and she said, Captain Hill and my Lord Mohun was walking in the Street, and Captain Hill had his Sword in his Hand drawn, and she did not know what their Design was.

L. H. Stew. Indeed she must speak louder, or I cannot tell what she sayeth.

El. Walker. My Lord, I say Mrs. Brown when I was at the Door, said, yonder cometh Mr. Mountford, and she said, she would go and meet him, and away she went as fast as she could towards him; and when she came up to him, she took him by the Arm thus, and desired him, that he would not come down that Street, but go to his own House, for there were Captain Hill and my Lord Mohun walking in the Street, and she did not know what their Design was, but Captain Hill had his Sword drawn in his Hand. If it please you my Lord, Mr. Mountford did not answer her a Word; but pressed forward to meet my Lord Mohun and Captain Hill. If it please you my Lord, they met one another, and my Lord Mohun and Mr. Mountford Complimented one another very lovingly, and said, they were glad to see one another; and Mr. Mountford said to my Lord, he had a great Respect for his Lordship, and my Lord replied to him again, by my Honour, I have the like for you Mr. Mountford, and with that, they embraced one another. I am sure this is the Truth, for I followed Mrs. Brown out, and stood by when it was done. Mr. Mountford told my Lord, it was a Dishonour to him to keep Company with Captain Hill. I will not take my Oath that Captain Hill did hear him say so, but he might have heard him, and it may be he did too; and that might occasion the Quarrel; but I will not take my Oath of that: It came just in my Head after this was said, that our Door was open, and I turned my Back to hear and look who was at our Door, and I heard Mrs. Brown say, that Captain Hill and Mr. Mountford were going to Fight: I saw them Fighting, making Passes at one another, I saw them engaged, I never saw men naked Fighting so in my Life.

At which there was a great Laughter.

El. Walker. My Lord, I do not understand these matters, I tell you as well as I can, they were fighting with naked Swords, Mr. Mountford's Sword was upon Mr. Hill hereabouts, and Mr. Hill's Sword was upon Mr. Mountford hereabouts; and after they had made two or three Pushes at one another, Mr. Mountford said he was kill'd, and threw down his Sword thus, and I took it up, and there was a good piece of the Sword broken off. I turned me about thus, towards our own Hatch at our Door, and there stood two or three People, I cannot say who they were, but I gave them the Sword, and I turned my Face towards Surry Street, and saw Captain Hill making his escape, running up Surry-Street; and if it please you my Lord, Mr. Mountford was the Friend I had most Respect for; and I saw him as fast as he could, going towards his own House, and my Lord Mohun stood in the same place that he was in, when he and Mr. Mountford were embracing one another, and I did not see my Lord Mohun stir from that place; but when they fought, they were engaged in the middle of the pitched Stones, where there was a place made for the Water to run along the Street

like a Channel; and to my Knowledge, I did never see my Lord Mohun off of the Paved Stones, on the side. I cannot say he was never off, when my Eye was turned another way; but to my Knowledge, I never saw him off of those Stones. If it please you my Lord, the next thing that I saw, was this, after Captain Hill run up Surry-Street, and Mr. Mountford did go Home, I saw my Lord Mohun walking up to the end of the Street, where the Watch were coming, and when the Watch came, I see him deliver himself up to the Watch; but I think one of the Watch said he must have his Sword; and he did deliver up himself and his Sword to the Watch. And he bid me take notice, bear Witness said he, I have no hand in the Death of Mr. Mountford. Said I, no, my Lord, I think you have not. The next thing I remember, was Mrs. Page came and said, Mr. Mountford was killed, upon which, said my Lord Mohun to her, bear Witness, I had no hand in his Death. Said she, you were in his Company, therefore seize him, and carry him to the Round-House; and the Watch did secure him; and my Lord answered, as he was a Gentleman, he desired to be used like a Gentleman; and they did carry him away to the Round-house. This is the thing that I did say, as near as I can remember, to the Justices; but I have been very much abused and distracted amongst them, and therefore to a Word I cannot say; but as near as I can remember, being abused at the rate I have been, This I did then say, and it is the Truth.

L. Mohun. I desire she may be asked whether she was not examined before the Justices at Hick's-Hall, and whether she was not then Mrs. Bracegirdle's Maid.

L. H. Steward. Truly, my Lord, I have heard very little of what she has said, but I hope my Lords that have been nearer have observed it.

El. Walker. If it please you, if you ask what was done at Hick's-Hall, I will tell you just as it was, what happened there, and so proceed on to tell you how I have been abused.

L. H. Stew. My Lord, What would you have her asked more?

L. Mohun. I desire to ask her whether she was not Mrs. Bracegirdle's Servant when she was examined at Hick's Hall, and whether she swore the same there as she saith here, and what was done to her since, or what they would have done, and whether they did not try to make her speak what they would, and to put her out.

El. Walker. If it please you my Lord, that next Morning, there came several of the Players to me, to ask me what I knew of the Death of Mr. Mountford, and I told them; but they did not like what I said, and they seemed discontented at me. And when they were to go to Hick's-Hall, they said they had no need of my Evidence, they could do without me. So Mrs. Brown and her Maid they went away, and left me at Home; what they did, or where they staid, I do not know; but about two or three Hours after, a Messenger came and said, my Mistress and I must go to Hick's-Hall to be examined before the Justices; and we went, and when we came there, all were examined, and I was examined in the last Place; where, my Lord, I gave in the same Evidence that I do now, as near as I can speak. I do verily believe it to be the same, but I have had so much Trouble with their abusing me, that I cannot speak to every Word or particular Thing. For my Mistress,

Mistress stood before me, and said, they brought Evidences that confounded themselves, and another said, hang her Jade, pull her by the Coat. I turned me to the Justices, and said, I hoped I might speak now I was there; but it may be for fear of my Mistress, I did not then speak all that I have done now, because I have called more since to my Remembrance. And there is one particular thing that I call to mind now, I remember, that in our Parlor, as soon as they came home out of *Drury-lane*, there was a Discourse between my old Mistress and my young, that Captain *Hill* waited at the Door to see my Mistress, and that if he might but have leave to see her, and to beg her Pardon, they would be gone thence to their own Lodging; and I said to my Mistress, if she would give me leave, I would go out to them, and demand Captain *Hill's* Sword, and then he might come in.

L. Mohun. I desire she may be asked whether she was not turned away and threatned.

Eliz. Walker. I am going on to tell my Lord what happened in our House that Night. I told my Mistress, if she would give me leave, I would undertake to get Captain *Hill's* Sword from him, and then she might let him come in and see her, and beg her Pardon, and I thought it would prevent a great deal of Danger that might follow else. And my Mistress said I was a prating Slut, and my young Mistress said, if he begged her Pardon upon his Knees never so, she would never forgive him, nor see him more. My Lord, there was another Discourse in the Street, that Captain *Hill* had made a Vow that he would kill himself that Night, and that my Lord *Mohun*, having a Respect for him, watched to prevent him from doing himself a Mischief. That was discoursed in the Street, but I cannot say it was so of my own Knowledge.

Then another Proclamation for Silence was made.

L. Mohun. I desire she may be asked whether she was not turned away, and whether she was never threatned.

Eliz. Walker. If it please you, my Lord, that Night that I gave in my Evidence at *Hick's-Hall*, by their talking, I knew before I went from Home, what a Life I should have with my Mistress, for I knew they did not like my Evidence, and I was afraid of coming Home, and went and staid with my Sister; but notwithstanding I went Home about nine a Clock, and they were very inveterate against me, and I told one of them, I had witnessed the Truth, and nothing but the Truth, and that I would stand by. If it please you, my Lord, the next Morning there was this *Ann Jones* that lay with me that Night, and she told me that in the Morning they threatned, and intended to fetch me to Mrs. *Mountford* to rattle me for what Account I had given in, and she giving me this Item, I got up and went to dressing my Dinner, and Mrs. *Mountford* sent a Man, that I know by sight, I think it was one *Roberts*, I believe that was his Name; whereupon he came and asked me where was Mrs. *Bracegirdle's* Maid; I said, I was she, and then he said Mrs. *Mountford* desired me to come to her. I said, I had given in my Evidence where I ought to do it, and I had nothing to do with her; but it was upon this account, not that I had any Antipathy against Mrs. *Mountford*, but only as *Ann Jones* had given me that Item of a Design to send me to her, to rattle me for the Evidence I had given in, and I did not

know what might come of it, or what their Design might be.

Mr. Att. Gen. My Lord, I would not interrupt any Witness, but because she speaks of what was said by *Jones*, and Mrs. *Bracegirdle*, I desire they may be by to hear what she saith.

L. Mohun. My Lord, I desire my Witnesses may not be hared.

L. H. Steward. This is not haring of Evidence, my Lord.

L. Mohun. My Lord, I desire I may go on with my Evidence without Interruption.

L. H. Steward. My Lord, this is no Interruption.

Mr. Att. Gen. Pray my Lord let Mrs. *Mountford* be called in to hear what she saith of her, I desire she may be by.

L. Mohun. My Lord, I have no more to say to her.

Mr. Att. Gen. But then my Lord, before she goeth away, I have two or three Questions to ask her.

L. H. Stew. What do ask her Mr. Attorney?

Mr. Att. Gen. She saith she was examined at *Hick's Hall*, I desire to know if ever she was examined before the Coroner.

Eliz. Walker. If it please you, my Lord, I was not, and I will give you the reason.

Mr. Att. Gen. Ay, pray let us hear it.

Eliz. Walker. Why you have not heard how badly they used me after this.

Mr. Att. Gen. But pray Mistress answer my Question.

Eliz. Walker. But, my Lord, if it please you, I went to my Sister, and staid with her till eight or nine, and my Aunt told me there had been a Porter to enquire for me, to go to the Jury; I was sorry I was not at Home, but I took a Neighbour with me to go to Mrs. *Mountfords*, to see if the Jury were not gone, and I knowing how they had threatned me, I desired him to leave me at a Victualling-house by *Temple-Bar*, and go and tell them, if the Jury were not gone, I was ready to wait upon them; he went, and I remained at the Victualling-House, and he came again, and told me, Mrs. *Mountford* said they had done without me; but he was a little surprized.

Mr. Att. Gen. My Lord, she maketh a long Answer to a short Question. I would ask her another Question presently; but by the way, as to this Examination at *Hick's-Hall*, I would observe that it is a very unusual, and I think, under Favour, a very unwarrantable thing for Justices of the Peace, to take upon them, under a Pretence of considering, in order to Bail a Person charged with Murder, to enter into a particular Examination of every one of the King's Witnesses, as if they were either a Grand Inquest, charged upon Oath for finding a Bill of Indictment, or Coroners to take an Inquisition of the Murder, both the Grand Jury and the Coroner are upon their Oaths to keep the King's Evidence secret; but this is to make it publick by an indirect way by a Justice of Peace's examining, in order to the bailing of an Offender. But I would observe this Woman goeth away from her Mistress, and continueth away, and concealeth her self; she was not to be found to be examined before the Coroner, the proper Officer, nor are we able to tell where she has been; I desire some account may be given, in whose hands she has been all this time.

L. Mohun. My Lord, I desire your Lordship's Opinion, whether this may be permitted, that he should talk thus.

L. H. Stew. What do you say, my Lord?

L. Mohun. My Lord, I desire to know whether he may interrupt me in my Evidence thus: All this matter is foreign to the Business before your Lordships.

Mr. Att. Gen. If you please, I would ask her this one Question.

Lord ———. Under Mr. Attorney's Pardon, I think the Prisoner, or his Witnesses, ought not to be interrupted; but if he have any Remarks upon the Evidence, when they have gone thro', he may call them again, and ask them any Questions, or make any Remarks upon them.

Mr. Att. Gen. My Lord, I would ask her but one Question.

L. H. Stew. What is it, Mr. Attorney?

Mr. Att. Gen. If she heard Mrs. Brown say to Mr. Mountford that she would not have him come forward, because my Lord Mohun and Mr. Hill were there, and she did not know what their Design was.

Eliz. Walker. If it please you my Lord, I did hear them, and I was just by them; and there was none but she and I.

Mr. Att. Gen. She upon her Oath saith, she did not tell him any thing more, than that she would speak with him; but he did not hear her, or hearken to her: But my Lord, I have no more Questions to ask her.

L. H. Stew. Have you any more to ask this Witness, my Lord?

L. Mohun. No, my Lord.

L. H. Stew. Who is your Lordships next? Pray call your next Witness.

L. Mohun. I desire Ann Jones may be examined. *(She came to the Bar.)*

L. H. Stew. What doth your Lordship examine her to?

L. Mohun. I desire she may be asked what she knoweth of what passed that Night Mr. Mountford was hurt, and tell the whole Story.

Jones. First, I saw Mrs. Bracegirdle coming home with her Mother and Mr. Page, about ten a Clock at Night, and there were Captain Hill and my Lord Mohun with them when they came Home, but they did not come in with them, but walked in the Street about an hour and an half; and after they came in, Mrs. Brown sent to Mrs. Mountford, for she said Captain Hill had some Design, and my Lord Mohun upon Mr. Mountford, but Mr. Mountford not being at Home, they sent to all the Taverns thereabouts, but could not find him; they came Home again, and told Mrs. Mountford and Mrs. Bracegirdle they could not find him, and there my Lord Mohun and Captain Hill walked to and fro about the Street for an hour and half in all; about an hour after they had been to look for Mr. Mountford, or about three quarters of an hour Mr. Mountford came down, and I saw my Lord Mohun and Captain Hill at this Door.

L. Mohun. At whose Door I desire she may be asked.

Jones. At this Mrs. Brown's Door, and Mr. Mountford coming down, my Lord Mohun met him, and embraced him, and said he had a great Honour and Friendship for him, and Mr. Mountford said he had a great Honour and Respect for his Lordship. Saith my Lord Mohun, Mr. Mountford, I suppose you are sent for. No not

I, upon my Honour, said he. Upon that he up and told him how they had like to have got Mrs. Bracegirdle into a Coach, and carried her away, but were prevented. Saith Mr. Mountford, as to Mrs. Bracegirdle, I have nothing to do, she is no Concern of mine, if my Wife have offended your Lordship, she shall beg your Pardon. Said Mr. Mountford again, I hope your Lordship will not vindicate Mr. Hill in any such Action as this. With that Captain Hill came up and hit Mr. Mountford a Box on the Ear, and bid him draw. And said Mr. Mountford, Damn ye, What is that for? And thereupon he drew; and I tell you what I saw, they both came off from the paved Stones into the middle of the Highway, and made two or three Passes at one another; at the second Pass Mr. Mountford's Sword broke, and he flung down his Sword, and run away, and said he was a dead Man; Mr. Mountford went one way, and Mr. Hill another.

L. Mohun. I desire she may be asked if I did meddle with Mr. Mountford at all, or helped Mr. Hill whilst they fought, and where I stood all the while.

L. H. Stew. What say you? Answer all those Questions my Lord asked you.

Jones. If it please your Lordship, he stood upon the Causey, the paved Stones, in the same Place where he was all the time.

L. H. Stew. Did my Lord meddle at all?

Jones. No, I did not see my Lord Mohun meddle.

L. H. Stew. Was my Lords Sword drawn?

Jones. I did not see it drawn.

L. Mohun. I desire she may be asked whether I run away, or whether I did not surrender my self to the Watch.

Jones. If it please your Lordship, I did not see my Lord run away. But I did see him surrender himself.

L. Mohun. I desire she may be asked if she was not examined at Hick's-Hall.

Jones. Yes, my Lord, I was.

L. Mohun. And whether she did not there declare the same upon Oath that she doth now.

Jones. Yes, my Lord, I did.

L. H. Stew. Have you any thing to say to this Witness, Mr. Attorney?

Mr. Att. Gen. My Lord, I would only ask her this Question: She saith my Lord Mohun was upon the Pavement, or Causey, as she calleth it, all the while; I desire to know whether the Scuffle did not begin upon the Pavement.

Jones. Yes, it did upon the Causey.

Mr. Att. Gen. I desire to know whether she saw any Blood upon that Causey the next day.

Jones. No, I saw none.

L. Mohun. I desire she may be asked whether they did not fight in the middle of the Street.

Jones. Yes, and please your Lordship, I did see them make Passes at one another in the Street.

L. Mohun. I desire she may be asked whether the Sword was not broken there in the middle of the Street, and whether Mr. Mountford did not then cry out, I am killed.

Jones. His Sword was broken in the middle of the Street; but I did not hear Mr. Mountford say he was killed, but he flung down his Sword, and run away, and said, I am a dead Man.

L. H. Stew.

L. H. Stew. Have you done with this Witness my Lord?

L. Mohun. Yes, my Lord.

L. H. Stew. Have you any more to say to her, Mr. Attorney?

Mr. Att. Gen. No, my Lord.

L. H. Stew. Then who is your next Witness, my Lord Mohun?

L. Mohun. Edward Warrington, my Lord.

(Who came to the Bar.)

L. H. Stew. What say you to him, my Lord?

L. Mohun. I desire to ask him where he liveth, whether he be not a Neighbour to Mrs. *Bracegirdle*? And what he saw that Night Mr. *Mountford* was killed? I desire he would give his whole Evidence?

Warrington. I live if it please your Honour, over against Mrs. *Bracegirdle's* House, at the *White-Swan*, on the other side of the way.

L. Mohun. I desire he would tell all that he saw that Night.

Warrington. All that I can say, is about nine or ten a Clock, as near as I can guess: I heard a Disturbance at Mrs. *Browne's* Door, where Mrs. *Bracegirdle* lodgeth, and looking out, I saw there were two Gentlemen talking to old Mrs. *Bracegirdle*, and Mrs. *Bracegirdle* and some People went into the House, and when they were gone into the House, I saw the two Gentlemen walk about the Street, one's Sword I saw was drawn.

L. H. Stew. Whose Sword was that was drawn?

Warrington. Captain *Hill's*, as they say, for my part, I did not know either of them, they walked there for the space of an Hour and a half, I saw them oppose no Body. But as they came along, I heard them ask a Gentleman that came towards them, whether he would drink a Glass of Wine or not.

L. Mohun. My Lord, I desire he may be asked, what he saw afterwards of Fighting.

Warrington. For Fighting, I saw Mr. *Mountford* come down *Norfolk-street*, and I saw him turn at the Corner with his sword in his Hand in the Scabbord, to the best of my Knowledge, and seeing some People there, as I suppose, went towards them, and came up to them; and I saw my Lord *Mohun* to the best of my Knowledge, lay his Hand upon his Shoulder, and embraced him, and complimented him; but I cannot be certain what the words were that passed between them.

L. H. Stew. Did you see them Fight?

Warrington. If it please your Honour, I did see their Swords both drawn, Mr. *Mountford* and he that they said was Captain *Hill*; there were some Women about them, so that I could not so well discern when they drew their Swords, or who begun the Quarrel. *Hill* they said, had no Scabbord to put his Sword in, my Lord *Mohun* stood by, and laid his Hand upon *Mountford's* Shoulder.

L. H. Stew. Was that before the Fighting, or at the time of the Fighting?

Warrington. It was before their Fighting, at their first meeting.

L. Mohun. I desire your Lordship would please to ask him, in what part of the Street they fought, and whether I was near them then.

Warrington. When first I saw their Swords drawn, it was upon the flat Stones of the Pavement; and I saw Mr. *Hill* come off of the Stones, and Mr. *Mountford* with him. Mr. *Hill* was, I think the first, and they came both up to-

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gether with their Swords drawn in their Hands, they were not a Swords length off from one another; and they passed at one another, and I run into our House to fetch a Paring-Shovel, with an Intention to part them; but before I could get out of Doors with the Paring-Shovel in my Hands, the one was gone one way, and the other the other way; and I saw no body in the Street to ask any Questions of, but my Lord *Mohun* at the Corner, three or four Doors above this place. And I came out, and asked which way they were gone, my Lord *Mohun* turned about, and I was a little afraid of him at first; but said he, here am I, I did not offer to oppose or draw my Sword, you all know it; and immediately if it please your Honour, the Watch came in, that is all I know.

L. Mohun. I desire he may be asked, whether I did not go towards the Watch, and surrender my self.

Warrington. I cannot say that, but the Watch came in a Minute. My Lord turned about, and said, here am I, I did not oppose or draw my Sword, you all know.

L. Mohun. Pray my Lord, let him be asked whether I did offer to fly. And whether I had not as much time to fly, as Mr. *Hill*.

Warrington. I cannot say that my Lord, I suppose he might have gone away as well as Mr. *Hill*, for they were both together.

L. Mohun. My Lord, I desire he may be asked another Question, whether when Mr. *Mountford* came into *Howard-street*, he did not come out of his way to his own House, to come towards us.

Warrington. My Lord, if it please your Honour, it was out of his way; but whether he did it on purpose, or because he saw People there, I cannot tell.

L. Mohun. I desire he may tell you where Mr. *Mountford's* House is.

Warrington. Mr. *Mountford's* House is in *Norfolk-street*, two Doors in the Corner out of the Cross Street; and this was done in *Howard-street*.

L. H. Stew. I would ask you a short Question, whether that was the way to his House that he went.

Warrington. No, it was not the way my Lord; for he turned on the Right-Hand, and he should have kept straight along.

L. Mohun. I desire he may be asked, whether he was not sworn at *Hick's Hall*, and whether he gave not the same Evidence there, that he doth now.

Warrington. I was sworn there, and did to the best of my Knowledge, give the same Evidence I do now.

L. H. Stew. If I understand you aright, you say both the Swords were drawn of *Mountford* and *Hill*?

Warrington. Yes, my Lord, I did.

L. H. Stew. Can you say whether *Mountford's* Sword was drawn before he was hurt, or not?

Warrington. If it please you my Lord, I cannot tell that, I cannot be positive whether it was or no; for there were Women about them, I say, at first, and I could not discern the Beginning; and I did not stand to see them push, for as soon as I saw their Swords drawn, and they come off the Pavement to Fight, I run into the House to fetch a Paring-Shovel.

L. Mohun. Now my Lord, I will call another Witness.

L. H. Stew. Mr. Attorney, have you any Questions to ask this Witness?

Mr. Att. Gen. No, my Lord.

L. Mohun. Then my Lord, I will call another Witness to shew you the reason why Mr. Hill and I stayed in the Street, and what was the Business we stay'd for. I desire *Ann Knevit* may be examined. *(She came to the Bar.)*

L. H. Stew. What do you ask her my Lord?

L. Mohun. I would ask her where she liveth, and what she knoweth of this Business.

Knevit. My Lord, I live in *Howard street*, exactly against Mrs. *Bracegirdle's* Lodging, and my Lord *Mohun*, as he gave his own Name to be, to the Watchmen, and another Man that they called Captain *Hill*, for so he gave his Name to be; they came down with Mrs. *Bracegirdle*, both the Mrs. *Bracegirdles* into the Street, and came to their Door, and old Mrs. *Bracegirdle* put her Daughter in at the Door, and then she stood still and talked with the Gentlemen, and asked them their Business. They said, they wanted to beg the young Woman's Pardon for what they had done, and then they would be gone. She said, she thought they came to rob her. They said no, they came upon a very Honourable Design, she said, then they might have come at a more seasonable time; but she believed they came to rob her.

L. Mohun. What time of Night was it?

Knevit. It wanted a quarter of Ten I believe, or it was about ten, a quarter over or under; I cannot exactly tell. They said, if she would give them leave but to speak to her, and beg her Pardon for what they had done, they would go home immediately. She said she would not, they should not see her any more that Night: Then one of the Gentlemen I know not which of them it was, said, they would walk a little while in the Street, she did see them walk very quietly, but she made a great Noise her self; and at last she went in, and shut the Door, and the Gentlemen walked quietly up and down; and by and by, they went to the Door again, and desired to be admitted to speak with young Mrs. *Bracegirdle*, that they might beg her Pardon for some Affront that they had put upon her, I suppose, and she still refused them, and would not let them speak with her; and several times they called and knocked at the Door, and still desired but to speak with her, and beg her Pardon, and they would be gone home, but she every time refused it.

L. H. Stew. Woman, I do not hear you, you must speak louder.

L. Mohun. My Lord, I desire your Lordships will let one of the Clerks come, and take the Evidence, and report it to you.

L. H. Stew. If it be material, another must report it; for I have not heard one quarter of it.

L. Mohun. It is very material my Lord, to shew the Reason why we stayed there.

Knevit. My Lord, I will repeat it over again if you please.

L. H. Stew. Then pray speak so loud that I may hear.

Knevit. My Lord *Mohun* is a perfect Stranger to me, I only tell you what I saw and heard. At the first beginning of all, two Gentlemen and two Women came to a Door over against our Door, and at that House Mrs. *Bracegirdle* and her Daughter lodged, the Gentlemen gave their Names to the Watch afterwards to be my Lord *Mohun* and Captain *Hill*: So when they

came there, the old Woman put her Daughter in at the Door, and when she had pulled off her Hood and Scarf, she came to the Door, and asked them their Business; and they told her, they wanted to beg her Daughter's Pardon for what they had done; but she abused the Gentlemen mightily, and gave them very ill words; and said, she believed they came to rob her Daughter, they said no, they came upon a very honourable Design, then she said, they should have come honourably at a seasonable time; they said it was not an unreasonable time, for she was out of Doors her self at that time. So she stood there a little, and then at last she went in a Doors, and shut the Door, and some of them opened the Door again, and they were walking upon the Causey, and came up to the Door, and still desired the same thing, to speak with the young Gentlewoman to beg her Pardon for what they had done, and they would go home for that Night. One of them, I think it was Mr. *Hill*, said he had given her an Affront, and he desired to beg her Pardon; but still they said, he should not be admitted to speak with her. Then one of them, I think it was Mr. *Hill*, desired she would be pleased to come but to the Hatch, that he might see her, and beg her Pardon, and he would not desire to come in, but that would not be permitted. So one of them made answer, that they would not stir till they did see her, and they would walk there all night.

L. H. Stew. Cryer, call for Silence, and pray my Lord Great Chamberlain, take some Order with those People behind there, for they cannot hear themselves what the Witnesses say, and therefore they are resolved we shall not hear them neither.

(Proclamation was made for Silence)

L. H. Stew. Now go on Woman.

Knevit. They said they would stay in the Street all Night, unless they did speak with her: But if she would give them leave to speak with her, they would depart to their own Lodgings immediately: but they were denyed to be admitted to speak with her. Whereupon one of them called unto his Boy, to bring him his Cloak; but then he said, he would not have his Cloak, he would walk without it, because they had not both of them Cloaks; by and by they sent for a Bottle of Wine, and there they drunk her Health, and took several Turns, and after they had drunk off the Bottle, or some part of it, they went to the Door again, and knocked at the Door, and some body answered from within, for they were not at the Door, what they would have; They said the same thing as before, that they desired only to see her, and beg her Pardon, and they would go home; for it was a very cold Night, and it was not convenient to walk there, but they still refused to let them in: By and by, the Watch came down, and asked who was there, and what was their Business, and one of the Gentlemen made answer, and said, He was a Peer, and his Name was *Mohun*, the other said, his Name was *Hill*. So the Watch went by, and said no more, but some Body made answer, and said, there was a Gentleman had a Sweet Heart in that Street, and he wanted to speak with her: Just at that time, I went up stairs to warm a Bed in our House, and whilst I was warming the Bed, I heard a little bustle in the Street, and running to the Window there I saw a Sword in

a Man's Body, I could not tell who the Man was, nor who put the Sword there, but the Man that drew out the Sword, run away as hard as he could, and the Man in whose Body the Sword was, went as fast as he could the other way. And my Lord that gave his Name to the Watch to be *Mohun*, stood on the farther side of the Street, and said, I have done no hurt to any Body, and I will not stir. And there was a Woman that called out to the Watch to seize him; but who the Woman was, I cannot tell, but he stood still between Mrs. *Bracegirdle's* Door, and the next Neighbours, one that is called *Nuttall* I think, and never stirred till the Watch came to him, and the rest went to Mr. *Mountford*, he said; there was no occasion to lay Hands upon him, for he would not stir from them.

L. Mohun. I desire to ask her if Mr. *Mountford* did not say I am killed after the Sword was broke.

Knevitt. Yes, he did say he was a dead Man.

L. H. Stew. What, after his Sword was broke?

Knevitt. After the Sword was drawn out of his Body, his Sword was in his own Hand, I squalled out when I saw the Sword in his Body, and had like to have gone out of the Window, and some body said to me, when I told them why I cry'd out, Will you break your Neck for that Reason? it may be it is one of the Watchmen. No, said I, it is not a Watchman.

L. Mohun. I desire she may be asked where Mr. *Mountford* and Mr. *Hill* fought; whether it was not in the middle of the Street.

Knevitt. My Lord, it was exactly in the middle, as near as I can guess, rather on our side of the way, with his Arms spread, and his Sword in the Scabbard.

L. H. Stew. Have you any more to ask this Witness?

L. Mohun. No, my Lord.

L. H. Stew. Have you any thing to say to her, Mr. Attorney?

Mr. Att. Gen. I would ask her where she liveth.

Knevitt. I live in *Howard-Street*.

Mr. Att. Gen. With whom there?

Knevitt. At one Mrs. *Brewers*.

Mr. Att. Gen. What Employment is your Mistress?

Knevitt. My Mistress keepeth a Coffee house.

Mr. Att. Gen. Do you live near Mrs. *Brown's*?

Knevitt. I know not any of that Name there; but I live over against Mrs. *Bracegirdle's* Lodgings.

Mr. Att. Gen. Do not you know the People of that House?

Knevitt. No, upon my Word, I do not know their Names that keep the House.

Mr. Att. Gen. Let me ask you another Question: You speak of many Messages sent backward and forward, and that they said Mrs. *Bracegirdle* should not be spoken with while my Lord staid there; I desire to know if you can tell who any of the Persons were that brought those Messages.

Knevitt. It was the Man that called himself my Lord *Mohun*, and the other that called himself *Hill*, they spoke themselves.

Mr. Att. Gen. But who was it that came to them so often, to tell them they should not speak with her?

Knevitt. It was old Mrs. *Bracegirdle*.

Mr. Att. Gen. You are sure of that.

Knevitt. Yes, Sir.

Mr. Att. Gen. I would ask you one Question more: When the Watch came up to them, did my Lord tell the Watch his Name was *Mohun*, or only that he was a Peer of England?

Knevitt. He said first he was a Peer of the Land, and then he said his Name was *Mohun*, and the other said his Name was *Captain Hill*.

Mr. Att. Gen. You are sure both of them told their Names to the Watch.

Knevitt. Yes, I am sure I heard them say so.

L. H. Stew. Have you any more Witnesses to call, my Lord?

L. Mohun. No, my Lord, I could call some as to *Sandys's* Reputation, but I do not think it at all material.

L. H. Stew. Have you any thing, Mr. Attorney, to say to the Boy that was set by? Will you have him called again?

Mr. Att. Gen. My Lord, I did propose that the Boy should hear the Information read which he gave in to the Coroner.

L. H. Stew. Will you have him called again?

Mr. Att. Gen. Yes, if your Lordships please.

L. H. Stew. Well then, call him again.

(The Boy came to the Bar, and his Deposition before the Coroner was shewed to him.)

Mr. Att. Gen. Look upon that Paper, is that your Name, and of your Writing?

Boy. Yes.

Mr. Att. Gen. Was it true you then swore before the Coroner?

Boy. Yes, it was true.

L. H. Stew. Read it.

(It was taken by the Clerk, and read at the Table.)

Clerk of Crown. Reads.

Middlesex. The Information of *Thomas Leake*, Servant to *Richard Hill*, Gent. taken upon Oath this 12th Day of December, 1692. before me.

HE saith, that on Friday Morning last, about nine of the Clock, 'twas agreed betwixt my Lord *Mohun* and *Captain Hill*, to seize Mrs. *Bracegirdle* with some Soldiers, and carry her away in a Coach about nine Miles off, and about ten of the Clock at Night my Lord *Mohun* and *Captain Hill*, with about six Soldiers, did seize her, and endeavour to put her into a Coach; but she refused to go, and they led her down into *Howard-street* to her Lodging, and then said they would walk an hour under Mrs. *Bracegirdle's* Window, and another under Mrs. *Barry's*; and about an hour and an half after, Mr. *Mountford* came down the Street, and Mr. *Mountford* and my Lord *Mohun* saluted each other, and my Lord *Mohun* said; he hoped Mr. *Mountford* was not come to vindicate Mrs. *Bracegirdle*; and Mr. *Mountford* hoped my Lord did not come to vindicate the Rudeness done to Mrs. *Bracegirdle* by Mr. *Hill*; and then Mr. *Hill* said, he was able to vindicate himself, and bid Mr. *Mountford* to draw, and they both pushed at each other with their Swords, and my Lord said he would stand by his Friend, and Mr. *Hill* was his Friend: and during the time that Mr. *Hill* and Mr. *Mountford* fought, my Lord *Mohun* did not endeavour to part them.

Jo. Cowper, Coroner:

Thomas Leake;

Mr. Att. Gen. My Lords, as to this last Witness, I would desire some of the Watch may be asked, because she saith my Lord told them his Name was *Mohun*, and *Hill* told them his Name was *Hill*, whether it was so or not.

L. H. Stew. Who would you call?

Mr. Att. Gen. *Merry*, my Lord, if you please.

L. H. Stew. Call him.

Lord Mohun. I desire the Constable may be called.

Merry did not presently come in.

Mr. Att. Gen. My Lord, I think it is not so material, as to desire your Lordships should stay for him. But as to that one Witness that entertained your Lordship so long, *Mrs. Bracegirdle's* Servant, I desire, that she being here, may give your Lordships an account what became of this Servant of hers.

Mrs. Bracegirdle. My Lord, she went away from me on the Sunday.

L. H. Stew. Who did?

Mrs. Bracegirdle. My Maid that was then, and I sent to her Aunts the Week after to seek for her, but she could not be found, where she was I cannot tell, nor could not hear of her from that time to this.

Lord Mohun. I desire she may be asked whether she did not discharge her, or pay her her Wages.

Mrs. Bracegirdle. I did not.

Lord Mohun. Did not you or your Mother?

Mrs. Bracegirdle. My Mother, my Lord, did, she was not my Servant, my Mother hired her, my Lord.

L. H. Stew. What doth she say? were her Wages paid, and she discharged?

Mrs. Bracegirdle. They were paid because she would not stay with me, my Lord. I desired her to stay, and she would not, and then she demanded her Wages, and my Mother paid her.

L. Mohun. My Lord, I desire you would ask the Maid the reason why she would not stay.

El. Walker. If it please you, my Lord, the reason was this. When I came from *Hick's-Hall* *Mrs. Mountford* the next day sent for me, and I lying with this *Ann Jones* that was here, she told me that I should be sent for, and they would rattle me off for my Evidence that I had given at *Hick's-Hall* for the King; my Lord, I having such an Item from *Ann Jones*, and they being all Players; I was afraid, because Players have a worse Reputation than other People.

Mr. Att. Gen. My Lord, we shall not trouble your Lordships with any more Witnesses.

L. Mohun. My Lord, I desire she may be asked if there were not Bailiffs sent to take her, and she threatened to be arrested.

L. H. Stew. What say you to that?

El. Walker. If it please you, my Lord, I cannot swear it, but I will tell you, as near as I can, how it was; I had not time to look over my Cloaths, being in haste when I went, and for fear I should have mistaken any thing, the next day I went to look over my Cloaths, whereupon I found I had mistook, and taken one of my Mistresses Aprons, and left one of my own for it, and knowing their great Suspicion and Inveteracy against me, I went the next day to my Uncles, a Porter's, and desired him to carry it to them; but when I had delivered it to him, he would not let me stay to speak much,

for he said there had been three Bailiffs to take me, and I having no Friends, was much affrighted, and run crying up and down, and did not know where to fly; for fear they might lay me in a Prison; and having no Friends, therefore I was forced to fly, and so I went to a Justice of Peace, and there I gave him an Account of the Business. But he said he must have nothing to do with it, I must go again to proffer my Service to my Mistress; but I was not willing to proffer my Service again to her, so I kept away ever since.

L. H. Stew. If you have done with the Evidence on both Sides; What have you more to say, my Lord?

L. Mohun. My Lords, I hope it will be no Disadvantage to me, my not summing up my Evidence like a Lawyer, being a young man; I think I have made it plainly appear that there never was any former Quarrel or Malice between *Mr. Mountford* and me; I have also made appear the reason why we staid so long in the Street, which was for *Mr. Hill* to speak with *Mrs. Bracegirdle*, and ask her Pardon, and I staid with him as my Friend, so it plainly appeareth I had no hand in the Killing of *Mr. Mountford*, and upon the Confidence of my own Innocency, I surrendered my self, and I commit my self to this Honorable House, where I know I shall have all the Justice in the World.

L. H. Stew. Has your Lordship no more to say?

L. Mohun. No, my Lord, but I am innocent of the Fact, and leave my self wholly to your Lordships.

Mr. Sol. Gen. May it please your Lordships, according to my Duty, I am to repeat the Evidence to your Lordships on the behalf of the King.

My Lord, the Evidence hath been very long, both that on the Part of the King, and that on the Part of the Prisoner, and I know your Lordships have given Attention to it with very great Diligence. I cannot pretend that my Memory will serve me so well, as to repeat the Circumstances of this so long Evidence, but that which has been material, I shall crave leave shortly to mention to your Lordships.

My Lords, I know a great many things may slip my Notice and Repetition, but nothing can slip your Lordships Observation: So that though I should not lay a due weight upon the Evidence for the King, yet your Lordships will let nothing pass without giving it its just Consideration, and will give Judgment according to the exactest Justice.

My Lords, the Evidence for the King doth consist first of Facts precedent to the Killing of *Mr. Mountford*, and next what happened at that time.

As to what preceeded this Fact thus committed, there were two or three Witnesses called, and the first of them is *Mr. Hudson*, the next is *Mr. Powel*, and they give you an Account that *Mr. Hill* had made his Applications in the way of Courtship to *Mrs. Bracegirdle*, but that he had an Apprehension that *Mr. Mountford* was an Obstruction to him in that matter, and therefore he did declare several times, that he would be revenged of him. And one time (which I think was two or three Days before the Fact was done) my Lord *Mohun*, the Prisoner at the Bar, was at Dinner with *Hill*, when *Hill* had this Discourse

course concerning *Mountford*, and said he would be revenged of him. My Lord *Mohun* was by, they both say, when such Discourse was used by *Hill*, but they cannot tell what Notice he took of it.

My Lords, after this, the Day that this Fact was committed, your Lordships have heard how my Lord *Mohun* and *Hill* hired a Coach and six Horses in order to seize Mrs. *Bracegirdle* and carry her away by Force, and that is proved most fully, both upon my Lord *Mohun* and *Hill*, that they were both concerned in that Design, and actually engaged in it; there can be no Dispute of that. Accordingly they dined together that Day, and at Dinner there arose a Discourse in relation to Mrs. *Bracegirdle*. And at that time my Lord *Mohun* said it would cost *Hill* 50 l. to carry her off. And *Hill* said, if the Villain resisted he would stab him. And my Lord *Mohun* said, He would stand by his Friend. This Declaration was made at Dinner, on the Day this Fact was committed; and then they appointed to meet at the Play house at six a Clock in the Evening, expecting Mrs. *Bracegirdle* would be there; and accordingly the Coach was ordered to be ready at that time in *Drury-Lane*.

My Lords, in pursuance of this Design, they both came to the Play-house at six a Clock; this is proved by two or three Witnesses. When they came there they inquired for Mrs. *Bracegirdle*, but she was not there at that time. And then not finding Mrs. *Bracegirdle* there, your Lordships have an Account from the Coach-man, to what Places he carried them from thence. First to *Drury-Lane*, there they staid some time; and not finding her there, he drove them into *Norfolk-street*, near the Place where she lodged, and there a Man and a Woman being discoursing together, gave them occasion to say, they thought they were betray'd. And *Hill* said, my Lord, let us go and cut that Fellows Throat, or Words to that effect.

Then, my Lords, they drove back from that Place, into *Drury-Lane* again, and ordered the Coach to stop over against my Lord of *Clare's* House. There it happened that Mrs. *Bracegirdle* came from Mr. *Page's* house, where she had supped. At that time there were present her Mother, her Brother, and Mr. *Page*, and Mr. *Page* led her along. *Hill* came up with seven or eight Soldiers, and forced her out of Mr. *Page's* Hand, and endeavoured to thrust her into the Coach. In that Coach my Lord *Mohun* was, that is agreed upon on all hands, the Coach Door was open, and my Lord *Mohun* was there in it with seven or eight Pistols.

It happening they could not carry her off, but the matter taking Air, People came in to their Assistance, and the Design being prevented, *Hill* would needs go home with her to her Lodging in *Howard-street*, and my Lord came out of the Coach and went along with him. When they were come to the Lodging, the Witnesses tell your Lordships, that at that time, when Mr. *Page* was going into the House, *Hill* would have had some Discourse with Mr. *Page*, and desired to speak with him, but Mr. *Page* said it was not a convenient time, but to Morrow would do better, and so went into the House, and the Door was locked.

My Lord *Mohun* and *Hill* continued walking about the Streets for about two hours before Mr. *Mountford* was killed, and now your Lordships will observe what Transactions there were during the

time that they continued walking in the Streets.

Then there was an Interruption for about a quarter of an hour, occasion'd by a Lady's falling into Fits in one of the Galleries; but she being removed, and Proclamation made for Silence, the Court proceeded.

L. H. Stew. Pray, go on Sir.

Mr. Sol. Gen. My Lords, I was observing to your Lordships, that part of the Evidence which related to what happened after the time that Mrs. *Bracegirdle* was in her Lodging. And, my Lord, your Lordships hear from the Witnesses, that my Lord *Mohun*, and this *Hill* continued in the Street, where Mrs. *Bracegirdle* lodged, and walked up and down for near two hours before Mr. *Mountford* came.

During that time, the Constable and the Watch-men have told your Lordship upon their Oaths, that my Lord *Mohun's* and Mr. *Hill's* Swords were both drawn. And the Constable swears expressly, That he asked my Lord *Mohun* what he did with his Sword drawn, and that my Lord answer'd, he was ready to put it up, and told him withal, he was a Peer of the Realm; the Constable then asked, Why the other Gentleman's Sword was drawn, and my Lord *Mohun* made answer that his Scabbord was lost.

But your Lordships observe, that before the Watch came, Mrs. *Brown* (as she her self hath sworn) came out of the House where Mrs. *Bracegirdle* lodged, and desired to know what they did there, and then *Hill* said, he should light upon *Mountford* one time or another; saith Mrs. *Brown* to him, why, what hath he done to you, to which he Replyed, he hath affronted me, and I will be Revenged upon him; and this was said in the Presence of my Lord *Mohun*, he being just by.

My Lords, after this, in a very short time, Mr. *Mountford* came down, and Mrs. *Brown* telleth your Lordships, that they were so much aware of this matter, that my Lord *Mohun* and *Hill* staid to do *Mountford* a Mischief, that there were Persons sent to Mrs. *Mountford* to give her Notice of it, and she sent Messengers to find out her Husband, to prevent his coming in their Way, but they could not find him.

Upon Mr. *Mountford's* coming down, Mrs. *Brown* seeing him, steps up towards him, to tell him that my Lord *Mohun* and *Hill* were in the Streets with their Swords drawn, and she was afraid they had some ill Design against him; but she sweareth she did not, nor could not tell him this, he was in such haste; but one of the Witnesses for my Lord contradicts her in this, and says, that she did tell him, but whether the one Witness sweareth true, or the other Witness saith true, must be left to your Lordships Judgment.

But Mr. *Mountford* came down immediately, and as he came down, he met my Lord *Mohun*, and they did Salute one another (for I would not injure my Lord in mistaking the Evidence, as near as I can) but your Lordships will observe the Witnesses say, that presently my Lord *Mohun* asked Mr. *Mountford*, whether he was not sent for, and said, I suppose you have heard what happened to the Lady this Night, and I hope you do not come to Vindicate Mrs. *Bracegirdle*. And Mr. *Mountford* Replyed, I hope your Lordship doth not come to Vindicate Mr. *Hill* in such an Action.

Thereupon *Hill* stepped up, and struck Mr. *Mountford*

Mountford a box on the Ear, and at the same time, with his Right Hand, passed at him, and run him through, before his Sword was drawn. This two of the Witnesses for the King say *Mr. Mountford* told them upon his Death-Bed, and it was very probable so; because your Lordships observe by all the Evidence, *Hill's* Sword was ready drawn in his Hand.

There being some Noise, Proclamation was made for Silence.

Mr. Soll. Gen. My Lords, I was observing that it was immediately, and at the same time that he struck him, and run him through, and it is very likely it was so, as *Mr. Mountford* said when dying; for several of the Witnesses for the King do Swear, that the Box on the Ear, was before his Sword was drawn, and *Hill's* Sword was ready in his Hand. So *Mr. Mountford* said when he was Expiring, and what regard your Lordships will have to the Declaration of a Dying Man, we must submit to your Lordships Judgment; and *Mrs. Brown* who was there and saw the Fact, sweareth the same thing, that it was done before *Mr. Mountford* could have time to draw his Sword.

If that be so, it is very plain it was Murder in *Mr. Hill*, and your Lordships will please to observe another piece of Evidence that came from the Mouth of a Witness, Examined for the Noble Lord the Prisoner at the Bar, and that is *Leake* the Boy, he was Examined before the Coroner, indeed he was not called now for the King, and your Lordships may see some Reason why he was not, but your Lordships have had his Deposition before the Coroner read, and by that your Lordships may observe, how different his Testimony then was, from what he now giveth. And whether your Lordships will believe what he then said upon his Oath, or what he now saith, is left to your Lordships Consideration. He saith, when he was Examined upon his Oath, soon after the Fact, that my Lord *Mohun* was by, when *Hill* did wound *Mountford*, and that my Lord *Mohun* said, that he would stand by his Friend, and that *Hill* was his Friend, and that my Lord *Mohun* did stand by, and did not offer to part them. Though he hath something varied from this in his Testimony now, yet he still affirms what he there Swore, to be true.

But further my Lords, your Lordships will Consider what the Constable Swore, my Lord *Mohun* said after he was taken, and when he was in Custody at the Round house. Whether he did Surrender himself or no, we must leave to your Lordships, upon the Evidence that hath been given on the one side, and on the other. But when he was in Custody (as I said) my Lord *Mohun* asked whether *Hill* was taken, and being answered No, he said he was glad of that; but he was sorry he had no more Money about him, and wished that he had that Money which he himself had, and that he would be willing to be hanged for him. So great a kindness he expressed for *Hill*, and said, he had changed Coats with him, and then had *Hill's* Coat on his Back.

This, my Lords, is the Substance of the Evidence on the King's part, and upon the whole of it, it is plain, with Humble Submission to your Lordships, that here was a premeditated Malice in *Hill*, by his own Declarations preceeding, by what was done at the time of the

Fact committed, and by stabbing him before his Sword was drawn.

The Question will be, whether, my Lord *Mohun* the Prisoner at the Bar, was Privy to this Design of *Hill's*, and did so far agree in it, as to keep him Company to Assist and Encourage him. For if he was Privy, and knew of *Hill's* Design, and stayed there for that purpose, to give him Assistance in it, with Humble Submission to your Lordships Judgment, he will be as much Guilty of the Murder, as *Hill* that actually killed him: That therefore will be the Question before your Lordships, for your Judgment upon the Consideration of what has been proved in this Case.

My Lords, The Prisoner my Lord *Mohun*, has called and produced several Witnesses to your Lordships, in Defence of himself. The first Witness was called to this purpose, to shew that my Lord hath no Malice to *Mountford*, but that they were very good Friends, but two or three Days before, that he spoke of him with a great deal of Kindness, and desired to Drink a Bottle of Wine with him.

Now for this, I would observe to your Lordships, that it is not the Question, whether my Lord *Mohun* had any direct or express Malice against *Mountford*, but if *Hill* who was so great a Friend of my Lord *Mohun's*, had a Malice against *Mountford*, and my Lord *Mohun* had so great a Kindness for *Hill*, as to Accompany and Assist him in taking his intended Revenge. (Whether it was so or no, your Lordships are to Judge) it will be as much Murder in Law, as if my Lord had himself had a Hand in it.

For the other Witnesses that have been called for the Prisoner, I must leave the Consideration of what they say, to your Lordships. They are not upon their Oaths, but yet they are to be believed so far, as your Lordships shall Judge what they say Credible, upon Consideration of all that you have heard. But for the Boy, who hath Contradicted his own Evidence, which he gave upon Oath before the proper Officer; but acknowledgeth what he Swore then, was true, what Credit is to be given to him, will deserve your Lordships particular Consideration. How he has been prevail'd upon to change his Evidence, I cannot tell, nor what weight it will have with you.

My Lords, I will not spend more of your Lordships time, I know you very well remember, and will carefully Recollect all the Evidence, both for the King and for the Prisoner, and your Lordships will consider that it is a Case of Blood, and if your Lordships think him Guilty, tho' he be one of your own Body, you will adjudge him so, if not you will acquit him; and therefore I leave the Matter to your Lordships just Determination.

L. H. Stew. My Lords, I think now, having heard the Evidence on all sides, your Lordships will think fit to Adjourn to the House of Lords. Is it your Pleasure to Adjourn?

Lords. Ay, Ay.

L. H. Stew. This House is Adjourned to the House of Lords.

Then the Lords returned to their own House, in the same Order as they came into the Court.

After some Debate amongst themselves in their own House, they Adjourned till the next Day, and ordered the Prisoner, Council, and Witnesses to attend then in the Court.

Die Mercurii Primo Februarii 1692.

The Lords sate all Day in their own House, debating amongst themselves in the Absence of the Judges, who were in the Court, and about eight a Clock in the Evening, the House of Lords Adjourn'd till the Friday following, the Thursday being Candlemas-day, and no Law-day.

And the Prisoner, Council, and Witnesses were ordered to attend in the Court on Friday morning.

Die Veneris Tertio Februarii 1692.

ABout the Hour of Four in the Afternoon, the Lords (who had till then been Debating amongst themselves in their own House) came in the same Order as the first Day into the Court in *Westminster-Hall*, except only that the Judges were a great part of the Day waiting for them in the Court.

The Lords being seated on their proper Benches, and his Grace the Lord High Steward in the Chair before the Throne, Proclamations were made for Silence, and for the bringing the Prisoner to the Bar in usual manner; and the Prisoner coming to the Bar, and having saluted his Grace the Lord High Steward, and the Peers, and being resaluted by them, the Court proceeded in this manner:

L. H. Steward. My Lord *Mohun*, My Lords have heard the Evidence on both sides, for and against you; and upon that Evidence some Questions have arisen in point of Law, in which some of my Lords are doubtful. I am therefore by their Lordships Command to propose to your Lordships, my Lords Chief Justices and the rest of the Judges here, to have your Opinions upon a Case stated by their Lordships; and it is this:

In a Case where a Man shall murder another, Whether all those that are in his Company at the time of the Murder, are so necessarily involved in the said Crime, that they may not be separated from the Crime of the said Person, so as in some Cases to be found guilty of Manslaughter?

To this, my Lords expect you the Judges should give your Resolutions severally one after another, and therefore it is to begin with you, my Lord Chief Justice.

L. C. J. Holt. My Lord, the Question is pretty long; and I desire, that I may not be mistaken in the Opinion I shall give, that I may have it in Writing, and that I may have a little time to consider of it, because it hath been a Question framed upon very great Consideration and Deliberation: Therefore I would be very well advised before I give an Answer to such a Question, because it is of so great Importance.

L. H. Stew. You must speak out, my Lords; for else I am at such a distance that I cannot hear a word you say.

L. C. J. Treby. My Lords, I make the same humble Request: The Question propounded is

long, and the Fruit of great Deliberation among your Lordships; I desire therefore my Answer may be such as becometh me to it, and to that purpose that I may have a Copy of it, and some time to consider of it.

L. H. Stew. I have it here in Writing, and will give it you, if that will serve the turn.

The Paper was brought by the Black Rod from his Grace to the Judges.

L. C. J. Holt. My Lord, we desire your Lordships will give us time to withdraw, and consider of it among our selves.

L. H. Stew. Your Lordships hear the Motion of my Lord Chief Justice; the Judges desire your leave to withdraw, and consider of the Question among themselves.

Lords. No, no, no.

Then the Judges sitting upon the Wool-Packs, conferred for a little time privately with one another; and then the Earl of *Rocheſter* stood up.

E. of Rocheſter. My Lords.

L. H. Stew. My Lord of *Rocheſter*, What say you?

E. of Rocheſter. My Lords, the Prisoner doth desire to have a Copy of this Question, it being a Question in Point of Law, that his Council may see it.

Lords. Ay, ay, he ought to have it.

A Copy was carried by one of the Clerks to the Bar, and delivered to the Prisoner, and he gave it to Sir *Thomas Powys*, who with Mr. *Hawles* and Mr. *Price*, before assigned of Council for my Lord *Mohun* in Matters of Law, stood by him at the Bar.

L. Mohun. My Lords, I desire to know whether my Council may speak to this Case before the Judges give their Opinions, it being a Matter of Law, and the Judges superiour to my Council.

L. H. Stew. My Lord, they may be heard to any Matter of Law that is Law singly, the Council on either side may be heard to any thing that is a Point of Law only.

L. Mohun. My Lord, I conceive this to be so.

L. H. Stew. My Lord, it is agreed to be so: But, my Lords, I must desire your Lordships leave to go down to the Wool-Pack, or I shall not be able to hear what is said.

Lords. Ay, ay.

Then his Grace came down and seated himself on the Wool-Pack.

Sir T. Powys. May it please your Lordships, I am of Council—

E. of Devonshire. My Lords.

L. H. Stew. My Lord Steward.

E. of Devonshire. I think your Lordships have not yet resolved that the Prisoner's Council shall be heard before the Judges; therefore I desire they may not begin.

Lords. Yes, yes, it was agreed above.

L. H. Stew. My Lord, it must be either then, or not at all; and I understand the Resolution of the House to be so.

Lords. Ay, ay.

L. H. Stew. Go on, Sir.

Sir T. Powys. May it please your Lordships, I am of Council assigned by your Lordships for this Noble Peer that is now a Prisoner at the Bar: The Question your Lordships are pleas'd to propound is this:

In a Case where a Man shall murder another, Whether all those who are in his Company at the time of the Murder, are so necessarily involved in the same Crime, that they may not be separated from the Crime of the said Person, so as in some Cases to be found guilty only of Manslaughter?

My Lords, with humble Submission to your Lordships, I take it there are many Cases where a Person that is present when a Murder is committed by another Man, shall be equally Guilty of that Murder; and there are many Cases where a Person that is present when a Murder is committed by another Man, shall be Guilty only of Manslaughter: And there are many Cases where a Person that is present when a Murder is committed by another Man, shall not (with humble submission) be Guilty of any Crime at all.

For the first, there is no Question but if two Persons or more do meet together with Malice prepened to kill another, and one of them killeth him, and the rest do aid and assist him in doing of it, though the Mortal Wound is only given by one, there is no question but they are all equally Guilty of the Murder with him that gave the Mortal Wound: And it is also as clear, if two Persons meet together to commit an unlawful Act, and during the execution of that unlawful Act, one of them doth kill another Man, the other will be involved in the Guilt of it.

But, my Lords, if several Persons do meet together to commit an unlawful Act, and the Design of the Act is totally over, so that the Prosecution of it is quite left off. —

There being some Noise and Disorder about the Court, Proclamation was commanded to be made, and was made again for Silence.

Sir T. Powys. My Lords, I say in the second Instance that I was offering to your Lordships. If two Persons or more meet together to do an unlawful Act, but are either disappointed in it, or have totally desisted from it; and afterwards these same Persons having quitted their Design, are together, and a third Person coming into their Company, though there were Malice between one of those Persons, and that third Person, and upon words, or some other occasion or accident, there should be quarrelling and fighting between those two Persons that bore Malice to one another, and one of them is killed, and he that before had joyned in the Design of committing an unlawful Act, be only there in the Company, if he doth neither aid nor abet, nor any ways agree to the doing of the thing, the Authorities are it will neither be Murder nor Manslaughter; and of this I would, with your Lordships Favour, put some Instances.

If two Persons agree together, (as the Case is put in that which goeth by the Name of my Lord Dacre's Case) to enter into another Man's Park and steal his Deer, this is an unlawful Design; and if one of them kill the Keeper, and the other no way at all act in the doing of it, yet it will be Murder in the Person that did go along with that other in that unlawful Act: But the Lord Dacre's Case was accompanied with further Circumstances, for there it did appear that the Lord Dacres had agreed before-hand to

kill any Person that should oppose them; there was that particular Circumstance in that Case.

But, my Lords, I take it, with submission, to be very clear, that if two such Persons who made such an attempt to rob or steal Deer in a Park, should be disappointed, and should leave the Park, and afterwards go to a Tavern, or an Ale-house, or any place to drink, having quitted that Design, and some Hours afterwards, a Person cometh in that was not expected, or thought of, and a Quarrel ariseth between one of those two Persons who were before together, and the Man that so came in, and he shall be killed, I take it that the other Person who was present will not be guilty of the Murder, unless he aided, or assisted, or acted in it.

My Lords, I would speak to your Lordships in a Case of this Nature with as good Authority as I could, besides my own poor Reason to prove to your Lordships that there may be many Cases where a Person may be present at the time when another is murdered, and yet he shall be guilty only of Manslaughter, and in some Cases shall be guilty of no Crime at all.

The Case that I shall cite is out of a Treatise of a very great and very Learned Man, it is the Book that goeth under the Name of Sir Matthew Hales's *Pleas of the Crown*; the Case is this, you will find in that Book under the Title of *Murder*, Fol. 51. If A. and B. having Malice prepened, meet and fight, and C. the Servant of A. not acquainted therewith, take part with A. his Master, and kill B. this is Murder in A. but only Manslaughter in C. So here is an Instance where one is guilty of Murder, and the other only guilty of Manslaughter, when both are present at the time of the Fact committed. The same Law, saith he, it is, if C. came in suddenly, and took part with A. and killed B. In this Case it is Murder in A. if there was Malice prepened between him and B. but only Manslaughter in C. who came in suddenly, and actually killed B.

My Lords, He goeth further, and saith, If one come by chance where one is killed, and doth not abet, he is neither Principal nor Accessory to that Murder or Manslaughter; so that here are Cases where it is Murder in one, and Manslaughter only in the other; and here are Cases where it is Murder in one, and not so much as Manslaughter, or any Crime at all in the other.

These that I have cited are Cases where one has Malice against another, and he that joyneth in the Quarrel doth not know it. But I will put the Case now, That a Person hath Malice against another, and one happeneth to be in his Company that knoweth he hath Malice against that other Person; if those two that had Malice against one another, do fight, and the one kill the other, yet he that is present will not be guilty of Murder or Manslaughter. For if the Law should be, that Men are involved in the guilt of Murder whenever they are present at a time when one that beareth Malice against another killeth his Enemy, Conversation in the World would be very dangerous: For, my Lords, we know the World is too full of Malice, and there are few Men but have Acquaintance with such as bear Malice to others; but if so be that no Man that is acquainted with one that bears Malice to another, may be in his Company but at the peril of his Life; if his Enemy come in his

his way, and he happen to kill him in his Presence, then no Man that is ever so innocent can be safe.

For I would put this Case to your Lordships: I am walking with a Friend or an Acquaintance that I know hath Malice against another, and that other Man cometh in the way, and they fight, and my Friend killeth that other Man, and I am no way aiding or assisting in it, if that should involve me in the Crime, surely the Law of England would be the most unreasonable and dangerous Law to live under in the World. No doubt but in such a Case the Person that is so present is unfortunate, but he is innocent, is not guilty.

For to make one guilty of Murder where Murder is committed, it must be either that he doth aid or abet, or some way assist in the killing of the Man, or he must have before that time agreed and confederated with the Person that killed him that he would joyn therein at that time, and he must be there for that end and purpose: For if he never engaged or agreed to the killing of him, nor was there for that purpose, nor at the time did any way act, or joyn, or assist, in the doing of it; in those Cases he is certainly not guilty.

My Lords, I dare not apply any of these things to the present Case, because I suppose your Lordships only propounded this as a Question of Law, and not of Fact; your Lordships are the great Judges both of the one and the other: But what in the Argument or Resolution of this Case, your Lordships will find agreeable to the present Case of my Lord now before you, I submit to your Lordships Judgment.

Mr. Hawles. My Lords, I will not repeat what has been offered, the Distinction is certainly true that has been made, that there are Cases and Instances in Law where a Man may be guilty of Murder, when he is present where Murder is committed, and he may be guilty of Manslaughter only where another is guilty of Murder; and a Man may be present where Murder is committed, and be innocent both of the one and the other. But this I do venture to say, That there is no Authority in our Law that saith a Person present, when a Murder is committed, must be guilty either of Murder or Manslaughter, it must be according to the Circumstances of the thing, either that he intended to aid or assist in the killing when he was there by Agreement before-hand, or must actually aid or assist by some Action or Encouragement.

But, with Submission, the Authority of Law is very plain upon this Question proposed by your Lordships, that one Person may be guilty of Manslaughter, and another of Murder at the same time. The Case that hath been put out of my Lord Hales was upon his account Authority sufficient to quote, if we would only rely on him: But, my Lords, with Submission, the Authority goeth a little higher; yet Stampford putteth the Question before the Justices; A. that is, the Master, fighteth with B. and C. the Servant taketh part with his Master, and killeth B. A. is guilty of Murder, and C. only of Manslaughter.

And that Authority is followed afterwards in the Case of Salisbury, in Plowd. Com. Fol. 100. B. with the Resolution of all the Judges in that Case, That one Man may be found guilty of

Murder, and another of Manslaughter, as to the same Fact; and Stampford doth expressly say, as my Lord Chief Justice Hales quotes it out of him, That if a Man be present, but do not abet or assist, or contribute to the thing, he is totally innocent, and neither Principal nor Accessory to the Murder or Manslaughter.

My Lords, We do not find that our Law hath any way prohibited a Man to keep Company with one that oweth another a Spleen; sure there should be some warning given about it, if that was the Law in such a Case. The Law goeth no farther than to caution a Man that he take care he doth not break the Law himself, that he doth not transgress the Bounds set him by the Law.

And it were a very hard Case upon a private Person if it should be otherwise; for no Law compelleth a private Person to part two that are fighting; if he doth attempt it, he doth it at his own Peril, as in that Case of A. the Master fighting with B. and C. the Servant taking part with his Master to part them, if B. be killed, C. is guilty of Manslaughter, though his Design was only to part them, because the Law putteth it not upon a private Person to do it; if it did, the Law would protect him for what he did in Obedience to it.

The Law is otherwise in the Case of a Magistrate or a Constable, who endeavoureth to part any Persons fighting, and to keep the Peace; if he happen so to kill a Man, he is totally innocent; but a private Person shall answer for it.

My Lords, I will not trouble your Lordships further; I hope it is plain that Malice is absolutely necessary to make a Man guilty of Murder, and there is no such thing in this Case stated by your Lordships; and therefore I submit the Matter to your Judgment.

Mr. Price. My Lords, I am of Council for this noble and young Lord the Prisoner at the Bar: I shall not trouble your Lordships so far as to make any Repetition of what has been said by those Gentlemen that went before me.

But there was a Case in Plowden that was cited by Mr. Hawles by the Name of Salisbury's Case; and I would crave leave to cite the Case that is next precedent; it is in that Book, Fol. 98. There, my Lords, was an Indictment for Murder against several, and among the rest against two, one for giving the Wound and the Stroke, and the other for being present and aiding the other; and they tell you how he was an Aider and an Abetter because he was present, and put the Man upon whom the Assault was made in terror, which terror was the occasion that he could not defend his Life; and made him full as much a Principal as the other that gave him his Deaths Wound. And there, my Lords, he citeth another ancient Record, which is Quarto Libro Assisarum Placito 25. of an Appeal of Murder by a Woman for the Death of her Husband against Sixteen; four whereof were Principals, and the others Accessories, where the words are Presence, Force and Aid.

How that will come up to this Case now before your Lordships, I am not to trouble you with the Consideration of, you who have heard the Evidence are best able to judge of it.

My Lords, By the same Reason and Rule that one Man may be found guilty of Murder, and another of Manslaughter; one may be found

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guilty

guilty, and the other not guilty. As for Example, if *A.* commandeth *B.* to kill *C.* and afterwards it repenteth him of this Command, and he countermandeth it: yet notwithstanding *B.* doth kill *C.* now *B.* that killed *C.* is guilty of Murder, but *A.* that countermanded it is not guilty as Accessory; for his malicious Intent did not continue till the murdering Stroke was given, and to make Murder there must be a continuing Malice till the mortal Wound given. Cases to this purpose many might be cited; but for a full Authority there is my Lord *Coke* in his Pleas of the Crown, *Fol.* 51.

My Lords, I have no more to say, but that by the same Rule; that one may be found guilty of Murder, and another of Manslaughter for the same Fact, by the same Rule, (as Circumstances may be,) the one may be found guilty of Murder, and the other not guilty at all.

L. H. Stew. Have you any more to say that are of Council for the Prisoner?

Sir Tho. Powys. No, my Lord, I have nothing further to offer to your Lordships.

L. H. Stew. Have those who are of Council for the King any thing to reply to this that is said by the Council for the Prisoner?

Mr. Att. Gen. May it please your Lordships, the Question that is proposed, is this,

In a Case where a Man shall murder another, Whether those who are in his Company at the time of the Murder, are so necessarily involved in the said Crime, that they may not be separated from the Crime of the said Person, so as in some Cases to be found guilty only of Manslaughter.

My Lords, that which with all Submission we would offer to your Lordships is this; We are intrusted by their Majesties to prosecute for the Death of one of their Subjects; there hath been a Case stated to your Lordships by the Evidence which hath been given before you; That which is mentioned in this Paper has nothing certain in it, we are to imagine a Case, and suppose Facts, and then to argue what will be the Law upon those Facts supposed. When your Lordships are pleased to let us know what it is which your Lordships take to be the Fact of the Case before you, we shall be ready to speak to the Law upon that Case, as it becomes us, and as it is our Duty to do; but till the Fact be so stated by your Lordships, and declared to be that which your Lordships take to be the Fact of my Lord *Mohun's* Case, we think it not consistent with our Duty to enter into a Debate upon Supposals, or upon other Cases than that which is in Judgment before your Lordships.

L. H. Stew. Will your Lordships then please that the Judges give their Opinion?

Mr. Sol Gen. My Lords, not to trouble your Lordships with any Repetition of what hath been said, it is my Opinion, as Mr. Attorney General has declared his, That, as this Case is stated, we are bound not to give any Answer to it, unless your Lordships will please to tell us what the Case is upon the Evidence that hath been given before you.

Mr. Serj. Thomp. My Lords, I desire to be heard one Word in this Case. I take it for granted, that your Lordships here are Judges

both of Fact and Law in this Case, and you are so entirely Judges of it, that no Body can interpose in giving their Opinions in relation to your Judgments, what the Fact is, and from the Fact the Law ariseth. We, that are of Council for the King, must needs prejudice him as to the Evidence of the Fact that we have given, except we argue that which is the Fact of this particular Case, and the Law arising thereupon together; which is not necessary here, where your Lordships are Judges of both; and since you are better Judges of them, than any one else can be. Therefore we do not think it our Duty to argue upon a Case put *ad extra*, and *obiter*; and hope your Lordships will excuse us from answering what hath been said by the Council for the Prisoner; tho' I think it might be easily answered in every Point; but I shall not enter upon the debating of it. For your Lordships see what Caution we ought to have in relation to our Duty to the Government, which your Lordships will always expect we should perform as exactly as we can. When the Fact that hath been proved in this Case is stated, your Lordships then are the proper Judges what it amounteth to in point of Law, or if your Lordships desire that Council should argue it, we shall be ready to do it.

L. H. Stew. Then, my Lords the Judges, what say you to it? my Lords here expect your Opinion in this Case.

L. C. J. Holt. If your Lordships please, I will repeat the Question, which is this:

In a Case, where a Man shall murder another, Whether those who are in his Company are so necessarily involved in the said Crime, that they may not be separated from the Crime of the said Person, so as in some Cases to be found guilty only of Manslaughter?

My Lords, I shall not enlarge upon the Matter, but humbly offer my Opinion to your Lordships as generally as the Question. I am of Opinion, that the Crime of those who are in the Company at the time of the murder committed, may be so separated from the Crime of the Person that committeth the murder, as in some Cases they are only to be found guilty of Manslaughter. I suppose your Lordships do not expect that I should argue the Case, or explain my Opinion upon so general a Question, by particular Instances, or run into a Consideration of the different Cases that may be put upon it, therefore I only deliver this as my Opinion.

L. C. J. Treby. May it please your Lordships I am of the same Opinion; I think the Import of your Lordships Question is, Whether there may be a Case in which it is possible that one Person, who is in the Company of another at the time that he committed murder, may be guilty of Manslaughter; and my Lords, I think a Case may fall out, and may be so circumstanced, as that it may be possible, that he who did accompany the Murderer, may be guilty only of Manslaughter. Your Lordships only expect our Opinion, and therefore I will not go about to argue it.

Mr. J. Nevill. My Lords, I shall not spend your time to repeat the Question, it hath been so

so often repeated ; but I am of the same Opinion with my Lords Chief Justices, I must concur with them in it, that there may possibly be such a Case, as that when Murder is committed where others are in Company, he that doth the thing will be guilty of Murder, and those that were in Company guilty but of Manslaughter. There may be such a Case.

Earl of Carlisle. My Lords, to save your Lordships time, unless the rest of the Judges differ from those that have spoken their Opinion, I think you need not trouble them to speak to it severally.

Mr. B. Turton. We are all of the same Opinion, my Lords, we cannot differ in Opinion upon such a Case.

Earl of Monmouth. My Lords, I humbly beg your Lordships leave to propose a Question to my Lords the Judges for their Opinions.

Lords. Ay, ay.

L. H. Stew. What is your Question, my Lord of Monmouth ?

Earl of Monmouth. My Lords, the Question is this,

A. Conscious of an Animosity between B and C, A accompanieth B where C happeneth to come, and B killeth him, whether A, without any Malice to C, or any actual Hand in his Death, be guilty of Murder ?

L. H. Stew. Pray, my Lord, be pleased to hand up your Paper, that my Lords the Judges may see it.

Earl of Mulgrave. My Lords.

L. H. Stew. What saith your Lordship, my Lord of Mulgrave ?

Earl of Mulgrave. I only desire, that the Prisoner at the Bar, if he hath a mind to it, may have his Council speak to this Question, before the Judges answer it, as was done in the other Case.

L. Mohun. I desire, my Lords, my Council may have the Question in writing.

L. H. Stew. Make my Lord a Copy of it. One Copy was delivered by the Clerk to the Prisoner, and by him to his Council, and another to the King's Council ; and the Original was delivered to the Judges.

L. Mohun. Is it your Lordships pleasure that my Council may be heard to this Question ?

Lords. Ay, ay.

Sir T. Powys. My Lords, the Question that this noble Peer hath been pleased to propose, is this :

A Conscious of an Animosity between B and C, A accompanieth B where C happeneth to come, and B killeth him, Whether A, without any Malice to C, or any actual hand in his Death, be guilty of Murder.

My Lords, with humble Submission to your Lordships, I take it in this Case the Law is very clear, That as this Case is put, he that was in Company when the Murder was committed, under these Circumstances, is not guilty of any Crime : But without question he is not guilty of Murder.

My Lords, Malice is so absolutely necessary to Murder, either express, or that which the Law calleth Malice implied, that there can be no Case where Murder can be committed without it ; no Indictment can ever be good, unless *Ex malitia sua precogitata* be alledged in it ; because this is absolutely essential to Murder.

But, my Lord, if so be a Man that is present, not designing, or foreseeing that unhappy Accident that doth fall out between his Friend with whom he is in company, and another Person that came accidentally to them, tho' Malice was between those two, God forbid he should be guilty, if he did neither foresee it, nor any way acted in it.

He that is present must be involved in the Crime, either by some way aiding, abetting, or contributing to the death of the Man, or there must be some precedent Combination and Agreement to do that Act which at that time was done ; and that must be plainly and clearly proved : For his acting, his standing by innocently and harmlessly, is so great an Evidence of his not concurring, that it must be a mighty Proof of Malice that must convict that Man of a preceding Agreement to do the Fact ; and if it doth not appear plainly and manifestly, that he agreed before hand, or acted then, and abetted and contributed to the thing, I say, unless this be clear and manifest, it is no Question, but in Law, he is innocent of the Murder.

For in such a Case it is plain he never had pre-pensed Malice express, nor is there any Evidence of that which the Law calleth Malice implied ; which is when a Man killeth another without Provocation, that is, when he that doth the Act had no Provocation, or killeth an Officer in the Prosecution of his Office, That the Law calleth Malice implied. But then that is never but in the Person that did the Act, and not in the Persons who were present at that time, unless before hand they had agreed to do that Act ; and therefore they cannot be guilty of Murder.

And this, my Lords, is what I humbly offer to your Lordships Consideration, in relation to the Case put by that Noble Lord.

Mr. Hawles. Will your Lordships please to favour me with a Word on the same side with Sir Tho. Powys, and I shall be very short in the matter.

The King's Council did complain that the last Case was not fully stated, and therefore they could not speak to it ; my Lords, with Submission, this Case is fully stated, there was nothing in the other Case said of Malice between him that was murdered, and him that killed him ; but here it is said, That the Person present was not conscious of any Malice, nor had any manner of hand in the doing of it : And then with Submission, my Lords, upon the Question, Whether he was not guilty of Murder ? If this was a Special Verdict, found by 12 Men, and referred to the Judges, I do not at all doubt but their Judgment would be, That he was not guilty. For tho' in a Special Verdict, where Malice is not found, the Prisoner would be acquitted ; yet if it be expressly found in the Verdict that he did not know of any Malice between them, then, with Submission, there would be no Colour to find him guilty of any thing.

A Lord interrupted him, and said, The Case was put of one conscious of the Malice.

Mr. Hawles. My Lords, I beg your Pardon, I confess it is so, I did mistake it; but with Submission, that will not much alter the matter. If he was conscious, that will not make him guilty; for that Consciousness of his is no matter of Crime, if he did not act any thing, or agree to do any thing before hand, but only was in Company with the Person that had Malice against another, that will not make him guilty of any Crime whatsoever.

Mr. Price. My Lords, I shall speak but one word to it; I observe the great stress of the Case lieth upon the Word being conscious of the Malice between B and C. Now as to that with Submission, I conceive, and am of Opinion, that as this Case is, A is not guilty of Murder; and for Authority, I shall rely upon the Cases in *Stampford's Pleas of the Crown*, Fol. 40. And my Lord Coke's *Pleas of the Crown*, Fol. 51. The Case is this, If a Man happen to be in Company where Murder is committed, or Felony, and he cometh not there on purpose, or by confederacy to do it, In that Case, tho' Murder be committed, and he doth not endeavour to part them, this is no Murder in him, for he is punishable by Fine and Imprisonment, if not an Infant; but if he was an Infant, he is not punishable at all, for he is not Consufant of the Law in such a Case. But in this Case, except Malice prepensed, exprefs, or implied, be proved, without doing any thing, or abetting, he is not guilty of Murder.

L. H. Stew. Gentlemen, you that are of the King's Council, have you any thing to say to this Question?

Mr. Att. Gen. My Lords, here is a Case put, which I hear from the Council on the other side, is certainly enough stated. My Lords, if this be stated to us, as that which is agreed to be the Fact of the present Case, we are ready to speak to it; but if this be not taken by your Lordships, to be my Lord Mohun's Case, and as such stated to us, then we must humbly beg to be excused. I know your Lordships will be tender in this matter, and as well pleased that we hold to that which we conceive to be our Duty in reference to that Station in which we serve the King, as with any forwardness in us to answer Questions: And therefore we beg your Lordships Excuse for saying nothing more to it.

Earlof Monmouth. My Lords, I did not propose it as a Case stated and agreed by your Lordships, it is only a Case particularly stated for my own Satisfaction.

Earlof Mulgrave. My Lords.

L. H. Stew. My Lord of Mulgrave.

Earlof Mulgrave. If your Grace please, let the King's Council know, that they are not to ask you the Question, Whether the Lords are agreed what the Case is? They are to answer such Questions as are proposed, and not to ask any such Question.

Mr. Att. Gen. My Lords, with that noble Lord's Pardon I did not ask any Question; all that I said was, That when a Case is agreed to, and stated by your Lordships to be the present Case, we would be ready to speak to it, and till we receive that Intimation from your Grace, we shall think our selves excused from giving any Answer to other Questions.

L. H. Stew. My Lords, I think we must go

on, and if any Lord has any more Questions to propose, he may propose them.

Earlof Nottingham. My Lords.

L. H. Stew. My Lord of Nottingham.

Earlof Nottingham. Your Lordships will not certainly require of the King's Council to answer any Questions that they think improper for them to speak to, but when a Question hath been proposed by any noble Lord, to which the Council for the Prisoner hath been heard, and the King's Council think not fit to speak to it, there is nothing more requisite, but that in the presence of the Prisoner (as the Law requireth it should be) you do demand the Opinion of the Judges.

L. H. St. What say to it my Lord Chief-Justice?

L. C. J. Holt. If your Lordships please, I will repeat the Question.

A conscious of an Animosity between B. and C. A. accompanieth B. where C. happeneth to come, and B. killeth him; Whether A. without any Malice to C. or any actual hand in his death, be guilty of Murder?

And my Lords, as this Case is stated I do conceive, that A. is not guilty of the Murder, for it appeareth the meeting was casual, and there was no Design in A. against C. and therefore though A. did know of the Malice between B. and C. yet it was not unlawful for A. to keep Company with B. but he might go with him any where, if it was not upon a Design against C. Therefore I take it as this Case is put, that C. came accidentally into the Company where A. and B. were, and then without any Design in A. B. killeth C. This is not Murder, indeed no Offence in A.

L. C. J. Treby. If it please your Lordships, as this Case is put, I think it is not an Offence of Murder or Manslaughter in A. it dependeth upon the Words as the last Question did. For the former Question was put generally, Whether there might not be a Case found or framed, wherein one might be guilty of Murder, and the other of Manslaughter. So here it dependeth upon the Word [*Happeneth*], which I take to signifie, (as my Lord doth) a casual coming into, or being in the Company.

Now my Lords, when B. had communicated to A. this malicious purpose to kill C. it stood uncertain, whether he to whom B. had communicated it did consent; if he had any way declared his Consent, that he would go to such a place, and stay there with B. for such a Purpose, then it had been Murder in both; but if he merely was silent, and only kept B. Company, perhaps with an intent to dissuade him from it, or possibly without any Consideration at all, and then the Person intended to be killed accidentally came by, and is killed by B. A. doing nothing towards it. In that Case, it is neither Murder nor Manslaughter in A.

Mr. J. Nevill. My Lords, as this Case is, it seemeth to be meer accidental the coming of C. into their Company, for it is said, *Happeneth to come*; and so though A. did know that there was an Animosity between B. and C. yet declaring no intent of going with B. to that Purpose, but coming with B. into a place where C. accidentally came or happened to be, between whom and B. there is a Quarrel, and C. is killed; I do

I do not take it at all that *A.* is concerned, but meerly as any other Person that accidentally was there, and in that Case he cannot be guilty of Murder or Manslaughter, or any other Crime.

Earl of Devon. My Lords.

L. H. Stew. My Lord Steward.

Earl of Devon. If the rest are of the same Opinion, you need not give them any further trouble I think.

Judges. We are of the same Opinion.

Earl of Scarborough. My Lords.

L. H. Stew. My Lord of Scarborough.

Earl of Scarborough. I humbly beg your Lordships Leave, that I may offer a Question to your Lordships, to be proposed to the Judges, and the Question is this:

Whether if A. heard B. threaten to kill C. and some days after A. shall be with B. upon some other Design, where C. shall pass by, or come in the place where A. and B. are, and C. shall be killed by B. A. standing by without contributing to the Fact, his Sword not then being drawn, or any Malice ever appearing on A's part against C. whether A. will be guilty of the Murder of C?

L. H. Stew. Pray, my Lord, give your Paper to the Clerk. *(Which was done.)*

L. H. Stew. My Lord Mohun, doth your Lordship desire that your Council may have a Copy of this Question, and be heard to it?

L. Mohun. Yes, my Lord, if you please.

Then a Copy was given to him for his Council, and another to the King's Council, and a third the Judges had.

Sir Tho. Powys. Will your Lordships please to favour me with a few Words, and I shall trouble your Lordships very little, because I have said that already to your Lordships which will be an Answer to a good part of this Case? The Case is this:

Whether if A. heard B. threaten to kill C. and some Days after A. shall be with B. upon some other Design, where C. shall pass by, or come in the place where A. and B. are, and C. shall be killed by B. A. standing by without contributing to the Fact, his Sword not then being drawn, or any Malice ever appearing on A's part against C. Whether A. will be guilty of the Murder of C?

My Lord, with humble Submission we do take it, that the Law in this Case is likewise very clear, that *A.* is not guilty of Murder: For as this Case is put, there doth not appear (nay, the contrary doth appear) that he had any manner of Malice to this Man that was killed, nor any Hand in the killing of him: And as I said before to your Lordships, (and I hope the Judges will verifie us in that, and your Lordships will be of the same Opinion) there can be no Case wherein a Man shall be guilty of Murder, but where there is Malice against the Person so murdered, or some way abetting and assisting in the killing of him, or what the Law calleth *Implied Malice*.

But in this Case that is now put, there is neither express Malice, but the contrary appearing, nor any implied Malice, which is by Construction of Law; the Person that was by, and heard *B.* threaten *C.* before, yet doth no way aid or assist to the killing of him; and therefore I think, with Submission, the Law, and all our Law-Books, and Reason it self, are clear for the acquitting of *A.* in this Case.

Mr. Hawles. My Lords, I think the Resolutions that have been given in the Cases before, will warrant us in our Opinions in this, that *A.* is not guilty of Murder in this Case: For I think it was said by the Judges, That notwithstanding a Man knew another had a Design upon a third Person, yet it was lawful to keep Company with him, if he did not joyn with him in the Design. Now here it doth appear, that *A.* keepeth *B.* Company, but not upon that Design, for he had no Malice to *C.* nor had any Hand in his Death, and *C.* cometh in by accident into the Company or Place where they are: With Submission, my Lords, *A.* is totally not guilty, for there was no Malice in him; and though he was there, he was there upon his lawful Occasions; and if they two fight, the best course he can take is to stand still, and do nothing; and therefore he cannot be guilty of Murder or Manslaughter.

Mr. Price. My Lords, I have but this Word to say, His being there was lawful, *C.* cometh there but by accident, and when they two do fight, his not parting of them doth not make him guilty of the others Death; here is no Malice, therefore he is not guilty of Murder, and he hath done nothing towards the Fact, therefore he is not guilty of Manslaughter.

L. H. Stew. Will you say any thing to this Question, you that are of the King's Council?

Mr. Att. Gen. My Lords, we are ready to speak to the present Case, when we receive Intimation from your Lordships that what is put is the present Case.

Mr. Serj. Thomp. My Lords, if they put a Case of Fact to be argued as a Case of Law, and from time to time alledge Facts which are not in the Case before us, we cannot speak to them.

Mr. Att. Gen. My Lords, we are ready to argue the Case of the Prisoner at the Bar when it is stated; but till then, we humbly beg your Pardon: We think we are not bound to speak to other Cases.

L. H. Stew. My Lord Chief Justice; What say you to it?

L. C. J. Holt. If your Lordships please, I will put the Question:

Whether if A. heard B. threaten to kill C. and some Days after A. shall be with B. upon some other Design where C. shall pass by, or come in the place where A. and B. are, and C. shall be killed by B. A. standing by without contributing to the Fact, his Sword not then being drawn, or any Malice ever appearing on A's part against C. Whether A. will be guilty of the Murder of C?

My Lords, I am of Opinion that *A.* in this Case will not be guilty of Murder or Manslaughter:

slaughter: For it doth not appear by the stating of the Case, that *A.* did consent to the Design, or in any wise contribute to the Fact.

L. H. Stew. My Lord Chief-Justice *Treby*.

L. C. J. Treby. My Lords, I take this Question to be the same in Substance as to the Point in Law with the last; and am of Opinion that *A.* is not guilty of Murder or Manslaughter.

Mr. J. Nevill. I am of the same Opinion.

L. H. Stew. If all the rest of you are of the same Opinion, you may spare your selves the trouble of delivering it particularly.

Judges. We are all of the same Opinion.

[Then there was a little pause; and afterwards the Earl of Kingston stood up.]

Earl of Kingston. My Lords, I desire for my own private Satisfaction to know;

Whether a Person knowing of the Design of another to lie in wait to assault a third Man, who happeneth to be killed, (when the Person who knew of that Design is present) be guilty in Law of the same Crime with the Party who had the Design and killed him, though he had no actual Hand in his Death?

L. H. Stew. My Lord, I must crave your Excuse, there is another Question to precede this.

Earl of Devon. My Lords, I had a Question to ask; but it being much to the same Purpose with the two last, I think it better to wave it, for there hath been given an Answer to it already.

L. H. Stew. Then, my Lord of Kingston, will you be pleased to deliver up your Paper to the Table? [Which was done.]

L. H. Stew. My Lord Mohun, Do you desire your Council may have a Copy of this Question?

Earl of Mulgrave. My Lords.

L. H. Stew. My Lord of Mulgrave.

Earl of Mulgrave. I desire your Grace will hear the Question. Pray let it be read, that we may know what it is.

L. H. Stew. Read it.

Cl. of Crown. Readeth.

Whether a Person knowing of the Design of another to lie in wait to assault a third Man who happeneth to be killed, (when the Person who knew of the Design is present) be guilty in Law of the same Crime with the Party who had the Design, and killed him, though he had no actual hand in his Death?

Earl of Mulgrave. My Lords.

L. H. Stew. My Lord of Mulgrave.

Earl of Mulgrave. I think, my Lords, in a Case of this Nature we cannot be too exact: I humbly conceive that is not a proper Question to be put, therefore I move that we may adjourn to consider of it, whether it shall be put or not, if that Lord do insist upon it.

L. H. Stew. My Lord of Kingston, Doth your Lordship insist of this Question being put?

Earl of Kingston. Yes, my Lords, I do, and I must insist upon it; for I think I cannot give

my private Opinion in this Case without Satisfaction in it.

Lords. Then Adjourn, Adjourn.

L. H. Stew. This Court is Adjourned into the House of Lords.

Then the Lords went back to their own House in the same Order, and debated this Matter amongst themselves for about an Hour.

Between six and seven in the Evening the Lords returned into the Court in the same Order, and being seated on their Benches, and his Grace in the Chair before the Throne, they proceeded thus:

First, Proclamation was made for Silence.

L. H. Stew. My Lord Chief-Justice, and you the Judges—

L. Cornwallis. My Lords.

L. H. Stew. My Lord Cornwallis.

L. Cornwallis. My Lord, Before your Grace giveth any Directions, I think you should call the Prisoner.

L. H. Stew. Is not the Prisoner at the Bar?

L. Cornwallis. No, my Lord.

L. H. Stew. Call for the Prisoner.

Then Proclamation was made for the Governour of the Tower to bring forth the Prisoner, and he was brought as before.

L. H. Stew. I am to let you that are of Council for the King, and the Prisoner know, That if any Question be put by any of my Lords, which any of you shall not think fit to give an Answer to, my Lords will take it for granted either on the one part or on the other, that the Reason is, because it is not necessary to give any Answer; and then they will proceed to have the Answer of you, my Lords the Judges. And now for my self, I must desire your Lordships will give me leave to come down again to the Wool-Pack.

Lords. Ay, Ay.

Then his Grace came down, and seated himself on the Wool-Pack.

L. H. Stew. My Lord of Kingston, Will you please to propose your Question?

Earl of Kingston. My Lord, my Question is this, which I desire the Judges Opinion in for my own Satisfaction:

Whether a Person knowing of the Design of another to lie in wait to assault a third Man, who happeneth to be killed, (when the Person who knew of the Design is present) be guilty in Law of the same Crime with the Party who had the Design, and killed him, though he had no actual hand in his Death?

L. H. Stew. My Lord Mohun, Do you desire your Council may have a Copy of that Question?

L. Mohun. Yes, if your Lordships please.

L. H. Stew. Read it aloud, and deliver a Copy to my Lord.

The Question was read by the Clerk of the Crown, and one Copy of it delivered to the Prisoner's Council, and another to the King's Council, and a third to the Judges.

L. Mohun. Is it your Lordship's Pleasure, That my Council be heard to this Case?

Lords.

Lords. Ay, Ay.

Sir Tho. Powys. The Case that is put my Lords is this:

Whether a Person knowing of the Design of another to lye in wait to assault a third Man, who happeneth to be killed, (when the Person who knew of the Design is present) be guilty in Law of the same Crime with the Party who had the Design and killed him, though he had no actual hand in his Death?

My Lords, I shall not insist upon the same Privilege that the King's Council did even now do, to decline speaking to any Case that your Lordships shall put. But I hope your Lordships will permit me to say, That I do not admit this to be the Case of my Lord Mohun, and I hope that my speaking to it shall not be taken as any Admission that this is his Case. But as this Case is put with that allowance, that I speak to it not as his Case, I do take it, that this Person thus present at the killing of the third Man is not guilty of Murder.

My Lords, there are but two Circumstances in the Case that can draw him into any danger:

The *First* is, That he knew another Person had a Design to make an Assault upon a third Man. And,

The *Second* is, That he who had the Knowledge of this Design, was also present when upon that Assault that third Person happened to be killed.

But my Lords, I do take it, that in this Case neither of these Ingredients will make this Man guilty of Murder.

As to the *First*, The knowing that a Man has a Design to make an Assault upon a third Person, that taken by it self is no Crime. It frequently happeneth; that a Man heareth what others threaten, that they will assault and beat such an one, I may know that another doth so design, and that he will watch his Opportunity for the doing of it, and yet my meer Knowledge, my meer knowing of it, doth not make me guilty of any Crime, tho' I do not endeavour to prevent it.

I confess, it doth become a good Man upon such Knowledge to do all that he can to prevent such beginning of Mischief, but if he doth not prevent it, that is no Crime.

The *Second Matter* is, That tho' he did know of this Design, he was also so unfortunate as not to prevent it; nay more, he was present when the Assault was made, and that Assault is attended with the Death of the Party assaulted, but he never acted in it, never abetted it. Take all this together, and yet he is not guilty of Murder, nay, perhaps not of any Crime, at most only of a Misdemeanour.

For it is no more than this: I knew another Person did intend to assault a third Man, I was present when he did assault him, but did not prevent it either before he made it, tho' I knew he designed it, nor whilst he was making the Assault upon which the Man is killed. That is all that this thing doth amount to, and no Man can say with humble Submission, That this can involve me in the Crime of Murder.

It is true, if I command A. to beat C. and he according to my Command doth fall upon him,

and so beat him, that he dieth; this maketh me guilty of his Death, because what is done by that Command of mine is my doing; therefore tho' I only commanded him to beat him, yet he dying upon that beating, which was made pursuant to my Command, I that gave the Command must answer for it, and am guilty of all that followeth thereupon.

But if I only know, that another Person designeth to do such a thing, and am neither commanding, aiding nor assisting in the doing of it, but only present at the time, but did not interpose to prevent it; that doth not make me such an Agent in this matter, as that I should be any ways guilty of his Death if it doth ensue. I take it this Case cometh to no more than this, there is no Malice precedent, no sort of abetting, aiding or assisting, but a bare declining to prevent the Assault, and that will not amount to any thing that is Capital; if it be any Offence, it can only be construed as a Misdemeanour, but neither Murder, nor Manslaughter.

Mr. Hawles. If your Lordships please to spare me one word on the same side: It is no manner of Crime for a Man to know, that another doth design to lie in wait to murder a third Person, much less to assault him.

There is but one Case that I know of in Law, where the Knowledge of an ill Design without discovery and endeavour to prevent it, is an Offence, and that is in the Case of High-Treason; and yet even there the bare Knowledge doth not make a Man guilty of Treason: And it was a hard Case if it should, for it is not in the Power of any innocent Man to say, that he shall not know of an ill Design, either of Murder, or High-Treason.

It is true, in the Case of Treason, if I conceal it, it is a Crime, but it is not Treason, but only misprision of Treason; which is forfeiture of Lands, and perpetual Confinement in Prison during my Life: But it doth not extend to any other matter; for tho' I know, and do conceal it, that is no manner of Crime at all, tho that is further than this Case putteth it; for it only goeth to the knowing, and not to the concealing.

And my Lords, with Submission, this would be likewise a hard Case if the Law was otherwise; For sometimes a Man may apprehend he knoweth of a Design, when there is no such thing designed. Your Lordships know where a certain Gentleman said he would kill any Man that did oppose him, when he neither designed it, nor executed any such purpose: And in such a Case, tho' it had been well done of the Person that heard of the Design, to have gone and informed the third Person (and if he had, I believe your Lordships would have had no occasion of a Tryal at this time, for it might have been determined another way) yet his not doing it is not a Crime.

Then further my Lords, a Person's being present at such a time is his misfortune, but not at all his fault; he can no more help the Action, than he could the ill Design, or his own Knowledge of that Design. It is a complicated misfortune, both to know it, and be present at the Execution of it; but without having any hand in it, it can be no Offence: For indeed, it is as to him no more than a Man's being present that did not know of such a Design. And if this was a Special Verdict, upon an Indictment for Murder, I doubt not but my Lords the Judges would give

give their Judgment, that the Defendant was not guilty.

Mr. Price. I have only this word to add, my Lords; I do take it, That the bare privy of this design, with the bare personal Presence of him that was so privy when this Act is committed by another Man, will not amount to make him principal; and so he will not be guilty of Murder: For we find, that to make a Man principal in Murder, there must be aiding and abetting, and only being present will not do it. Now the aiding and abetting must be, either by commanding or assisting, or putting the Person assaulted in Terror and Fear, or he must be there ready, and designing to assist in case of Opposition. These are Facts that the Law requireth to the making a Man principal in Murder; and bare privy, with a mind to Assault, and bare Presence, when upon the Assault the Man is killed, will not amount to make a Man Principal, and consequently guilty of Murder.

L. H. Stew. Mr. Attorney, Do you think fit to say any thing to what the Council for the Prisoner have alledged?

Mr. Att. Gen. No, my Lord.

L. H. Stew. Nor no other of the King's Council?

Mr. Sol. Gen. No, my Lord.

L. H. Stew. Are ye all of that mind?

Mr. Serj. Tremain. I am of that mind, my Lord.

Mr. Serj. Thompson. And so am I.

L. H. Stew. Then my Lord Chief Justice, what say you to it?

L. C. J. Holt. If your Lordships please, I will repeat the Question:

Whether a person knowing of the design of another to lye in wait to assault a third Man who happeneth to be killed (when the person who knew of the Design is present) be guilty in Law of the same Crime, with the party who had the Design and killed him, tho' he had no actual hand in his Death?

My Lords, I am of Opinion this is no Murder nor Manslaughter, he that knew of the Design of assaulting, only happened to be present when the Assault was made, and the Party killed; but if he did not contribute to his Death, he is not guilty of Murder. This Question is much to the same effect with the Question that was put before: But if the Person that knew of this Design did advise it, or agree to it, or lay in wait for it, or resolv'd to meet the third Person that was killed, with him that killed him, it would be Murder: But as this Case is put, it is neither Murder nor Manslaughter.

L. C. J. Treby. My Lords, I am humbly of the same Opinion as this Case is put. The Person to whom this matter of the Design to lye in wait to assault another is communicated, is only passive; he only receiveth the notice of it, and doth nothing towards the Fact. But if by going to the place, directing, perswading, promising Assistance, or encouraging, he had discovered his Consent, or had layen in wait himself, then he had been guilty: But if he did nothing, but only receive this notice, and then the Person assaulted happened to come by, and is killed in his Presence, this is but an Accident, and doth

not involve him in the Murder. And I think in Effect, it is the same with the second Question that was proposed. There it was put, of one that had an Animosity against another, here it is put, of one that lay in wait to assault him; There it was put, of accompanying him to the place where the Party was killed; here it is, of his being killed in his Presence: So that the Resolution must be the same in this Case that was given in that.

Mr. J. Nevill. My Lords, I shall not spend any of your Lordships time. I am of the same Opinion with my Lords that spoke before, and for the Reasons that they have given.

L. H. Stew. If they are all of the same Opinion, I suppose your Lordships will not require their particular delivering it.

Lords. No, no.

Judges. We are all of the same Opinion.

L. H. Stew. I am now to know of your Lordships, whether there be any of you that have any more Questions to ask?

Earl of Nottingham. My Lord.

L. H. Stew. My Lord of Nottingham?

Earl of Nottingham. The Question that I have to propose to your Lordship is the same that hath been already offered to you, but with some little Variation; for I do find, my Lords, the Judges do interpret this Persons being killed in the Presence of another, to be upon an accidental meeting. I would propose to your Lordships, that the Judges may answer what the Law would be, when a Person, knowing of the Design of another to lye in wait to assault a third Man, accompanieth him at that time that that Design is to be executed, Whether it be the same Crime in the one as the other?

L. H. Stew. If your Lordship have your Question in Writing, pray deliver it in.

Earl of Nottingham. I will immediately, my Lord.

(Then he did put it in Writing.)

L. H. Stew. Will your Lordship please that it may be handed to the Table.

(Which was done.)

L. H. Stew. Read it.

Cl of Crown. Readeth.

Whether a Person knowing of the Design of another to lie in wait to assault a third Man, and accompanying him in that Design, if it shall happen that the third Person be killed at that time in the presence of him who knew of that Design, and accompanied the other in it, be guilty in Law of the same Crime with the Party who had that Design and killed him, though he had no actual hand in his Death?

L. H. Stew. My Lord Mohun, Do you desire a Copy of this?

L. Mohun. Yes, if your Lordships please.

L. H. Stew. Carry my Lord one.

(Then Copies were deliver'd as before.)

L. H. Stew. Well, Sir, What say you to that Question?

Sir Tho. Powys. The Case that is now propounded is this:

Whether

Whether a Person knowing of the Design of another to lie in wait to Assault a third Man, and accompanying him in that Design, if it shall happen that the third Person be killed at that time in the presence of him who knew of that Design, and accompanied the other in it, be Guilty in Law of the same Crime with the Party who had the Design, and killed him, though he had no actual Hand in his Death?

My Lords, I shall not, (though I am of Council for this Noble Lord) decline or refuse Speaking to this Question; still, my Lords, with that saving which I know your Lordships will allow me; that I am very far from admitting that this which goeth much further than the last Case, is the Case of my Lord Mohun. Whether your Lordships will permit the King's Council who have declined Speaking to any of the Cases hitherto, as not being, as they pretend, my Lord's Case; now to speak to this which we do much less admit to be so, than they did the others, will be in your Lordships Pleasure to determine, but I shall not decline to speak to it with that Saving.

And truly, my Lords, with humble Submission, I do take it, that as this Case is put, the Party who accompanied the other in such manner as in this Case it is stated, is not Guilty of Murder. I know it was intended by that Noble Lord who proposed the Question, that it should be admitted that beyond all doubt the Fact was so as here it is stated; and then the Question is, What the Law will be where the Fact is thus admitted and agreed to on all sides: And if there was such a Case, (for my Lords I speak to this as a Case at large) if there was such a Case where the Fact is beyond all Question made out to be so as it is here Stated; yet I take it that in a Case of Life, which is the Case now before your Lordships, the Party will not be Guilty of Murder.

My Lords, here is a further Circumstance added in this Case than what hath as yet been inserted into any of the other Cases, that is, That the Party knoweth of the design of him that he accompanieth to Assault a third Man, and doth accompany him in this Design, and then is present when the Design is executed; yet all these together, will not, as I humbly conceive, with Submission to your Lordships Judgment, make this to be Murder, because it doth not appear in this Case that he did accompany him with an Intention to execute this matter, or to aid and assist him in the doing of it: There is no such Circumstance in the Case, and 'tis that which must be the thing that will draw him in to be guilty of Murder.

For if two Men (to put a Case which I hope I may do with your Lordships Pardon to explain my self) should be Travelling upon the way, and one of the Persons should acquaint the other, that at such an Inn, there is a Servant that he is resolved to Beat, and this Person that has this matter imparted to him doth accompany the other in the Journey, (which I take it answereth the knowing the Design and accompanying him in the Design) and when they

come to the Inn the thing is executed in the presence of the Party that knew of such a Design, and it doth fall out that Death doth ensue upon it, unless he that did accompany him did some way or other act, contribute, or assist in the doing of it, it doth still remain a thing whereof he had only Privy and Knowledge, which he had done well, (especially in regard of the Consequence of it) to have prevented. And he is highly blameable, that he would accompany a Man who had such a Design to do an unlawful Act, and did not prevent him from executing of it.

All this is blameable in him, but it will not, as I conceive, be Murder in him; for I must insist upon that in point of Law, that to make any thing Murder, there must be preperised Malice in the Person that is to be found Guilty of it, or some precedent Agreement to do it, or some Act of Aiding or Assisting of the Person who doth it; but as this Case is, here is nothing of Malice doth appear, or that the Person who accompanied the other in his Design had any sort of Malice against the Person Assaulted. And it doth not appear, that he did any way assist in the doing of it. He was present at the time when the other Executed the Design he had imparted to him, but he never joyned in it, nor had any Malice precedent, nor did assist or do any Act at that time; and therefore I take it in this Case (which, as I said,) I am very far from admitting to be my Lord Mohun's Case, that the Party who accompanied the other is not Guilty.

Mr. Hawles. My Lords, Though who are of Council for this Noble Lord, the Prisoner, do not think this Case that is put to be his Case, for with Submission, if the Indictment be looked upon, your Lordship will find—

L. H. Stew. Sir I must stop you there, you are not to tell my Lords what your Opinion is as to the Fact, for of that my Lords are the Judges, you are to take the Case fairly, as a Case put, and you are to inform my Lords what the Law, in your Opinion, would be upon such Case. It is not before you, but before my Lords only, to consider whether this be applicable to my Lord Mohun's Case or not.

Mr. Hawles. If your Lordship please, I shall observe your Directions in that Matter, and with humble Submission this is not Murder in him who accompanieth the other, as this Case is put; for in every Case of Murder the Indictment must be either that he actually killed him, or aided and assisted him that did kill him. But, with Submission, there is neither of these in this Case.

He did know of the Design, there is no Crime: he did accompany him in it, that is, he bore him Company at that time; he went with him to the place where he Executed his Design, but he did nothing when he came there to further, promote, or encourage the Execution of it; and therefore it can never make him Principal, nor Accessory to the Murder.

Mr. Price. I shall only say this, my Words, that I take it, that the bare going with him in this Design without doing any Act, doth not involve him in the Confederacy, as Aiding and Abetting. Something must be done or said, either he must assist or advise, or otherwise he cannot be Principal, and consequently cannot be guilty of this Murder.

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L. H. Stew.

L. H. Stew. Mr. Attorney, have you any thing to say to this ?

Mr. Att. Gen. My Lords, we that are of the King's Council do not desire to be heard to this Case neither.

L. H. Steward. I do not hear you, Sir, what you say ?

Mr. Att. Gen. My Lord, we do not desire to speak to it.

L. H. Stew. Then my Lord Chief Justice.

L. C. J. Holt. This is the Question :

Whether a Person knowing of the Design of another to lie in wait to Assault a third Man, and accompanying him in that Design, if it shall happen, that the Third Person be Killed at that time in the Presence of him who knew that Design, and accompanied the other in it, be Guilty in Law of the same Crime with the Party who had that Design, and Killed him though he had no actual Hand in his Death ?

My Lords, as for this last, I desire to make some Observations upon the Words, *Had no actual Hand*. By these Words, I suppose, is meant he did not draw his Sword, or lay any Hand upon the Person slain, or give any actual Assistance to the other Person at that time when the Third Person is slain, but was only in Company, and a Looker on.

E. of Nottingham. My meaning in those Words is, That with his Hand he gave no Stroke.

L. C. J. Holt. That my Lords, I take to be the meaning, he did not give an actual Stroke, nor held the Person whilst the other Killed him, nor used any Violence.

Now, I am of Opinion, my Lords, that this is Murder in the Person that did accompany the other in the Design. For he being acquainted with the Design, and knowing of the Intention of the Party to Commit Murder, or do an unlawful Act, upon which Death might ensue, accompanying him in that Design, he shews an Approbation of it, and gives him greater Courage to put it in Execution. Which is an Aiding, Abetting, Assisting and Comforting, which are the Words used in such Indictments, and so my Humble Opinion is, it is Murder in that Person that accompanied the other, as well as in him that did the Fact.

L. C. J. Treby. My Lords, as this Case is, I think the accompanying of him in that Design (which are the effectual Words upon which the Question turneth) is Murder.

Here is first of all the Party that designeth the Assault, and he doth, pursuant to that Design, make this Assault, and thereupon doth Kill the Third Man, this undoubtedly is Murder in him, for here was Malice prepenfed, and intent of Bodily Hurt to the Party, and in pursuance of this Intent, Death ensueth, this is unquestionably Murder in him.

Then the Question is, What Crime it is in him to whom this is made known, and who accompanied the other in that Design, knowing of it. I take this to be a Consent to the Design, and to the Execution of it. It is more than knowing and not revealing of it, though that was his Duty to have done, (and so the Council for the noble Lord did admit, that it was a

Misdemeanor in him not to hinder such a breach of the Peace.)

But here I say is more than that : He goeth with him to the place, and accompanieth him in order to the executing the Design, and this is an Aiding and Abetting of it. If a Man say to another, I intend to assault and beat such a one, come along with me, stand by me, and see it done ; and the other consenteth, and accordingly goeth along with him, and accompanieth him whilst he beats and kills the Man. This is an Approving, Encouraging, and Emboldening of him in his mischievous Purpose, and shews such concurring Malice in that other Person, as renders him guilty of the same Crime with him that with his Hand and Weapon beat and killed the Man.

Mr. J. Nevil. My Lords, as this Case is, and as I take the Law to be, this is murder. It is a Case of one's lying in wait, and another Person doth accompany him in the Design, he that did design the lying in wait having told it to him, and then he is present at the Execution. I take it as Law, if the Party is killed, he that is present, and cometh with the other upon that Design, shall be taken to come to assist or abet the other, or defend him if any thing of opposition should happen, and that I take to be Murder.

L. H. S. Are you all of the same Opinion ?

Judges. We are all of that Opinion, it is Murder in both in that Case.

E. of Devon. My Lords.

L. H. Stew. My Lord Steward.

E. of Devon. My Lords, I desire they may all give their Reasons, as well as their Opinions, as this Case is.

Mr. J. Gregory. My Lords, I am humbly of the same Opinion with my Lords Chief Justices that spoke before me, that this is Murder, and my Reason is this : First, He knew of the Design, which was an unlawful Design ; then he accompanied him as this Case is put, not only to the Place, but in the Design, which differs the Case from his being present by Accident ; for by his going along with him he doth encourage him to do that, which perhaps singly the other would not venture upon, and going and being present when the Design is executed, upon which the Man is slain ; I take it he is as much guilty as the Person that strook the Stroke in point of Law.

Mr. J. Eyres. My Lords, I am humbly of the same Opinion, I take it to be murder in him that knew the Design, and did accompany the other in it, though he did nothing at all towards the killing of the Man.

For, my Lords, it is the Intention of the Party that diversifieth the Act. If he came there with an ill Intention, and to assist him if need did require, as it is plain he did if he did accompany him in the Design, which is a strong Evidence of the Intention : And my Lords, Nature hath allowed no Man a Casement into anothers Heart, and therefore we can judge of no Mans Intention, but by Circumstances of the Fact appearing without ; and then I say, if the Fact be so apparently from the Circumstances of it, that he knew of the Design, and accompanied him in it, it is a strong Evidence that he came to assist him ; and though he doth nothing actually in the Matter, yet being present to assist him if Occasion did require, it is plain he did aid and abet him in the Action, and so it is as much murder

murder in him, as in the other that gave the Stroke.

Mr. B. Turton. My Lords, I am humbly of the same Opinion; the thing that differeth this from the former Case is, That this Person was in the Design with the other, for that, my Lords, I take to be accompanying him in the Design in order to the Execution of it, for bare Privy and Knowledge of the Design would not do it; but if he be with him at the time, and accompany in order to the Execution, that maketh him as much Criminal, as he that did actually occasion the Death of the Person, for he was present in the Company, and ready to assist him in the Evil Design, which I conceive is as much murder as the other.

Mr. B. Powell. My Lords, I am of Opinion, as this Case is now put, That this is murder in both, and my Reason is this: Where one Person is privy to a Design of Felony, or committing some Personal Violence as this Case is, and is not only privy to it, but goeth along with him, and accompanieth him in putting this Design in Execution, though he may not think it will extend so far as Death, but doth only intend Beating, and hath no Personal Hand, or doth otherwise contribute; but by his being with the other Person when he executeth his Design of Assaulting, and the Party beaten dieth, they are both guilty of murder.

L. Mohun. My Lords, Will your Lordships give leave, that my Council may answer some things that the Judges have said?

L. H. Stew. No my Lord, you must not Reply after the Judges have given their Opinions. Have any of your Lordships any more Questions to propose?

L. Cornwallis. My Lords, I have one.

L. H. Stew. My Lord Cornwallis.

L. Cornwallis. My Lords, I am very sorry to have occasion to ask any Questions in this Case, but I humbly desire a Question may be answered by the Judges, which is this:

If a Person be by, named William, when Thomas said, He would stab John, upon which William said, He would stand by his Friend, and afterwards Thomas doth actually murder John, and William is present at the same Murder: Whether the Law will make William equally guilty with Thomas, or what Crime William is guilty of?

L. H. Stew. Pray deliver in your Paper, my Lord.

It was deliver'd in, and read by the Clerk of the Crown, and Copies given of it as before.

L. H. Stew. What say you to this Question, Gentlemen?

Sir T. Pewys. May it please your Lordships, this Question runneth thus:

If a Person be by, named William, when Thomas said he would stab John; upon which William said, he would stand by his Friend; and afterwards Thomas doth actually murder John, and William is pre-

sent at the Murder; Whether the Law will make William equally guilty with Thomas, or what Crime William is guilty of?

My Lords, I do not question but many Cases may be put which will be plainly Murder, and if this Case should be attended with Fact equal to the state of this Case, I believe it will amount to Murder. But upon this difference the Resolution of it will depend, and every Case must stand upon its own Circumstances.

If a Person do generally say, I am fully resolved, I will stab such a Man, and say so without condition or limitation, that he will do it; and another doth declare his Intention to assist and aid him, by saying, I will stand by you in it, and afterwards the thing is executed in his Presence, who so concurred; I do take it, that that is an Evidence that he is equally guilty with the other.

But on the other hand, if a Man say, I will stab such a one if he oppose me in such a Design, and so maketh his Resolution conditional, and the Person that is present doth say, I will stand by you in it, that is in your doing it, if you are opposed in such a particular matter; My Lords, with submission, if he is not opposed in that particular Thing or Design upon which he did say he would stab him, but if he doth afterwards, upon some other occasion different from the former, and not relating to what he was talking of before; or upon some other Provocation, stab him, and the other Person happeneth only to be present, I take it, that the Words which he spoke with a limitation to a particular matter, will not make him liable to the Guilt of the Murder that is committed upon quite another account.

The Words, *Standing by him*, are capable of two Senses; but I would not, in so serious a matter as this, offer to put a Jocular Sense upon them, as if it was meant he would stand by and not meddle; but I take it, that such a Case as this will turn upon the manner of the Man's engaging himself; if he engaged to stand by him in a particular matter, and the other doth stab the threatened Person afterwards, not upon that particular occasion, but upon another account, and he happeneth only to be by, these words will not draw him in, though they should be well proved to be spoken, so as to involve him in the guilt of that Murder.

For the Law is favourable to a Man in the Case of Life, and will judge according to the Intention of the Party; and he having not abetted or contributed to the Fact, his Words shall not be carried to his Prejudice, further than his Intention, or farther than the concomitant Circumstances of the Matter will make them plainly import.

This Case is put generally, and without restraint; and there is no question but many Cases may be put that will undoubtedly be Murder; but every Case must, as I said, stand and fall by its own Circumstances.

Mr. Hawles. My Lords, I think the Case as it is put single, and upon these Circumstances, would be Murder; and my reason is this, The Person that saith he will stand by a Man, who saith he will kill or stab another, is as much guilty as that Man himself, and will be thought as malicious; but if it should happen that be-

tween the Words pronounced, and the Murder committed, that the Person that saith he will stand by his Friend, cometh to have a friendship and kindness for the Party that is threatned to be killed, and upon meeting him caresses him extremely, and there being no Malice continuing (as there must be to the time of the stroke given, to make Murder) but he happeneth to be killed by that other, suddenly in his presence, those words will not make him guilty of Murder; but as the Case is put, I think it is Murder.

Mr. Price. My Lords, I shall not take upon me to trouble your Lordships with making a Case, but as this Case is put without any Condition, or other Circumstance annexed to it, I think it will be Murder.

L. H. Stew. There will be no need to ask the King's Council upon this Question whether they will speak to it, because the Council for the Prisoner agree it to be Murder; Therefore if your Lordships please, we may now proceed to ask the Judges Opinions; And first, What say you, my Lord Chief Justice?

L. C. J. Holt. My Lords, the Question is this.

If a Person be by, named William, when Thomas said he would stab John, upon which William said he would stand by his Friend, and afterwards Thomas doth actually Murder John, and William is present at the same Murder, Whether the Law will make William Guilty with Thomas; or what Crime William is Guilty of?

My Lords, I am of Opinion that this is a great evidence of Murder in William, that was thus actually by. I cannot say it is Murder, as the Case is put; but upon such an Evidence, Fact is to be left to the Conscience of a Jury in the Case of a Commoner, or the Conscience of the Peers in the Case of a Peer.

For when William said he would stand by his Friend, who said he would Stab John, That is plainly a Consent, or at least such an Expression, from which, a Consent to the Stabbing of him may be inferred.

Then afterwards it seemeth Thomas actually murdereth John, and William was present. Now if William was designedly present with the other that committed the Murder, then it is plain it will be Murder in William, but if there be no Evidence to prove upon what account he was present, it may be presumed he was present in pursuance of his former Agreement, so that it may be Murder, or not Murder, as Circumstances may happen upon the Evidence; if he was present in pursuance of his Promise, then no doubt it is Murder; But if he did not meet in pursuance of that Agreement, it may not be Murder. But this is all Matter of Evidence, and that rests upon the Consciences of those that are to Try the Prisoner.

L. C. J. Treby. My Lords, I am of Opinion that this is Evidence, and great Evidence of Murder, the Fact consisteth of Two Parts.

First, Here was a deliberate Expression of his Intention, that he would stand by his Friend Thomas, when his Friend Thomas had said before he would Stab John, and this I take properly to

be Interpreted, and understood as a Promise of Abetting him in the Murder he would commit; for, I presume, standing by him in this Case to be meant in a grave Sense, signifying that he would befriend, and if there should be occasion, defend and support Thomas in what he resolv'd to do.

Secondly, He was present at the Stabbing, which was before Designed and Spoken of: Now I think, his being present when that Resolution of his Friend was executed, coupled with his preceeding Declaration of his Intention, is a strong Evidence of Murder.

Mr. J. Nevill. My Lords, the Question I take to be, Whether the Law of England saith William is Guilty of this Murder? Truly, my Lords, I must say as my Lords have said before, that as this Case is, This is a very strong Evidence of Murder: For when he doth say, That he will Murder such a Man, and the other saith, he will stand by him, in the common acceptance of those Words, it is taken, that he doth then agree with him in that Design, which he declareth to be to Stab John.

But then it seemeth to me truly, that this Case is not put full, how long it was afterwards that the Fact was done, and what Circumstances attended it; for if any Circumstance happened afterwards that did amount to a Countermand of this Promise, or any thing thing interposed to interrupt it, that this Agreement was not performed, perhaps the Case might not be Murder, but still it is Evidence, so far as your Lordships may judge upon the Circumstances that attend it, whether it be Murder or no. But to declare a further Opinion, as this Case is put, truly I cannot.

Mr. J. Gregory. My Lords, I do upon this Case humbly conceive, there is a little difference from the former, only there it is put positively but here as Evidence. Now, my Lords, I do humbly conceive that in common Discourse, I will stand by my Friend, is, I will assist my Friend. If my Friend should say, I will Kill such a Man, or I will do any other Act, and I say I will stand by him, I think the import of the Words is, I will assist him in it.

My Lords, As to the latter part, as this Case is put, for I can go no further, it doth not appear, whether when the Man was killed, he came by accident, or in pursuance of his Agreement, knowing of the Design. Now that is but matter of Evidence, if he came by Accident it will not be Murder, but if he came with Design, no doubt it is Murder in one as well as in the other.

E. of Mulgrave. My Lords.

L. H. Stew. My Lord of Mulgrave.

E. of Mulgrave. If any of my Lords desire that the rest of the Judges should give their Opinion, it is fit they should be heard; but if no Lord doth desire it, and they say they are of the same Opinion without any more to do, because it may save a great deal of time, I desire your Grace may only ask them, Whether they agree in their Opinions with those that went before?

L. Cornwallis. My Lords, I humbly desire the Judges may all speak.

Lords. Go on then.

Mr. J. Eyres. My Lords, I humbly conceive this is a Question of Fact, and not of Law, and it is a very strong Evidence, if a Man hear another say he will Stab such a Man, and he saith he will stand by his Friend, and accompanieth him

him at the time when the Fact is done, it is a strong Evidence, that he came with a murderous intent with his Friend ; and doth as much manifest his Intention to commit Murder, as if he had actually given the Wound, and a great Evidence to involve him in the Crime, as much as the Person that gave the Stroke.

Mr. B. Turton. My Lords, I am of the same Opinion with my Lords and my Brothers that have spoke before me ; my Lords, I confess I do not think it cometh up so close to the matter as the Question that was put last before ; for this, as my Brother Eyres saith, is rather a Question of Fact and Evidence, than Law. But certainly a very strong Evidence it is of the Intention of that Party that was present when the other said he would Stab the third Person, and his going away presently, and accompanying him when the Stab was given, and Murder done, I say his Presence after this Determination is a very great Evidence, that it was done in pursuance of that Agreement : It is a matter of Fact which your Lordships will determine, according as the Circumstances appear before you, which may vary the Resolution one way or other.

Mr. B. Powell. My Lords, I am of Opinion as this Case is put, that it may be Murder or not Murder, according to the Concomitant Circumstances. If a Man say, I will Stab such a one, and another say he will stand by him, and afterwards when he is with his Friend, the Man is stabbed, if that is at some distance of time from the Words speaking, and the meeting be accidental, or other Facts happen that may alter the Case, it may receive another Determination. But if after this is said there be any immediate going to look after this Man, or they be near the way where this Man is to come, and then he is killed ; this is a mighty strong Evidence that something was done in pursuance of this Resolution, and that the one went along with the other to countenance him in the Action.

L. H. Stew. Have any of my Lords any other Questions to propose ?

Lords. No.

Earl of Mulgrave. My Lords, If there had been any other Questions proposed by any other Lords, I would have staid till they had all been over ; but I see their Lordships are at an end with their Questions : I have one which I think is nearer the Case than any has been yet, and of more Importance to the Matter in Hand, and more fit for the Council to inform you in, and for your Lordships to ask, and the Judges to answer. The Question is this :

If A. accompanieth B. in an unlawful Action, in which C. is not concerned, and C. happeneth to come in the way of B. after the first Action is fully over, and happeneth to be killed by B. without the Assistance of A. Whether A. is guilty of that Man's Murder ?

This Question was banded to the Table, read by the Clerk, and Copies given as before.

L. H. Stew. What say you to it Gentlemen, who are of Council for the Prisoner ?

Sir Tho. Powys. May it please your Lordships, I will not trouble your Lordships with the re-

peating of the Case again, because my Copy is agreeable with what was read at the Table : Nor shall I trouble your Lordships with many Words upon this Case, because I take it, the Law is very plain.

If two Persons accompany each other to do an unlawful Act, and in the Execution of that unlawful Act, one of them doth go beyond what was first designed, and a third Man is killed whilst they are in Execution of that Act, though the one did the Fact, and the other did not immediately contribute thereto, yet he being joyned with him in the unlawful Action, upon which this doth ensue, he is answerable for all the ill Consequences of it ; the Law herein is clear according to the Case that was put at first of two Persons going together to rob a Park and steal Deer.

But if that unlawful Action be executed, or the two Persons who joyned in the Design have totally desisted from it, or are disappointed in it, if afterwards when they are together upon some other Occasion, it happeneth that one of them killeth another Man, but his Friend no way aided him or assisted him in the doing of it, your Lordships and the Law will separate these Persons who were at first joyned together for another Purpose ; and will distinguish between them in this new Matter that is subsequent to the former Agreement, though they were in Company together.

Because in the first Case, he that joyned in an ill Action must look to himself, and be answerable for all that followeth thereon : In the second Case, he is in no fault at all, it is only his Misfortune to be in ill Company if he had no Hand in the Fact. This the Law is very plain in, and therefore I shall not trouble your Lordships further with speaking to it.

Mr. Hawles. My Lords, I would only add one short Word ; There is but this one Difference between an Accessory and a Principal ; The Principal is always present, the Accessory is always absent. And I would only put you one Case of an Accessory in Felony out of my Lord Coke ; he saith, It must be the same Numerical thing in which they are joyned, and therefore if A. bid B. rob the Vintner's Boy of Plate as he cometh to a Gentleman's Chamber to bring Wine, but B. doth not pursue the Instructions, but breaketh into the Vintner's House, and stealeth the Plate there ; this is a different matter, it is not the same thing wherein A. and B. agreed at first, and A. is no way concerned in it.

The same Law is, if A. and B. agree to kill C. and B. killeth D. tho' A. be present, it will not be Murder in A ; for the Agreement was for the killing of C. and not of D.

My Lords, as this Case is put, they did agree in the unlawful Act, but that Matter was over, and there is no Agreement as to the other Matter, nor is that pursuant to the Matter agreed upon ; and therefore the Presence of the Party that agreed to the unlawful Act doth not make him guilty of Murder, unless he agree to that too.

Mr. Price. My Lords, I have but one Word on the same side. I take it, that when a Man is doing an unlawful Act, there is an inseparable Incident that doth attend it, which is Malice implied. And this is so inseparable, that when,

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his ill Design is at an end, his Malice is at an end too, and hath no being, and therefore if he entereth upon an ill Design afterwards, tho' another be present that was joined with him in the ill former Design, yet his Malice who was so joined, being coupled with the ill Design that is over, must be gone too; and there is no Malice in his being barely present. And therefore for that Reason, he that was aiding and assisting before cannot be principal in such a sudden Act as this new one is, and consequently cannot be guilty of Murder, or of Manslaughter.

L. H. Stew. Mr. Attorney, Do you, or any of the King's Council think fit to say any thing to this Question?

Mr. Att. Gen. My Lords, we that are of the King's Council do not think we have any occasion to be heard to this Question.

L. H. Stew. Then my Lords the Judges, what say you to it?

L. C. J. Hk. If your Lordships please, I will again repeat the Question, it is this:

If A. accompanieth B. in an unlawful Action, in which C. is not concerned, and C. happeneth to come in the way of B. after the first Action (that is the unlawful Action, I suppose) is fully over, and happeneth to be killed by B. without the Assistance of A. Whether A. is guilty of that Man's Murder?

And I do humbly conceive with great clearness, That *A.* is not guilty at all. For here is no Relation to the first unlawful Act that he was engaged in, but that is all over and determined; and then *C.* cometh in the presence of *B.* who killeth him, and of *A.* who had no knowledge of any Malice between them, or any Design of his Death. This is merely accidental, and doth not depend upon the first unlawful Action; and therefore *A.* is not guilty.

L. C. J. Treby. My Lords, I think there can be no difference of Opinions in this Case: For it is plain there was an unlawful Action in which they did agree, (as a Riot or Assault to beat or wound a Man or the like) and if Death had ensued, they both had been guilty of Murder, as well he that looked on, as he that gave the mortal Wound. But then the Question addeth further, That the Action to which they agreed was fully over, and there only happeneth to be a continuance of their Presence together; and there being an old Grudge between one of the Parties and a third Man, and the Party who had that old Grudge, meeting with his Enemy, executeth it then upon him, and murdereth him; this doth in no sort affect the other that was present, and had joined in the former unlawful Action that was over. In the former, he did joyn and concur, and therefore if Death had ensued, they had been both guilty: In the latter, he did not joyn and concur; and therefore though Murder did happen in his Presence and Company, he is not guilty, but only the Party that actually killed is.

Mr. J. Nevill. My Lords, I am of the same Opinion.

L. H. Stew. If you are all of the same Opinion, I think you need say no more.

Judges. We are all of the same Opinion, my Lords

L. H. Stew. My Lords, all the Judges are of the same Opinion; and now I think it is your Lordships Resolution to adjourn to the House.

Lords. Ay, Ay.

L. H. Stew. This Court is Adjourned to the House of Lords.

And then the Lords returned to their House in the same Order, and there presently Adjourned till the next Morning.

Die Sabbati Quarto Februarii 1692.

ABout four of the Clock in the Afternoon, the Lords came from their House in the former Order into the Court in *Westminster Hall*; and being seated on their Benches, and his Grace the Lord High-Steward in the Chair before the Throne, Proclamation was made for Silence; and the Judgment of the Peers was demanded, and delivered in this manner.

L. H. Stew. My Lords, Your Lordships have now heard all the Evidence both against the Prisoner and for him: The next thing is your Lordships Judgment, and for that the Method is this, Your Lordships Opinions are to be delivered in the absence of the Prisoner. The Question that your Lordships are to deliver your Opinion about will be this:

Whether my Lord Mohun be guilty of the Murder of William Mountford, whereof he stands indicted, or not guilty?

The Order of delivering your Opinions must be, to begin with the youngest Baron, and so upwards; and therefore I must desire your Lordships to allow me to take your Judgments distinctly, and that I may write them down.

Lords. Ay, Ay.

L. H. Stew. My Lord Lemster, is my Lord Mohun guilty of the Murder whereof he standeth indicted, or not guilty?

The Lord Lemster stood up in his Place uncovered, and laying his Right-hand on his Breast, pronounced his Judgment thus:

L. Lemster. Not guilty upon my Honour.

The same Question was severally asked of all the Lords, who in the same Form delivered their Opinions as followeth:

L. Capell. Guilty upon my Honour.

L. Ashburnham. Not guilty upon my Honour.

L. Cholmondley. Not guilty upon my Honour.

L. Godolphin. Not guilty upon my Honour.

L. Osborne. Not guilty upon my Honour.

L. Arundel of Trerise. Not guilty upon my Honour.

L. Crew. Not guilty upon my Honour.

L. Cornwallis. Not guilty upon my Honour.

L. Granville. Not guilty upon my Honour.

L. Berkeley of Stratton. Not guilty upon my Honour.

L. Lexington. Not guilty upon my Honour.

L. Lucas. Not guilty upon my Honour.

L. Clifford of Lansborough. Guilty upon my Honour.

L. Colpeper. Guilty upon my Honour.

L. Vaughan. Not guilty upon my Honour.

L. Fermyn. Not guilty upon my Honour.

L. Leigh. Not guilty upon my Honour.

L. Lovelace. Not guilty upon my Honour.

L. Brooke,

L. Brooke. Not guilty upon my Honour.
L. Hunsdon. Not guilty upon my Honour.
L. Chandois. Not guilty upon my Honour.
L. Willoughby of Parham. Not guilty upon my Honour.
L. Evers. Not guilty upon my Honour.
L. Fitzwalter. Not guilty upon my Honour.
L. Morley. Not guilty upon my Honour.
L. Berkeley of Berkeley. Not guilty upon my Honour.
L. De-la-Ware. Not guilty upon my Honour.
L. Willoughby of Eresby. Not guilty upon my Honour.
L. H. Stew. My Lord Viscount Villiers, &c.
Visc. Villiers. Not guilty upon my Honour.
Visc. Longueville. Not guilty upon my Honour.
Visc. Weymouth. Guilty upon my Honour.
Visc. Newport. Not guilty upon my Honour.
L. H. Stew. Earl of Warrington, &c.
Earl of Warrington. Guilty upon my Honour.
Earl of Scarborough. Not guilty upon my Honour.
Earl of Marlborough. Not guilty upon my Honour.
Earl of Montague. Not guilty upon my Honour.
Earl of Monmouth. Guilty upon my Honour.
Earl of Falkenberg. Not guilty upon my Honour.
Earl of Portland. Guilty upon my Honour.
Earl of Abington. Not guilty upon my Honour.
Earl of Rochester. Guilty upon my Honour.
Earl of Nottingham. Guilty upon my Honour.
Earl of Radnor. Not guilty upon my Honour.
Earl of Macclesfield. Not guilty upon my Honour.
Earl of Feversham. Not guilty upon my Honour.
Earl of Craven. Not guilty upon my Honour.
Earl of Carlisle. Not guilty upon my Honour.
Earl of Bath. Not guilty upon my Honour.
Earl of Essex. Not guilty upon my Honour.
Earl of Sandwich. Guilty upon my Honour.
Earl of Scarisdale. Not guilty upon my Honour.
Earl of Sunderland. Not guilty upon my Honour.
Earl of Thanet. Not guilty upon my Honour.
Earl of Chesterfield. Not guilty upon my Honour.
Earl of Carnarvan. Not guilty upon my Honour.
Earl of Kingston. Guilty upon my Honour.
Earl of Stamford. Not guilty upon my Honour.
Earl of Rivers. Not guilty upon my Honour.
Earl of Mulgrave. Not guilty upon my Honour.
Earl of Manchester. Not guilty upon my Honour.
Earl of Westmoreland. Guilty upon my Honour.
Earl of Bullingbrock. Not guilty upon my Honour.
Earl of Clare. Not guilty upon my Honour.
Earl of Denbigb. Not guilty upon my Honour.
Earl of Northampton. Not guilty upon my Honour.
Earl of Bridgewater. Guilty upon my Honour.

Earl of Bedford. Not guilty upon my Honour.
Earl of Huntington. Not guilty upon my Honour.
Earl of Kent. Not guilty upon my Honour.
Earl of Shrewsbury. Not guilty upon my Honour.
Earl of Oxford. Guilty upon my Honour.
L. H. Stew. My Lord Chamberlain, &c.
Earl of Dorset. Not guilty upon my Honour.
L. H. Stew. My Lord Steward, &c.
Earl of Devon. Not guilty upon my Honour.
L. H. Stew. My Lord Great Chamberlain, &c.
Earl of Lindsey. Not guilty upon my Honour.
L. H. Stew. My Lord Marquiss of Halifax, &c.
L. Marquiss of Halifax. Not guilty upon my Honour.
L. H. Stew. My Lord Duke of St. Albans, &c.
Duke of St. Albans. Not guilty upon my Honour.
Duke of Northumberland. Not guilty upon my Honour.
Duke of Ormond. Not guilty upon my Honour.
Duke of Somerset. Not guilty upon my Honour.
Duke of Norfolk. Not guilty upon my Honour.
L. H. Stew. My Lord Privy Seal, &c.
Earl of Pembroke. Not Guilty upon my Honour.
Then his Grace the Lord High Steward stood up uncovered, and laying his Right-Hand upon his Breast, pronounced his Grace's own Judgment thus :
L. H. Stew. My Opinion is, That my Lord Mohun is not guilty, upon my Honour.
Then his Grace seated himself again in the Chair, and numbred up the Opinions of the Peers.
L. H. Stew. My Lords, I have carefully taken your Lordships Opinions, and find the Numbers to be thus : My Lords that have found my Lord Mohun to be guilty are Fourteen ; my Lords that have found him not guilty are sixty Nine.
Call for the Prisoner.
Proclamation was made for the Chief Governour of the Tower to bring forth the Body of the Prisoner, and he was brought to the Bar as before : And Proclamation for Silence was made.
L. H. Stew. My Lord Mohun, you have been indicted for the Murder of William Mountford ; upon your Arraignment you have pleaded not guilty, and have put your self upon the Judgment of your Peers ; and your Peers have considered what hath been said both for and against you, and the Judgment of my Lords is this, That your Lordship is not guilty : Your Lordship is therefore discharged. Make Proclamation for dissolving the Commission.
Cl. of Crown. Serjeant at Arms make Proclamation.
Serjeant. O Yes.
Cl. of Crown. Again.
Serjeant. O Yes.
Cl. of Crown. Again.
Serjeant. O Yes.
Cl. of Crown. My Lord High Steward of England his Grace, doth straightly Charge and Command all manner of Persons who have given their Attendance here, to depart hence in the Peace of God, and of our Sovereign Lord and Lady the King and Queen ; for his Grace the Lord High Steward of England intendeth to dissolve his Commission.

Which the Serjeant at Arms repeated, and at the end of it, his Grace standing up, and holding the White-Staff in both his Hands, broke it in two, by which his Commission was dissolved.

Marq. of Carmarthen. Is it your Lordships Pleasure to adjourn to your own House?

Lords. Ay, Ay.

Marq. of Carmarthen. This House is Adjourned into the House of Lords.

And then the Peers returned to their own House in the same Order.

The Tryal of Thomas Rosewell, for High-Treason; in the Months of October and November, 1684. 36. Car. II.

N. B. This Tryal, in point of time, should come between that of Titus Otes for Scandalum Magnatum, and that of Robert Bailie of Jerviswoode.

Die Jovis 23. Oct. An. Dom. 1684. Term. St. Mich. An. Reg. Regis Car. II. 36. B. Regis.



HIS Day, being the first Day of the Term, Mr. Attorney General moved the Court of King's-Bench for an *Habeas Corpus*, directed to the Keeper of the Gate-house, to bring up the Body of Thomas Rosewell, Clerk, to be arraigned upon an Indictment of High-Treason, found against him at a late Sessions of Oyer and Terminer, held at Kingston in the County of Surrey; and it was desired returnable to Morrow, but was not taken out till that Day, returnable immediate, and upon Saturday it was returned.

Die Sabbati 25. Oct. 1684. B. Regis.
Dominus Rex vers. Rosewell.

THIS Day Mr. Rosewell was brought upon the Writ of *Habeas Corpus*, to the Bar of the Court of King's-Bench, and was thus Arraigned:

Clerk of the Crown. Thomas Rosewell, Hold up thy Hand, (which he did) Thou standest indicted by the Name of Thomas Rosewell, late of the Parish of Rotherhithe, in the County of Surrey, Clerk; For that thou, as a false Traytor, against the most Serene, and most excellent Prince our Sovereign Lord Charles the Second, by the Grace of God, King of England, Scotland, France and Ireland, Defender of the Faith, &c. thy Supreme and Natural Lord; not having the Fear of God in thy Heart, nor weighing the Duty of thy Allegiance; but being moved and seduced by the Instigation of the Devil; the cordial Love, and true, due and natural Obedience, which a true and faithful Subject of our said Sovereign Lord the King doth, and of right ought to bear towards him, altogether withdrawing: and contriving and intending to disturb the Peace and common Tranquillity of this his Kingdom of England, and to sow Sedition and Rebellion within the Kingdom, and to depose our said Sovereign Lord the King from the Stile, Honour and Regal Name of the Imperial Crown of this Realm, and to bring our said Sovereign Lord the King to Death, and final Destruction, the 14th Day of September, in the 36th Year of the Reign of our said Sovereign Lord the King that now is, at the Parish of Rotherhithe aforesaid, in the County of Surrey aforesaid; didst propose, compass and imagine to sow Sediti-

on, and raise Rebellion against our said Sovereign Lord the King, within this Kingdom of England, and to make a miserable Slaughter among the Subjects of our said Sovereign Lord the King, and to cause our said Sovereign Lord the King to be deposed from the Regal State, Title, and Honour of the Imperial Crown of this Realm; and to put to Death, and final Destruction, our said Sovereign Lord the King; and the Government of this his Kingdom of England, at thine own Will and Pleasure to change and alter; and the State of this Kingdom of England, in all its Parts well order'd and constituted, to overthrow and subvert; and to levy War against our said Sovereign Lord the King, within this Kingdom: And to compleat thy said most wicked Treasons, and traiterous Purposes, and Imaginations; and to raise Discord between our said Sovereign Lord the King and his People, Thou the said Thomas Rosewell, the aforesaid 14th Day of September, in the 36th Year aforesaid, at the Parish aforesaid, in the County aforesaid; falsely, unlawfully, seditiously, maliciously and traiterously, in a certain unlawful Assembly, and in the Presence and Hearing of divers Subjects of our said Sovereign Lord the King, then and there unlawfully and seditiously, and against the Laws of this Land, assembled and gathered together; didst speak, assert and declare, That the People (meaning the Subjects of our said Sovereign Lord the King) made a flocking to our said Sovereign Lord the King, upon pretence of healing the King's Evil, which he (meaning our said Sovereign Lord the King) could not do; but that we (meaning thy self, and other traiterous Persons, Subjects of our said Lord the King) are they to whom they (meaning the Subjects of our said Lord the King) ought to flock, because we (meaning thy self, and the said other traiterous Persons) are Priests and Prophets, that by our Prayers can heal the Dolours and Grievs of the People. We (meaning the Subjects of our said Sovereign Lord the King) have had two wicked Kings, (the most Serene Charles the First, late King of England; and our said Sovereign Lord the King that now is, meaning) together, who have permitted Popery to enter in under their Noses; whom (meaning the said Charles the First, late King of England, and our said Sovereign Lord the King that now is) We can resemble to no other

no other Person but to most wicked Jeroboam: And that if they, (meaning the said evil-disposed Persons then and there, so as aforesaid with thee unlawfully assembled, and gathered together) would stand to their Principles thou (meaning thy Self) didst not fear, but they (meaning thy Self, and the said evil-disposed Persons) would overcome their Enemies, (meaning our said Sovereign Lord the King and his Subjects) as in former Times with Rams horns, broken Platters, and a Stone in Sling; against the Duty of thy Allegiance, against the Peace of our Sovereign Lord the King, his Crown and Dignity, and against the Form of the Statute in that Case made and provided. How say'st thou Thomas Rosewell; Art thou guilty of this High Treason whereof thou standest Indicted, and hast been now Arraigned, or not Guilty?

Mr. Rosewell. My Lord, I humbly crave the Favour to speak a Word.

Mr. Just. Holloway. What is it you would say, Sir? You must Plead.

Mr. Rosewell. My Lord, my Charge is very high; and I bless my God, I am not conscious to my self of any Guilt as to those Things, that you have heard read, and charged upon me—

Mr. Just. Holloway. If you will Plead, Sir; to this Indictment, so; that is all you have to do now.

Mr. Rosewell. My Innocence is my great Comfort under the God of Heaven; who knows they have lay'd to my Charge Things that I know not. I do protest my Abhorrence of these Things alledged to be said by me against my Sovereign, whom I honour in my Heart, and daily pray for; I bless my God for it.

Mr. J. Holloway. I hope then your Innocence will clear you. But we have nothing to do now but to take your Answer to this Question, Whether you are Guilty, or not Guilty, of what you stand Indicted for.

Mr. Rosewell. I humbly crave your Lordships Patience a little. Pray, my Lord, give me Leave—

Mr. Just. Holloway. Sir, you will be heard whatever you have to say, at the time of your Trial.

Mr. Rosewell. Pray hear me a few Words, my Lord; I would not trespass upon your Patience: I have but a few Words to say.

Mr. Just. Walcot. You must plead, Guilty, or not Guilty, first.

Mr. Rosewell. My Lord, I beseech you—

Mr. J. Holloway. Sir, We cannot hear you in a Case of so great weight and moment as this, till you have Pleaded. You will have time enough at your Tryal to make your Defence; and all we can do now is to take your Plea of Guilty, or not Guilty.

Mr. Rosewell. May it please your Honours, You are sensible of my great Weakness and Ignorance in Matter of Law, and Things of this Nature; I therefore humbly beg I may have Council to assist me in this Business.

Mr. J. Walcot. If there be any thing of Matter of Law doth arise upon your Tryal, the Court will assign you Council.

Mr. J. Holloway. We cannot assign you Council at present, for we have nothing to assign it upon. If there do any Question of Law arise in your Case, then the Court will, (as they are bound to do,) take Care of you, that you suf-

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fer no Prejudice for want of the Assistance of Council; and in Matters of Fact upon your Tryal, the Court are of Council for you.

Mr. Rosewell. I humbly thank you, my Lord: I hope you will pardon my Weakness and Ignorance. I crave the Favour to have a Copy of my Indictment.

Mr. J. Holloway. We cannot allow it. You cannot be ignorant of that, it has been denied in many Cases of late.

Mr. J. Walcot. We cannot grant it, except Mr. Attorney will consent to it.

Mr. J. Holloway. You must positively say Guilty, or not Guilty. Sir Samuel Astry, call him to his Plea.

Clerk of Crown. How say'st thou, Art thou Guilty, or not Guilty?

Mr. J. Holloway. Look you Sir, you shall not be straitned, you shall have convenient Time to consider what Defence you have to make. In the mean time, we have nothing to say, but to know of you what you Plead; Guilty, or Not Guilty.

Sir Robert Mr. Att. Gen. If you desire to have the Sawyer. words read again to you, you shall.

Mr. J. Holloway. Ay, with all our Hearts.

Mr. Rosewell. I thank you, Sir, and my good Lords. I desire, if you please, to have it read in Latin.

Mr. J. Holloway. Read them in Latin.

Surry ff. Juratores pro Domino Rege super Sacramentum suum presentant, quod Thomas Rosewell, nuper de Parochia de Redriffe in Com' Sur' Clericus, ut falsus proditor Illustrissimi, Serenissimi & Excellentissimi Principis Domini nostri Caroli Secundi, Dei Gratia Angliæ, Scotiæ, Franciæ & Hiberniæ Regis, Fidei Defensoris, &c. Supremi & naturalis Domini sui, timorem Dei in corde suo non habens, nec debitum ligeanciæ suæ ponderans, sed instigatione diabolica motus & seductus, cordialem dilectionem & veram, debitam & naturalem obedientiam quas veri & fideles subditi dicti Domini Regis erga ipsum Dominum Regem gererent & de jure gerere tenentur, penitus subtrahens; & machinans & totis viribus suis intendens pacem & communem tranquillitatem dicti Domini Regis hujus Regni Angliæ inquietare, molestare & perturbare; & seditionem & rebellionem contra dictum Dominum Regem infra hoc Regnum Angliæ movere, suscitare & procurare; & cordialem dilectionem, & veram & debitam obedientiam quas veri & fideles subditi dicti Domini Regis erga ipsum Dominum Regem gererent, & de jure gerere tenentur penitus subtrahere, delere & extinguere; & ipsum Dominum Regem a stylo, honore & regali nomine imperialis Coronæ hujus Regni Angliæ deprivare & deponere; & Subditos dicti Domini Regis contra dictum Dominum Regem suscitare & movere; decimo quarto die Septembris, anno regni dicti Domini nostri Caroli secundi, Dei Gratia Angliæ, Scotiæ, Franciæ & Hiberniæ Regis, Fidei Defensoris, &c. tricesimo Sexto apud Paroch. de Redriffe in Com' Sur' prædicto, falso, malitiose, subdole & proditorie proposuit, compassavit, imaginatus fuit, & intendebat seditionem & rebellionem infra hoc regnum Angliæ movere, suscitare & procurare; & stragem miserabilem inter Subditos dicti Domini Regis procurare & causare; & dictum Dominum Regem a regali statu, titulo, potestate & regimine regni sui Angliæ penitus deprivare, deponere, dejicere & exhereditare; ac ipsum dictum Dominum Regem ad mortem & finalem destructionem adducere & ponere; ac gubernationem ejusdem regni pro voluntate & libito suis mutare & alterare; & statum totius

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rotius hujus regni per universas ejus partes bene institut' & ordinat' totalit' subvertere & destruere; & guerram contra dictum Dominum Regem infra hoc regnum Angliæ levare: & ad easdem nefandissimas prodiciones & proditor' imaginat' & proposita sua prædict' perimplend' & perficiend', & discord' int' dictum Dominum Regem & populum suum movere, causare, & procurare; ipse idem Thomas Rosewell, dicto decimo quarto die Septemb. anno regni dicti Domini regis nunc tricesimo sexto supra prædict', apud Parceb' de Redriffe prædict', in Com' Surr' prædicto, falso, malitiose, subdole, adversate, diabolice & proditorie in quadam illicita assemblat', in præsentia & auditu diversorum subdit' dicti Domini Regis, adtunc & ibidem illicite & seditiose assemblat' & congregat', dixit, asseruit & declaravit quod populus (subdit' dicti Domini Regis nunc inuendo) coadunationem fecere (Anglice made a Flocking) dicto Domino Regi nunc, sub prætextu sanandi morbum regni (Anglice the Kings Evil) quod ipse (dictum Dominum regem nunc iterum inuendo) facere non potest; sed nos sumus illi (seipsum Thomam Rosewell & al' seditiosas & proditor' person' inuendo) ad quos illi (ligeos subdit' dicti Domini regis nunc inuendo) debent accedere (Anglice Flock to) quia nos (seipsum prædict. Thomam Rosewell & al' sedit' & proditor' person' iterum inuendo) sumus Sacerdotes & Prophetæ qui precibus, doloribus ipsorum (ligeos subdit' dicti Domini regis nunc iterum inuendo) sanaremus. Nos (subdit' & ligeos hujus regni Angliæ inuendo) habuimus nunc duos iniquos reges (Serenissimum Carolum primum nuper regem Angliæ, & dict' Dominum regem nunc inuendo) insimul, qui permiserunt Romanam superstitionem (Anglice Popery) ingredi (infra hoc regnum Angliæ inuendo) in eorum conspectu (Anglice under their Noses) qui (prædictum Carolum primum nuper regem Angliæ & dictum Dominum regem nunc inuendo) assimulari possunt ad nullam personam nisi ad nequissimum Jeroboam. Et si ipsi (divers' maledisposit' & sedit' person' adtunc & ibidem cum præfat' Thoma Rosewell, illicite & seditiose assemblat' & congregat' existens inuendo) ad fundamental' ipsorum permanent (Anglice would stand to their Principles) ipse (seipsum Thomam Rosewell inuendo) non timebat quin ipsi (seipsum Thomam Rosewell & prædict' maledisposit' & sedit' person' sic ut præfertur assemblat' inuendo) inimicos suos (dictum Dominum regem nunc & ligeos subdit' ipsius Domini regis nunc inuendo) vincerent sic ut in pristino tempore cum Cornubus ariet', patinis fractis (Anglice broken Platters) & lapide in funda (Anglice Sling) contra debit' ligeant suæ, contra pacem dicti Domini regis nunc, Coron' & dignitat' suas, &c. Necnon contra formam Statut' in hujusmodi Casu nuper edit' & provis', &c.

Cl. of Crown. How say'st thou, Art thou Guilty, or not Guilty?

Mr. J. Holloway. Now what do you say to it, Are you Guilty, or not Guilty? for indeed we cannot spend our Time impertinently, we have other Business. Here is a Question you ought to make a direct Answer to, one way or other.

Mr. Rosewell. My Lord, I humbly crave the Favour it may be read once more in English.

Mr. Att. Gen. Sir Samuel Astry; Read the Words without the Inuendo's.

[Clerk of Crown reads] That the People made a flocking to the King, upon pretence of healing the King's Evil, which he could not do; but we are they to whom they ought to flock, because we are Priests and Prophets, who can heal their Grievs. We have

now had two wicked Kings together, who have permitted Popery to enter under their Noses, whom we can resemble to no other Person, but to the most wicked Jeroboam: And if you will stand to your Principles, I do not fear but we shall be able to overcome our Enemies, as in former Times, with Rams Horns, broken Platters, and a Stone in a Sling.

Mr. Just. Holloway. Now you hear your Charge, both in Latin and English; Pray, therefore, let the Court know what you do Plead; Guilty, or not Guilty to it.

Mr. Rosewell. Not Guilty, my Lord; and I blefs my God for it.

Clerk of Crown. Culprit, How wilt thou be Tried?

Mr. Rosewell. By God, and my Country.

Clerk of Crown. God send thee a good Deliverance.

Mr. Rosewell. These are Things that my Soul abhors, I thank my God.

Mr. Att. Gen. Mr. Justice Holloway, will you please to appoint some time for his Tryal?

Mr. J. Holloway. What time would you have, Mr. Attorney? When can you be ready, Mr. Rosewell?

Mr. Rosewell. I desire, my Lord, it may be on the 19th of November.

Mr. J. Holloway. What Day of the Week is that?

Mr. Clerk. Upon Wednesday.

Mr. J. Holloway. Are there no Arguments appointed for that Day?

Mr. Clerk. There is a Jury of Northamptonshire, for that Day.

Mr. J. Holloway. Then it cannot be that Day.

Mr. Rosewell. Then, if it please your Honours, I desire it may be the next Day; upon Thursday.

Mr. Att. Gen. When it is most convenient for the Business of the Court.

Mr. J. Holloway. Sir Samuel, you will see when it will be most convenient at the Return of the Venire.

Cl. of Crown. Must I return it?

Mr. Att. Gen. No; The Sheriff must: And the Courfe is to make it returnable the same Day the Cause is tried.

Mr. Rosewell. My Lord, I humbly desire I may have Council allowed to come to me.

Mr. Att. Gen. You can have no Council allowed you.

Mr. Rosewell. My Lord, I request that my Friends may be allowed to come to me in the mean time; I have been a Prisoner above this Month, and not permitted to see my Friends, nor they to see me.

Mr. J. Holloway. What Friends would you have?

Mr. Rosewell. My Relations.

Mr. J. Walcot. That Relations is a large Word.

Mr. Att. Gen. Truly, Sir, I think he may have liberty to discourse with any Person in the presence of the Keeper. I shall not oppose that.

Mr. Rosewell. Yes, my Lord, I desire no otherwife.

Mr. J. Walcot. Who do you name to come to you?

Mr. Rosewell. I have poor Children, that desire and long to see me.

Mr.

Mr. F. Holloway. Who do you say, you would have come to you?

Mr. Rosewell. My Wife and Children, my Lord, that are my Bowels.

Mr. Att. Gen. In the presence of the Keeper I cannot oppose it.

Mr. Rosewell. Will your Lordship please to allow Council to come to me?

M. F. Holloway. We cannot do it by Law. The Court is to be of Council for you when you come to your Tryal. The Court will not suffer any thing to be done to your Prejudice against Law.

Mr. Rosewell. Is there any Statute, my Lord, that forbids the giving of Council?

Mr. F. Holloway. The Law forbids the allowing of Council in Capital Causes; unless where Matter of Law doth arise.

Mr. Rosewell. My Lord, as I remember, *Fitzbarris* had Council allowed him.

Mr. F. Holloway. That was in a different Case, in a Matter where there were Special Pleadings; this is a General Issue.

Mr. Att. Gen. That was in a Matter of Law, that was insisted upon, but it is not so here: If this Gentleman had any matter of Law to plead, he should have Council assign'd him too. But, Sir, I think *Tuesday* the Eighteenth of *November* will be the freest and most convenient Day.

Mr. F. Holloway. Let it be that Day then.

Cl. of Crown. The Eighteenth of *November* is the Day of your Tryal.

Mr. Rosewell. But, my Lord, was not Council allowed him before his Tryal came on?

Mr. F. Holloway. Yes; but that was upon a Special Plea, of a Matter in Law.

Mr. Rosewell. I hope you will consider my Case as of one that knows not the Law.

Cl. of Crown. *Tuesday* the Eighteenth of *November* is the Day.

Mr. Rosewell. My Lord, I humbly request the Favour that any Person that can speak of my Integrity, may come and Testify for me.

Mr. Att. Gen. Ay, Ay; you may have *Sub-paena's* out of the Office for any body, who you will, that are to be Witnesses for you.

Mr. F. Walcot. The Officers of the Court will do all things that are requisite and legal for you.

Mr. F. Holloway. Then take back your Prisoner, Keeper.

Mr. Att. Gen. I do not know truly, whether the Practice of the Court is not to commit to the *Marshalsea*, being the Prison of the County of *Surrey*.

Cl. of Crown. Sir, it may be one or th'other way, as the Court thinks fit. As long as the *King's Bench* sits in *Middlesex*, he may be Prisoner still in the *Gate house*.

Keeper. Then the Rule of the Court is that he shall come agen *then*.

Cl. of Crown. Yes, he is, by Rule, to appear here the 18th of *November* next.

Whereupon he was carried back to the Gate-house.

Die Martis 18. Nov. Anno Dom. 1684. B. Regis.

Dominus Rex vers. Rosewell,

THIS Day the Prisoner was brought by Rule, from the *Gate-house* to the Bar of the *King's Bench* Court to his Tryal, at which all the Judges of the said Court were present.

Cl. of Crown. *Thomas Rosewell*, Hold up thy Hand. (*Which he did.*) Those Men that thou shalt hear called, and do personally appear, are to pass between our Sovereign Lord, and thee, upon the Tryal of thy Life and thy Death: If therefore thou wilt challenge them, or any of them, thou art to speak unto them as they come to the Book to be Sworn. *Sir George Sheers*, *Baronet*.

Mr. Rosewell. My Lord, I would humbly crave the Favour of your Lordship, that I may have the Use of Pen, and Ink.

* *Sir George Jeffreys.* * *Lord Ch. Just.* Ay in God's Name, let him have Pen and Ink.

Cl. of Crown. Swear *Sir George Sheers*, *Baronet*.

Mr. Rosewell. I beg I may have Pen, Ink and Paper, before he be Sworn.

L. Ch. Just. Ay, let him.

Cryer. Look upon the Prisoner. Sir, You shall well and truly try, and true deliverance make between our Sovereign Lord the King, and the Prisoner at the Bar, whom you shall have in Charge; and a true Verdict give according to your Evidence. *So help you God.*

Jurat' *Sir George Sheers.*

Mr. Rosewell. My Lord, I challenge him.

Lord Ch. Just. That you cannot do now he is Sworn.

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Mr. Rosewell. I was surprized, my Lord; I did not know it.

Lord Ch. Just. I cannot help it, *Mr. Rosewell*, you must mind your Business. We cannot unswear him agen. Go on.

Cl. of Crown. *Sir St. John Broderick.*

Cryer. Look upon the Prisoner, Sir; You shall well, &c. Jurat' *Sir St. John Broderick.*

Mr. Rosewell. I challenge him.

L. Ch. Just. You cannot Sir; he is Sworn now.

Mr. Rosewell. I beg your Lordships Pardon, I was surprized.

L. C. Just. Let us not spend time in such Talk as is to no Purpose; I tell you we cannot unswear him.

Mr. Rosewell. I desire, my Lord, my Challenge may be received, I was going to speak—

L. C. Just. It cannot be after he is sworn; we cannot make a new Law for you. Mind what was said to you; if you have a Mind to challenge any body, you must challenge them before they come to be Sworn.

Cl. of Crown. *Sir Robert Knightsley.*

L. C. Just. Mind the thing you are about; Man: Speak now, if you have a Mind to challenge him.

Mr. Rosewell. I do not challenge him.

Cl. of Crown. Then Swear him.

Cryer. Look upon the Prisoner, &c.

Jurat' *Sir Robert Knightsley.*

L. C. J. Pray now mind the Thing you are about; you are looking about you for some

Mm m m m m 2 private

private Mark, or hint to be given you by some body, and so lose your time of Challenging. You must challenge them as they come to the Book to be Sworn, and before they are Sworn.

Mr. Rosewell. I beg your Lordships Pardon; I was minding to set down the Names in my Paper, because I am to take notice of those I challenge for their Number.

L. C. J. You shall have all the fair Advantages that the Law will allow; you shall have your full Number to challenge, which you may do peremptorily, and without Cause as to 35; and as many more as you can with Cause.

Mr. Rosewell. Is there any one to note the Number?

L. C. J. There shall be sure to be notice taken that you be not surprized that way. You shall have all fair Advantages, I tell you.

Mr. Rosewell. I humbly thank your Lordship.

Cl. of Crown. Sir William Elliot.

Cryer. Look upon the Prisoner.

Mr. Rosewell. I challenge him.

Cl. of Crown. Sir George Woodroffe.

Mr. Rosewell. I challenge him.

Cl. of Crown. Sir Cornwall Bradshaw.

Mr. Rosewell. I challenge him.

Cl. of Crown. Sir Thomas Bludworth.

Mr. Rosewell. I challenge him.

Cl. of Crown. Anthony Thomas, Esq;

Cryer. Look upon the Prisoner.

Mr. Rosewell. I do not challenge him.

Cryer. You shall well and truly, &c.

(Jurat' Anthony Thomas.)

Cl. of Crown. Francis Brend, Esq;

Mr. Rosewell. I challenge him.

Cl. of Crown. John Weston, Esq;

Mr. Rosewell. I challenge him.

Cl. of Crown. James Reading, Esq;

Mr. Rosewell. Is it Mr. Justice Reading of Southwark?

L. C. J. Do you challenge him or not? you may if you will.

Mr. Rosewell. My Lord, my Reason is, I have heard much of him, but never had any Opportunity to know him till now. I have no Exception against him.

L. C. J. Then Swear him.

[Which was done.]

Cl. of Crown. Thomas Newton, Esq;

Mr. Rosewell. I challenge him.

Cl. of Crown. Thomas Vincent, Esq;

Mr. Rosewell. I challenge him.

Cl. of Crown. Ambrose Muschamp, Esq;

Mr. Rosewell. I challenge him.

Cl. of Crown. Ralph Freeman, Esq;

Mr. Rosewell. I challenge him.

Cl. of Crown. Joseph Reeves, Esq;

Mr. Rosewell. I challenge him.

Cl. of Crown. Anthony Rawlins, Esq;

Mr. Rosewell. I do not challenge him.

[He was sworn:]

Cl. of Crown. Thomas Overman, Esq;

Mr. Rosewell. I have no Exception against him.

[He was sworn.]

Cl. of Crown. George Meggot, Esq;

Mr. Rosewell. I challenge him.

L. C. J. Cryer, Before you bid them look upon the Prisoner; and the Prisoner look upon them, that he may see what he does.

Cryer. I do so, my Lord.

Cl. of Crown. Samuel Lewin, Esq;

Mr. Rosewell. I have nothing to say against him.

[He was sworn.]

Cl. of Crown. Lawrence Marsh, Esq;

Mr. Rosewell. My Lord, I desire to know how many I have challenged.

L. C. J. He shall tell you. Count them.

Cl. of Crown. Twelve. What say you to Mr. Marsh?

Mr. Rosewell. I challenge him.

Cl. of Crown. Ambrose Brown, Esq;

Mr. Rosewell. I challenge him.

Cl. of Crown. John Halsey, Esq;

Mr. Rosewell. I challenge him.

Cl. of Crown. John Auburn, Esq;

Mr. Rosewell. I challenge him.

Cl. of Crown. Henry Flood, Esq;

Mr. Rosewell. I challenge him.

Cl. of Crown. John Parsons, Esq;

Mr. Rosewell. I challenge him.

Cl. of Crown. John Pettyward, Esq;

Mr. Rosewell. I do not challenge him.

[He was sworn.]

Cl. of Crown. Richard Coldham, Esq;

Mr. Rosewell. I do not challenge him.

[He was sworn.]

Cl. of Crown. Robert Sanders, Esq;

Mr. Rosewell. I challenge him.

Cl. of Crown. John Heather, Esq;

Mr. Rosewell. I do not challenge him.

[He was sworn.]

Cl. of Crown. John Austin, Esq;

Mr. Rosewell. Pray, Sir, doth this make Twelve if he be sworn?

Cl. of Crown. Yes, Sir.

Mr. Rosewell. Then I do not challenge him.

[He was sworn.]

Cl. of Crown. Cryer, count these. Sir George Sheeres.

Cryer. One, &c.

Cl. of Crown. John Austin.

Cryer. Twelve, good Men and true, stand together and hear your Evidence.

The Twelve Sworn were These,

Sir George Sheeres.	} Jury.	Thomas Overman.
Sir St. John Broderick.		Samuel Lewin.
Sir Robert Knightley.		John Pettyward.
Anthony Thomas.		Richard Coldham.
James Reading.		John Heather, and
Anthony Rawlins.		John Austin.

Clerk of Crown. Thomas Rosewell, Hold up thy Hand, (which he did.) Gentlemen, you of the Jury, look upon the Prisoner, and hearken to his Cause. He stands indicted by the Name of Thomas Rosewell, &c. (Prout in the Indictment, *mutatis mutandis*)—Upon this Indictment he hath been Arraigned, and thereunto hath pleaded not Guilty; and for his Tryal hath put himself upon God, and his Country, which Country you are. Your Charge is to enquire whether he be guilty of this High-Treason, in manner and form as he stands Indicted, or not guilty. If you find him guilty, you are to enquire what Goods or Chattels, Lands or Tenements, he had at the time of the High-Treason committed, or at any time since to your Knowledge. If you find him not guilty, you are to enquire whether he fled for it; if you find that he fled for it, you are to enquire of his Goods and Chattels as if you had found him guilty. If you

you find him not guilty, and that he did not fly for it, you are to say so, and no more, and hear your Evidence. Cryer, make Proclamation.

Cryer. Oyez, Oyez, Oyez; If any one can inform my Lords the King's Justices, the King's Serjeant, the King's Attorney-General, or this Inquest now taken, of the High-Treason whereof the Prisoner at the Bar stands indicted; let them come forth, and they shall be heard: And all manner of Persons, that are bound to give Evidence on the behalf of our Sovereign Lord the King against the Prisoner at the Bar, let them come forth and give their Evidence; for now the Prisoner stands at the Bar upon his Deliverance: Or they forfeit their Recognizance.

Mr. Phipps. May it please your Lordship, and you Gentlemen of the Jury——

Mr. Rosewell. Hold! Hold! I crave the Favour that the Indictment may be read in *Latin*.

L. C. J. Ay, with all my Heart, let it be read in *Latin*.

(Which was done.)

Mr. Rosewell. My Lord, I humbly crave leave to speak a Word or two.

L. C. J. What would you have?

Mr. Rosewell. I beg your Patience for a Word or two. I find, my Lord, as I told my Lords upon the Day of my Arraignment, that my Charge is very black, and high: And truly if I were guilty of those Things that are laid to my Charge——

L. C. J. You are now going to be tried for them. I hope you are innocent.

Mr. Rosewell. I humbly thank your Lordship: I beg you would hear me but a Word or two.

L. C. J. You must keep up to the Method of Proceedings, your time is not yet come. What is it you would have?

Mr. Rosewell. My Lord, my Soul abhors these Things, I thank my God for it. I was going to speak to your Lordship, to know whether the Words of a Natural, or a Mad-man be Treason in Law.

L. C. J. No.

Mr. Rosewell. Then, my Lord, the Ground of the Question is this, I find by Recollection and Consideration of the Words lay'd to my Charge, that my malicious Enemies have accused me of what any Man in his Senses,——

L. C. J. This is not proper, Mr. Rosewell, at this time; for this is but an Anticipation. You must hear what is first proved against you. We must keep up to the Forms of Law, you shall have your full time to be heard whatsoever you will say for your self; but you must not anticipate the Cause with previous Discourses.

Mr. Rosewell. I would only assert my own Innocency.

L. C. J. Not yet; you must not do it, nor you shall not do it. When it comes to your turn to speak, you shall have liberty enough to make your Defence as long as you will. Go on, Sir.

Mr. Phipps. May it please your Lordship, and you Gentlemen that are sworn: The Prisoner at the Bar, *Thomas Rosewell*, stands indicted, That he, as a false Traytor, not having the Fear of God before his Eyes, but being moved and seduced by the Instigation of the Devil, and endeavouring to disturb the Peace and Tranquillity of the Kingdom, and to depose the King, the 14th of *Sept.* in the 36th Year of this King, at the Parish of *Rotherhithe*, in your County;

did falsly, maliciously, and traiterously, purpose and imagine to raise a Rebellion within the Kingdom, and to deprive the King, and depose, and put him to death and Destruction, and the Government to change and alter, and to levy War against the King within the Kingdom: And these wicked Purposes to bring to pass, he the said *Thomas Rosewell*, the said 14th of *September* in the thirty sixth Year aforesaid, at the Place aforesaid, falsly, unlawfully, maliciously, seditiously and traiterously, in a certain unlawful Assembly, then and there congregated, did say and declare, *The People make a flocking to the King, upon pretence of Healing the King's-Evil, which he cannot do; but we are they to whom they ought to flock: for we are Priests, and Prophets, that can heal their Grievances. We have now had two wicked Kings together, who have permitted Popery to come in under their Noses; and whom we can compare to none, but the most wicked Jeroboam. But if they would stand to their Principles, he did not doubt, but they should overcome their Enemies, as in former Times with Rams-horns, broken Platters, and a Stone in a Sling.* And this is laid to be against the Duty of his Allegiance, against the Peace of the King, his Crown and Dignity; and against the Form of the Statute in that Case made and provided. To this Indictment he has pleaded not guilty; If we prove him guilty of this Matter, you are to find him guilty.

Mr. Att. Gen. May it please your Lordship; and you Gentlemen of the Jury; these traiterous Words; that the Prisoner at the Bar is accused of, were spoken in a Sermon, or Preachment at a Conventicle. And tho' the Gentleman does pretend to much Innocency; yet you will find that in open Defiance of the Law, he takes upon him to Preach against the Law, not only of the Land, but even against the Laws of Almighty God: For he takes upon him to be a Preacher against a Rule, than which nothing is more plain in all the Word of God, viz. *That he should not speak Evil of Dignities, nor revile the Prince of his People.* He knows this to be the Rule of the Scripture; and yet in his constant Discourses, (as we shall prove) he makes it his Practice to revile the Government on all Sides. And by these doings at this Day, Gentlemen, you will easily understand what the Designs of these Conventicles are; only to nurse up People in Sedition, and train them up to Rebellion; that they may be ready to break out into it when their Teachers advise them to it. We shall call our Witnesses, and prove to you, that this is, and has been the constant Tenor of his Discourse; viz. Reviling of the Government, and there is almost no Text of Scripture, but; in his way of perverting it, he has turned against the Government. We shall shew this to be the habitual Course and Practice of him who pretends to be so honest, and so innocent a Man. Cryer, call *Elizabeth Smith*,——*Hilton* and *Farrar*.

Then some of the Council at the Bar, being talking among themselves, the Lord Chief Justice reproved them for it.

L. C. J. Look you, Gentlemen, you must not have Interlocutions among your selves. And you, Gentlemen of the Jury, I must tell you, If any one whisper any of you, you ought to acquaint the Court with it. It is your Duty
to

to be directed by the Court, and the Evidence. Here is a Man's Life in Question, and that is a very weighty Thing: and you must not take any private Insinuations, but only hearken to your Evidence, and mind what is spoken publicly, that the Prisoner may be able to give answer to it.

Mr. Rosewell. I humbly thank your Lordship.

Mr. Att. Gen. Where are Mrs. Hilton and Mrs. Smith?

(They were all sworn.)

Mr. Rosewell. I do humbly request one Favour of the Court.

L. C. J. What would you have?

Mr. Rosewell. I humbly beg they may be examined *separatim*.

L. C. J. They shall.

Mr. Rosewell. I humbly thank your Lordship.

L. C. J. Who do you begin withal, Mr. Attorney?

Mr. Jones. My Lord, we shall begin with Mrs. Smith.

L. C. J. Then you must make way, that the other Witnesses may go out of hearing. You Cryer, make way for them; and see that they be set where they may not hear.

[Which was done]

Mr. Att. Gen. Come, Mrs. Smith, pray give my Lord and the Jury an account whether you have been at any Meeting, where this Gentleman has been. Whether you know him; and what you heard of him.

Smith. I heard him say this—

L. C. J. Hold a little. What is this Woman's Name, Elizabeth Smith?

Mr. Att. Gen. Yes, my Lord. Were you by at any of his Conventicles?

Smith. Sir, I have been ever since the 20th of July, till that Day for which he was taken, but one Sunday.

Mr. Att. Gen. Give my Lord an account of what you heard.

Smith. Yes, Sir.

L. C. J. Where was it that his Meeting-House was?

Smith. He had several Houses, private Houses and a publick House of his own.

L. C. J. Where? In what Place?

Smith. In Salisbury-street, near his own Dwelling.

L. C. J. Where is that?

Smith. In Rotherhithe.

L. C. J. You were frequently there, you say?

Smith. Yes, my Lord.

L. C. J. What number of People might be there, as you guess?

Smith. I believe there might be 400 People or 300 commonly.

L. C. J. What sort of People were they?

Smith. Men and Women, House-keepers.

L. C. J. Well, what did you hear him say?

Smith. I can give you an Account of his Sermons several Days.

L. C. J. Do so.

Smith. The first Notice that I took of any thing concerning the Government, was upon the 17th of August, and that was concerning His Majesty; and then in his Prayer after Sermon, he wished he might not offend God in not praying for the King; but that it might please God to open his Eyes, and the Times might turn.

Mr. Att. Gen. What other Things have you heard him say?

Smith. The next time that I heard him was the next Sunday again, and that was in West-lane, in a House there, and then he was speaking of Sodom and Gomorrah; and he brought in this Proof, not doubting but if there had been ten righteous Persons, the City had not been destroyed: But he did not mean Recorders, nor Lord Mayors.

Mr. Rosewell. What Day was that Mistris?

Smith. The 22th of August.

Mr. Att. Gen. Well, what did you hear him speak, upon the Day in the Indictment, the 14th of September?

Smith. He said, *The People made a flocking to the King, to cure the King's Evil which he could not do; but, says he, we are they they should flock unto, for we are Priests and Prophets, that by our Prayers can cure their Grievances.* He said, *We have now had two wicked Kings together, which have permitted Popery to come in under their Noses, and could be compared to nothing but to most wicked Jeroboam.* And then, after he had preached a good while, again he said, *If they would stand to their Principles, he did not fear, but they should overcome their Enemies, as in former Times, with broken Flatters, Ram's Horns, and a Stone in a Sling.*

L. C. J. When was this?

Smith. This was upon the 14th of September.

L. C. J. Where was it?

Smith. At one Captain Daniel Weldy's House.

L. C. J. What is he? a Seaman?

Smith. Yes, and he pray'd for him, being then at Sea and his Son both, who was ill.

L. C. J. How many do you think might be present there at that time?

Smith. There was a low Parlour full, and a little Room up six Steps; and where he preached was up one pair of Stairs, there was a large Room and a Garret.

L. C. J. Where did he stand?

Smith. In the Door-Cafe of that Room, that the sound might go up and down.

L. C. J. How many People in number might there be think you?

Smith. I cannot tell, my Lord; a great many.

L. C. J. How many, as nigh as you can guess, or think?

Smith. Several Hundreds of them.

L. C. J. Do you know any of them? Were they People of any Quality?

Smith. Yes, I know a great many of them; several of them are in the Court, and about the Hall now.

L. C. J. Who stood at the Door and let you in?

Smith. One Mr. Paul Shed; and he was angry at my coming with Pattens, for they made an Impression in the Ground, and gave notice to others, that there was Company there: and I promised him I would come no more with them.

Mr. J. Walcot. Was he Door keeper? What is he?

Smith. A Brasier, I think.

Mr. J. Holloway. Had you any notice of a Conventicle that was to be there?

L. C. J. Ay; Tell us how you came thither.

* Sir Thomas * Mr. Recorder. How came you Jenner. to find it out that there was a Meeting at such a Place?

Smith. At first I found it by dogging of People as they went along; and afterwards, there were

were People set commonly at a Place called *Cherry-garden Stairs* to give notice ; and sometimes I asked there, and sometimes I went to Mr. *Shed's* House to enquire.

L. C. J. *Shed*, you say, was present there then ?

Smith. Yes, he let me in.

L. C. J. What ; he was the Man that managed the Conventicle. He was Clerk, I suppose ; was he not ?

Smith. I never heard him say Amen ; but I have heard him expound in the Conventicle sometimes.

L. C. J. Oh, he was a Journeyman Preacher it seems.

Mr. Recorder. Pray was there any store of Watermen and Seamen there ?

Smith. Yes, abundance from *Rotterbith*, or thereabouts.

L. C. J. Which way came all the People that were there ?

Smith. From *Deptford* and *Rotterbith*, and all thereabouts.

L. C. J. Was it near the Water-side ?

Smith. Yes, not far from it.

L. C. J. Well, Mr. Attorney, have you any more Questions to ask her ?

Mr. Att. Gen. No, I think not. Mrs. *Smith*, you have heard him, you say, at other Days ; how did he use to treat the Government in his preaching at other times ?

Mr. Rosewell. My Lord, I beseech your Lordships to tell me whether these Questions are proper to be put, it not relating to the Matter that I am accused of ?

L. C. J. Yes, yes, to give an account of the Disposition of your Mind ; very proper as can be.

Mr. Rosewell. Because it is not part of my Charge, and I cannot be prepared to answer it.

L. C. J. When the King's Council have done with her, you may ask her any Questions ; but you must let them go on first.

Mr. Att. Gen. My Lord, it is charged that he spoke these words with a traitorous, malicious Mind ; and what better Evidence of such a Mind than his usual Discourses ?

Smith. The 31st of *August*, I heard him preach at *Paul Shed's* House ; and there he preached that there was a certain great Man, that lived at the Upper-end of *Grace-church-street* about this time eighteen Years ago ; I name no body, says he, you all know him whom I mean : and there came a certain poor Man to him ; he was not a poor Man neither, but a Carpenter by Trade, one that wrought for his Living, a labouring Man ; and told that great Man, if he would take his Advice, he would tell him how to quench the Fire ; but he Pish'd at it, and made light of it and would not take his Advice. Which if it had not been for that great Man, and the Lord Mayors and Sheriffs that have been since, neither that Fire in *London*, nor the Fire at *Wapping*, nor the Fire at *Southwark*, had gone so far, or come to what they did.

L. C. J. There was a great Man that lived at the Upper-end of *Grace-church-street* ! — Who did he mean by that ?

Mr. Recorder. He meant, we suppose, Sir *Thomas Bloodworth*, that was Lord Mayor at the Fire-Time.

L. C. J. He did not live there then.

Mr. Recorder. It seems he said so.

Mr. Att. Gen. Pray Mrs. *Smith*, let me ask you one Question. How far were you off from him ; and where did you sit this 14th Day of *September*, when you heard him say those Words you speak of ?

Smith. I sat upon the Bed, and he was standing at the Door.

Mr. Att. Gen. My Lord, we have done with this Witness at the present.

L. C. J. Now, Mr. *Rosewell*, if you will, you may ask her what Questions you please.

Mr. Rosewell. My Lord, I was before going to beg your Pardon for my Weakness, being altogether unacquainted with these Things ; and that you would look upon me as one that is *inops consilii*, and pardon any thing that comes from me impertinently. I cannot speak to her as a Lawyer to sift her, and search out the Truth ; will your Lordship give me leave to speak to her as a Divine ?

L. C. J. Ask her what Questions you will, but we will not have any of your Preachments here. You must consider where you are, you are not now in your Pulpit, but at the Bar ; I assure you we do not intend to make a Conventicle of the King's Bench Court.

Mr. Rosewell. My Lord, I meant only to endeavour to convince her, by putting some Questions, like a Divine, to her. For I pity them, tho' they envy me ; and I bless my God, have pray'd for them many times since my Imprisonment.

L. C. J. Well, well ; do not stand to commend your self now, this is not your time of making your Defence : Only, if you will ask this Witness any Questions, you may.

Mr. Rosewell. You are under an Oath, Mrs. *Smith*. I am so, Mr. *Rosewell*.

Mr. Rosewell. Are you sensible what an Oath is, and the great Obligation you are under by it to testify nothing but the Truth ? as you will answer it to the great God —

L. C. J. Look you, Mr. *Rosewell*, ask her any Questions to the Business that she has here testified ; but do not preach to her. It is not your Work to Catechise the Witnesses, that is the Duty of the Court, and we shall, no doubt, take care to do our Duty. And I will tell her, to save your Preachment, she is in the Presence of the Great God of Heaven and Earth, before whom we must appear at the great Day of Judgment, to give an account of every Word we speak. And you are under an Oath, and if in Case you tell one Tittle of a Lie in your Testimony against the Prisoner at the Bar, who stands now to be tried for his Life, it will be just with the Great God to sink you down into Hell Fire immediately. Therefore, I require you, upon your Oath, not to speak one Word but what is Truth.

Smith. My Lord, I assure you, I will rather say less, than add any one Tittle.

L. C. J. Mr. *Rosewell*, ask her what you will, but do not give your self, or us, the trouble of a Preachment to teach her the Obligation of an Oath ; for she very well knows it seems what it is, and says she will rather speak less than more than the Truth.

Mr. Rosewell. I humbly thank your Lordship for what you have said to her. Mrs. *Smith*, Pray

was you at *Rotherbith* the 14th Day of September?

Smith. Yes, that I was.

Mr. Rosewell. Did you come alone? or, who came with you?

Smith. Mrs. *Hilton* came along with me, and another Gentlewoman, and Mr. *Shed* let us in all together.

Mr. Rosewell. Who is that Mrs. *Hilton*?

Mr. Att. Gen. You will see her by and by

Mr. Rosewell.

Mr. Rosewell. Where did you meet together?

Smith. Mrs. *Hilton* lay with me all Night, and we were together the Day before.

Mr. Rosewell. What time did you come thither, pray Mistris?

Smith. I came thither before Seven of the Clock, before you came, Sir.

Mr. Rosewell. And I pray whose House came you to at *Rotherbith*?

Smith. We were informed it was Captain *Weldy's* House.

Mr. Rosewell. Are you sure it was his House?

Smith. As they did tell us it was Captain *Daniel Weldy's*.

Mr. Rosewell. I pray Mistris what Room were you in there?

Smith. We were up one pair of Stairs. There is a little Room we come at sooner; but we were in the Room with the Bed; and there was one Mr. *Atkinson* there that was in Mourning, and there were two or three Boys of his with him that sate upon the Bed, and their Shoes were plucked off, that they might not dirt the Bed; and I gave him his Boys Shoes from under the Bed.

Mr. Rosewell. Pray where did I stand, Mistris, do you say?

Smith. In the Door-Cafe.

L. C. J. What Boy is that you speak of?

Smith. Two Boys that came in with one Mr. *Atkinson*; his Relations, I suppose they were.

Mr. Rosewell. Pray how did the Service begin?

Smith. You took your Text out of the 21st of *Genesis*; that was the Chapter to the best of my Remembrance.

Mr. Rosewell. But I ask you Mrs. how did the Worship, the Service begin?

L. C. J. You mean your Prayer, you do not use to call it Service.

Smith. You made a Prayer.

Mr. Rosewell. Was it begun with a Chapter, or a Psalm, or how?

Smith. There was no Psalm; a long Prayer you made, as you used to do formerly.

Mr. Rosewell. How long was that?

Smith. It was always used to be about three quarters of an Hour long.

Mr. Rosewell. Was there any Chapter read?

Smith. There was no Chapter before you took your Text, as I heard, and I was there before you.

Mr. Rosewell. Upon what Occasion then were these Words spoke, if there was no Chapter read?

Smith. I say there was none till you took your Text, and then you spoke those Words.

Mr. Rosewell. But how came those Words in?

Smith. You always took a whole Chapter, and expounded all along.

Mr. Rosewell. A long Text for one Sermon, Mistris.

L. C. J. Yes, yes, We know you have a fine way of Preaching.

Mr. Rosewell. Well, Mistris. Upon what Verse of the Chapter were these Words spoke, about flocking to the King to cure the King's Evil?

Smith. I cannot be punctual to the particular Verse.

L. C. J. Nay, I suppose you seldom keep to your Text. I am sure there was never a Verse in any Chapter that warranted the speaking of any such Words as these.

Smith. My Lord, I cannot be punctual to the particular Verse. It was within five or six Verses of the beginning, I believe.

Mr. Rosewell. Then upon what Occasion came in the Words about the two wicked Kings?

Smith. In Preaching you brought it in by other Proofs.

L. C. J. Why, Man, there can be no Occasion for speaking of those Words. You spoke them without any Occasion at all. No body can tell what Occasion you had to speak them.

Mr. Rosewell. But, my Lord, I suppose there may be some coherence in my Discourse. I would know how they were brought in?

L. C. J. Who can tell the Occasion? Do you ask me what Reason any Man has to speak Treason? I tell you there is none at all to be given for it.

Smith. One of your Proofs in your Preaching was concerning *Dalilah* and *Sampson*, and you brought in that Proof concerning the King's using of Women, it was out of the *Judges*. And he said he did not Question, but that in the end the Whores would serve the King, as that Whore *Dalilah* did *Sampson*.

L. C. J. Was this at the same time, upon the same Day?

Smith. Yes, it was upon the 14th of September.

Mr. Rosewell. If it please you, my Lord, these are not Words that are charged in the Information—

L. C. J. You draw it upon your self by your Questions.

Mr. Rosewell. If they were spoken, (upon that *Hypothesis*, I say if they were spoken; but I deny the *Thesis*, I abhor the thoughts of them.) I would know how they were brought in, under what Verse?

L. C. J. Ay, I take you right as to that, you do deny it; and they are not in the Indictment.

Smith. I cannot be punctual as to the Verse.

Mr. Rosewell. Pray upon what account did come in the two wicked Kings?

Smith. I cannot tell the Verse, truly.

Mr. Rosewell. How came in that about *Jeroboam*?

L. C. J. How can she tell how you bring in Treason?

Mr. Rosewell. My Lord—

L. C. J. Nay, pray, Sir, hear me a little. You shall have all the Liberty to defend your self that the Law can allow of. We are accountable to the Law upon our Oaths to do Justice, and are as much accountable to Heaven for our Actions,

ons, as you or any Prisoner that comes to this Bar is to the Law for your Actions. But do you ask what Reason you spoke Treason for? I tell you no Reason can be given for it.

Mr. J. Holloway. Do you think any of your Auditors can give an account of the Connexion of your whole Sermon?

L. C. J. When you talk besides the Cushion, do you think any Man alive is able to give an account how you come to ramble and talk Treason?

Mr. Rosewell. Can you tell, Mistress, when that was spoken, of standing to their Principles, and the Rams-horns, &c.?

Smith. That was at the latter end of your Sermon.

L. C. J. When you had said there were two wicked Kings, then presently you were for standing to your Principles, and over coming your Enemies.

Mr. J. Holloway. It seems she was very intent upon your Sermon.

L. C. J. For my part, I wonder she can remember so much as she does. It is much she can remember such Stuff as this.

Mr. Rosewell. The God of Truth, my Lord, I hope will manifest the Truth. Pray, Mistress, were these Words spoken one just after another in my Discourse?

Smith. No, they were not; but they were all spoken at that time.

Mr. J. Holloway. Have you done with her?

Mr. Rosewell. No, my Lord, I humbly beseech your Favour and Patience a little; Pray Mistress *Smith* did you write?

Smith. I did not write till I came home, and after I came home I did write it down. Several that were there did write down your Sermon.

Mr. Rosewell. Several of whom do you mean?

Mr. Smith. Several of your Congregation, Sir.

Mr. Rosewell. Did your Companions write? and pray where did you first write down these Words?

Smith. After I came Home I set them down, Word for Word to a Tittle, as they were spoken, as near as I could remember, what you spoke.

Mr. Rosewell. Was any body with you when you set them down?

Smith. Yes, my own Family saw me write them down: and the other Witness was with me; and afterwards we went to the *Bull and Mouth*, the Quakers Meeting-House.

Mr. Rosewell. What other Witnesses were by when you set them down?

Smith. There was my Husband, my Apprentice, and my Child.

Mr. Rosewell. And did you set them down just exactly, as you have sworn them upon this Indictment?

Smith. Yes, to the best of my Knowledge.

Mr. Rosewell. Upon your Oath in the presence of the great God, did you set them down as they were spoken?

Smith. Yes, I tell you.

L. C. J. Ay, I would ask you that Question; Did you, (I speak to you as in the Presence of the great God, and upon your Oath) set down his Words just as he spoke them in Substance?

Smith. Yes, I did to the same Substance as near as I could remember.

Mr. Rosewell. Pray what other Words were spoken between these Words in the Indictment, if they were not all spoken together?

Smith. One thing I do remember more, that you said that Day. You said there was a Word they called Canting; but for your Part you did not understand what it meant, unless it were this; You said, you chanced to go by one of the great Churches; where peeping in, you saw a Man with a white Surplice, and the Organs were going, and they were canting, and singing the *Litany*, the *Creed*, and the *Ten Commandments* with a Ha-ha-ha-ha-ha. For your part, you were ashamed to hear it: and this you said was all the Canting you knew.

Mr. Att. Gen. You will draw this upon your self.

Mr. Rosewell. I am sorry to hear this indeed, my Lord.

L. C. J. So am I too, with all my Heart, I'll assure you.

Mr. Rosewell. You say you set down the Words the same Day, when you came Home?

Smith. Yes, I resolved so to do, when I came away from the Meeting, to write them down as soon as I came home.

Mr. Rosewell. Did you confer with any body about these Words?

Smith. Not till I came to a Justice of Peace, and discovered it.

Mr. Rosewell. What Justice of Peace was that whom you discover'd it to?

Smith. The Recorder of London.

Mr. Rosewell. And you swear these were the Words that I spoke?

Smith. Yes, as near as I can remember.

L. C. J. If she swear the substantial part of them it is enough, tho' the very exact Words she doth not swear: For the Words are laid in this Indictment in *Latin*, and by way of Assertion.

Mr. Rosewell. Your Lordship will pardon my Weakness, I am ignorant of the Law.

L. C. J. And we will take care you shall have nothing done to your Prejudice that is against Law.

Mr. Rosewell. I humbly thank your Lordship. Mistress *Smith*, upon your Oath you say Mr. *Shed* was at that Conventicle?

Smith. Yes, he let me in at the Door, and was angry with me that I would come so near the Place with my Pattens; he said it might give occasion of Suspicion.

Mr. Rosewell. You were saying you heard him expound. Where was that, pray?

Smith. Yes, that I did, at Mr. *Crookshank's* House; and I heard him another time.

Mr. Rosewell. What was the Day in *August* that you say you came first to hear me?

Smith. I do not say it was in *August*, but in *July* that I came first to hear you, the 20th of *July*.

Mr. Rosewell. You say I preached in the publick Meeting-Place; What Day was that pray?

Smith. The 10th of *August*, to the best of my Remembrance; it was the fourth Sunday, as I remember that I heard you there.

Mr. Rosewell. Have you not sworn against Conventicles in other Places?

Smith. Yes.

Mr. Rosewell. What Conventicles?

Smith. If my Lords please to ask me, I shall give an account.

Mr. Rosewell. Have you, or have you not?

Smith. Yes, several; tho' I never heard any thing spoken in any of them against the King, but at yours.

Mr. Rosewell. Did you swear a Conventicle against one *Mr. Hales*?

Smith. I swore it by Confession.

Mr. Rosewell. Were you at that Conventicle?

Smith. No, I was not; but I swore it by Confession.

Mr. Rosewell. What day was that Conventicle?

Smith. As they told us, it was the 13th of July.

Mr. Rosewell. Was there any thing done upon that Conviction?

Smith. Yes, he paid his Money that was set upon him, and never made any Appeal; his Wife confessed it.

Mr. Rosewell. What other Conventicles have you been at?

Smith. Concerning you, do you mean?

Mr. Rosewell. No, any other Conventicles of the Fanatics that you have sworn against.

Smith. I do not know whether that be a proper Question.

Mr. Rosewell. What say you, *Mistress Smith*?

L. C. J. No, no; that you must not ask her, that is to accuse her self.

Mr. J. Holloway. You must not ask her to any thing but that you stand here charged with.

L. C. J. You must not ask her any thing that may make her obnoxious to any Penalty.

Mr. J. Walcot. Do you ask her any other Questions?

Mr. Rosewell. I will presently, my Lord, I beg your Patience.

L. C. J. Ay, ay, take your own time.

Mr. Rosewell. Pray, *Mistress Smith*, were you a Witness against a Conventicle at one *Mistress Batbo's*?

Smith. Yes, that I had by Confession of her own Mouth.

Mr. Rosewell. Was there not some Money offered her—

L. C. J. That is not to be asked, you must not ask her any Question that may make her accuse her self criminally.

Smith. Never by me, *Mr. Rosewell*.

Mr. Rosewell. I beg your Lordships Pardon.—

L. C. J. I'll tell you the Reason for it, and it is that which ought to be satisfactory to you or any body. They are not bound to answer any Questions that you ask the Witnesses, whereby they charge themselves with any Crime, or by answering may subject themselves to any Penalty. Whether it be so or no, you must not ask them, but prove it.

Smith. I never did offer any, my Lord.

Rosewell. I thought I might offer any thing against what she had sworn.

L. C. J. Prove what you can in your Time; but do not ask her any such Questions. The Law is so, and the same for you as it is for every body else.

Mr. Rosewell. *Mistress Smith*, you swear these Words were spoken in the Forenoon upon that place, the 21st of *Genesis*, one after another.

Smith. Yes; those Words, as near as I can speak them, were spoken then.

L. C. J. Are those the Words you heard at that time?

Smith. In Substance they are, my Lord; as near as I can discover.

Mr. Rosewell. I have no more Questions to ask her at present my Lord.

Mr. Att. Gen. Pray, *Mistress Smith*, since he has started such a Question; Have you been tamper'd with, and been offer'd any Money; and what, and for what?

Smith. There came one *Cartwright*, and one *Norton* to me one Day, I cannot give an account exactly what Day it was; and first they spake to me about *Mistress Batbo's* Business, and afterwards they fell into Discourse about *Mr. Rosewell*, and they told me, They wonder'd I would have my hand in any Man's Blood. Said I to them, Suppose you had heard what I did, what would you have done? Says *Mr. Norton*, you had better take 20 Guineas, and not appear against him, said he; not that any body, that I know of, that he is concerned with, will give you that sum of Money, but you had better take it. Says I, what is the Truth no Money nor Gold shall buy me off from telling. What was Truth I would speak, and no more; and I had already given Evidence of it, and would not retract it. Said *Mr. Cartwright* then to me, But if you had not discovered it, no body else would. Said I, yes, others heard it as well as I.

Mr. Att. Gen. Has any body else tamper'd with you? have you had any Letter sent to you?

Smith. Nothing till Yesterday Morning: A Letter came then.

Mr. Att. Gen. What was that?

Smith. I suppose my Lord saw it.

Mr. Att. Gen. Ay, but you must tell the Jury what it was.

Smith. One came to my Brothers, and brought a Letter thither, which I read over; and he said to my Brother, if I could be any ways Assistant to *Mr. Rosewell* in not coming in against him; might have 200*l.* paid down to Morrow, not that *Mr. Rosewell* knew of it, or would give it me, but it was a Wager that was lay'd. Some laid he would be hang'd, and some lay'd he would not; and so he said he would come and give me an account who it was that spoke to him.

Mr. Att. Gen. My Lord, we have done with her now. Call *Mistress Hilton*.

Mr. Rosewell. Will your Lordship please to indulge me so far that I may ask her another Question or two?

L. C. J. What is it you would have, Sir?

Mr. Rosewell. I desire her before she goes out to recollect one thing.

L. C. J. Nay, nay, she shall not go away; If you have a Mind to ask her any thing before she goes away, do so; or she shall come again if you have any Questions to put to her.

Mr. Att. Gen. My Lord, she is big with Child, and cannot well crowd in and out.

L. C. J. If she be with Child, then let her sit upon the Stool there.

Mr. Rosewell. With your Lordships Indulgence, I would ask *Mistress Smith* this Question; The Gentlewoman that was with you, *Mistress Hilton*, I think you call'd her, did she agree with you as to the same Words, and as to Time and Place?

Smith.

Smith. If you please to examine her, I suppose she will give you an account.

Mr. Rosewell. Then I would ask her this Question, with your Leave, my Lord; whether was that other Gentlewoman with you in the same Room?

Smith. Yes, she was, and sat upon the Bed with me, and I pulled her by the Sleeve when the Words were spoken, to take notice of them.

Mr. Att. Gen. Come, *Mistress Hilton*, give my Lord and the Jury an account; have you been at this Conventicle at any time, and what have you heard there?

Hilton. I came to *Mistress Smith's* on Saturday Night, and on Sunday Morning I went with her to this Place; I was never there before in my Life, they said it was one *Daniel's* House, one Captain *Daniel's*; it was near *West-Lane* in *Rotherbirb*. And when we came there, there was one that *Mistress Smith* knew, that stood at the Door, they call him *Paul Shed*, a little Man: And when we came to the Door, he said to us, Pull off your Pattens, says he; for they will give too much Occasion of Distrust of Peoples coming: So we pulled off our Pattens, and said we would take care the next time. When we came in, we went through a kind of a Hall, and when we came there into the Hall, there was a little Parlour against it: We went up the Stairs, and when we came up Stairs, there were two more Rooms; that Room we came into was hung with sad-colour'd Paper, and upon the Left-hand there stood a Sweetwood kind of Chest, a little Cabinet, and a little Glass over that. *Mr. Rosewell* came, and stood at the Entrance in of the Door; so there was a little Child in bed when we came up, and we sat down on the other side of the Bed; and the Child was taken out of the Bed presently afterwards. *Mr. Rosewell* preached upon the 20th or 21st Chapter of *Genesis*, I cannot be positive which of them, but one of them it was.

Mr. Rosewell. But upon your Oath cannot you tell which it was?

L. C. J. You must not interrupt her, Sir; you shall have your time to ask her what you will.

Hilton. It was the 20th or 21st of *Genesis*, I will not be positive which of them it was. But the thing was as to *Abraham* and *Sarah*; that was the Contents of the Chapter that *Mr. Rosewell* was then pleased to preach upon. After he had took his Text, and preached a little while, he said, *the People went flocking to the King to cure the King's Evil, which he could not do; for they ought to flock to them, that were Priests and Prophets, who by their Prayers could cure their Grievances.* Then he preached a great while of the Chapter following again; and then says he, *We have had two wicked Kings that have suffered Popery to come in under their Noses, which I can compare to nothing but the most wicked Jeroboam.* There was another King named, and I think it was *Rehoboam*. I cannot be positive as to that, but *Jeroboam* I am sure was named. Then he said, *If the People would stand to their Principles, he did not question but to overcome all their Enemies with broken Platters, Rams Horns, and a Stone in a Sling.* These were the Words *Mr. Rosewell* was pleased to say.

L. C. J. Can you remember what day of the Month this was?

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Hilton. It was the 14th of September, my Lord.

L. C. J. Do you remember what number of People were there?

Hilton. I believe there were four or five hundred People; there was a Garret full, and two Rooms below, the Parlour full, and the Hall full; and one *Paul Shed*, (as *Mrs. Smith* told me his Name was,) let us in. I did not know any of them; nor ever had Convicted any of them; that was the first time I ever was at a Meeting in my Life; and I had enough of it then.

L. C. J. You say you came on Saturday Night to *Mistress Smith's* House.

Hilton. Yes, my Lord.

L. C. J. What time that Night?

Hilton. About eight or nine a Clock.

L. C. J. What time in the Morning did you go along with her to this place?

Hilton. We went by seven a Clock in the Morning.

L. C. J. Did *Mr. Rosewell* come before you, or after you?

Hilton. No, he came presently after we were there.

L. C. J. Do you remember any other Words he utter'd there that Day?

Hilton. He was pleased to talk of several things between whiles in his Sermon; among the rest, I heard him speak about Canting. He said there was a Word they called Canting, but he did not understand what that Word meant; except it were the Fellows in their white Gowns. For he was going by one of their Churches, where he heard them sing the *Lord's-Prayer*, the *Creed*, and the *Ten Commandments*, with a Ha-ha-ha-ha; for my part, says he, I was ashamed to hear it.

L. C. J. Do you remember any other part of the Discourse?

Hilton. He had a great many other of those things, that I cannot now remember; it affrighted me to hear it, out of my Wits.

L. C. J. Where did you go from thence?

Hilton. We went Home to *Mrs. Smith's*. It was two a Clock, and we had not eat a bit of Bread all the while; and as soon as she came Home, *Mistress Smith* took her Pen and Ink presently, and writ down those Words; her Husband and I, and she, were together; and when we had done this, we went to the *Quaker's* Meeting.

L. C. J. What *Quaker's* Meeting is that?

Hilton. It is that by *Cheapside*; I do not well remember the Name, I think it was called the *Bull and Mouth*.

Mr. J. Holloway. What time of the Day was it that the meeting was done at *Mr. Rosewell's*?

Hilton. We came from *Mr. Rosewell's* a little after two a Clock.

L. C. J. From Seven to Two did he hold? that is pretty long winded.

Hilton. No, he went into Dinner, and left us there, and abundance in the Congregation eat Sweet-Meats, or Biskets, or such things as they had. But I am sure we had nothing there. I was never among you before, nor ever Convicted any of you.

Mr. Rosewell. I humbly beseech your Lordship to make her sensible of the Obligation she is under by her Oath.

L. C. J. Ay, Ay; I will. Look you *Mistress*, you must take notice, here is the Life of a Man in question, which is a thing of great

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Considera-

Consideration. And for you to have any concern in taking away the Life of a Man, if it be upon false Grounds, is a very dismal thing; besides, that there is a thing which is yet of greater weight and moment to you your self, it concerns your own immortal Soul. You must consider, what Guilt you contract upon your self, if you tell a Lie; but there is a much greater Guilt contracted, if you offer to swear a Lie in a Court of Justice, upon a Cause of this Concernment. Consider, I tell you, you are in the Presence of Almighty God, that seeth into the Hearts of all Mankind; that is the Avenger of all Lying and Perjury; that may justly sink you into Hell if you offer to swear a Falshood. Therefore, I charge you, in the Name and Presence of that great God, the Judge of Heaven and Earth, to answer me truly to this Question: Are these things that you have sworn here true?

Hilton My Lord, they are every Word true. There is a Gentlewoman here, one *Mrs. Collingwood*, that shall witness, I set them down that Day; and went away to the Recorder, and gave him an Account of them.

Mr. Att. Gen. Well, if you have done, go over.

L. Ch. Just. No, hold Sir, will the Prisoner ask her any Questions?

Mr. Rosewell. Yes my Lord with your Leave.

Lord Ch. Just. Ay, in God's Name, what you will, that is fitting to ask.

Mr. Rosewell. Mistribs, what is your Name?

Hilton. My Name is *Hilton*.

Mr. Rosewell. Was your Name ever *Shastoe*?

Hilton. Yes, but my Name now is *Hilton*.

Mr. Rosewell. Or otherwise *Smith*, I suppose: for I have heard so.

Hilton. No Sir.

Mr. Rosewell. Then *Mrs. Hilton*, upon the Oath you have taken, (for I hope you have observed what my Lord has said to you about the Sin, and Danger of False-swearing.) —

Hilton. *Mr. Rosewell*, God forbid I should stand here to tell such a Lie as this; if it were not all Truth to my Knowledge, I would rather speak less than more.

Mr. Rosewell. Were you at *Rotberbith* that 14th Day of September?

Hilton. Yes, I was. I was with *Mrs. Smith* at her House over Night, and went with her to *Rotberbith* at Seven a Clock next Morning.

Mr. Rosewell. Whose House were you at there?

Hilton. I cannot say whose House it was of my own Knowledge, for I was never there before in all my Life; but they said it was one Captain *Daniel's* House.

Mr. Rosewell. What Street was it in?

Hilton. I do not know what Street it was in, it was near *West-Lanc*.

Mr. Rosewell. What kind of Buildings were there in the Street?

Hilton. Over against it, a little way from the House, is a Bridge, that we went over; I believe it may be some ten or twelve Doors from the House.

Mr. Rosewell. In the Street, you say, over against the House?

Hilton. A little way from it. *Mr. Rosewell*, if you do remember, (I can remember these things very well,) there were Shutters in the Windows, and the Sun came in, and you were

afraid least the People that went by should hear you. *First*, There was not light enough, and you desired that one part of the Shutters might be opened; which was done: And then you desired that half might be shut again, for fear the People should over hear you.

Mr. Rosewell. What kind of Entrance is there into the House?

Hilton. There is an Entry, and from the Entry we went into a little Hall, the Rooms were but of a low Height.

Mr. Rosewell. Was it in an upper Room, or a lower Room that I preached?

Hilton. It was in an upper Room, you were up two pair of Stairs, the Chamber was hung with sad coloured Paper, and a sad coloured Bed was in the Room; upon the Left-hand, as you stood, there was a Chest of Sweet Wood stood, and a little Cabinet upon it, and a Glass over that; and upon the Right-hand, on the side of the Chimney, was a Closet. I took very good Notice of all these things.

Mr. Rosewell. Two pair of Stairs, upon your Oath, you say it was?

Hilton. Yes, It was two Pair of Stairs, upon my Oath, Sir.

Mr. Rosewell. How many Steps, *Mrs. Hilton*, were there?

Hilton. They were low Stairs, eight or nine to a Pair, I think; I did not number them, *Mr. Rosewell*.

Mr. Rosewell. The other says, there was a little Room up six Steps; and that I was but one Pair of Stairs high.

Hilton. And there was a Garret, my Lord; which I am sure there was above four Hundred People there at that Meeting.

Mr. Rosewell. Did you see that Number of People there?

Hilton. Yes, I did.

Mr. Rosewell. If you were within in the Room, how could you see them all there that were below, and in the Garret, as you say?

Hilton. When you went down to refresh your self, to Dinner, as I suppose; said I to *Mrs. Smith*, for the Lord's sake let me go out, for I am affrighted out of my Wits to hear such Stuff as this.

L. C. Just. Frightful Stuff indeed.

Hilton. Says she, you cannot go out till they all go; there is no Body to let you out; but I would fain have been gone out thence.

Mr. Rosewell. What time did you come thither, say you?

Hilton. We came by Seven a Clock in the Morning.

Mr. Rosewell. How did the Exercise begin?

Hilton. Between Seven and Eight.

Mr. Rosewell. I do not ask you what time, but how it began.

Hilton. You made a kind of a Prayer, I do not understand your way, for I never was used to your Meetings, I never was at any before in my Life. You took your Text, (I cannot be positive which, but it was) either out of the 20th or 21st Chapter of *Genesis*.

Mr. Rosewell. But can you remember these Words, and not the Chapter?

Hilton. I can tell you more that you said, if you please.

Mr. Rosewell. *Mrs. Hilton* —

L. C. Just. Let her go on; you ask her a Question, and will not stay for an Answer, but

go to another thing. She is telling you what was done.

Hilton. This I am positive in, it was the 20th or 21st Chapter of *Genesis*: the Story was about *Abraham* and *Sarah*, how he bid her call her self his Sister.

Mr. Rosewell. That is the 20th Chapter.

L. C. Just. Nay, I suppose you can remember the Text better than this Woman.

Hilton. I believe it was the 20th, that you did most expound upon that Day; for you said at last *Abimelech* made *Abraham* a Present, which you did think might be about 20 Guineas.

Mr. Rosewell. I see you are thorough paced.

L. C. Just. Methinks she brought away much of your precious Stuff for one time upon my word.

Mr. Rosewell. How long did you stay there, *Mrs. Hilton*?

Hilton. I stay'd there from the time you came in till the end of all; about eleven or Twelve a Clock you went down to Dinner; They that were there stay'd till you came up agen, which was in the Afternoon; and then you began upon a Text which you took in the *Psalms*, I think; I cannot positively say where; but a new Text you did take, that you did.

Mr. Rosewell. In the *Psalms* did you say?

Hilton. And if it please you Sir, I never saw you but then, and now, in my Life.

Mr. Rosewell. What Habit was I in?

Hilton. You had a Camlet Cloak on that had an Eye of blew in it, and a mourning Hat-band about your Hat; and upon the Bed-side by me sat *Mr. Atkinson* in a mourning Cloak, and his two Boys.

Mr. Rosewell. There was some Stop or Pause you say; you call it a Dinner?

Hilton. You went to Dinner, I suppose; I know not where you were.

Mr. Rosewell. Pray how did the Exercise begin in the Afternoon?

Hilton. I cannot very well tell.

Mr. Rosewell. Was you there to the End of it?

Hilton. To the very End of all.

Mr. Rosewell. What *Psalms* was read, or what Chapter that I preached upon?

Hilton. Sir, I cannot remember what your *Psalms* is. These are the Words that you said, and that you Preached. Sir, I cannot remember how all these came in, nor all the Stuff that was said.

L. C. Just. She says she cannot remember all your Stuff.

Hilton. I was never used to a Conventicle in my Life; and I would I had not been there then.

Mr. Rosewell. What was the Text I preached upon?

Hilton. In the Morning it was, I tell you the 20th or 21st Chapter of *Genesis*. But the Heads of your Sermon, and after you had talked about the King, and all those things, was about *Abraham* and *Sarah*—

Mr. Rosewell. But what was the Text in the Afternoon?

Hilton. I cannot tell that truly.

Mr. Rosewell. Then upon what Occasion were those Words in the Morning about flocking to the King to cure the Evil?

Hilton. Sir, you said—

L. C. Just. How can any Body tell what occasion you could have. You had no Occasion from that Text, nor any other Text that

I know of to talk of the King, or the King's Evil.

Mr. Rosewell. But I speak of the Coherence of the Discourse, my Lord.

L. C. Just. You Preach without any Coherence, or you never had been brought here. When you give your self the Liberty to talk of these things, you ramble from your Text.

Mr. Rosewell. I mean by it, my Lord, what part of the Chapter it was that did lead to it.

L. C. J. No Man living can tell; it was the Devil led you to talk Treason; The Indictment tells you so, that you had not the Fear of God before your Eyes, but were moved and seduced by the Instigation of the Devil to do it. Who leads People to do all sorts of Wickedness but the Devil? you can give no reason for it your self, nor no one else.

Mr. Rosewell. Were these Words delivered all in the Forenoon Discourse?

Hilton. I do not know what you call Forenoon, or Afternoon: I am sure we had no Dinner.

Mr. Rosewell. But was it all before or after I broke off, and went down?

Hilton. Before, Sir.

L. C. Just. She says it was before you went to Dinner; but for her part she had no Dinner at all she says. If you have done with her, then go on *Mr. Attorney*.

Mr. Att. Gen. Where is *Mrs. Joan Farrar*?

Farrar. Here I am, Sir.

Mr. Att. Gen. Pray, will you tell my Lord, and the Jury; were you present at this House when *Mr. Rosewell* preached there?

Farrar. Yes, Sir, I was.

Mr. Att. Gen. What did you hear him say?

Farrar. Do you ask me of the 14th of September first, Sir?

Mr. Att. Gen. Yes.

L. C. Just. Why? were you there at any other time?

Farrar. Yes, several times.

Mr. Att. Gen. Well, take your own way of delivering your Evidence, and give an Account what you know of the Prisoner.

L. C. Just. But hark you, be sure you tell nothing but what is Truth. You must consider, here is the Life of a Man at the Stake, and your own immortal Soul is at stake, too. You are in the Presence of the great God of Heaven and Earth, that seeth into all your Actions and Thoughts, and searcheth the Hearts of all Mankind, and therefore have a Care of contracting any Guilt upon your self, by telling any Lie; be sure to say nothing but what is Truth.

Farrar. Sir, I was not in the Room with him; I was in a Parlour or Hall, what do you call it, a low Room; and he was up Stairs above it.

Mr. Att. Gen. But were you in the Congregation? Were there any other of the Hearers in that Room among whom you were?

Farrar. Yes, Sir; there were a great many of them there, Sir.

Mr. Att. Gen. Well, what did you hear him say?

Farrar. Sir, concerning the Evil was the first thing I heard him say; and he made it so, that it was not the King that cured it, but it was they, they should Flock to. It is we they should Flock to, says he; for we are they which

which are the Priests and the Prophets, that by our Prayers do cure the Grievances of the People.

Mr. Att. Gen. What did you hear him say more in that Discourse ?

Farrar. The next that I observed was, he said, we had had now two wicked Kings together ; but I could not tell who he compared them two wicked Kings to ; but he bid the People stand to their Principles, and in time they should overcome their Enemies.

Mr. Recorder. Pray have you heard him at any other time ?

Farrar. Yes, I have heard him at other times.

Mr. Recorder. Did you take Notice of any thing he said against the Government ?

Mr. Rosewell. I beseech your Lordship, may these leading Questions be asked ?

L. C. J. Yes, I have told you already to shew your Practice. It is not at all a leading Question. What did you hear him say at any other time about the Government ?

Farrar. In a Mill, it was by Rotherhithe Wall, at one Hudson's, he prayed that he might not offend the Lord in not praying for the King ; but the Lord might please to open his Eyes, or turn the Times.

L. C. J. Can you remember when that was ?

Farrar. It was the 17th Day of July, — no, of August to my best Remembrance ; and upon the 17th Chapter of Genesis.

L. C. J. That he preached upon there, did he ?

Farrar. Yes, Sir.

L. C. J. Did you hear him say any thing at any other time ?

Farrar. Yes, Sir.

Mr. Recorder. What do you remember about People in Scarlet ?

L. C. J. Tell us what you have heard him say else ?

Farrar. At West-lane end, at one Paul Shed's, I heard him preach concerning the Fire of London about eighteen Years ago. That there was a certain great rich Man, that lived in Gracechurch-street ; he said, he needed not name him, he supposed they all knew who he was ; and he said there went a poor Man to him, not a poor Man neither, but a Carpenter, an House-keeper, a labouring Man, and told him how to quench the Fire ; and then he preached, that if it had not been for that great Man, that Fire had not been, nor the Fires in Southwark or Wapping, if it had not been for the Lord Mayors and Sheriffs since.

L. C. J. Have you any more to ask her ?

Mr. Recorder. What have you heard him say else ?

Mr. Att. Gen. No, my Lord, we have done, I think.

L. C. J. Answer my Brother Jenner's Question.

Mr. Recorder. What about People in Scarlet ?

Farrar. Then after he had preached concerning the Fire, he said it was a fine Sight to see Fools in Scarlet Gowns ; and he heard the Recorder was to be made a Judge.

L. C. J. He hears strange Stories it seems. What do you make of this Brother Jenner ?

Mr. Rosewell. God forbid, my Lord, this should be true.

L. C. J. You see she swears it.

Mr. J. Wimbins. Mr. Rosewell, will you ask her any Questions ?

Mr. Rosewell. Mistress, you say you were at the Meeting on the 14th of September ; pray in whose House was it ?

Farrar. It was at a House at the end of West-lane ; there are a Row of Houses that face to the Fields.

Mr. Rosewell. But whose House was it ?

Farrar. They said it was one Daniel's House.

Mr. Rosewell. In what Room of the House were you ?

Farrar. In the lower Room.

Mr. Rosewell. Did you see me there ?

Farrar. Sir, you were gone up Stairs before I came in.

Mr. Rosewell. You did not see me there upon your Oath ?

Farrar. No, my Lord, I did not see him.

L. C. J. She said at first, you were gone up before she came, and she was in a lower Room.

Farrar. But I knew his Voice.

L. C. J. Did you know his Voice ?

Farrar. Yes, Sir ; I had heard him several times.

Mr. Rosewell. Did not you tell some Body that you heard none of these Words ?

L. C. J. Were you asleep all the while ?

Farrar. No, Sir, I was not asleep, I did not Sleep while I was in the Room. I never slept in your Presence in my Life.

Mr. Rosewell. Were you there at the beginning ? What time came you in ?

Farrar. Sir, I believe you had read half your Prayer ; I was at the beginning of the Sermon.

Mr. Rosewell. Who came along with you ?

Farrar. I came alone ; my Child was not well, and so I came late.

Mr. Rosewell. What was the Chapter I was upon ?

Farrar. It was upon the 21st of Genesis, Sir.

Mr. Rosewell. Upon what Verse of the 21st of Genesis, was it that you heard these Words ?

Farrar. I cannot tell what Verse it was.

Mr. Rosewell. I ask my Lord, because I went distinctly upon Verses.

L. C. J. Prithce Man, I care not how thou went'st on.

Mr. Rosewell. Cannot you tell how they came in ?

Farrar. No, Sir.

L. C. J. Nor any one else, I dare say ; how such Words can come in.

Mr. Rosewell. Were the Words spoken together in that Exercise that you have sworn ?

Farrar. Yes, in that Exercise.

Mr. Rosewell. How long did you stay there ?

Farrar. Till you had done, I believe it was two a Clock.

Mr. Rosewell. Was it in the Forenoon ?

Farrar. We had no Dinner at all ; I cannot tell what you call Forenoon, or Afternoon.

Mr. Rosewell. Was it all spoken upon that Chapter, upon your Oath ?

Farrar. Truly, Sir, I think it was upon your first Text.

L. C. J. If you have done with her, let her go over.

Mr. Att. Gen. We shall call one or two more of his Auditors at other times, that will give some account of his Way. Where is your Man, Mr. Atterbury ? What is his Name ?

Mr. Atterbury. Peter. But here is one of the Witnesses.

Mr. Att. Gen. Swear him then. What is his Name?

(He was sworn.)

Mr. Atterbury. Robert Cook, he says.

Mr. Recorder. Were you an Officer in this place?

Cook. Yes, in St. Mary Maudlin's I was; Saint Mary Magdalen Bermondsey Parish.

Mr. Recorder. Were you at the executing of any Process against Rosewell's Conventicle?

Cook. If it please you, my Lord, I had a Warrant from Sir Thomas Jenner, to serve at one Weldy's House a Brick-layer in Rotherhithe; and when I came to the House to serve it, there was abundance of People, and a great Riot was made, but no Blows I confess; but a great Tumult of People, that had not I, and the Beadle, one Samuel Bennet by Name, caused the People to stand clear, I do not know but there might have been mischief done. Of which, we upon that gave an account to Sir Thomas Jenner, and he hath bound some of the People over to the Sessions.

L. C. J. What do you mean by this, Gentlemen?

Mr. Att. Gen. My Lord, we have done; this is only about some Disturbances that the King's Officers meet with, in executing Process against these Conventicles.

L. C. J. But what is this to the Prisoner?

Mr. Att. Gen. Here are some would have him called; but I confess we cannot make any use of his Evidence against the Prisoner, only as to what is hinted in the Indictment, that he did it to disturb the Peace.

L. C. J. Pish, that is nothing, the Officer did his Duty; but what is that to this Business? Have you done, Gentlemen, for the King?

Mr. Att. Gen. Yes, my Lord, we have done.

L. C. J. Then Mr. Rosewell, now is your time to make your Defence; and you shall have time to make it as full as you will.

Mr. Rosewell. My Lord, may I have the Favour to have the Indictment read agen in Latin?

L. C. J. Yes, yes, if you will. Read it agen.

Mr. Rosewell. I humbly thank your Lordship, only the Words, my Lord.

Cl. of Crown. (reads.) *In quadam illicita assemblea, in praesentia & auditu diversorum subdit' dicti Domini Regis, adtunc & ibidem illicitè & seditiosè assembleat' & congregat', assruit & declaravit quod populus (subdit' dicti Domini Regis nunc, inuendo) coadunationem fecere (Anglice made a flocking) dicto Domino Regi nunc, sub praetextu sanandi morbum regni (Anglice the King's Evil) quod ipse (dictum Dominum regem nunc, iterum inuendo) facere non potest; sed nos sumus illi (seipsum Thomam Rosewell & al' seditiosas & proditor' person' inuendo) ad quos illi (ligeos subdit' dicti Domini regis nunc, inuendo) debent accedere (Anglice flock to) quia nos (seipsum predict' Thomam Rosewell & al' sedit' & proditor' person' iterum inuendo) sumus Sacerdotes & Prophetæ qui precibus, dolores ipsorum (ligeos subdit' dicti Domini regis nunc, iterum inuendo) sanaremus. Nos (subdit' & ligeos hujus regni Angliæ inuendo) habuimus nunc duos iniquos reges (Serenissimum Carolum primum nuper regem Angliæ, & dict' Dominum regem nunc, inuendo)*

insimul, qui permiserunt Romanam superstitionem (Anglice Popery) ingredi (infra hoc regnum Angliæ inuendo) in eorum conspectu (Anglice under their Noses) qui (predictum Carolum primum nuper regem Angliæ & dictum Dominum regem nunc, inuendo) assimulari possunt ad nullam personam nisi ad nequissimum Teroboam. Et si ipsi (divers' maledisposit' & sedit' person' adtunc & ibidem cum prefat' Thoma Rosewell illicitè & seditiosè assembleat' & congregat' existen' inuendo) ad fundamental' ipsorum permanerent (Anglice would stand to their Principles) ipse (seipsum Thomam Rosewell inuendo) non timebat quin ipsi (seipsum Thomam Rosewell & predict' maledisposit' & sedit' person' sic ut prefertur assembleat' inuendo) inimicos suos (dictum Dominum regem nunc, & ligeos subdit' ipsius Domini regis nunc, inuendo) vincerent, sic ut in pristino tempore cum Cornubus aries, patinis fractis, (Anglice broken Platters) & lapide in funda (Anglice Sling, &c.

Mr. Rosewell. If it please you, my Lord, that which I object against, and desire to be satisfied in by your Lordship, is this; I am charged with speaking words about flocking to the King to cure the King's Evil; and it is in the Indictment called *Morbus Regni Anglici*, that is, the Disease of the English Kingdom—

L. C. J. No, no; It is *Morbus Regni, Anglicè* the King's Evil.

Mr. Rosewell. I do not understand how *Morbus Regni* can be the King's Evil.

L. C. J. Therefore because there is no apt Word in the Law for that Distemper, they help it up by the Word *Anglicè* to shew what they meant.

Mr. Rosewell. But my Lord, I understand there are proper Words for the Disease; as *Struma*, and *Scrofula*, those are proper Words for it, nor *Morbus Regni*.

L. C. J. Not at all in Law; those may be the Words used among Physicians; but in legal Proceedings we are to keep up exactly to the legal Names and Phrases; and where we have not an usual Word, then we help it up by *Anglices*: And so here we express that very Distemper, which is called by the Name of the King's Evil, by a Word framed as near to a Law Phrase as we can; and to shew our meaning in it we add, *Anglicè* the King's Evil.

Mr. Rosewell. My Lord, is that the Phrase that is proper for it in Law?

L. C. J. Yes, yes, it is very well expressed to shew what is meant.

Mr. Rosewell. But my Lord, *Morbus Regni* is in English properly the Disease of the Kingdom.

L. C. J. It is so, the Disease of the Kingdom; if they had gone no further, but left it there, it might have had such an Interpretation put upon it. But because the words are so ambiguous in Latin, they are reduced to a Certainty, by putting an *Anglicè* to them.

Mr. Rosewell. I thought it had been *Anglici*: My Lord, there is another Phrase that I object against, it says *Nos habuimus nunc duos iniquos Reges insimul*. My Lord, this cannot be understood of two Kings one after another; but *insimul* makes it to be both at once.

L. C. J. No, we have had now together two wicked Kings.

Mr. Rosewell. That we do not use to express so in Latin.

L. C. J. The Words do thus sound in *English*.

Mr. Rosewell. Here are two Words *Insimul* and *nunc* that do signify the present time. My Lord, I am now only speaking all this while upon the *Hypothesis* that these Words were spoken by me; for I still do and always must deny the *Thesis*.

L. C. J. We take it so.

Mr. Rosewell. It should have been *Successive*.

L. C. J. Then it had not agreed with your Words. For the Witnesses swear that you said we have now had two wicked Kings together, and not successively.

Mr. Rosewell. If that be an Anglicism, this cannot be true *Latin*.

L. C. J. Nay, if it be a Blunder in the *Latin*, it was a Blunder of your making; for you spoke it so in *English*, and the Indictment in *Latin* must exactly pursue your *English*.

Mr. Rosewell. Then, my Lord, here is another Expression, that they suffered *Romanam superstitionem*, Popery to come in.

L. C. J. Ay, is not that well expressed?

Mr. Rosewell. My Lord, there may be Superstition in the Worship of the Church of Rome, and yet that not be the thing we call Popery.

L. C. J. There may so, you say right; but then this comes under the same reason, as the former Phrase you objected against about *Morbis Regni*. Because *Romana superstitio* is such a general Word, and because there are several Superstitions in the Romish Church, abundance of them; and this may make it uncertain; and because we have no other Word to express what we call Popery by, therefore there is an *Anglice* put in, to shew what is meant.

Mr. Rosewell. Then my Lord, it is said *in eorum conspectu*: is that right, my Lord?

L. C. J. Yes, *Anglice* under their Noses.

Mr. Rosewell. That is in their Sight.

L. C. J. Pray how would you put that into *Latin*, under their Noses?

Mr. Rosewell. My Lord, if I should speak according to the other parts of the *Latin* of this Indictment, which your Lordships says must exactly pursue the *English*, I would render it *Sub naribus illorum*.

L. C. J. Such People suffer Conventicles under their Noses, *in eorum Conspectu*.

Mr. J. Holloway. 'Tis not your Nose that fees.

L. C. J. Suffer Rebellion under your Noses; are these things *Sub naribus*, or *in Conspectu*?

Mr. Rosewell. My Lord, this could not possibly be spoken of the late King, and this King; when the Precedent King died a professed zealous Protestant; and his present Majesty has so often, and earnestly declared against it.

L. C. J. We know that very well; but yet withal we know 'twas the Pretence of Popery and Arbitrary Power, and those things that brought that blessed Martyr to the Scaffold; and the great Cry now at this Day by all Factionous, and seditious busy Fellows, is against Popery; as if it were just breaking in upon us, and the Government abetted it; when it is all false, nothing more untrue; the Indictment calls it so, says these Words are spoken *falso*, & *malitiose*; and all Treasons are so.

Mr. Rosewell. Then, my Lord, there is another thing, *Si ipsi starent ad Fundamentalia eorum*, *Anglice* if they would stand to their Principles, or Principals; for I know not how it is in the

Indictment. Pray, my Lord, How comes *Fundamentalia* to signify Principles?

L. C. J. Their Principles, that is their Foundations, or Fundamentals. If the Foundations be destroyed, what can the righteous do? Says the Psalmist. The *Latin Bible* expresseth it by *Fundamentalia*.

Mr. Rosewell. Then it is *si ipsi* in the third Person; now my Lord, in common Sense that must needs refer to the two wicked Kings, that were spoken of just before; or to the King, and his Subjects spoken of afterwards; and then sure it cannot be Treason.

L. C. J. No, they; that is, I and you that are here. 'Twas spoken to your Congregation. If they would stand to their Principles, then come the broken Platters, &c.

Mr. Rosewell. If it were spoken to them, and of them, it must have been *you*, or *we*. Then it is added in the end, my Lord, *Fractis Patinis*, broken Platters: Your Lordship has remembered me of that Word. My Lord, I did hear that Mistress Smith did swear at Kingston Affizes, it was Pewter Platters.

L. C. J. I do not know what she swore there; now I am sure she swears as it is in the Indictment.

Mr. Rosewell. Mistress Smith, Pray did not you swear it was Pewter Platters at Kingston?

Smith. No, I never said otherwise than I do now; and that is, broken Platters.

Mr. Rosewell. I did hear she swore *Pewter* then. But, my Lord, I conceive, if it refers to me, and the People that were there, it should have been as the former Sentence is in the first Person; *We* have had, &c. but here it is changed into the third Person, and therefore cannot be so meant.

L. C. Just. But it plainly speaks its own meaning, that it is meant of the People there.

Mr. Rosewell. My Lord, then as to these *Inuendos*, I see there are Eight or Ten of them. Whether are these to make such a Construction of a Man's meaning, which doth not otherwise sufficiently appear, as to bring a Man under the guilt of Treason?

L. C. Just. I tell you, the meaning is plain; if you and we, such false Traytors as are said to be there assembled with you, will but stand to our Principles, we shall overthrow and destroy our Enemies with broken Platters and Rams-horns.

Mr. Rosewell. It is said here *ipse non timebat quin*—Of whom should I speak that *ipse*?

L. C. J. You were speaking of your self and your Congregation.

Mr. Rosewell. But that is in the third Person, and the singular Number.

* Mr. Sol. Gen. No, the Jurors that find this Indictment say, that he said * Mr. Finch. so, and that must be in the third Person.

Mr. Rosewell. That is not according to the rest.

Mr. Just. Withins. They, is the People with him; and he, is he himself; that is plain, and can have no other Construction.

Mr. Rosewell. Now, my Lord, will your Lordship please to accept a free Declaration of the Truth of this matter?

L. C. Just. Ay, ay, go now to the Fact; now we are got over the Exceptions to the Indictment. To answer the Fact is most proper at this time.

Mr. Rosewell.

Mr. Rosewell. Then here in the Presence of the great God of Heaven, the righteous Judge of all the Earth; before whom you and I, and all that are here, must one Day appear, at that terrible Bar of impartial Justice, (and a glorious Tribunal it will be) to give an account of all things that we have done in the Body, whether they be good or evil; and I am told by my blessed Redeemer, (who shall also be my Judge that Day,) that an account must be given of every idle Word that I shall utter, how much more for Lying and Perjury, and False-witness bearing, as your Lordship, (I humbly thank you for it,) did very seasonably suggest to those that have witnessed these things against me; I say, in the Presence of that great God, and this Honourable Bench of Reverend Judges, and you Gentlemen of the Jury and my dear Countrymen, that have been now sworn, as well as returned by the Process of Law for that end; I do here most solemnly declare the Truth unto you, as in the Presence of this God I shall answer it hereafter. And I shall begin with the latter part of these Words first; where this Indictment ends; for that seems to refer to some things of the late Times, and also to my Treasonable Intentions now. My Lord, and dear Countrymen, because I heard something mentioned as to the late unhappy Civil Wars in these Nations; I can declare, my Father was no ways concerned in those Wars, for he was dead before they began; and I was then but a Child, and did not understand the thing. But for the Death of the King, (Death did I say? that is too soft a Word; the Murder, the barbarous Murder of His Majesty King Charles the First, whom I had once the Happiness to see the Face of; or rather the Unhappiness to see in respect of his Condition at that time; being at Dinner under a Tree, with some few Persons about him, which very much affected my Heart, tho' then but young. So far was I from being one that would compare him to *Feroboam*, &c. as your Lordship will hear, that) I always bewailed and abhorred that Act. For my present Sovereign, I declare in the Presence of God, I honour him with my Soul, and daily pray for him; and if I could do him any real good, I would Sacrifice my Life most cheerfully to do it; I would die at his Foot to do him any real good. My Lord, I was once threatened with the loss of my Life for declaring for His Majesty in his Exile; when, it is well known, few durst appear in those Days on the behalf of an injured Prince: It was objected against me, that I never prayed for *Oliver Cromwell*, that had Usurped the Government. My Lord, I knew he stood upon a false Bottom; he was an Usurper. And for declaring, that the Kingdom would never be at Peace till the Right Heir, our Sovereign that now is, were restored to his Right, I was threatened that a Gibbet should be set at my Church Porch, and I hanged upon it, or at my own Door. I preached upon that place of Scripture, *Ezek. 21.* and the 27th Verse, *I will overturn, overturn, overturn; and it shall be no more, until he come whose Right it is, and I will give it him.* And I declared in my Sermon the several overturnings, that God hath given them then in Power. And tho' they threatened me, yet God preserved me then here at Home, as he did my dear Sovereign abroad; for whom I have prayed many hundreds and thousands of times. And it is

well known, immediately after his Majesty's happy Restoration, I did upon one of His Majesty's Days preached upon that Subject: *For the Transgressions of a Land, many shall be the Princes thereof.* I preached concerning the Excellency of Monarchy, which I shewed to be the chiefest and best of Governments, practised almost every where: And I proved it from the Example of the great God of Heaven, the Monarch of all the World, down to some of the meanest Species of Creatures. I shewed it was the Government God had set up in his Church; appointing the Lord Christ to be the King there: Among the Angels there was the Prince of them: Among the Celestial Bodies, the Sun in the Firmament—

L. C. J. Mr. Rosewell, I am very unwilling to give you any Interruption, because of the Condition you stand in, being a Prisoner pleading for your Life, upon an Accusation of High-Treason. But I tell you, these things that you have now insisted upon are not at all to the purpose, as to what you are brought here for. You are not here Arraigned for your good Works, but for your evil Works. If you commend your self for two Hours together; it signifies not one Farthing; and the Gentlemen of the Jury must let it go for nothing. It only serves to please your Humour of talking, and captivate the Auditory; but it is not at all to the purpose. Keep close to the matter, that it is incumbent upon you to answer; to the Business you are upon here. It is our Duty, who are upon our Oaths, and who are accountable to the Government and the Law for what we do, to see that things be done according to Law. You are not here called in Question for your good Works or Actions; but for Treasonable and Seditious Words. I would to God, you had never done worse than what you have said of your self. But here is an Indictment for Traiterous Preaching at one particular Place, and one particular Time; answer to that, The Jury must go, not according to your way of Speaking; but according to the Evidence, relating to the Matters laid in this Indictment. Do not talk of your Preaching for Monarchy; and your Overturn, Overturn, Overturn; for if this be true, that the Witnesses have Sworn against you, you have at once overturned all the good you ever did, or said in your Life before.

Mr. Rosew. My Lord, I know very well, one such evil Action is enough to marr a Life of former good ones. But this that I have said was to shew, how inconsistent those things that they have Sworn, are with my constantly declared Judgment and former Practice.

L. C. Just. There are abundance of People, to whom the King has formerly extended Mercy, not only his Pardon, but even all the Promotions their ambitious Fancies could make them pretend to: But 'tis well known, the Devil has not had more ready Instruments to carry on bloody Designs for the Murdering this Gracious King, their Princely Benefactor, than these very Men that were thus gratified and advanced by him. Therefore, we can say nothing to what is alledged of former Loyalty; the Devil surprizes Men into these things; they do them as the Indictment says, by the Instigation of the Devil. Keep to the Matter before you.

Mr. Rosew. Well then, my Lord, to cut short. As to the Business since his Majesty's Return: I have been a constant Observer of his Days; and particularly the 30th of January I have always observed as a Day of Humiliation: And I did upon one of those Days preach upon that Text—

L. C. Just. And all this signifies just nothing; and upon that Day you went to a *Conventicle* against the Law, and Preached there; which shews, what a conformable Man to the Government and the Law you are. You can have your Congregation of Hundreds of People, and I know not what; now I tell you all this makes nothing against you, nor doth all your Commendation make any thing for you.

Mr. Rosew. My Lord, I do not know any Law of the Land that is against Preaching the Gospel.

L. C. Just. Yes, in *Conventicles* to preach, is against the Law of the Land.

Mr. Rosew. My Lord, I humbly conceive it is the Circumstance of Number that makes the Transgression.

L. C. Just. It is not only a Circumstance, but the Substance to preach in a *Conventicle*, and all against Law.

Mr. Rosew. If you call that a Transgression to preach the Gospel, I humbly acknowledge myself a Transgressor.

L. C. Just. I tell you it is a Transgression; but it is not such a Transgression as that for which you are here Indicted: But because you commend your self so much; a Man, I must tell you, that every Day doth notoriously transgress the Laws of the Land, need not be so fond of giving himself Commendations for his Obedience to the Government and the Laws.

Mr. Rosew. My Lord, I was only saying that upon the 30th of January I preached upon that Text; 1 Tim. ii. 1, 2. *I exhort therefore, that first of all Supplications, Prayers, Intercessions and giving of Thanks be made for all Men; for Kings and all that are in Authority; that under them we may lead quiet, and peaceable Lives, in all Godliness and Honesty.*

L. C. Just. Amen! I say to that Petition.

Mr. Rosew. Amen! I am sure I say to it, with all my Soul; and it is my daily Prayer to my God for my Sovereign. And here I shewed, that it was the Duty of Subjects to pray for their Prince—

L. C. Just. I tell thee, I care not a Farthing what thy Text was, nor thy Doctrine; I wish you had been at Church tho', and been conformable to the Laws. But this is nothing to our Business.

Mr. Rosew. I had therein a sharp Reproof and Invective against those that instead of praying for their Civil Head, cut it off; and those that design and plot against the Government.

L. C. Just. You did abundance of good by your Sermon, no doubt; I shall not now stand to examine that.

Mr. Rosew. So far was I from harbouring any Traiterous Thought—

L. C. Just. Come, Come; All this is besides the Cushion; come to the Matter that is here before us Man. I would not restrain you of any part of your Defence, either in Time, or any thing else; but let us not have the time taken up with that which no way concerns our Question. Our Business relates to what was said at your Meeting, at that Time the Witnesses speak of.

Mr. Rosew. Then, my Lord, as to the Truth of this particular Case, I shall now declare all that past then; as in the Presence of that God who searcheth the Heart, and trieth the Reins, and who shall judge us all. Upon the 14th Day of September last, I did preach to some People that were met at a Friend's House, one Capt. Daniel in Rotherbith: and as my Course hath been to expound the Scriptures, (to make them understand them) I was, my Lord, that Day upon the 20th Chapter of Genesis. The Chapter is about Abraham and Abimelech King of Gerar. Now, my Lord, will you please that I shall deliver to you what was said, by repeating it by Word of Mouth, or read it.—

L. C. Just. No, no; I do not desire any of your Expositions, or Preachments; Answer to the Indictment, and what is charged upon you there.

Mr. Rosew. My Lord, I am about it, in telling you what was really said; and I ask the favour of delivering in Court what I then delivered to them. My Lord, it was thus: In the 2d Verse it is said, *And Abraham said of Sarah his Wife, she is my Sister*; From whence I observed, that he had been guilty of this once before, in the 12th Chapter, when he told the very same Lie to Pharaoh King of Egypt. And thence I raised this Note, *That a Good Man, or a Friend of God might fall into the same Sin once and again.* And in proof of it, I brought three, or four Instances. That of Lot in the foregoing Chapter, his falling twice into the same Sins of Drunkenness and Incest with his own Daughters. That of Samson, in the 16th of Judges, (and there came in the mention of Dalilah, that she spoke of, which she only remembers the Name of, and not the Truth of the Quotation.) That of Peter's denying his Master, Once, twice, and again; first, with a Lie; secondly, with an Oath; and thirdly, with an Imprecation. But the Proof which they in this Point have most distorted, is that of Jehosaphat, who sinfully joyned with two wicked Kings: First, with a wicked Father, Ahab in his Expedition into the Land of the Syrians against Ramoth Gilead, 2 Chro. 18th Chapter; for which he is reprov'd as a great Transgressor, and threatned by the Prophet in the 19th Chapter, and the beginning: And yet he afterwards joyned with another wicked King, Abaziah, Ahab's wicked Son, to go to Tarsish; as we may see in the 20th Chapter, and the latter end. And here, my Lord, is the whole of the Business concerning the two wicked Kings. In the Presence of the Holy and great God there was not one word spoken of the Kings of England, either King Charles the First, or his present Majesty. This was as to the two wicked Kings. And then, my Lord, I came to the 7th Verse, which has these Words, *He is a Prophet, and he shall pray for thee, and thou shalt Live.* Upon this I observed, That the Prayers of God's Prophets have been very prevalent for the Healing, and helping of others in a time of need. And three Proofs I brought of this: The last of which, was that of the Prophet Isaiah's praying for King Hezekiah in the time of his great and dangerous Sickness. But that which has reference to this Business, was that out of the 1 Kings 13. and the beginning; *When the Prophet came to Bethel, and there rebuked Jeroboam, and prophesied against the Alter there; Jeroboam put forth his hand, and shook it at him, and said, Lay hold of him*

him; upon which the King's hand was dried up. Thereupon the King intreated the Prophet, that he would pray unto the Lord his God for him, that his hand might be restored, which the Prophet did; and the King's hand was restored again, and became as it was before. And here is the Business of Jeroboam. In the Presence of God, I speak it, there was not any the least Comparison of my Dear Sovereign to that accursed wicked Prince Jeroboam, who made Israel to Sin: No, my very Soul trembled at the Thoughts of it when I heard it. Upon this Head I had this Sentence, or Observation (which I will give you to a Word.) If I were to die the next Moment, and appear before the glorious Tribunal of the Heavenly Majesty, I tell not the least Lie, or Equivocation, or Prevarication) That a Godly Man's Prayer is a Sovereign Cure of the King's Evil; whereby the meanest, or the poorest Christian may gratify, and serve the greatest Monarch. And this is not my Saying neither, but the Saying of an Expositor upon that very place of Scripture, out of whom I did quote it. Nor did I speak of it, or he write of it, with respect to that particular Disease, that the Indictment calls *Morbus Regni*, but the King's Evil as the King's own Disease, in reference to *Abimelech*; who was King of Gerab. For it followeth in the Close of the Chapter, God heard Abraham's Prayer, and healed Abimelech and all his House. But as for that Word they speak of; of the People's flocking to his Majesty to cure the King's Evil, which he could not do; and that we were Priests and Prophets to whom they must come for Cure; in the Presence of the Eternal God there was not a Word of it. Then, my Lord, for that of the Ram's-horns; I shall observe how that came in by and by; but first I will premise, That all this that has been now spoken of, was upon the Exposition of that Chapter in the Morning. In the Afternoon I preached upon a particular Text; I began with the reading of a Psalm, and a Chapter; and so far I conceive it was after the manner and Usage of the Church of England, which enjoins the reading of the Scriptures as Part of its Worship. I Preach'd upon the 11th of the Epistle to the Hebrews, and the 12th Verse, (tho one of the Witnesses said it was a Psalm) —

L. C. J. She would not be positive, but she thought a Psalm, she could not tell.

Mr. Rosew. My Lord, it was the 11th of Heb. v. 12. the Words are these, *Therefore sprang there of one, and him as good as Dead, so many as the Stars of the Sky in multitude, and as the Sand which is by the Sea-shore innumerable.* Upon which I had this Note, *That the great God can effect great Matters by very small and unlikely Means:* As here, (of one) what was less than one? none at all: And this one too, as good as Dead; and yet from him to raise as many as the Stars in the Sky, and the Sands on the Sea-shore. What great things did God effect by the Rod of Moses? which was but a little Wand in his Hand, and yet a Sign and Symbol of Authority; as our Sheriffs white Staves are. Never was there any great Plague to be sent upon the Enemy of God, and his Church, Pharaoh and his Egyptians; but upon the stretching forth that little Rod, it came. And so, at the Siege of Jericho; What dreadful Dilapidations in that great City, did the Sound of the Rams-horns make? What a Terrible Army of the Enemies of the Israelites did Gideon's small Host destroy, with a few broken Pots or Pitchers? (much less did I

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mention Platters, or Pewter Dishes; as I have been informed they first Swore.) And what a tremendous Champion did David strike down with a Stone in a Sling? And what a glorious Work did our Lord Christ, the Son of David, do, in his curing the Blind Man with a little Clay and Spittle; more likely to dam up the Eyes of one that could well see, than to open the Eyes of one that was born Blind. Now here, my Lord, is the whole truth in the Presence of the Eternal God. Here your Lordship sees is mention made upon the second Verse of the Twentieth of Genesis of two wicked Kings; but how? not (as they have represented it) with any Reflection upon the Kings of England: Nor were they spoken in that order as they have Sworn them; but as I have now repeated them. Here is mention of healing the King's Evil, and of Jeroboam; but no way in that manner as they say. And here is likewise mention of Rams-horns, broken Pitchers, and a Stone in a Sling; but not with the least application to the Government, or reference to it, or Reflection upon it or the King: and this is the Truth. I have made an ingenuous Confession of the whole as it passed, that your Lordship may see how much I am abused by these false Wretches. And if they have so good Memories as really, and indeed to remember what was then said, their Memories and their Consciences cannot but go along with me; and confirm what I have said; that all that was spoken by me that Day, was as I have related it, without the least Reflection upon, or Application to his former Majesty and our present Sovereign, or either of them, or any thing relating to the Government. And if you be not convinced here, I am sure there will be a Day come wherein you will find and see, that these are none of the King's Friends, but his Enemies; that thus have falsely accused an innocent, faithful Loyal Subject of Treason; a Crime which my very Soul abhors the thoughts of. In Proof whereof, if your Lordship will give me leave, I will now call my Witnesses to Testify the Truth of all this Matter. And after this free and ingenuous Confession of the Truth, and what the Witnesses I shall call will testify about it, I hope, and trust in my Good God, that he will let you my Dear Countrymen, see the Truth and Sincerity of my Heart in whatever Words were spoken by me. Had I been guilty of those Things that are laid to my Charge, I were not worthy to live. Pray Mr. Cryer, Call Mr. Thomas Hudson.

L. C. J. Ay; Come call your Witnesses.

Mr. Rosew. My Lord, One thing I would desire to speak to your Lordship. Your Lordship was speaking, that what I declared of my former Loyalty was nothing to what the Witnesses have deposed; My Lord, I have read in a true History, (I think the Scriptures will be owned by all Persons that are here to be such,) of two false Witnesses; they were such; they are called Sons of Belial; (I pray God these be not accounted Daughters of Belial) that Swore Naboth did blaspheme God and the King. Doth your Lordship believe it?

L. C. J. What would you have of us, Man, by that Question?

Mr. Rosew. I am confident, my Lord; your Lordship, and the Court, do not believe he did so.

L. C. J. The Scriptures tell us it was not true; Do you think we do not believe the Scrip-
tures,

tures, because we do not hear you Preach in your Conventicles? We do believe the Scriptures, Man; and we believe too they have been perverted by you, and other People, to very ill Purposes. Yes, I do remember the Story of *Naboth*; and to shew you that I can remember some Holy History as well as you; I can tell you of another Story, and that is the Story of *Susanna*, and the Elders, and there was Circumstance of Time and Place testified to; but it seems they were defective in their Proof, and thereby discovered. You would do well to detect the Witnesses if you can, in some Contradiction, or Falshood; that will do you more Service, than all your Harangues and Speeches.

Mr. Rosew. The God of Heaven will do it this Day, I trust; for to him I have open'd my Cause.

L. C. J. Well, well, Call your Witnesses, and prove what you can.

Mr. Rosew. My dear Redeemer himself was served so; nay condemned by the Testimony of false Witnesses. (Mr. Hudson came in.)

L. C. J. Come, here is your Witness; What say you to him?

Mr. Rosew. Mr. Hudson, were you present at the Meeting at *Rotherhithe* on Lord's-Day the 14th of September last?

Mr. Hudson. Yes Sir, I was so.

Mr. Rosew. Here is Mrs. Smith hath sworn that since the beginning of *August*, we had a meeting in our Publick Meeting-House; Was there any, pray Sir?

Mr. Hudson. There was none such, that I know of.

Mr. Rosew. She swears, that we were at the House of Captain *Daniel Weldy's* the 14th of September. Was it so?

Mr. Hudson. No, Sir.

Mr. Rosew. What place was it then?

Mr. Hudson. It was one Capt. *Daniel's*.

L. C. J. That is the same, as they say.

Mr. Rosew. The first Witness, Mrs. Smith said Capt. *Weldy's*; indeed, the other said Capt. *Daniel's*.

L. C. J. She said she was told so, but she could not tell; but she remembers you pray'd for him, and his Child too who was then ill.

Mr. Rosew. Pray Sir, as to the Truth of the Business; Did you hear me speak of two wicked Kings? That, my Lord, came in, I say upon the second Verse of the 20th of *Genesis*, which I then was expounding.

L. C. J. Nay, ask him in general what he heard you say? and whether he heard you say any thing of two wicked Kings, and what it was?

Mr. Rosew. Ay, about *Abah*, and *Abaziab* his Son—

L. C. J. Nay, nay, I must have none of those Things, we must have fair Questions put; for, as you see we will not admit the King's Council to put any Questions to the Witnesses, nor produce any Witnesses against you, that are leading, or not proper, so nor must you: But if you have a mind to ask him any Questions, what he heard concerning two wicked Kings generally; do so.

Mr. Hudson. Upon the 2d Verse he was then.

L. C. J. Of what Chapter?

Mr. Hudson. Of the 20th of *Genesis*. I was then in the Place, and writ. He was upon the second Verse, and concerning *Abraham's* denying of *Sarah* his Wife. Says Mr. Rosewell, doth

Abraham here fall again into Lying? I thought he had smarted enough in the 12th Chapter, for the same he told to *Pharaoh*: And doth he fall again, and not take warning by it? From that you may take notice, that *the best of God's Children may fall agen and agen into the same Sin*. And there you quoted what Mischief good *Jehosaphat* had like to have brought upon himself, by joyning with two wicked Kings: First, with wicked *Abah* King of *Israel*; and, after he was reprov'd for it by the Prophet, yet he fell into the same Sin agen, by joyning with *Abah's* wicked Son King *Abaziab*. And so he quoted *Sampson*, who got Mischief by taking a Wife among the Daughters of the *Philistines*; and yet after he had felt some smart and hurt by it, yet like good *Jehosaphat*, and good *Abraham*, he falls into the same Sin agen, by going to *Tinnab* and taking *Dalilah*.

Mr. Rosew. What said I, pray, upon the Seventh Verse?

Mr. Hudson. The Seventh Verse was, concerning God's appearing to *Abimelech* in a Dream; where God says, *He shall pray for thee, for he is a Prophet, and thou shalt be healed*. And there Mr. Rosewell spoke concerning the Worth and Value of the Prayers of God's Prophets; wherein he instanced in one thing, that they were good to cure the King's Evil. And he quoted several Texts of Scripture of the Worth and Value of them; and among the rest was that in the First Book of *Kings*, the 13th Chapter, and the 6th Verse, wherein the Prophet came to reprove *Jeroboam* at the Altar at *Bethel*; and the King stretched forth his Arm, and bid lay hold on him, and the King's Hand was dried up: Upon which, the King said to the Prophet, *Intreat now the Face of thy God for me*, and he did so; the Prophet prayed unto the Lord, and the King's Arm was restored whole as the other. And he did quote that of *Hezekiah* too.

Mr. Rosew. My Lord, this Man did take Notes; and therefore may be the more exact.

Mr. Hudson. Yes, my Lord, I have my Notes, and can read them at large; and I did generally write, my Lord.

Mr. Rosew. Then pray Mr. Hudson, will you declare, whether you heard any thing in that Exposition or Discourse, concerning Rams-horns, broken Platters, and a Stone in a Sling?

Mr. Hudson. That was in the Sermon, Sir; in the Afternoon.

Mr. Rosew. She swears it was all in the Morning Discourse.

Mr. Hudson. There was not such a Word in that, as I know of: The Sermon was not in the Morning; you did only Expound, as you used to do, in the Morning.

L. C. J. If you have done with him, I would ask him a Question or two. Hark you, Sir, Pray what time did this Exercise begin?

Mr. Hudson. It begun about Eight a-Clock.

L. C. J. What number of People do you think there were there?

Mr. Hudson. I cannot judge how many they were.

L. C. J. How many do you think?

Mr. Hudson. I believe there were a matter of Forty or Fifty there.

L. C. J. No more than Forty or Fifty?

Mr. Hudson. Alas, we could see but in one Room.

L. C. J.

L. C. J. What Room were you in?

Mr. Hudson. I was in one of the Chambers.

L. C. J. How many Pair of Stairs high?

Mr. Hudson. Two Pair of Stairs high.

L. C. J. Did you see Mr. Rosewell?

Mr. Hudson. No, I could not see him at all.

L. C. J. Was there ever a Bed in the Room where you were?

Mr. Hudson. No, my Lord, there was not.

L. C. J. Was there a Dinner-time between?

Mr. Hudson. There was at Noon a Resting a little while.

L. C. J. Did Mr. Rosewell go down?

Mr. Hudson. Yes, my Lord, he did, I believe, go down Stairs.

L. C. J. Do you remember any thing that was spoken of *Sampson* and *Dalilah*?

Mr. Hudson. Yes, as I said before, there was about *Sampson's* going down to *Timnah* to take *Dalilah*; shewing his failing, how he fell twice into the same Sin.

L. C. J. Did you hear any Discourse about Canting? Did you observe he used that Word Canting?

Mr. Hudson. No, not that Day, as I know of.

L. C. J. Did you ever hear him use that Word?

Mr. Hudson. Yes, I did one Day.

L. C. J. Ay; What did he say that Day about Canting?

Mr. Hudson. I am not able to tell you very exactly.

L. C. J. You must, you must indeed.

Mr. Hudson. I do assure your Lordship, I know not how to repeat his Expressions about it.

L. C. J. For look you, Sir; Tho' you are not upon your Oath, because the Law doth not allow it; yet the same thing that I told those Witnesses before, the same I must tell you; you must consider, Friend, you come here to serve no turn, nor Party; you are in the Presence of the great God of Heaven and Earth, who will call you to Account for every thing you Testify here; and therefore without any Subterfuges tell us the Truth, and the whole plain Truth without Welt or Guard.

Mr. Hudson. My Lord, I will not deny one Tittle of the Truth, nor tell any thing that is untrue. I know I am in the presence of a great Court of Justice, and in the Presence of the God of Heaven.

L. C. J. Tell us then, what the Prisoner said about Canting.

Mr. Hudson. He was speaking of the wicked Men of the World, that when they spoke concerning serious Religion called it Canting, and says he, what is Canting? Canting, says he, is a whining Tone.

L. C. J. Did you hear him speak any thing concerning Organs, and Surplices, and white Gowns?

Mr. Hudson. No, my Lord; nothing of Surplices nor white Gowns?

L. C. J. Nor any thing concerning Organs?

Mr. Hudson. No; but something he had concerning the Cathedrals, and their canting Tone there.

Mr. Rosewell. Will your Lordship accept an ingenuous Confession from me my self about this Matter?

L. C. J. No, no, Mr. Rosewell, that will not be Evidence; you can neither acquit, nor con-

demn your self by these Things either confessed or denied. It is your Witnesses that I must ask, and that I expect an Account from. Therefore I ask you Friend, and pray recollect your self; How was it that he talked concerning the Canting in Cathedrals?

Mr. Hudson. Truly, my Lord, I cannot give a better Description of it than I have done. For I neither do particularly remember what time it was that I heard him use that Expression, nor can I tell you where it was; neither where, nor when.

Mr. Rosewell. Shall I tell your Lordship the Occasion—

L. C. J. Why do you think I believe any Word you say, notwithstanding any Imprecations or Asseverations you make about your self? It must neither weigh with the Court nor the Jury; we must go according to the Evidence. *St. Peter* himself, that you say you talked of, denied all with a great many Asseverations; but that Denial did not make him Innocent, no it was his Sin. So all your Imprecations, and Asseverations and Affirmations of your own Innocence, do not signify one Farthing to this Cause.

Mr. Att. Gen. Hark you, Mr. Hudson; Let me ask you one Question. Pray when Mr. Rosewell had explained those Texts of Scripture, did he not use frequently to make Application of his Quotations?

Mr. Hudson. Yes, my Lord.

Mr. Att. Gen. Then, pray Sir, after he had spoken of the two wicked Kings, how did he apply that?

Mr. Hudson. My Lord, I will tell you how he applied it. After he had made those Quotations, says he, take notice, if *Abraham* fell, and good *Jehosaphat* fell, and *Sampson* fell, and *Peter* fell, then what are we? *Let him that standeth take heed lest he fall*: and that was the Application he made of it.

Mr. Att. Gen. Do you speak to all that Mr. Rosewell spoke in that Discourse at that time touching these Matters?

Mr. Hudson. No, Sir, not all; I cannot remember all; But the Substance of the distinct Heads I do remember.

Mr. Rosewell. Then about the King's Evil; how did you apprehend it was meant?

Mr. Hudson. My Lord, I do not believe he spoke it with respect to that Disease which we call the King's Evil; because he spoke it with reference to the Disease that the King was under.

Mr. Rosewell. Did you hear any thing about Twenty Guineas?

Mr. Hudson. No, I did not hear a Word of any Guineas that Day.

Mr. Sol. Gen. Did you hear him say any thing about the Peoples flocking to the King?

Mr. Hudson. No indeed, Sir; not I.

Mr. Rosewell. Pray Mr. Hudson, Did I name the Word Priests?

Mr. Hudson. No, Sir, I did not hear you name Priests, but Ministers and Prophets; and what a Judgment it was to have the Prophets taken away.

Mr. Att. Gen. Pray recollect your self; Is that a Phrase they use, Ministers and Prophets; or do not they call themselves Priests?

Mr. Hudson. Ministers and Prophets, my Lord, are the usual Words.

Mr. Att. Gen. Priests is the Word I am told they have.

Mr. Rosew. Then Sir, Pray will you give an Account how that about the Rams-horns came in?

Mr. Hudson. That my Lord was upon that Text, 11 *Heb.* 12.—

Mr. Rosew. Do you remember what time it was; Forenoon or Afternoon?

Mr. Hudson. I do remember it was in your Sermon in the Afternoon. The Words are these, *Therefore sprang there even of one, and him as good as Dead, so many as the Stars in the Sky in multitude, and as the Sand by the Sea-shore innumerable.* From whence he raised this Note, or Doctrine; That the great God could by very small Means bring great things to pass. And then he came to prove his Doctrine, by several Instances. Says he, What Works did God do by *Moses's Rod*? And by *Gideon's broken Pitchers*, routing a whole Army? What great Works has God done by small Means? That by the founding of Rams-horns the Walls of *Jericho* should fall down? And what great Wonders he wrought when *David* slew the tremendous Giant *Goliath* with a Stone out of a Sling! And what great Works and Wonders did the Son of *David* our Lord *Jesus Christ* do, in opening the Eyes of him that was born Blind, with a little Clay and Spittle? The Application of that was, *A little Grace*—

L. C. J. We do not desire to hear your Applications.

Smith. My Lord, if your Lordship please, *Mr. Hudson* used to Expound himself.

Mr. Hudson. My Lord, I used to repeat what I write, in my own Family; that is all.

L. C. J. Yes, no doubt he is a most excellent Expositor; there are several People take upon them to Expound that can neither read, nor write. But pray Friend, let me ask you one Question more; Was the Captain, at whose House you were the 14th of September, at Home or at Sea?

Mr. Hudson. My Lord, he was not at Home, but at Sea; and is still at Sea.

L. C. J. Do you remember that he pray'd for him at that time?

Mr. Hudson. Yes, my Lord, 'twas his common Practice to pray for the Family wherever he came.

L. C. J. And did he pray for his Son that was Sick?

Mr. Hudson. I cannot tell whether he were Sick or no, I do not remember that; but he prayed for the Father and all his Children, the whole Family.

Mr. Rosew. Pray did you hear any one Word mentioned of the Kings of England, or of his present Majesty, but only in Praying for him; as I bless God I daily do, that God would give him Grace and all good Things here, and his Glory hereafter?

Mr. Hudson. Not one Word did I hear named of the Kings of England; nor of any Kings, but those mentioned in the Scriptures, that were quoted; The Kings of Israel, and the like.

Mr. Rosew. Was there any Word spoken about Popery being permitted to come in under their Noses?

Mr. Hudson. Not one Word of that was spoken, that I know of.

L. C. J. Did you hear the King of England mentioned at all that Day?

Mr. Hudson. Yes, in his Prayer. It was his constant course to pray for the King.

L. C. J. Ay; what did he pray for?

Mr. Hudson. He used to express himself very heartily in Prayer, that God would enable him to Rule and Govern the People under his Charge; and bless him. And he used to say, God forbid that he should Sin against God in neglecting to Pray for the King.

Mr. Rosewell. It was *Samuel's* Speech to *Saul*. Pray Sir, did you hear that?—

L. C. J. Nay, nay, ask him what he did hear you pray.

Mr. Rosew. Did I pray about opening the Eyes—

L. C. J. But you must not open your Witnesses Eyes: Do not lead him.

Mr. Hudson. It was his Common Practice to pray for the King, that God would preserve him from all his Enemies.

L. C. J. And we say the same thing too.

Mr. Hudson. And that God would remove all Evil Councillors from him.

L. C. J. Ay, no Question.

Mr. Hudson. And establish his Throne in Righteousness, and lengthen his Life, and prosper his Reign; and he used to pray as heartily, and as favourably for the King, as ever I heard any Man in my Life.

L. C. J. So there was praying in this Hall, I remember, for his late Majesty; for the doing of him Justice: We all know what that meant, and where it ended.

Mr. Rosew. *Mr. Crjer*, pray call *Mr. George Hall*. (who came in) *Mr. Hall*, Were you present this 14th Day of September at *Rotherbith*?

Mr. Hall. Yes Sir, I was.

Mr. Rosew. When I expounded upon the 20th of *Genesis*?

Mr. Hall. Yes, you did so, Sir.

Mr. Rosew. Pray will you inform my Lords what you heard me say.

Mr. Hall. I will inform them to the best of my Memory.

L. C. J. What Trade are you, Friend?

Mr. Hall. I am a Mealman my Lord.

L. C. J. Well, what say you?

Mr. Hall. The 14th of September last it was my Lot to hear *Mr. Rosewell* expound the 20th Chapter of *Genesis*; as it was his usual Course to expound a Chapter.

Mr. Rosew. It was not of Choice, but taken in Course. And pray what do you remember was said by me about two wicked Kings?

Mr. Hall. Sir, I remember you brought a Scripture concerning *Jehosaphat* joining with two; first of all with wicked *Abah*, and afterwards with wicked *Abaziah* his Son; and you proved it out of 2 *Chron.* 18th Chap. and 19th and 20th Verses.

Mr. Rosew. Do you remember there was any one Word spoken of the Kings of England?

Mr. Hall. There was nor one Word of his present Majesty, nor his Father, nor any of the Kings of England; but of the Kings of Israel, *Abah* and his Son.

Mr. Rosew. Well then, concerning *Feroboam*, what do you remember of that?

Mr. Hall. As to *Feroboam*—* You were expounding from the 7th Verse of the 20th Chapter of *Genesis*—And in the opening of that 7th Verse among several Texts of Scrip-

* This Witness was wont to say that some Person or Persons pinch'd his Legs as he was ture,

giving his Evidence, ture, Mr. Rosewell had this which occasioned those frequent breaks. Note, —Hold—Jeroboam.—

L. C. J. Ay, about Jeroboam.

Mr. Hall. My Memory fails me—

L. C. J. Ay, so I perceive it doth wonderfully.

Mr. Hall. As to Jeroboam, he brought a Text from the 2d Book of Kings, the 13th, and the former part of the Chapter. There was a Man of God that came to Bethel, and prophesied against Dan and Bethel, and there were these Words, that Jeroboam—

Mr. Rosew. He had his Hand dried up—

L. C. J. What do you mean by that? If your Witness be out in his Story, must you prompt him? Go on, Friend.

Mr. Hall. He prophesied, that the Bones of the Priests should be laid upon the Altar and burnt, as we read in that Text of Scripture, 2 Kings 13. and the beginning. And Jeroboam was there, and put forth his Hand—and bid some body take hold of him—whereat the Hand of Jeroboam dried up.

Mr. Rosew. If it please your Lordship, I will call another.

L. C. J. Ay, ay, you may set him going, for he is out.

Mr. Hall. If it please you, I can go a little further. I have something to say as to that—

L. C. J. You had best go out, and recollect your self; you have forgot your Cue at present.

Mr. Rosew. Mr. Cryer, pray call Mr. James Atkinson.

(Who came in.)

L. C. J. You Mrs. Smith, I will ask you, (I will not ask him himself, because he may accuse himself by it.) Is this the Miller at whose House one of the Meetings was?

Smith. No, my Lord, the former Witness Hudson is the Miller where he preached.

L. C. J. Well, what do you ask this Witness?

Mr. Rosew. Mr. Atkinson, were you at our Meeting the 14th of September last?

Mr. Atkinson. Yes, I was there the 14th of September.

Mr. Rosew. Were you there at the Beginning?

Mr. Atkinson. I was there from the Beginning to the End.

L. C. J. Pray, what Trade are you, Sir?

Mr. Atkinson. My Lord, I am a Mathematical Instrument-Maker.

Mr. Rosew. What Chapter was I upon?

Mr. Atkinson. The 20th of Genesis in course, and not out of Choice. His usual Custom was to expound a Chapter before he preached.

Mr. Rosew. Pray, what do you remember was said by me of two wicked Kings?

Mr. Atkinson. Of two wicked Kings! I remember that was upon the second Verse; how Abraham said of Sarah his Wife, *She is my Sister*: And upon that Mr. Rosewell had this Note, *That a Child of God may fall into the Commission of the same Sin again and again, after he had been reprov'd and smarted for it.* And he quoted several Instances: As that of Lot, committing Incest over and over again; that of Peter, denying his Lord three Times; that of Sampson out of Judges, taking two Wives among the Philistines, one after another; and then quoted that of Jehoshaphat joining with two wicked Kings; Ahab, in

the 2d of Chron. 18. Chap. and afterwards, tho' reprov'd by the Prophet Jehu, he joined with Ahab's wicked Son Ahaziah.

Mr. Rosew. Pray, what did you hear of the King of England?

Mr. Atkinson. Not a Word, unless it were in his Prayer; in which he always used to pray earnestly for the King.

Mr. Rosew. What do you remember was spoken about the King's Evil?

Mr. Atkinson. There was an Expression concerning the Evil, upon the 7th Verse; *He is a Prophet, and he shall pray for thee, and thou shalt be healed.* And he had this Expression, or to this same Effect, for I hope you cannot expect I should speak every Word exactly; but I shall endeavour to speak the Sense, and the Truth, as near as I can, and nothing else. He said, the Prayers of God's Prophets were very prevalent for the healing and helping others in time of need. And he quoted several Instances; as that out of the Prophet *Jeremy*, 27th Chap. and 18th Verse, to the best of my Remembrance. And he also quoted that of the 1 Kings 13. concerning Jeroboam. The Prophet came to reprove him, and Jeroboam stretched out his Hand against him, and it dried up; and then he desired of the Prophet to pray for him; which he did, and his Hand was healed.

L. C. J. Look you, what you say may be true, and so may what they say too; for he might say both. You used to say abundance of good things, as well as some bad ones; therefore I would ask him this Question, whether he heard any thing of the King's Evil, or that had any Reference to the King of England?

Mr. Atkinson. This is all that I heard that comes to my Memory concerning the King's Evil. *That a godly Man by his Prayers may help to cure the King's Evil, and thereby the poorest Christian may gratify the greatest King, as says our English Annotator upon that 7th Verse; but I never understood him to mean it of the Disease of the King's Evil.*

Mr. Rosewell. Do you remember that I preached in this Discourse about Rams-horns or broken Platters?

Mr. Atkinson. I did not hear of any such thing upon all that Chapter.

L. C. Just. But did you hear him speak of any such thing at all that Day?

Mr. Atkinson. Yes, my Lord I did.

L. C. Just. Come then let us have it. What was it?

Mr. Atkinson. His Course was after the Exposition, to preach a Sermon.

Mr. Rosewell. Was it in the Forenoon, or in the Afternoon?

Mr. Atkinson. It was after the Exposition; he prayed, and then ceased for a quarter of an Hour.

Mr. Rosew. Was it distinct in the Afternoon?

Mr. Atkinson. It was another distinct Discourse after the People had received some Reflection in the Afternoon; I cannot tell exactly the time. But the Discourse was preached from Heb. 11. 12. I suppose that I need not repeat the Words.

L. C. J. No, no, I care not for that.

Mr. Atkinson. But he thence rais'd this Doctrine, *That the great God can effect great Matters by very unlikely means*; and he instanced in several

ral Particulars to prove it. As the Miracles God wrought by *Moses's* Rod; and the Walls of *Jericho* falling down at the found of Rams-horns, in the 6th of *Joshua*; and then he quoted that of *Gideon*, a dreadful Rout of a great Army, by a few Earthen Pots and Pitchers; and what a tremendous Champion did *David* smite down with a Sling and a Stone?

Mr. *Rosew.* I have this one Question more to ask you; did you hear me speak any thing of standing to their Principles?

Mr. *Atkinson.* Not one Word; and I was there all that live long Day, from beginning to end.

L. C. J. Then, Sir, I would ask you a Question or two, if Mr. *Rosewell* have done with you.

Mr. *Rosew.* I have, my Lord.

L. C. J. Pray, what Room were you in?

Mr. *Atkinson.* I was in the same Room that Mr. *Rosewell* was, he stood at the Door.

L. C. J. What, one Pair of Stairs?

Mr. *Atkinson.* Yes.

L. C. J. Is there not another Room between the Floor or the ground Room, and that you were in?

Mr. *Atkinson.* Yes, Sir; there is another little Room, a little lower than that.

L. C. J. Was there a Bed in that Room you were in?

Mr. *Atkinson.* Yes, Sir.

L. C. J. Did you sit upon the Bed?

Mr. *Atkinson.* I did sit upon the Bed sometimes.

L. C. J. Had you a mourning Cloak on that Day?

Mr. *Atkinson.* Yes, I had.

L. C. J. Had you a mourning Hatband?

Mr. *Atkinson.* Yes, I had.

L. C. J. Do you remember who sat by you?

Mr. *Atkinson.* No, my Lord, I do not know.

L. C. J. Do you remember any Body gave you your Boy's Shoes from under the Bed?

Mr. *Atkinson.* Yes, my Lord; but I cannot tell who.

L. C. J. Well then, I ask you, did you hear any mention made that Day about *Dalilah* and *Sampson*?

Mr. *Atkinson.* Yes, my Lord.

L. C. J. You did?

Mr. *Atkinson.* Yes, my Lord, as an Instance of a good Man's falling twice into the same Sin.

L. C. J. Did you hear any mention made at that time concerning any other matter that you remember?

Mr. *Atkinson.* My Lord, that of *Sampson* and *Dalilah*, was one of the Instances that I repeated before.

L. C. J. Mrs. *Smith*, was it the same Day that he spoke about Canting?

Smith. Yes, it was.

L. C. J. Do you remember, Friend, any thing that was spoken by him that Day concerning Church-musick?

Mr. *Atkinson.* No, my Lord, not a Word that Day that I know of.

L. C. J. Did you hear any thing about Canting that Day?

Mr. *Atkinson.* No, not a Word.

L. C. J. Did you hear him talk any thing of Surplices or white Gowns?

Mr. *Atkinson.* No, my Lord, not one Word all that Day; but that of *Sampson* and *Dalilah*, my Lord.

L. C. J. You remember that?

Mr. *Atkinson.* Yes, it was one Instance of a good Man's committing the same Crime once and again.

Mr. *Rosew.* Yes, I own it, it was so; but not as the other Witnesses swear.

Mr. *Atkinson.* Truly, my Lord, I would not tell one tittle of a Lie; to the best of my Remembrance.

Mr. *Sol. Gen.* Pray, Sir, let me ask you one Question: I see you are very perfect in the Proofs of the Sermon, did you take Notes that Day?

Mr. *Atkinson.* No, I did not, Sir.

Mr. *Sol. Gen.* Can you remember then any one Observation that he made upon any other Verse? Pray what Observation did he make upon the eighth Verse?

Mr. *Atkinson.* None at all.

Mr. *Sol. Gen.* What upon the 12th or 13th Verses?

Mr. *Atkinson.* I cannot tell; I can upon the 5th.

Mr. *Rosew.* Will your Lordship give me leave to acquaint you with that?

Mr. *Atkinson.* He only explained that which was difficult; but when it was a little Historical, he only read it. But what he observed upon the second and the seventh Verses, was the substance of the whole Exposition almost.

Mr. *Att. Gen.* Has no body read the Notes of that Sermon to you since?

Mr. *Atkinson.* I endeavour'd to recollect myself, after I heard Mr. *Rosewell* was accused; and writ, what I could remember, down.

Mr. *Att. Gen.* But did any body read their Notes to you since?

Mr. *Atkinson.* No, indeed, there has no body read any Notes to me.

Mr. *Att. Gen.* Upon your Oath how came you to remember the word *Tremendous*?

L. C. J. He is not upon his Oath, Mr. Attorney.

Mr. *Atkinson.* Because when he made such short Notes, I endeavour'd to remember them; I thank God I have a pretty good Memory.

Mr. *Att. Gen.* Ay, upon my Word, a very strong one.

Mr. *Atkinson.* He did use the Word tremendous Champion.

Mr. *Recorder.* Had you and Mr. *Hudson* any Discourse about this Matter since?

Mr. *Atkinson.* Yes, Sir, we might talk what we did remember to one another.

Mr. *Sol. Gen.* Did he write down the Sermon?

Mr. *Atkinson.* Yes, I suppose he did; but I did not sit by him.

Mr. *Rosew.* Mr. *Cryer*, Pray call Mr. *William Smith*.

(Who came in.)

Mr. *Smith.* Were you at this Meeting the 14th of September last?

Smith. Yes, I was, Sir.

Mr. *Rosew.* Pray will you acquaint my Lords, what you heard me say there? What Chapter did I expound?

Mr. *Smith.* The 20th Chapter of *Genesis*.

Mr. *Rosew.* What do you remember of it?

Smith. I remember the Chapter concerned *Abraham* and *Abimelech*.

Mr. *Rosew.* What did you hear of the People's flocking to the King to cure the King's Evil?

Mr. *Smith.* I heard no such Word.

Mr. *Rosew.* Or that His Majesty could not cure the King's Evil?

Smith.

Mr. Smith. No, Sir, not a Word of it.

Mr. Rosew. Did you hear any thing at all concerning the King's Evil?

Mr. Smith. Sir, you did quote something out of the Annotator about the King's Evil.

Mr. Rosew. Do you remember what that was?

Mr. Smith. I cannot remember it fully at length, Sir.

Mr. Rosew. Pray did you understand it as meant of the King's Evil; or of the Evil of Abimelech, King of Gerar?

Mr. Smith. I did not understand it of the Disease so called; but of the Evil of Abimelech.

Mr. Rosew. What did you hear concerning Priests and Prophets?

Mr. Smith. You said it was the Function of the Prophets to pray for the People.

Mr. Rosew. What do you remember was said of two wicked Kings?

Mr. Smith. You did make mention of two wicked Kings, Abab and Abaziah; that Jehosaphat sinned, in joyning with them one after another.

Mr. Rosew. Was there any thing of the Kings of England, or of my Sovereign?

Mr. Smith. No, not at all, Sir.

L. C. J. Did you hear any thing concerning Jeroboam?

Mr. Smith. Yes, that Jeroboam stretched forth his Hand, and his Hand withered; and the Prophet prayed for him, and his Hand was restored.

L. C. J. Did you hear any thing in the Exposition of broken Pitchers; I mean in the Forenoon?

Mr. Smith. No, I think not.

L. C. J. What did you hear of them? and when?

Mr. Smith. To the best of my Remembrance it was in the Afternoon; That God could do great matters by small means; and you quoted several things. I did not stand well, so that I could not hear all the Particulars.

L. C. J. But what did you hear?

Mr. Rosew. Pray did you hear any Word of standing to their Principles; or of overcoming, that Day?

Mr. Smith. No, I did not.

Mr. J. Holloway. It seems you did not stand in a good Place to hear.

Mr. Rosew. Mr. Cryer, Pray call Mr. William Bates.

(Which he did, but he did not appear.)

Cryer. He is not here, Sir.

Mr. Rosew. Pray Sir, call Mr. George Hales then.

(Who came in.)

Were you this 14th Day of September at this Meeting, Sir?

Mr. Hales. Yes, I was, Sir.

Mr. Rosew. Were you there from the Beginning to the End?

Mr. Hales. Yes, I was, Sir.

Mr. Rosew. Pray then will you tell my Lord what you heard me say, with reference to flocking to the King, or curing the King's Evil.

Mr. Hales. I heard nothing that you should say of Peoples flocking to the King; but you were speaking of the King's Evil, and that was thus: my Lord. It was from the 7th Verse of the 20th Chapter of Genesis, *He is a Prophet, and shall pray for thee, and thou shalt be healed.* God is speaking to Abimelech in a Dream; and

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after a little Paraphrase upon the Words, Mr. Rosewell said, *That a godly Man's Prayer was a Sovereign Cure for the King's Evil*; and quoted some Scripture Instances, as in *1 Kings*, where God having sent a Man of God to reprove Jeroboam for his Idolatry, he stretched out his Hand, and his Hand withered; and he desired the Prophet to pray to the Lord his God, that his Hand might be restored; and accordingly it was accomplished.

Mr. Rosew. Did you hear any thing of the Kings of England?

Mr. Hales. No, not one Word all that Day; only you Prayed for His Majesty as you used to do.

Mr. Rosew. What do you remember was said about Rams-horns?

Mr. Hales. I remember you were preaching out of the *11 Heb. 12.* and the Words were these, *Therefore sprang there of one, and him as good as Dead, as many as the Stars in the Sky for Multitude, and as the Sand upon the Sea-shore innumerable.* From whence he had this Observation, *That God is able to bring great Matters to pass by small Means.* And so accordingly Mr. Rosewell instanced how the Walls of Jericho were shook down by the sounding of Rams-horns; or something to that purpose.

Mr. Rosew. What do you remember of broken Platters?

Mr. Hales. I remember you brought in an Instance concerning Gideon: and I think it was thus, that by breaking a few earthen Pitchers he routed a great Army.

Mr. Rosew. And so of a Stone and a Sling. But was there any thing of standing to Principles?

Mr. Hales. Not a Word.

L. C. J. As you heard?

Mr. Hales. That I heard.

L. C. J. Or that you remember?

Mr. Hales. Yes, my Lord. But you said what a tremendous Champion did David slay with a Sling and a Stone.

L. C. J. Did you take Notes?

Mr. Hales. No, my Lord.

L. C. J. Then pray how came you to remember that Word tremendous?

Mr. Hales. I do remember he did use that Word.

L. C. J. Have you had any Discourse about this matter since?

Mr. Hales. Yes, I have.

L. C. J. With whom?

Mr. Hales. With several Friends.

L. C. J. Did you discourse with Atkinson about it?

Mr. Hales. Yes, I did.

L. C. J. Did you with William Smith?

Mr. Hales. No; I do not remember I did.

L. C. J. Did you discourse with Hudson?

Mr. Hales. I cannot say I did.

Mr. Att. Gen. Nor you cannot say you did not.

L. C. J. Did you hear any Notes read?

Mr. Hales. I think I did.

L. C. J. Whose Notes were they you heard?

Mr. Hales. Thomas Hudson's Notes, I think; I am not sure of it.

L. C. J. It is so hard and difficult to get out the Truth from this sort of People; they do so turn and wind. How long after the Sermon was preached was it that you heard the Notes read?

P P P P P

Mr:

Mr. Hales. I was in the Country when Mr. Rosewell was taken; and when I came home again, I heard of it.

L. C. J. But you did not remember it till after he was taken?

Mr. Hales. No, my Lord; and I read the Chapter my self, and remember'd these things.

Mr. Sol. Gen. Pray is the Word tremendous in Hudson's Notes, or no?

Mr. Hales. I cannot tell whether it be or no.

Mr. Att. Gen. Pray when was the next Day after this?

Mr. Hales. I cannot tell, I was in the Country.

L. C. J. Did he take Notes in Long-Hand, or Short?

A Stranger that stood by. In Characters, my Lord.

Mr. Att. Gen. Have you not heard him preach since that time?

Mr. Hales. Sir, I went into the Country soon after.

Mr. Att. Gen. Where was his Text at any other time? can you tell?

Mr. Hales. No, I cannot readily.

Mr. Att. Gen. Nor what he discoursed upon?

Mr. Hales. As to any particular time I cannot.

Mr. Att. Gen. Do not you remember his Text at any other time?

L. C. J. When was the time before this 14th of September, that you did hear him preach? You have heard him before?

Mr. Hales. Yes, my Lord, I have.

L. C. J. Was that upon a Sunday?

Mr. Hales. Yes, it was.

L. C. J. Did you hear him the Sunday before?

Mr. Hales. Yes, I did.

L. C. J. Well, what did he preach upon then?

Mr. Hales. This I know, that in his Course of Reading and Exposition, he was upon the 19th of Genesis.

L. C. J. What was his Discourse upon that Chapter?

Mr. Hales. That I cannot tell.

L. C. J. Nor the Lay afterward?

Mr. Hales. No my Lord.

L. C. J. Upon my Word you have a lucky Memory for this Purpose; to serve a turn, it can just hit to this very Day. You are very punctually instructed.

Mr. Sol. Gen. Do you remember any other part of the Sermon of this Day than what you have related?

Mr. Hales. Yes.

L. C. Just. Ay; tell us what you remember besides.

Mr. Hales. I must consider a little; I am not so ready at it.

L. C. J. Ay, Come let us hear it.

Mr. Rosew. These Things he might have more occasion to recollect by reason of my Charge.

L. C. J. You say right, just occasion for this Purpose. But I thought these Men that have such stupendious Memories, as to tell you they remember the Chapter, and the Verse, and particular Words when it serves a Turn, might remember something before or after, at least in the same Sermon. Why do you think they were enlightned to understand, and remember that one Day more than any other? They can re-

member particularly as to such things, and can Clan it together to answer such particular Questions; but as to any thing before or after, they are not prepared.

Mr. J. Withins. Have you any more Witnesses, Mr. Rosewell?

Mr. Rosew. Mr. Cryer, pray call Mr. John Wharton. (Who came in.)

Mr. Just. Holloway. Where do you dwell, Wharton?

Mr. Wharton. At Rotherhitb.

Mr. J. Holloway. What Calling are you of?

Mr. Wharton. A Gardiner.

Mr. Rosew. Were you at the Meeting the 14th of September?

Mr. Wharton. Yes, I was, Sir.

Mr. Rosew. What do you remember pray of the Exposition then concerning Flocking of the People to the King to be cured of the King's Evil?

Mr. Wharton. Sir, I do remember upon your Exposition of the 20th of Genesis, you were speaking concerning Abimelech King of Gerar; and you took your Exposition thus, That Abimelech had taken away the Wife of Faithful Abraham, that I do remember very well; and that you did say in your Exposition, That the Prayers of the Prophet were prevalent for the curing of the King's Evil. And then you brought your Proof to the best of my remembrance concerning King Jeroboam; that Jeroboam stretched out his Hand against the Prophet of the Lord, and that the King cried, Lay hold of him, when he came to cry against the Altar at Bethel, and his Hand dried up; whereupon the King desired the Prophet to pray to the Lord, that his Hand might be restored; and he did so. This was the Exposition that you made upon that Verse in Part.

Mr. Rosew. Do you remember any thing of comparing the King of England to Jeroboam?

Mr. Wharton. I do not remember any such Passage.

Mr. Rosew. Do you remember any thing about two wicked Kings?

Mr. Wharton. I do remember this Passage, concerning Jehosaphat, that he had fallen twice into the same Sin, by taking part first with wicked Ahab, and then with his wicked Son Abaziah.

Mr. Rosewell. Was there any thing of the Kings of England mentioned in this Discourse?

Mr. Wharton. No, nothing Sir. It was but an accidental thing that I heard you then. I heard nothing of the King of England in your Exposition or Sermon, but only in your Prayer; when you pray'd for his long Life and happy Reign.

L. C. Just. Did you ever hear him before that time?

Mr. Wharton. Yes, my Lord.

L. C. Just. Did you ever hear him since?

Mr. Wharton. Yes, once since.

L. C. Just. Now let us know his Text, and the subject Matter he was upon since.

Mr. Wharton. Truly, as to the time since I did not take much Account; for I did not write.

L. C. Just. Canst thou tell us of what past at any time before?

Mr. Wharton. Once before, I heard him upon the 19 of Genesis, where he made his Exposition — Truly, I have not any Notes —

L. C. J.

L. C. J. Then hark you Friend, have you spoken with any Body since that 14th of September that did take Notes?

Mr. Wharton. I am not acquainted much with them that were his constant Hearers that did take Notes.

L. C. J. But answer my Question that I ask you; did you ever discourse at all about this Matter? and with whom?

Mr. Wharton. I came thither by my self, I say; I had not much Acquaintance with them.

L. C. J. Nay, do not prevaricate, Friend, with the Court, but speak the Truth out plainly. I ask you in the Presence of Almighty God, did you ever speak with any Body since the 14th of September about this Business?

Mr. Wharton. Mr. Hudson did speak with me about it.

L. C. J. Did he read his Notes to you?

Mr. Wharton. Yes, he did.

L. C. J. It is a strange thing, Truth will not come out without this Wire-drawing. You cannot help this Canting for your Life; this is Canting, if you would know what Canting is. Did you ever speak with Hales, or Atkinson, or Smith about it?

Mr. Wharton. I do not know Atkinson, or Hales. I know Mr. Smith; but I never spoke with him about it? nor he with me.

L. C. J. When was it that Hudson and you spoke together of this thing?

Mr. Wharton. It was last Thursday.

L. C. J. Did he come to you, or you to him?

Mr. Wharton. I met him.

L. C. J. Where did you meet him?

Mr. Wharton. At Rotherhithe.

L. C. J. Did he speak to you of it first, or you to him?

Mr. Wharton. He spoke to me.

L. C. J. Then I ask you, (and remember, though you are not upon your Oath, yet you are to testify the Truth, as if you were upon your Oath,) did he mention any thing of Jeroboam?

Mr. Wharton. Yes, he did.

L. C. J. Of Jehosaphat? and of Abimelech?

Mr. Wharton. Yes, he did.

L. C. J. Did you mention any of these things to him?

Mr. Wharton. Yes, Sir, I repeated more then, than I have done now.

Mr. Att. Gen. Was your Meeting accidental, or appointed?

Mr. Wharton. It was accidental in the Street; I dwell below him a great deal.

Mr. Att. Gen. And where was it?

Mr. Wharton. We were talking in the Street.

Mr. J. W. Did not you go into some House?

Mr. Sol. Gen. Had you any Discourse at that time of being present at the Tryal of Mr. Rosewell?

Mr. Wharton. No, I did not know any thing of it till I saw the Subpœna.

Mr. Sol. Gen. Before you discoursed with him, did you remember all these things?

Mr. Wharton. Yes I could remember them as well as he; and a great deal more then.

Mr. Att. Gen. Then, cannot you remember what was done the next Day?

Mr. Wharton. No, I cannot.

Mr. Att. Gen. How come you then to remember so well what was said that Day?

Mr. Wharton. Because there was a remarkable

Passage, that I had never heard before expounded. I had not staid at that time, but that he was expounding of a very remarkable thing, which I had never heard expounded before.

L. C. J. Have you any more Witnesses Mr. Rosewell?

Mr. Rosew. I have some Witnesses to call more, if your Lordship pleases, to testify concerning my Life, and that I always prayed for the King, that God would Crown him with Grace here, and Glory hereafter; and that he would remove all his Enemies from him.

L. C. J. Ay, Mr. Rosewell, first remove all his Friends from him; and then remove his Evil Counsellors.

Mr. Rosew. Pray Cryer, call Mr. Charles Arthur. (but he did not appear.)

Mr. J. W. Come it seems, he is not here, call another.

Mr. Rosew. Call Mr. Tho. Jolliff. (Who appeared.)

L. C. J. What do you call this Man to?

Mr. Rosew. My Lord, this Person I call to testify with respect to my Conversation and Carriage towards His Majesty and the Government.

L. C. J. What is your Name, Sir?

Mr. Jolliff. Thomas Jolliff.

Mr. J. W. Where do you live, Sir?

Mr. Jolliff. In Mary Magdalen's Parish.

L. C. J. Why not St. Mary Magdalen's?

Mr. Rosew. He is my Neighbour, my Lord.

L. C. J. But, I suppose, he thinks that would have made the Name so much the longer; or else, he thinks, that there is Popery in calling it so.

Mr. Jolliff. No, my Lord, I have called it a Hundred times, and a Hundred times St. Mary Magdalen.

L. C. J. Prithce then do it again, it will never be the worse for thee, I dare say. Well, Mr. Rosewell, what do you ask him?

Mr. Rosew. Pray, Sir, will you testify what you know of my Conversation towards the Government, and particularly towards His Majesty?

Mr. Jolliff. My Lord, in the time of Indulgence I have heard Mr. Rosewell once, or twice, or more; and I heard him pray for the King, and the Peace and Wellfare of the Nation, as heartily as ever I heard any Minister in England in my Life.

Mr. Rosew. Pray, Sir, for my Conversation; did you ever hear any thing of my Disloyalty or Disaffection to his Majesty, or the Government?

Mr. Jolliff. No, Sir, I never heard any thing of any Disloyalty, or any such thing in my Life; but all the Parish will give you an Account, that you have behaved your self as an honest Man; and I never knew that either in Word, or Deed, you were accused of any Disloyalty. And, my Lord, if you please to give me my Oath, I will swear it; for it is the same thing to me to testify here in such a Court under an Oath, or without it; for I ought, I know, to testify the Truth.

Mr. Rosew. My Lord, I am confident that what he says he would Swear; and he is a very honest Man.

L. C. J. Well Mr. Rosewell, if you have any more Witnesses, call them; and make what

Remarks upon the Evidence you please afterwards, for this is not the time for making Remarks.

Mr. Rosew. I humbly thank your Lordship for your great Favour.

L. C. Just. I do not speak it to cramp you in your time; but call your Witneses, and then make what Remarks you will: For, God forbid, we should hinder you from taking your full time; for you stand here for your Life.

Mr. Rosew. Is Mr. Winnacott here?

(He did not appear.)

Then pray call Captain Richard Cotton.

(But he did not appear.)

Call Mr. Thomas Fipps.

(Then Capt. Cotton appear'd.)

Mr. Rosew. This Gentleman, my Lord, hath known me for several Years. Captain Cotton, I pray Sir, will you speak what you know of my Conversation, and Life, and Loyalty, with respect to the King and Government?

Capt. Cotton. My Lord, and Gentlemen of the Jury, of late I have not frequented Mr. Rosewell's Company, or his Congregation; but when the Door stood open, without opposition, I have been there; and have heard him pray for the King and Government several times; and bless God that we lived under so peaceable a Prince, when all our Neighbours were in Blood and War.

Mr. Rosew. Pray, Sir, have you ever heard, that either in Word or Deed, I should ever declare against His Majesty, or the Government?

Capt. Cotton. No, I never heard any such thing in my Life; but what I heard now upon this Trial up and down the Hall, as I was walking below.

Mr. Just. Withins. How long ago is it, that you speak of, Mr. Cotton?

Capt. Cotton. I was abroad most of the time at Sea; but this was three, or four, or five Years ago.

Mr. Just. Withins. What time was that?

Capt. Cotton. It was in the time of the Indulgence.

Mr. Just. Withins. Ay, then it may be, he could speak kindly enough of the Government.

Mr. Rosew. He has known me these ten Years. Have you not, Sir?

Capt. Cotton. Yes, I believe, I have, ever since you came thither. (Then Mr. Fipps came in.)

Mr. Rosew. This Gentleman hath known me several Years, have you not Sir?

Mr. Fipps. Yes, Sir.

Mr. Rosew. Pray Sir, will you give my Lord and the Court an Account, what you know of my Life and Conversation, and of my Loyalty or Disloyalty to the King or Government.

Mr. Fipps. My Lord, I have known this Gentleman divers Years. He lived in Wiltshire, and there he had the Reputation of a very honest Man, a good Scholar, and a pious Man. I never heard him Preach in my Life, because I never go to Conventicles; but I have been in the House where I have heard him pray in the Family; and there he pray'd very earnestly for the King and Government, for the Prosperity of it. Since I came to London, he came to London too, and has been here in London about ten Years; and has been often in my Company since, and in the late Times, the Bethelish Times, when every Body did take Liberty to say what they would of the King and Government; I

have been often in his Company, and heard him speak with a great deal of Respect of the King, and of the Government, and thank God for the Liberty he did enjoy, and the Protection he had from the Government; but I never heard him speak an ill Word of the Government in my Life; and I have known him as much (I believe) as any other Man that was not his Hearer; he was always reputed a very ingenious Man; and that is all I can say. I never heard, or knew any thing of ill of him in my Life.

Mr. Rosewell. Pray call Mr. Caleb Veering.

(Who came in.)

Sir, you have known me several Years. Pray be pleased to testify to my Lord, and the Court, what you have known of my Conversation, with Respect to His Majesty and the Government.

Mr. Veering. My Lord, I have known Mr. Rosewell these several Years; and I have been in Company with him upon the Occasion of receiving Money on Account of Rent for a Friend of mine; and likewise have heard him formerly when he preached publicly; and never heard any thing from him that reflected upon the Government, or shewed any disrespect to the King. I have heard him pray often very heartily for the King, and he never meddled with any publick Business, nor spoke of any News while I was concern'd with him.

Mr. Rosewell. Pray, Sir, did you ever hear of any ill I should speak of my Sovereign?

Mr. Veering. I have heard him often pray for the King and Government; and I never heard any Man say that he did otherways, or that ever he spoke an ill Word concerning any of them.

Mr. Rosew. Call Mr. John Hitchcock—

(Who came in.)

Sir, you are a Gentleman that have known me for several Years; pray will you testify what you have known concerning me? And if you have heard, or known any ill of my Conversation towards the King, pray speak it out, and let me be shamed before God and this great Assembly.

Mr. Hitchcock. I have known him (my Lord,) several Years, and have heard him formerly, though not of late; and when I heard him, he used constantly to pray for the King and Government; I never knew him to speak any thing against the King and Government in my Life; but always spoke very worthily of them.

Mr. Rosew. Have you heard me often pray for the King?

Mr. Hitchcock. I have so, Sir, a great many times.

Mr. Rosew. How long is that ago?

Mr. Hitchcock. About two or three Years ago, my Lord; and I never knew him to be but a very worthy Gentleman.

Mr. Rosew. Pray call Mr. Michael Hinman—

(Who came in.)

My Lord, here is another Gentleman that hath known me several Years. Pray Sir, will you speak what you know of my Conversation, with Respect to His Majesty, and the Government?

Mr. Hinman. My Lord, I have known him many Years, and been in his Company several times, and never heard him speak any thing of ill relating to the King or Government.

Mr. Rosew. Pray, Sir, have you not been, (upon some Occasions,) present where I have prayed?

Mr. Hinman. Yes, Sir, I have heard you pray;

pray ; and I have heard you pray for the King very heartily.

Mr. Rosew. Have you heard of any Evil I should either say or do ? Or any thing by Word or Deed, against the King or Government ?

Mr. Hinman. No, never in all my Life, one way or other.

Mr. Rosew. Pray call *Mr. Nicholas Wanley.*
(*Who came in.*)

Sir, you have known me for these many Years ; pray will you be pleased to speak the Truth of what you know of my Conversation, with Respect to the King and Government ?

Mr. Wanley. My Lord, I have known the Prisoner at the Bar several Years ; I have been frequently in his Company ; and never heard him speak an ill Word against the King or Government in my Life : But have often heard him wish, that the King might live, and have a long and prosperous Reign ; I never heard him say one ill Word of the Government in my Life ; but always when he spoke of it, it was with all the Respect that any Person could do.

Mr. Rosew. Did you ever hear from any other Person directly or indirectly, that I have spoken reflectively upon His Majesty ?

Mr. Wanley. Never in my Life, my Lord.

Mr. Rosew. One way or other ?

Mr. Wanley. No, not any way at all.

Mr. Rosew. Pray call *Mr. John Strong* —
(*Who appeared*)

Sir, you are a Gentleman that have known me many Years too, ten or twelve Years I believe.

Mr. Strong. Yes, Sir.

Mr. Rosew. Pray will you tell my Lord and the Jury, what you know of me with respect to my Behaviour in Word, or Deed, in reference to His Majesty or the Government ?

Mr. Strong. Sir, I have heard you teach several times formerly ; I was not at this time indeed (for which you now stand Accused) at that Place : But I never heard you speak a Word against his Majesty or the Government. But you always pray'd very earnestly for his Majesty.

Mr. Rosew. Did you ever hear that I should say any thing ill of the King, or Government ?

Mr. Strong. No, never.

Mr. Rosew. Call *Mr. John Cuttloe* —
(*Who appeared*.)

Sir, You have known me too, very many Years ; What do you know pray, concerning my Behaviour towards his Majesty and the Government ?

Mr. Cuttloe. My Lord, I never knew him speak one Word disrespectfully of the Government, or the King in my Life ; tho' I have known him some Years.

Mr. Rosew. Did you ever hear from any body else, that I did speak ill of the King or Government, directly or indirectly ?

Mr. Cuttloe. No, never a Word ; I assure you, Sir.

Mr. Rosew. Have you been where you have heard me pray for his Majesty ?

Mr. Cuttloe. Yes, Sir ; I remember at *Bristol* once occasionally I heard you in the time of Liberty ; otherwise I cannot say I have heard you : But I never heard any thing against the

Government ; but you always behaved your self Loyally and Peaceably that I know of.

Mr. Rosew. Call *Mr. Charles Melfum* —
(*Who appeared*.)

My Lord, I call this Gentleman, who will acquaint you that he liv'd with me many Years in an honourable Family, a Person of Quality of this Nation, one of the *Hungerfords* : Where (my Lord) I was Tutor to *Sir Edwards* Son for near Seven Years ; a Gentleman well known for his great Loyalty to the King and Government : So that if I had been such an Enemy to the King, or so disaffected as these People would make to be, sure he would never have entertained me. Pray, *Mr. Melfum*, will you please to acquaint my Lord, and the Jury, how many Years I was in that Family ?

Mr. Melfum. Seven Years ; and I was above Fourteen my self.

Mr. Rosew. Pray, what do you know of my Carriage in that honourable Family, with respect to the King and Government ?

Mr. Melfum. As far as I know for my Life, I will declare. I do not remember he did trouble himself, or meddle or make with any Man's business but his own. He was a Man that kept much to his Study : And when he came up to Prayer, he prayed heartily for the King ; and had the good Word of all his Neighbours thereabout.

Mr. Rosew. Have you often heard me pray for the King ?

Mr. Melfum. I have heard him a Hundred times pray for the King ; I never miss Prayers when I was at Home ; and it was his constant Practice.

L. C. J. Did he Pray in the Family then ?

Mr. Melfum. Yes, he did

L. C. J. Did he use to go to Church ?

Mr. Melfum. Yes, he went to Church, to the beginning of the Prayers ; he did frequently attend Divine Service.

L. C. J. Did he receive the Sacrament in all that time ?

Mr. Melfum. Yes, I believe he did ; I cannot say it directly.

Mr. Rosew. I was a constant Attender upon the Publick Ministry. It is now above a Dozen Years ago ; it was in the Year 1664, my Lord, and so downward. Sir, you know I was a constant Attendant upon the Ministry of the Church, and the Worship of God there.

L. C. J. Did you ever hear him make use of the *Common Prayer* himself in the Family ?

Mr. Melfum. I cannot say he did.

L. C. J. Well ; Have you any more Witnesses, Sir ?

Mr. Rosew. Yes, my Lord. Pray call *Mr. Robert Medbam.*
(*Who appeared*.)

Here is another Gentleman, my Lord, that lived in that Family. Pray *Mr. Medbam*, how long did you live in that honourable Family ?

Mr. Medbam. About four Years.

Mr. Rosew. Was that in the time that I was there ?

Mr. Medbam. Yes, it was.

Mr. Rosew. Pray then, Sir, will you declare what you know of my Conversation in that Family with respect to the Publick ?

Mr. Medbam. My Lord, it is a great while ago ; but at that time *Mr. Rosewell* did always keep to the Parish-Church : He was Chaplain

to my Lady Hungerford ; and always pray'd for the King at every time of Prayer.

Mr. Rosew. Did you ever hear that I should speak or declare any thing against the King, or Government in all my Life, all my time, or your time that I was there ?

Mr. Medham. I must needs say, I never did hear any such thing in my Life.

Mr. Just. Holloway. But it was not the Prayers of the Church that he used ?

Mr. Medham. I cannot say that.

L. C. J. Did you ever hear him use the Prayers of the Church ?

Mr. Medham. The Prayer that I heard, was that which was usually made in the Family.

L. C. Just. But pray speak plain ; Did he use the Common-Prayer ?

Mr. Medham. No, my Lord ; I cannot say he used the Common Prayer.

L. C. J. I tell you what I mean ; did he pray out of the Book of the Common-Prayer ?

Mr. Medham. No, my Lord, I cannot say that.

L. C. J. Dost thou take his *EX TEMPORE* Prayer to be the Prayers of the Church ?

Mr. Just. Withins. My Lord, he does not know the difference, I believe ; I believe he does not go to Church.

Mr. Medham. Yes, I use to attend upon the Publick ; and so did Mr. Rosewell.

Mr. Just. Withins. Well, Sir, have you any more Witnesses ?

Mr. Rosew. Yes, my Lord ; Pray call Mrs. Ann Broadhurst.

(Then Mr. Winnacott appear'd and offered himself.)

Mr. Winnacott. My Lord, I heard I was call'd ; and am come as soon as I could get in.

Mr. Rosew. Ay, Mr. Winnacott, you have known me many Years ; I desire you would testify what you know concerning my Conversation and Behaviour.

Mr. Winnacott. Formerly, when I heard him, I never heard him speak a Word against the King or Government ; and it is some three years ago, since I heard him.

Mr. Rosew. Have you heard of any Evil that I have said or done against the King or the Government ?

Mr. Winnacott. No ; but I have heard him often Pray for his Majesty.

Mr. Just. Withins. Well, there is your other Witness Anne Broadhurst ; what ask you her ?

Mr. Rosew. My Lord, this was a Servant that lived several Years in my Family. Pray Nan, how many Years did you live there ?

Anne Broadhurst. Four Years, my Lord.

Mr. Rosew. Pray declare what you know of me in my Family, with respect to the King and Government.

Ann Broadhurst. I have generally heard you twice a Day pray in your Family ; and I never heard you Pray in my Life, but I heard you Pray as earnestly for the King as you did for your own Soul. This I can declare during the time that I lived there.

Mr. Rosew. Did you ever hear me speak Evil of the King in my Family ; or Reflectively upon the Government ?

Anne Broadhurst. No ; You always Pray'd for the King, (as I say) as earnestly as for your Self or your Family.

Mr. Rosew. If you know any ill Carriage in Word or Deed towards my Sovereign, I desire

you to speak it out, without favour or affection, or any respect to me in the World.

Ann Broadhurst. No, I never did ; but have often heard you heartily Pray for him.

Mr. Just. Withins. Pray, how long ago is this ?

Anne Broadhurst. Two Years ago I lived with him.

Mr. Rosew. Pray tell my Lord again, how long it was, and when that you lived there.

Anne Broadhurst. I lived there four Years ; and it is two Years ago since.

Mr. Just. Withins. Pray how often were you at Church in that time ?

Anne Broadhurst. When I had occasion to go, I did go ; but I did usually hear my Master, when I dwelt with him.

Mr. J. Withins. Well, who is your next Witness ?

Mr. Rosew. Call Anne Manning.
(Who came in.)

You lived with me in my Family several Years ?

Anne Manning. Three Years, Sir.

Mr. Rosew. Pray will you declare what you know of my Carriage and Behaviour towards the King and Government, in my Family while you were there ?

Anne Manning. My Lord, he prayed for the King, for his long Life in his Family Duties, Morning, and Evening ; and in Private, when no body heard him but my self.

L. C. J. What ! you and he were at Exercise together ?

Ann Manning. My Lord, I have gone by his Study-door, and have heard him pray for the King's long Life, when he knew not that any body heard him.

Mr. Rosew. This, my Lord, is more than I expected ; for I little thought that any body could give a Testimony of my private Devotion ; tho' I never then omitted to pray for the King, and never shall as long as I live.

Anne Manning. My Lord, he pray'd as heartily for the King's Life as for his own Soul ; and I have heard him often praying and desiring God to preserve him in his Kingdom, and give him long Life ; and have heard him insinuate upon that Scripture, *Speak not evil of the King, no, not in thy Bed Chamber ; for the Birds of the Air shall declare it.*

Mr. Rosew. Pray speak the Truth. Did you ever hear me utter an ill Word, or Reflection upon His Majesty, or the Government ?

Anne Manning. No, my Lord, he was always mightily for the King.

Mr. Rosew. Speak the Truth of what you know ; I hope you would speak the Truth, and nothing more than the Truth, as if you were upon your Oath.

Anne Manning. I do speak the Truth, and it is what I can declare, and would, if I were to die the next Moment ; and I can safely swear it.

Mr. Rosew. Then pray call Isabella Dickenson—

(Who appear'd.)

My Lord, surely I would not speak Evil of his Majesty, or the Government in publick in the Congregation, when I prayed for him in my Family and my Closet. But here's another Servant that liv'd in my Family ; Pray will you speak what you know concerning my Behaviour in my Family, with respect to the King and Government ?

Isabella

Isabella Dickeson. He used to pray twice a day in his Family, Morning and Evening, and he always pray'd earnestly for the King, for his good Health, long Life, and Prosperity.

Mr. Rosew. Did you ever hear me speak any Evil of the King or Government in any Respect?

Isabella Dickeson. No, never, Sir, in my life; nor do I believe you ever had an evil Thought of the King.

Mr. Rosew. Pray then will you call Mr. *James Atkinson*?

Mr. Just. Withins. We have had him already, and I suppose he is gone; he is not here.

Mr. Rosew. I call him now to testify another Thing, if your Lordship pleases; and he is at hand, my Lord, I suppose.

L. C. J. You should examine your Witnesses together, but we will not surprize you; we will stay.

Mr. J. Holloway. Pray call any body else, in the mean time, if you have any other.

L. C. J. Nay, Brother, it may be he hath observed a Method to himself; he is for his Life; let him take it.

(Then Mr. Atkinson came in.)

Mr. Rosew. That which I call you now for, Sir, is to testify, what you heard upon the 30th of *January* from me, about praying for the King and all that are in Authority?

Mr. Atkinson. My Lord, he kept that Day, the 30th of *January*, as a Day of Fasting and Prayer; and he preached from that Text on the 1 Tim. ii. 1. *Pray for Kings and all in Authority:* And then he did assert that Kingly Government was most agreeable to the Word of God, and the Constitution of the Government of *England*, which was the best in the whole World; and had been so approved by Writers, both Foreign, and of our own Country: And he did urge it as a Duty incumbent upon all People to pray for the King, and Magistrates, that they might live a peaceable and quiet life under them in all Godliness and Honesty.

(Then he seem'd a little faint and stop'd.)

Mr. Rosew. Pray Sir, will you recollect your self? My Lord will indulge you a little.

Mr. Atkinson. I have been acquainted with Mr. *Rosewell* these ten Years.

Mr. Rosew. But, pray Sir, what do you remember of the Application of that Sermon upon the Text about praying for Kings, and all in Authority?

Mr. Atkinson. That Persons were to pray for them, and to obey them, and that it was their Duty. That is all that I can remember.

Mr. Rosew. What do you remember of my Invectives against those that practiced the Contrary?

Mr. Atkinson. Why truly as to those Things, he did highly condemn those Persons that had any way acted against it. And I have heard him both in publick and private, inveigh against those that had any hand in the murder of the late King, and condemned the Fact as a diabolical Design.

Mr. Rosew. Is Mr. *Smith* there?

Mr. Atkinson. I was very ill on Sabbath-day last, and I thought I should not have come out now; and I would not to the best of my remembrance speak a Lie, as I am in the presence of this honourable Court, and in the presence of God, to whom I must give an account another Day.

Mr. Rosew. God will reward you for what you come to do for an innocent Person this Day.

Mr. Atkinson. I never heard an ill Word against the King or Government drop from Mr. *Rosewell* in my Life. I am not upon my Oath, but know my self to be bound to declare and tell the Truth, and nothing but the Truth.

Mr. Rosew. I am confident, my Lord, he would not speak what he would not swear.

L. C. J. The Jury are Judges of that, Mr. *Rosewell*, I must leave it to them.

Mr. Rosew. Pray, Mr. *Atkinson*, was Mr. *Smith* with you?

Mr. Atkinson. Yes, and I have sent one to call him.

Mr. Rosew. Pray, Sir, let me ask you as to what *Mistress Smith* says, that I should say of the Recorder being made a Judge?

Mr. Atkinson. I never heard you speak any such Words in my Life.

Mr. Rosew. Upon the last day of *August* last, at Mr. *Shed's* House, she says, that I did use that Expression.

Mr. Atkinson. As to *Shed's* House, I was then Sick, and was not there. If my Lord will give me leave to look upon my Note-book, I can tell what Day I was there.

Smith. It was at one *Daniel Weldy's* House, as I think, that you spoke about the Mayors and the Sheriffs; but what you said about Fools in Scarlet Gowns was at *Shed's* House.

Mr. Rosew. Was there any meeting at the Meeting-house, since *July* last, upon the Sabbath Day?

Mr. Atkinson. Truly I be not able to remember; but if my Lord please to give me leave to look upon my Note-book, I can give an account; for I writ down every Day the Place where we met.

L. C. J. Prithee look upon thy Note book; for I have a mind to know something out of that Note Book. Prithee tell me what was insisted upon the 14th of *September*.

Mr. Atkinson. My Lord, I only have a Note of the Day, of the Place, and of the Text.

Mr. Rosew. Pray, Sir, did you hear me speak of a great Man in *Grace-church-street* at the upper end; and that if it had not been for him, the Fire had been quenched?

Mr. Atkinson. I never heard that Expression from you in all my Life.

(Then Mr. Smith came in.)

Mr. Rosew. Pray did you hear any such thing, Mr. *Smith*?

Mr. Smith. No, my Lord.

Mr. Rosew. My Lord. I can bring all the rest to testify the same thing. if your Lordship will let me call them over again.

L. C. J. Do as you will, I would not restrain you from any thing of a legal Indulgence, that is fit to give to any Man in your Condition.

Mr. Atkinson. What day of the Month do you say it was, Sir, that she said you spake of the Recorder?

Mr. Rosew. The 31st of *August*, I think.

Mr. Atkinson. At that time I was Sick, and was not there.

Mr. Rosew. Pray, Mr. *Smith*, have you ever heard me preach upon the 30th of *January*?

Mr. Smith. Yes, Sir; I have heard you upon that Day, and upon that Text, that we should *Pray for Kings, and all in Authority.* You kept it

it as a Day of Humiliation, and you abhorr'd the Action of that Day. It was kept very solemnly, for the bewailing the horrid Murder of our late King. And you were so far from giving any Countenance to the Action of that Day, that you detested it, and preached very much against it, and you have always preached up Kingly Government.

Mr. Atkinson. Sir, you were asking me, if there were a Meeting since *July*, in the Meeting-house.

Mr. Rosew. Yes, because she says there was one upon the 10th of *September*.

L. C. J. If you look upon your Notes again, *Mr. Rosewell*, you'll find it was the 10th of *August*.

Mr. Rosewell. Where were you upon the 10th of *August*?

Mr. Atkinson. I was at home Sick then; it is written down, your Lordship may see it.

L. C. J. Do you take notice where you heard the Meeting was, when you were Sick?

Mr. Atkinson. Yes, my Lord, I have a short Note of it.

L. C. J. Where was the Meeting then?

Mr. Atkinson. In the Meeting house, as I heard.

L. C. J. Pray recollect your self, and look upon your Book, how is it enter'd there?

Mr. Atkinson. My self at home the 10th of *August*.

L. C. J. When didst thou take that Note, upon your Word now?

Mr. Atkinson. When my Family came home, some body did tell me that Day, or the next day.

L. C. J. Well, where was it the time before?

Mr. Atkinson. The 3d of *August*, at *Mr. Crookshanks*; the Text was the 11 *Heb.* 7. The 10th at the Meeting house, my self at home; and *Canticles* the 7th and 13th.

Mr. Rosew. My Lord, these Gentlemen say, they were at several Meetings. I desire my Lord, that these Witnesses may be called.

L. C. J. Call whom you will. Who do you call first?

Mr. Rosew. Thomas How. My Lord, I could bring Hundreds of Witnesses as to this Point.

L. C. J. Well, there is *Thomas How*; to what purpose do you call him?

Mr. Rosew. My Lord, to testify that she should swear before *Sir George Treby*, that *Mr. How* was at a Conventicle such a time, when he was not. And therefore I desire him that he would please to testify the Truth of that matter.

Mr. How. My Lord, I will testify the Truth as far as I know it; she sent three Ten—

L. C. J. How do you know that?

Mr. How. So they said.

L. C. J. That is no Evidence; and I care not what they said: if you know any thing your self of your own Knowledge, speak it.

Mr. How. They offered—

L. C. J. I tell you their offering signifies nothing.

Mr. How. My Lord, it is a Year and an half ago.

L. C. J. Let it be never so long ago, if it be only what they said, it signifies nothing, it is no sort of Evidence; but if you can say any thing of your own Knowledge, you say well; in God's Name we will hear it.

Mr. Rosew. Then, my Lord, some Questions I desire I may have leave to put to *Mr. Recorder*.

L. C. J. If *Mr. Recorder* be ready to answer your Questions, with all my Heart.

Mr. Rosew. *Mr. Recorder*, I desire you would please to do me the Justice to testify, whether you know any thing concerning *Mistress Bathoe*.

L. C. J. Who is She?

Mr. Rosew. My Lord, it is whether there was not a Conventicle sworn before *Mr. Recorder* against one *Mistress Bathoe*.

Mr. Recorder. I can't well tell, *Mr. Rosewell*. There was a Conviction before me, (as I remember) of one *Mistress Bathoe* for a Conventicle; and as I take it, (as the Witness told you just now) she had it from her own Confession.

Mr. Rosew. Do you know any thing, pray, Sir, of a Composition that was made upon that Conviction?

Mr. Recorder. No, Sir; you don't think sure, that I make Compositions; or know any thing of them.

Mr. Rosew. Was not the Money, Sir, paid back again?

Mr. Recorder. Not a Penny that I know of, or any Agreement for it.

Mr. Rosew. Pray, Sir, will you acquaint the Court, how that matter was really?

Mr. Recorder. *Mistress Bathoe* came to me, and said she was mistaken, if any such Words did pass from her; for indeed there was never any such Conventicle, as *Mistress Smith* swore she had confest. Upon that, I sent for *Mistress Smith*, and bid her consider of it, whether there was really any such Conventicle; and *Mistress Bathoe* hath brought her Appeal, and it is depending now, and will be heard the next Quarter Sessions.

Mr. Rosew. Pray Sir, Did you tell her that she might have her Money again?

Mr. Recorder. I did tell her, *Mistress Smith* was mistaken, and did not insist upon it, and she would have her Money return'd again.

Mr. Rosew. Pray Sir, Did you send your Warrant for one *Cartwright* under your Hand?

Mr. Recorder. You ask me a hard Question; I might send a Summons for several Persons, I cannot remember all their Names.

Mr. Rosew. By whom, I pray, Sir?

Mr. Recorder. I can't tell who I send all my Summons by.

Mr. Rosew. Was it not by these two Women, *Mistress Smith* and *Mistress Hilton*?

Mr. Recorder. I can't tell; it may be it might be so.

Mr. Rosew. Pray Sir, What did you say to *Mr. Cartwright*, when he came thither?

Mr. Recorder. I can't remember particularly.

Mr. Rosew. Sir, did you not ask him what he had to say against these Witnesses that are produc'd against me?

Mr. Recorder. My Lord, I remember when *Mr. Cartwright* came to me, I did ask him some such Question; for they had told me that he had, by a Person, been tampering with them, to take them off from prosecuting a great many Persons.

Mr. Rosew. By whom were you told so, Sir?

Mr.

Mr. Recorder. By themselves. I know nothing of it; But I tell you the reason why I sent for him; because they told me they went in Danger of their Lives; that they could not walk the Streets in Safety, but they had Stones thrown at them; and they were reproach'd as common Informers, and were beset hard with Applications of Money, to take them off from Prosecuting. And among the rest, they complain'd of one *Carrwright*, that he had been dealing with them; and it was upon that account that I sent for him, to know what he had to say against them; and he satisfied me, that he had nought to say against them.

L. C. J. These Questions, Mr. Rosewell, perhaps, may be better let alone.

Mr. Recorder. I have seen a Letter that does threaten them very much; but I cannot say whence it comes.

Mr. Rosewell. My Lord, I desire to ask Mr. Recorder, whether or no he did not send for some of my Witnesses.

Mr. Recorder. I don't know your Witnesses, Sir.

Mr. Rosew. Did you send for one *Richard Gibbs* of *Rotherhitb*?

Mr. Recorder. Yes, he was Constable at *Rotherhitb*.

Mr. Rosew. Pray Sir, upon what account did you send for him?

Mr. Recorder. I did it, because I heard the Constables of your Side durst not execute their Warrants, for fear of the Rout of the People.

L. C. J. I tell you, these Questions were better let alone.

Mr. Rosew. Mr. How, that which I call you for, is, whether Mrs. Smith has not offered to Swear before a Justice, that you were at a Conventicle, when you were not?

L. C. J. She says, she does not know any thing of her own Knowledge.

Mr. Rosew. She offered it a Year and a Quarter ago, before Sir George Treby.

L. C. J. Were you by when she offered any such thing?

Mr. How. I was by when she was before Sir George Treby; and she went into a Yard, and offered to inform against one Mr. How, for being at such a Conventicle; but I was not the Man, she said.

Mr. Rosew. My Lord, she had Sworn it.

L. C. J. No, no, she had not Sworn it, she only offered it, and for ought I perceive, she is a very careful Witness, to see that she does not fix upon the wrong Person.

Mr. Rosew. Then if it please your Lordship, I desire *John Townsend* may be called.

(Who came in.)

Pray will you testify what you know concerning Mrs. Smith's swearing that Mr. How was at a Conventicle?

Mr. Townsend. Sir, I will tell the Truth as near as I can, I cannot tell the Day, it was about a Year and an half since, that he was out of Town of the Lords Day, and that Day was remarkable; for I met him coming to Town, and it was about Evening, about five of the Clock, and that Day they had brought him some notice of a Warrant for the seizing of his Goods, for that he had been at a Meeting; now he understanding when they were to make Affidavit of it before Sir George Treby, he desired me to go

with him thither, and I went with him, and he asked her if she knew the Man. There he was, and I was, and one more, and there came one Stranger: And we went out to the Light, and she look'd upon all of us, and knew never an one of us.

L. C. J. You use to go to Conventicles, all of you, I warrant you.

Mr. J. Withins. She was not much out in her Conjecture, I dare say.

L. C. J. But she seems to be very careful, that she did not swear against the wrong Person. And (*Speaking to Mr. Townsend*;) If she had Sworn that thou hadst been there that Day, I warrant you she had Sworn true.

Mr. Rosew. Is Sir George Treby here?

(He did not appear.)

Then I desire Mr. Thomas Harvey may be call'd.

L. C. J. There he is; what do you ask him?

Mr. Rosew. My Lord, to prove that this *Elizabeth Smith* Swore that several Persons were at several Conventicles, which she afterwards confess'd in truth they were not; and made Applications to Compound for the Forfeitures, and they should have their Money again.

L. C. J. Prithee, ask him in general, what does he know of her.

Mr. Harvey. *Elizabeth Smith* came to a Friend of mine in April, or May last—

Mr. Att. Gen. Were you by?

Mr. Harvey. Yes, I was by. She came to a Friend of mine, I say, and she told him that she could Swear against him, and some others, for a considerable Value of Forfeitures upon Conventicles—

L. C. J. What Friend of thine was this?

Mr. Att. Gen. Where does that Friend live?

Mr. Harvey. In *Southwark*.

L. C. J. What's his Name?

Mr. Harvey. One *Games*.

L. C. J. What Trade is he?

Mr. Harvey. A Sail maker.

L. C. J. Whereabouts does he live in *Southwark*?

Mr. Harvey. By *St. Mary Overy's Dock*. And he came to me, and desired me that I would meet and speak with her; I met her, I think it was about the Exchange at the *Roe-Buck*; there was she, and another fellow with her. She told me she could Swear against such and such; and desired me to give her a Cup of Drink, which I did; and then she told me her Story, and demanded either 10 or 20 Pounds; and that that should take her off from Swearing against them. I told her, I could say nothing to it; but I would acquaint them; which I did, particularly Mr. Games; They thought not fit to give her any thing; which Answer I return'd to her. She told me she was very Poor, and if she could have but something, she would declare who it was that would Swear; but upon reasonable Composition (though she had offer'd to Swear) she would not. But she had taken the Copy from a Sister of hers; and I think she said her Sister's Name was *Mary Farrar*, as I remember.

L. C. J. Did she offer to Swear any thing against you?

Mr. Harvey. No, my Lord.

L. C. J. You know that *Games* very well, don't you?

Mr. Harvey. Yes, my Lord.

L. C. J. Does he use to frequent the Church constantly?

Mr. Harvey. I don't know that my Lord; I have known him many Years.

L. C. J. Do you live near him?

Mr. Harvey. No, I do not.

Mr. Rosew. Pray call Mr. John Cartwright, and Mr. George Norton.

(Mr. Cartwright appear'd.)

Mr. Cartwright, I desire you would please to testify what you know here concerning Mrs. Smith, who hath testified against me?

Mr. Cartwright. My Lord, may it please your Honour; the 22d of July last, Mrs. Smith and I were together from Seven o' Clock in the Morning, till half an Hour after Eleven; and that Morning we went to a Constable, one Alexander Venner in Aldersgate-street; and from thence we went to Moorfields to look for a Meeting in Petty-france; but there was none: And from that place we went into Moorfields again, and followed an ancient Man, whom we supposed was going to a Meeting; and this Man we followed the space of almost an Hour's time, that it was almost this time of Day that it now is that I am speaking. That Day she convicted Mrs. Bathoe for having a Meeting in her House; when she own'd to me and another Man, that she never was in the House of Mrs. Bathoe; and then for the same Morning there was one Rice Bowing that was convicted of a Conventicle at Bermondsey, upon her Oath.

L. C. J. How do you know that?

Mr. Cartwright. As I was told.

L. C. J. But it may be you were told a Lye; you must only speak what you know your self.

Mr. Cartwright. Then, my Lord, several times she has asked me to convict with her, when I never had been at a Meeting; and also, she has offered to convict with me, when I have been there, and she hath not been there; and she also asked my Wife to Convict one Dod's Meeting at Shoreditch, and my Wife refused it, because she was not there.

L. C. J. Were you by when she asked your Wife to do it?

Mr. Cartwright. Yes, and please your Honour.

L. C. J. Who did you tell this first to? Because I see you hunted along with her, why did not you go and complain when she had several times proposed such a thing to you?

Mr. Cartwright. My Lord, I did not so well understand it at that time.

L. C. J. Who did you first of all tell it to, I ask you?

Mr. Cartwright. I first of all told it to one Smith.

L. C. J. Was this before Mr. Rosewell was taken, or after?

Mr. Cartwright. It was afterwards.

L. C. J. Did you go to Smith, or did he come to you?

Mr. Cartwright. It was through another's means that I came to speak with Mr. Smith.

L. C. J. Who was that?

Mr. Cartwright. It was through a Goldsmith's means.

L. C. J. What is his Name?

Mr. Cartwright. His Name is Ferns; he lives in Newgate-street.

L. C. J. How came he to understand it, to bring you together?

Mr. Cartwright. Because he understood that I was with Mrs. Smith that time that she convicted Mrs. Bathoe, and was concern'd with her.

I did not know any thing of Mr. Rosewell, at that time at all.

Mr. Rosewell. Did she not tell you, she would do as much for me?

Mr. Cartwright. She did offer me this; that if I would go and discover any Meeting, she would Convict them, though she was not there.

L. C. J. Who didst thou tell a thing of this Nature to? only to Mr. Smith and that Goldsmith?

Mr. Cartwright. I told it first to that Mr. Smith.

L. C. J. When these Witneses, and things drop out of the Clouds, I never put any great Value upon them. These come to serve a Turn, and never make any Discovery till you are taken.

Mr. Rosew. My Lord, you may observe it was her common Practice to Convict upon a Report, not having any Eye or Ear-Witneses.

L. C. J. Well, I will observe what he has said; but I tell you what I think of it.

Mr. Cartwright. She has asked me to do it several times.

L. C. J. All that I can say to it, is, it seems she look'd upon thee as so very a Knave, as that thou wouldst have done such a thing; and it may be she was not mistaken.

Mr. Rosew. Then call Mr. George Norton.

(Who appear'd.)

I call you as a Witness, to declare what you know of Mrs. Smith's importuning you, or any one to Swear against Meetings.

Mr. Norton. Yes, she has offered to Swear; but I cannot say with him; for I was not present all the time. All that I can say, is, that she own'd she was never at Mrs. Bathoe's House.

L. C. J. So she says still; and it agrees with all the rest of the Evidence: It was only Hear-say.

Mr. Rosew. Then pray, will you please to call John Hobson?

L. C. J. There he is: What say you to him?

Mr. Rosew. My Lord, I bring this Witness to testify, that Mrs. Smith swore there was a Conventicle at such a Place, when there was none.

Mr. Hobson. Sir, there was none since I came into the House to my Knowledge.

L. C. J. What House?

Mr. Rosew. At Mr. Hale's; she swore there was a Meeting upon the 13th of July.

Mr. Hobson. There was none, to the best of my Knowledge.

Mr. J. Withins. We must not Convict People of Perjury upon such Evidence. Indict her of Perjury, if you have a mind to it.

L. C. J. Where is the Instrument Maker, Atkinson? Bid him send me his Book.

(Which was done.)

L. C. J. Were you at every Meeting always that he preach'd at?

Mr. Hobson. No, my Lord.

L. C. J. Then there might be many Meetings that you do not know of.

Mr. Hobson. I live next Door to this Mr. Hales.

L. C. J.

L. C. J. You use to go frequently to hear Mr. Rosewell, did not you?

Mr. Hobson. No Sir.

L. C. J. (*Having look'd upon the Book.*) Was there any Meeting that you know of, the 13 of July?

Mr. Hobson. None there: He lives the next Door to me.

L. C. J. Was there no Meeting no where there away?

Mr. Hobson. Not that I know of.

L. C. J. She Swears to that Day at Mr. Hales's.

Mr. Rosew. Ay, and to the very Place.

L. C. J. Do you know one Hodgefson?

Mr. Atkinson. It is Hudson, my Lord.

Mr. Hobson. No, my Lord; I do not know him.

L. C. J. Were you ever at his House at any Meeting?

Mr. Hobson. No my Lord; I never was at any Meeting this two Years.

Mr. Rosewell. He lives next Door to the House.

L. C. J. There may be a Meeting next Door to my House twenty times over, and I not know it.

Mr. Rosew. Then pray call John Crook.

(*Who came in.*)

Pray, Sir, do you know whether there was any Meeting at Mr. Hales's the 13th of July?

Mr. Crook. No; I never heard of any such thing, but what was according to his own use amongst his Family. I live under his Roof, and never yet did know that there was a Meeting there.

Mr. Rosew. Pray call Sarah Whibby. (*Who came in.*) I desire she may be asked, whether Mrs. Smith did not Swear there was a Conventicle at Mr. Hales's the 13th of July; and whether there was any such thing.

Mrs. Whibby. There was none.

L. C. J. That you know of, you mean.

Mrs. Whibby. I am certain of it.

L. C. Just. How came you to remember the Day particularly?

Mrs. Whibby. I can tell you by a very good Token; because the Chimney of my House was on Fire that Day.

L. C. J. How do you recollect it was the 13th of July?

Mrs. Whibby. Because there was a Neighbour of ours, that is a Waterman, that was sent for to wait upon His Majesty; and I went that Day to call him to quench the Fire; not finding him at home, I went further to call more Help.

L. C. J. How can you tell that it was the 13th? It might be the 20th for ought you know.

Mrs. Whibby. No; it was the 13th.

L. C. Just. How can you tell that?

Mrs. Whibby. Because there was another Meeting on the 20th Day, for which I paid 20 Shillings; and I can remember my Chimney was on Fire that Day.

L. C. J. What Day of the Week was it?

Mrs. Whibby. It was Sabbath-Day.

L. C. J. Why, if my Chimney was on Fire the 14th or 15th, it may be I can remember it a little while, but how came it that you do remember it so long?

Mrs. Whibby. It was the 13th of July.

L. C. J. How can you be sure of that?

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Mrs. Whibby. Because it was the Sunday before the Meeting at Mr. Bowen's.

L. C. J. Where was the Meeting that Day your Chimney was on Fire?

Mrs. Whibby. I did not know then; but I knew since, it was at Mr. Hudson's.

L. C. J. Then you have been instructed about it; But pray don't think you come here to serve a Turn.

Mrs. Whibby. It was at Mr. Hudson's.

L. C. J. Was there a Meeting on the 13th of July?

Mrs. Whibby. By Relation there was; but I was not at it.

Mr. Rosew. My Lord, I bring her to testify there was no Meeting at Mr. Hales's that Day.

L. C. J. We know well enough you sniveling Saints can lye.

Mrs. Whibby. I have answered the Truth as far as I know.

Mr. Rosew. I only ask her about Mr. Hales.

L. C. J. She shall answer such Questions as the Court shall think fit to ask her.

Mr. Rosew. How far is your House from Mr. Hales's?

Mrs. Whibby. Next Door.

L. C. J. How far is your House from Mr. Hudson's?

Mrs. Whibby. A great Way.

L. C. J. Was it half so far as you went to fetch the Waterman?

Mrs. Whibby. That was but three Doors off; but Mr. Hudson's is half a Mile, I believe, or a Mile.

Mr. Rosew. Then pray call Anne Collins.

(*She appeared.*)

Mr. J. Witbins. Well; what do you ask her?

Mr. Rosew. Mrs. Smith hath Sworn, that there was a Conventicle at Mr. Hales's the 13th of July; I desire to know of you, whether there was such an one or no?

Mrs. Collins. The 13th of July there was none.

Mr. Rosew. Upon your certain knowledge?

Mrs. Collins. Upon my knowledge there was none; I can justify it.

L. C. J. Not there you mean, at Mr. Hales's: But do you know there was any, any where else?

Mrs. Collins. No, not to my knowledge.

L. C. J. Do you know Mr. Hobson? Was there any there that Day?

Mrs. Collins. I know one Hudson.

L. C. J. I thought you had said Hobson.

Mrs. Collins. No, it was Hudson.

L. C. J. Was there any Conventicle there?

Mrs. Collins. I cannot tell any thing as to that.

Mr. Rosew. Then pray call Sarah Bathoe, and Susan Bathoe. (*Sarah Bathoe appear'd.*)

L. C. J. Well, what say you to this Witness?

Mr. Rosew. That which I call Mrs. Bathoe for, is to prove that Mrs. Smith was mistaken, when she Swore that Mrs. Bathoe permitted a Conventicle at her House the 20th of July: Upon which Mrs. Bathoe was Convicted, and brought her Appeal.

L. C. J. You do mistake, Mr. Rosewell. She says, that Bathoe confess'd that there had been a Conventicle at her House, as she heard.

Mrs. Bathoe. She has convicted me.

L. C. J. Ay, but it was upon your own Confession,

Q q q q q q 2

Mrs.

Mrs. Bathoe. No, I never confes'd any such thing; for I had none there at that time, nor did confes any such Thing.

L. C. J. Had you ever any Conventicle at your House?

Mrs. Bathoe. That is not it that I am to answer to now. I desire to be excused from answering that Question.

L. C. J. Then I will not believe her, if she talk'd as long as you Preach.

Mr. Rosew. There was an Appeal brought, my Lord.

Mr. Att. Gen. She is not a Witness, it is in her own Case. It would be a fine thing if an old Woman's Story should prevail here against positive Testimony.

(Then Susan Bathoe came in)

Mr. Rosew. Mrs. Smith hath Sworn, that Mrs. Bathoe had a Conventicle at her House the 20th of July.

L. C. J. No; She only Swears that Mrs. Bathoe confes'd it; but her self was not there, she says.

Mr. Rosew. Did you confes it?

L. C. J. No matter what she says; it all agrees with that Testimony that she has now given: This Matter, it seems, is depending upon an Appeal, and so she testifies for her self. And when I ask her whether she ever had any Conventicle at her House, she will not tell me; which induces a Suspicion that she does not come for a fair Purpose, but only to serve a Turn.

Mr. Rosew. Pray Mrs. Susan Bathoe, was there any such Conventicles?

Mrs. Bathoe. There was none.

L. C. J. Why I tell you, you mistake still. Mrs. Smith swears that Mrs. Bathoe confes'd to her that she had a Conventicle, but she swears she was not there. And take all together, seeing she will not answer whether she ever had a Conventicle; and so it may be only a Mistake just of the Day: Or she might tell her so, for any thing appears; and for ought I know Hales has had Conventicles: and what is all this to the Purpose of which you are Accused?

Mr. Rosew. Call Mr. John Ferne.

(He did appear.)

My Lord, I desire Mrs. Bathoe may not go away.

L. C. J. Let her stay then. What do you call this Man for?

Mr. Rosew. It is to prove she has compounded Convictions. Pray Sir, do you know whether Mrs. Smith hath compounded with Mrs. Bathoe since the Conviction, to set by the Prosecution; and Mrs. Bathoe was prevail'd with so to do?

Mr. Ferne. Mrs. Bathoe came to me about 8 or 10 Days ago; says she, I must get you to go with me to the Recorder's. I am promised my Money again, that was paid upon the Appeal I brought. I was glad to hear it, and went with her; the Time appointed was five or six a-Clock. I was there a little after five; and Mrs. Smith was not there, that was one of the Witnesses upon her Conviction, Elizabeth Smith, for I served her with a notice to attend the Recorder. We were there a second Time at the Recorder's Chamber about six a-Clock; she was not come. We waited hard by, and went a third Time; and then she was there, and desired my Sister to excuse her that she was not there earlier; but she did not doubt but she should have her Money; and waited to see the Recorder. Mr. Recorder had several above with him. We waited

an Hour or better. Mrs. Smith went up, and my Sister went up with her, or followed her: And says the Recorder to her, Are not you the Woman that was with me such a Time, with Mrs. Williams? Yes, Sir (says she) I was. Says he, What made you make such haste away? Upon that, Mr. Courtbope steps forward with the Book; Sir, (says he) I have paid it in to the Clerk of the Peace. Then, says the Recorder, It is out of my Hands, I can go no further: But promised afterwards to speak with Sir William Smith, the Chairman of the Sessions about it.

L. C. J. I can make Nothing of all this. What a Business is here?

Mr. Ferne. She seems to be a Rash Woman, ready to Swear any thing.

L. C. J. Oh dear, Sir! and you seem to be a grave, prudential sort of a Man.

Mr. Rosew. If she did not Swear that this Meeting was at Mr. Hales's, why was he convicted for that Meeting?

L. C. J. I know nothing of the Conviction at all; it is the first time that I have heard of it.

Mr. Rosew. Then if your Lordship please, we desire to have the Record of it read; here it is.

L. C. J. Make it appear that she swore, and that what she swore was false; and then you say something.

Mr. Rosew. We desire to have these Copies of Records read. Here it is per Testimonium Elizabethæ Smith, or per Sacramentum.

L. C. J. Prove that she swore it.

Mr. Rosew. My Lord, we had a very gracious Answer concerning the Petition that my poor Wife deliver'd to His Sacred Majesty in reference to her coming to me; which His Majesty granted with a great deal of Compassion: He remitted it to your Lordship, and your Lordship did second it, for the having the use of what Records should be necessary for my Defence. And upon what Application we made to the Attorney General, it was readily granted: But for the searching of the Records, we have desired the Recorder, and cannot have it.

L. C. J. You are much mis-informed in that. I'll tell you how it was: Your Wife, and a young Man came to me, a matter of a Fortnight ago, and did tell me, there were several Records that were necessary for your Defence, and the Recorder refused to let you have Copies of them. I told her then, God forbid but that you should have all manner of Helps from Records that were necessary for your Tryal; and thereupon I did require my Brother Jenner, who is Recorder, to attend to shew Cause, why he did refuse to let you have any Records that you thought necessary for your Defence: And he gave me this for Answer, that they were Records of Convictions, and were return'd to the Sessions of Peace; some to Surrey, and some into Middlesex, and some were in the Clerk of the Peace's Hands. Whereupon I told your Wife, if she would go to the Clerk of the Peace for Copies of the Records, if they did not readily give you Copies at your Charge, I would make them do it, if she came to complain to me; and if they would not, I would lay them by the Heels. When my Brother Jenner came to me, said I, I believe that which they have a mind to, is to know upon whose Testimony the Convictions are made. Now that is no part of the Conviction; and that we thought ought not to be granted.

Nor

Nor is there any Law for it; for that is to open a Way to the tampering with the King's Witnesses. After this, there was Mr. Wallop that came and moved the Court of King's Bench about this Matter; and we gave him the same Answer, that for any one to discover the King's Witnesses before they come to a Tryal, was not to be allowed by Law. If Mr. Attorney had come here, and said, Pray give us a List of all the Witnesses that Mr. Rosewell will make use of at his Tryal; we should have denied his Motion. God forbid but that the Witnesses you bring should be heard; and that the Witnesses they bring should be heard; but we must prevent tampering with the Witnesses on all sides.

Mr. Rosew. If the Witnesses are suppress'd, it is impossible to encounter their Testimony.

L. C. J. What do you mean by suppressing the Witnesses? They are here produced.

Mr. Rosew. Their Names, my Lord, upon the Records.

L. C. J. Their Names are never exposed, nor ought to be.

Mr. Rosew. My Lord, it is that which must enable me to make my Defence. If we could have their Names, we could prove them Perjured.

L. C. J. It cannot be by Law. You have the same Benefit that all the rest of the King's Subjects have. If any one be Convicted of Treason by Witnesses (twenty in Number) we never enter them upon the Record; and if any be acquitted, the Testimony of the Evidence upon that Acquittal, is never enter'd upon Record. It may be in your Matter, it was not upon the Testimony of Witnesses, that the Conviction was; but upon the Notoriety of the Fact, or by Confession, as in the Case of Mrs. Bathoe; that was by Confession, and Witnesses. The Notoriety of the Fact, or the Confession of the Party, are all, and each of them, sufficient to make a Conviction by Record. You have the same Liberty that every Subject has.

Mr. Rosew. Mr. Courthope is the Recorder's Clerk, that saw the Convictions in the Clerk of the Peace's Hands.

L. C. J. We cannot tell that, without the Clerk of the Peace was here.

Mr. Rosew. Pray, where is Mr. Charles Walker?

(He appear'd)

I desire you, Sir, to testify what you know concerning the Conviction of Elizabeth Smith upon Mr. Hales, for a Conventicle at his House the 13th of July?

Mr. Walker. You had a Copy of it from the Clerk of the Peace; I made it out.

Mr. Rosew. Of Mr. Hales and Mistress Bathoe, do you mean?

Mr. Walker. No, only of Mistress Bathoe.

Mr. Rosew. Then I suppose we may have it; and the Clerk will testify it to be a true Copy.

Mr. Walker. This is a true Copy.

L. C. J. Then make what use you please of it. Will you have it read?

Mr. Rosew. No, my Lord, not yet. If your Lordship please, I desire Richard Drew may be call'd; but however, if your Lordship will, let him read that Passage in it, that I cannot so well read, 'tis in Court Hand.

(Clerk of the Crown reads.)

Memorandum quod ad generalem Sessionem pacis pro Com' Midd' septimo die Octobris, tricesimo sexto, &c.

L. C. J. What do you make from this? Here is a Record of the Conviction, which says, that by two credible Witnesses, and the Notoriety of the Fact she was convicted.

Mr. Rosew. Pray call Richard Drew.

(Who came in)

Pray Sir, what do you know about Mistress Smith's Practice in relation to Conventicles?

Mr. Drew. Upon the eleventh of July last, there was an Acquaintance of mine that she did pretend was at a Meeting—

L. C. J. Who was that that did pretend so?

Mr. Drew. Elizabeth Smith; and she would have had some Money of him. He came to me, and asked my Advice. Yes (said I) I think you had better give her Money, than to run the Hazard of swearing against you: So he did. He took me along with him to a Place where they were to meet, where she took ten Shillings, and promised he should come into no further trouble about it.

L. C. J. Had he been at a Conventicle, or not?

Mr. Drew. That I cannot say.

L. C. Just. Do you believe he was, or was not?

Mr. Drew. My Lord, I cannot say that he was, or was not.

L. C. J. But that is not the Question I ask you; for you would not persuade him to give her Money, if he had not been at a Conventicle.

Mr. Drew. My Lord, I did not know whether he was, or was not.

L. C. J. I ask you again, did you believe he was, or was not?

Mr. Drew. I believe he might, by his being so willing to take my Advice; tho' he said it was a base thing to give her any Money in such a matter.

Mr. Rosew. Pray call James Howard.

L. C. J. There he is; what would you have with him?

Mr. Rosew. My Lord, I crave leave first to ask Mistress Shastoe; Are you Mr. Hilton's Wife?

Smith. Yes.

Mr. Rosew. Then I desire Mr. Howard may testify what he knows concerning this Mistress Smith: But first, which Hilton's Wife are you?

Smith. George Hilton's.

Mr. Rosew. What then do you know of her, Sir?

Mr. Howard. I was once drinking a Cup of Ale in Grub street, where she did take a parcel of Money in the Concern of the King, my Lord.

L. C. J. Prithee speak up: In what Concern?

Mr. Howard. She took a Bribe in the Concern of the King.

L. C. J. What dost thou mean?

Mr. Howard. Of a Person that had been at a Meeting.

L. C. J. Prithee, what Bribe was it?

Mr. Howard. About 11 or 12 Shillings.

L. C. J. Prithee, of whom was it?

Mr. Howard. The Man I never saw, nor the Woman before: I came in by chance.

L. C. J. How long ago is this?

Mr. Howard. About the middle of July last.

L. C. J. Who did you discover this matter unto?

Mr. Howard. My Lord, I was only drinking a Cup

a Cup of Ale; and I discover'd it to Mr. *Drew*, that was call'd last.

L. C. J. Was Mr. *Drew* one of them?

Mr. *Howard*. No; Mr. *Drew* I am acquainted with; he is my Neighbour.

L. C. J. When were you at Church last?

Mr. *Howard*. The last Lord's Day.

L. C. J. When did you receive the Sacrament there?

Mr. *Howard*. My Lord, I never did. We have no Parish-Church at present; it is now a Building.

L. C. J. Where do you live?

Mr. *Howard*. In *Mugwell-street*.

L. C. J. Have you no publick preaching in the Parish?

Mr. *Howard*. I do hear Doctor *Fowler*, and Mr. *Smythies* too, sometimes.

L. C. J. That is when there is no Conventicle (I suppose) in the way. That Mr. *Smythies* and Doctor *Fowler* are both very well known.

Mr. *Rosew*. Is Mrs. *Anne Fary* here?

(She did not appear.)

Pray call Mrs. *Anne Higgenfon*.

(Who appeared.)

Do you know Mrs. *Shaftoe*, or Mrs. *Hilton*, as she is call'd?

Mrs. *Higgenfon*. My Lord, I have very little Knowledge of her; I have known her but a very little while.

Mr. *Rosew*. What Testimony can you give of her Conversation?

Mrs. *Higgenfon*. Since I have known her, I have heard some ill things of her: But I cannot speak to any thing of mine own Knowledge.

L. C. J. Why, so People may say a great many ill things of you, that you do not deserve, nor know any thing of.

Mr. *Rosew*. Call *Anne Carter*.

(She did not appear.)

I desire Sir *John Talbot* would please to be examined.

L. C. J. Here is Sir *John Talbot* by me.

Mr. *Rosew*. Sir, I desire you would please to testify to the Court and the Jury, what you know concerning the Conversation of Mistress *Shaftoe*, otherwise called Mrs. *Hilton*.

Sir *John Talbot*. She was a Servant, that liv'd in my House a great many Years; but I did not use to converse with her.

Mr. *Rosew*. No, Sir *John*; but what do you know of her Conversation while she lived in your House?

Sir *J. Talbot*. All that I know of her is, she had no very good Character in the Family.

L. C. J. Do you know any thing of your own Knowledge?

Sir *John Talbot*. As to any thing of my own Knowledge, I cannot speak; it is all no other than Hear-say from all the Family.

L. C. J. But I ask you what you know of your own Knowledge, Sir *John*. Tell us the Particulars you your self know.

Sir *J. Talbot*. It was the Complaint of all the Servants of the House, that she was guilty of telling Lyes and Stories in the Family.

Mr. *Rosew*. Was she reported in the Family a frequent Lyer?

Sir *J. Talbot*. She had that Character in the Family; all the Servants complain'd of it. I only know of other things since she was gone out of the Family; and that she has been concern'd in an odd sort of Practice, about attempting to steal away a young Lady.

cern'd in an odd sort of Practice, about attempting to steal away a young Lady.

L. C. J. Do you know of it of your own Knowledge?

Sir *J. Talbot*. I had it from her self, and upon her own Affirmation.

L. C. J. What was that?

Sir *J. Talbot*. It was about the Practice that had been set on foot of cheating People of Money for procuring Fortunes; particularly concerning the Daughter of one Sir *Harry Jones*. And there have a great many Gentlemen been abused about Town in that Matter, and made believe that this Woman had an Interest in her, and would put this great Fortune into their Hands: I have not been privy my self to any of the Negotiations, but I have understood there were such Practices; there was one *Salem*, and she that were engaged.

L. C. J. Look you, Sir *John*, do you know this of your own Knowledge? for we must not hear Evidence to take away People's Reputation by Hear-say: If she hath confess'd any thing to you, you may speak that, and let us know it.

Sir *J. Talbot*. My Lord, if it be not too long to give you the Circumstances, how I come to know it; I will tell you what I have been informed about it.

L. C. J. No, that is not Evidence, Sir *John*; unless you know it your self, or had it by her Confession.

Sir *J. Talbot*. My Lord, I do not come here as a voluntary Evidence, but I am here called upon, And my Lord, I think I ought to give my Testimony if a Man's Life be concerned.

L. C. J. And so ought we who are upon our Oaths, to insist upon it, that you give legal Evidence; what you know of your own Knowledge; and I ask you here again, whether what you relate be of your own Knowledge, or what was by Hear-say?

Sir *J. Talbot*. My Lord, I had notice sent me by a Letter, That there was a Gentleman came to *Thistleworth* with a Coach and four Horses, with a Design to steal Mrs. *Jones*. I cannot remember whether there was any Name to the Letter, but such a Letter was sent, and I was to enquire about it of this *Ellinor Shaftoe*, who was engaged in the Design. I sent to her to come to me, and she did come; and told me that there had been such a Practice of one *Salem*, and she would bring a Gentleman to discover the whole Business, and she did so; and brought this *Hilton* (by whose Name, (as her Husband) she owns her self) and he came to me, and gave me a Note of several Gentlemen's Names that were concern'd in it; and I believe, I have a Book wherein their Names are. I then asked why she did let it so long run, and the Business go on so far. Mr. *Hilton* did confess, that one particular Gentleman had been kept in treaty, who was a Country-man, and came to live in Town, and was in Town the greatest Part of the Winter upon this Design; and did walk that Way expecting that this *Nan Carter* should bring down this Heiress, that so they might have an Opportunity to Steal her. Mr. *Hilton* had no other way of Application to me, but by this *Shaftoe*; and he confess'd himself that he was a Party concern'd in the Design.

L. C. J. Ay; but what did *Hilton's* Wife say?

say ? for what he said is nothing to the Purpose in this Point.

Sir *J. Talbot*. She is one that I had no Communication with, nor converse, while she was in my Family, otherways than as an ordinary Servant ; but this same Mrs. *Jones* was my Ward.

L. C. Just. Did she confess she had any Design in this matter ; or was to have a Reward for setting the matter on foot ?

Sir *J. Talbot*. No, my Lord ; she did not particularly confess she had any hand in the Design ; but it was that which several other Persons have come and enquired since of my Family about ; who have told me, that there was one *Shastoe*, otherwife *Hilton*, that was concern'd in it.

L. C. Just. That is not Evidence, Sir *John*, I must tell you agen.

Sir *J. Talbot*. My Lord, I can't make the Evidence otherways than as it is. I tell you what I know.

L. C. J. You understand your self so well, Sir *John*, that you know it is not Evidence ; and you are not to talk of what other People have told you.

Mr. *J. Withins*. How long did she live in your Family ?

Sir *J. Talbot*. I can't tell how long (my Lord) but I believe she was there ten Years.

Mr. *Just. Withins*. That's a strange thing, that you should keep an ill Woman so long.

Sir *J. Talbot*. My Lord, with your Permission, she was a Servant when that Child came to me, and when the Mother died ; and my Wife did not think fit to put her away ; so she came and staid with the Child as long as my Wife could keep her ; but at last she did foment Differences in the Family, Lyes and Stories ; and was found to be a Person not fit to live in the Family ; and therefore my Wife was afraid to keep her any longer, and put her away.

L. C. J. Well, Mr. *Rosewell*, have you any other Witnesses ?

Mr. *Rosew.* Pray call *Anne Dillingham*.

L. C. Just. Well, what do you ask her ?

Mr. *Rosew.* My Lord, I bring this Witness to prove concerning Mrs. *Shastoe* alias *Hilton*, that she offered to swear against People as being at Conventicles, whom she had never seen.

Mrs. *Dillingham*. She lodged in my House, and is a very ill Woman ; and asked me to swear of Meetings, that I never knew any thing of at all in my Life. I never was at Meetings but about Thirteen Years ago. I asked her why I should swear, or what I could swear to ? She told me, I should have a share of the Money if I would swear to what she said ; whether it were right or wrong, I should have a Share if I would but swear.

L. C. J. How long ago is this ?

Mrs. *Dillingham*. Two Years ago.

L. C. J. Who did you tell this to first ?

Mrs. *Dillingham*. My Lord, I am Subpœna'd here to give my Testimony.

L. C. J. That's true ; but who did you tell this that you talk of first to ?

Mrs. *Dillingham*. My Lord, I never told it to any body but her, except it was to my own Husband.

L. C. J. But why would you keep this as a Secret, and not tell it to any body ?

Mrs. *Dillingham*. Why, my Lord, I don't speak it for any Malice to her at all, I assure you.

L. C. Just. Where do you live ?

Mrs. *Dillingham*. In *Long-Acre* at the *Golden Ball*.

L. C. J. If you live in *Long-Acre*, how came you to discover any thing of a matter that was transacted at *Rotherhish* ?

Mrs. *Dillingham*. My Lord, I know nothing of it, of my own Knowledge ; but what she would have perswaded me to.

L. C. J. But how came she to talk to you about a matter of *Rotherhish* ? or, you to know any thing about her ? that I desire to know ; and how you came here ?

Mrs. *Dillingham*. One Mrs. *Peirce*, that is a Neighbour, ask'd me what I knew of her ; and so would Subpœna me, because she lodged at my House.

L. C. J. How long did she lie at your House ?

Mrs. *Dillingham*. I can't tell ; I believe about half a Year.

L. C. J. Well, what became of her ? How did she behave her self ?

Mrs. *Dillingham*. My Husband turn'd her out of the House, and would not entertain her ; because she kept Company with a Man that was none of her Husband.

L. C. Just. Why, can you tell when they were married ?

Mrs. *Dillingham*. She went as the Wife of Mr. *George Hilton*, when she was not married.

L. C. J. How ! Was she not married then ?

Mrs. *Dillingham*. No, they were not married then. He was not her Husband then. There are a great many of our Neighbours that can say more than I. She is a naughty, filthy Woman ; a very ill Woman ; if I should call her Whore, I believe she might trouble me for it ; but I believe it to be true.

L. C. J. Have you any more Witnesses, Mr. *Rosewell* ?

Mr. *Rosew.* No, my Lord ; but I hope your Lordship will give me leave to say something to the Court and Jury.

L. C. J. Mr. Attorney, have you any more Witnesses to call for the King ?

Mr. *Att. Gen.* My Lord, we have some Witnesses to support the Credit of these Witnesses that we have produced : But we don't think there is any need ; nor that it is any way diminished by the Defence of the Prisoner at the Bar.

L. C. Just. Do as you please, Mr. Attorney ; go on your own way.

Mr. *Att. Gen.* No, my Lord ; we shall trouble your Lordship no further with any Evidence.

L. C. J. Then, Mr. *Rosewell*, let's hear what you have to say further for your self ; for all the Witnesses have been heard, of one side and t'other.

Mr. *Rosewell*. My Lord, and dear Countrymen who are to be my Judges in this Cause this Day ; What I now speak, is with respect as much to their precious Souls, who are concern'd either in Prosecution or trying of me, as my own Safety. There is not a Man of you of the Jury, tho' you are Strangers to me, but I would lay down my Life to Morrow to save one of your Souls, if I might be an Instrument therein : How much more then all of them, if the Consideration be taken of the Worth of an immortal Soul ? Your Lordship knows, and I am sensible,

sensible, how unfit I am now to do such a thing as this is, in the Company of so many learned Gentlemen of the long Robe. I have betray'd already too much of my Ignorance in such Affairs, and I beg your Pardon for it; and I humbly thank your Lordship, and the Court for the Indulgence that you have shewed towards me in my Infirmities. You are my Lord, as in the Presence, so in the Place of the great God; the Judge and Lord of all, at this Day: You are *Elchim*, I have said ye are Gods; whose Property it is to help the Weak, and compassionate the innocent; therefore I make this Apology in reference to my own Innocency, and my great inability to sum up the Proofs that have been in this Cause. If you will put my Weakness in competition with their vast Abilities, who are of Council for the King against me; and my ignorance in the Laws of the Land against their great Knowledge; I cannot but expect to be overthrown, notwithstanding my Case is very innocent, and I have declared in the Presence of God the Truth of my Heart this Day. And if I were to be call'd to the Bar of the great God, the Judge of all the Earth, before I sleep; I should speak the same thing, and must, and no other. I am sensible, a Lye is both a base, and a very wicked thing; and that the Lake that burneth with fire is prepared for all Lyars. And I pray God convince these Gentlewomen wherein they have wrong'd and abus'd me; that they may repent of their Sin; which (I bless God) I have prayed for them most Days ever since I was confin'd, and beg'd it of God with Tears, in Charity to their poor Souls. And I believe I have pray'd more for His Majesty in one Week, than they have done in all their Lives. They are not the King's Friends, but his Enemies, in bringing such Allegations against those that are his true, faithful and innocent Subjects; as I am, my God knoweth.

And here, my Lord, I would first observe the Variations that are in their Evidence. In the first place, Mrs. *Smith* swears, That the Text I preached upon was the 21st Chapter of *Genesis*. And here is Mrs. *Hilton* comes, and she swears afterwards that it was the 20th: herein they vary. Then I suppose, my Lord, if they vary and differ, in Law they are not two Witnesses: But differing so, are both of them incredible: And I think the *Statute Law* of this Land is, that a Man must be convicted upon the Oath of two Credible Witnesses.

Next my Lord, here's Mistress *Smith* swears, that these Things were delivered, which are charged in the Indictment, altogether in the Morning-Exercise, in the Forenoon: Whereas your Lordship has heard from several Witnesses (and I do not know one Man of them but fears a Lye; and would have sworn to the Truth of what they have spoken. They tell you) how every Passage that these People would pervert must come in, and how it was divided. I hope your Lordship will pardon the Infirmity of two or three, a few illiterate Men, that are weak, and could not so well instruct themselves to speak in a Court of Justice upon such an Occasion. But upon the whole matter, they give such an account, all, that it cannot be presumed, or thought that they should agree to speak any thing that was not true. And I am confident, there is not a Man of them but would take his Oath, (as I said) of the Truth of what he has

here declared. And they have declared that there were two distinct Exercises, as I have protested in the Presence of the great God. That in the Morning was upon the 20th of *Genesis*: And th' other in the Afternoon (there being an Hour that past between,) was upon one particular Verse of a Chapter in the Epistle to the *Hebrews*, quite distinct from the other Discourse that was in the Morning. She not only varies from the Truth, but also from her Fellow-witness, that it was all in one Exercise. This I submit to your Lordship's and the Jury's Consideration (these worthy Gentlemen that are to judge of my Life, and Death) whether they are two Credible Witnesses, thus varying.

There be several other Things (my Lord) that because of my present Infirmity, I may not so readily call to Mind; but which ought to be recall'd and recollected; as in reference to the Person whose House we met at; One says it was one Capt. *Daniel Weldy's*: Another that it was one Mr. *Daniel's*. Therein again they vary, in reference to the Person; and if they are out in one Thing, they may be out in another.

Smith. I can say nothing about his Name, I never was there in my Life before.

L. C. J. Mrs.! Mrs! You must not interrupt him; he is upon his Defence for his Life.

Mr. Rosew. Then, my Lord, she says that my Text in the Afternoon was upon a *Psalms*; and there was no such thing as your Lordship has had it particularly made appear to you. I have ingenuously told you the Text, and the Truth; I have spoken it from my heart in the Presence of the great God; and upon what occasion every Passage that they have wrested was spoken: And your Lordship may thereby perceive how most abominably they have perverted my Words. Now they having wrested my Words that are innocent in themselves (so far from being Treason, that I do not know there was any Fault or Crime in them; being only plain Scriptural Proofs of Doctrinal Propositions in Divinity, without those Applications that they have pretended to) certainly your Lordship and the Gentlemen of the Jury will consider, what is most probable or likely; what they have declar'd, or what you have heard from the several Witnesses that have come in to testify concerning me.

My Lord, I was going to speak something to your Lordship of the great Wickedness of their making the Application of what was innocently spoken and meant, to the late King of England, and his present Majesty, whom I daily pray for, and always did; whatsoever these Witnesses have declared concerning me. And your Lordship has heard my Maid testify (which I little expected) That I use to pray for the King every Morning and Evening in my own House; and God knows that to him I have address'd my self for him daily: And more than that she heard me (when I thought none but the God of Heaven himself had heard me) pray for him in my Closet. I would desire your Lordship and the Jury, to consider, whether these are not the Criminals (and not I) that have made application of innocent Passages, and wrested the Words that were plain and innocent in themselves, to a wrong meaning, to make me Guilty of High-Treason; applying them to His Majesty

jesty, when I never intended, or thought the least of any such thing.

My Lord, I doubt not but there have been several that have joyn'd in it, that have help'd to frame and forge this Accusation against me. And there is that which I suggested to your Lordship in the Morning, in the beginning of this Cause: These Persons have not only, or so much Sworn me a Knave; but a perfect Fool and a Mad man to speak such absurd, incoherent, inconsistent, sollecistical and nonsensical Things. I believe there is no Man of common Sense and Reason, no Gentleman that's here this Day, that can imagine that a Person that had the use of common Sense and Reason, should speak such absurd Things as these are. Besides, my Lord, I have brought Witnesses, several of them, to testify there never was any such Thing spoken by me as they have testify'd against me, and misapply'd. I have likewise produced several Persons to give Evidence of my usual and constant Practice with relation to the King and Government all along; my contending for Monarchy, and against Anarchy, which did too much reign in these late Days of Confusion, which I remember by very sad Experience, tho' I was then indeed but a Child. And when I came to be a Man, I used always to observe the 30th of *January*, and the 29th of *May*: Preaching upon those Days, and pressing People to Obedience; and inveighing against those that had acted against their Principles, and were Rebels either against his present Majesty, or had been concern'd in that barbarous Act against his Royal Father; which I did utterly abhor.

And, my Lord, Methinks it should have been very unlikely that a Man that should make it his common Practice so to do; as I have testify'd concerning my self, should fall under such a Suspicion and Accusation as I now am; Or, that such an one should fall into such a Sollecism, as the Words that are testified against me must import; it is very unlikely. I leave it to the great God of Heaven to vindicate my Innocency in the Matter; which I do not question but he will do.

Then, my Lord, here are several Gentlemen of the *Church of England* that have testify'd concerning my Conversation. They have had Acquaintance with me many Years, some of them near 20 Years; the least, 8, 10, or 12. They never heard an indecent Word, with respect to His Majesty, or the Government, fall from me; any unworthy Reflection upon either of them: But my constant Practice was to pray for His Majesty with all earnestness and sollicitude. There are several of them Gentlemen of repute in the City. There are particularly two Persons that belong'd to an honourable Family; in which I lived so many Years, who give a Testimony what my Conversation there was; and my constant Practice of practice of praying for the King, while I was there. This your Lordship, and the Gentlemen of the Jury, have heard and observed; I doubt not.

But, besides that; your Lordship and the Jury, I hope observe as to these People who Swear against me; what my Witnesses have testify'd; that they would swear any thing, and forswear it; And what a Character is given concerning one of them particularly, your Lordship has heard from that worthy Gentleman, Sir *John Talbot*, whose Face I never saw before

it was in this Place. And by the last Witness, you have a Testimony concerning her lewd Conversation. And several other Witnesses prove she would Swear any thing for them, if they would Swear for her. So that it appears she would, and does Swear at a venture such and such Conventicles; only upon hear-say, and meer report: And that she has taken Money, and made some Compositions too. These things I must refer to your Lordship, and these worthy Gentlemen, who are of the Jury.

If then my Carriage and Conversation (so well known in the World) be compared with that Character that is given of these Persons; I must humbly submit it to your Lordship, and the Jury, how far they are to be believed against me; and might argue from the Incredibility of their Testimony; but your Lordship cannot but remark it.

My Lord, It is very strange that these two Women should so exactly remember these Words: They agree in every particular Circumstance. I durst appeal to your Lordship, and the Jury, particularly to the Jury, if now they would undertake to repeat upon their Notes, the Words that have so often been repeated here; and whether there is any of them would be able to agree in all the particular Words? They have an incredible Memory that could so exactly agree together that these were the Words. I do humbly submit this to your Lordship. For, my Lord, I lay the stress of my Defence very much not only upon the incredibility and improbability, but even the impossibility of the Evidence that they have given. I humbly submit it, I say, to your Lordship, and these Gentlemen; and leave it with them and the great God of Heaven, whom I pray to direct them. I hope they will consider the Life of a Man, and the worth of Blood. My Lord, however I am represented this Day, I know my self to be a faithful Subject to His Majesty; and to the great God of Heaven, whose I am, and whom I desire to Serve.

My Lord, I will now, if you please, ingenuously confess my Crime, if it were any. I have been frequently Preaching, in my Congregation, out of the Scriptures; and it is true, as your Lordship sees, the Chapter came then in course to be Expounded: Which I use to do, to let the People understand the Scripture, as well as I could; for the People perish for lack of Knowledge; and it is by the Knowledge of Jesus Christ that they must come to Life and Salvation; for him to know is Life Eternal. It has been my way to Expound the Scriptures to them.

In the Presence of the great God, before whom I speak, to whom I can appeal for the truth and integrity of what I say, that God before whom we must all stand, (all whose Faces I see here shall meet, and see one another at the great Tribunal;) It is to this God that I appeal as to the Truth of my Heart in these Things. And, my Lord, I shall continue as I have done, however God dispose of me, to Pray for the Life, and Happiness of His Majesty; my usual Prayer, Morning and Evening being, that God would crown him with Grace here, and Glory and Honour hereafter. And this I shall do by the grace of God unto my Dying day; For my Soul does abhor such

Things as have been testify'd against me this Day.

Thus, my Lord, I have dealt as plainly with your Lordship and the Jury as I can. My Infirmities are great. I desire to leave my whole Cause with the Lord; and with these worthy Gentlemen my Country-men, who I do not question will have a just compassion and consideration of my Case, under these Circumstances wherein I stand; and to all the Circumstances that have been made out in this Cause this Day.

L. C. J. Mr. Attorney, Will you please, or any of the King's Council, to say any thing in this Matter?

Mr. Att. Gen. No, my Lord, we leave it entirely to your Lordship.

L. C. J. Gentlemen of the Jury, this Case has held a long Time; and Gentlemen, I must tell you, no Body ought to think Time too long in a Case of this Nature, wherein the Government is so much concern'd on the one side, and the Life of the Prisoner at the Bar on th' other. *Et de vitâ hominis nulla est cunctatio longa.* I think no Man ought to apprehend his Patience too much tired in finding out the Truth in the case of a Person that is tried for his Life. However, Gentlemen, by the way; because the Case has been long, it is fit that there should be some recollection made of it; and in order, as near as I can, that I might help your Memories in the Evidence that hath been given, both for and against the Prisoner at the Bar; I would endeavour as well as I can, to repeat, at least the Substantial Part of it, to you; and in case any thing that is material be omitted, God forbid but it should be supply'd by any one that is able for to give any Assistance of that kind; for I cannot pretend to be so exact as to give an account of the whole Evidence myself. But Gentlemen, I must tell you, it is a Duty incumbent upon the Court, to give you all the Assistance that can be in a Matter of this Nature, and I will do it with as much Integrity, and with all the Care and Caution of doing no Injury, either to the Prisoner or to the King, between whom we are to be indifferent, both you, and the Court, as possible can be; that there may be no wrong done on the one side, or on the other; and, according as the Prisoner himself hath said, what I shall speak, I know I speak in the Presence of the great God of Heaven and Earth; who is to be the Judge of all Men. We are upon our Oaths, and you are upon your Oaths; and we are all of us Bound by our Oaths that we have taken, to be guided in this weighty Affair, (for so I must call it) by the Evidence that has been given to us at this time, both against the Prisoner and for him. For certainly there cannot be a Thing of greater concern, nay, even in point of Compassion, than to see any Man come to be accused of so high a Crime as the Prisoner at the Bar is now tried for. And he must have a strange obdurate Heart and Conscience, that cannot so far participate of the common sympathy of human Nature and his Fellow Creatures, as to compassionate any one that stands in such Circumstances as the Prisoner does. But, then on the other hand; the Denials of the Prisoner at the Bar, with all the Imprecations that he has made; and all the Affirmations that he has offered of what he has formerly

done; and all these things of his appealing to the great God of Heaven about his Innocency; that I must tell you, of themselves, they are not to weigh with you; for your Business is to know according to the Oath that you have taken, whether you have Evidence given to you, (since you are Sworn upon this Tryal) to satisfy you that he is Guilty according to that Evidence. So that if the Affirmation of the Person accused, tho' attended with never so many Imprecations one way or other, be offered to Persons that are in your case, as Jurymen, it is not to weigh with you at all one way or other, if it be only the Affirmation of the Party accused; for if so, then there would never be any guilty Person brought before any Jury whatsoever; or any Criminal could come to suffer any Judgment, or be convicted of any Crime; if his own Affirmations concerning himself, and his own Commendations of himself would be sufficient to Acquit him, and set aside his Accusation. So that now you are to go according to the Evidence offer'd; and so are we, against this Person that is here before you.

Gentlemen, I must say that it is very untoward; and I hope by this Cause there will be a warning given, at least, to other Persons; that there have been too many notorious Transgressours of the Law in this Matter of Conventicles. I speak that, not to affect this Case at all; but I speak of what the Nation hath had but too woful Experience of, as to these Seditious Meetings, that are, and have been continually kept up in Opposition to the Laws; and I speak nothing as to the Meeting that was at this time; but I speak it that others may be warned for future Times; for always Mischief attends the open and publick Transgression of the Law. God forbid, but that People should worship God, and serve him according to their own Consciences; therefore the Law has been so indulgent to them, as to give them leave to exercise their Religion in other manner than as is done in the Church of England; provided there be not any occasion of Tumult; but that there be not above Five, except those of the same Family, meeting together; which you know the Act of Parliament hath provided for. And the truth of it is, the Reason of the Law is very plain: For you all know, who are Gentlemen of Quality, that this Law, as well as another Law that has so great a relation to the Case before you, does declare, that from these Seminaries of Sedition and Faction Conventicles, and the Clubs and Cabals of discontented, irregular People, disaffected to the Laws both of Church and State, was the great Mischief and Confusion that was brought upon us, and which at length brought us into the Distractions of the late Times.

Gentlemen, I must say likewise this to you, that whatsoever the Prisoner at the Bar thinks now, that blessed Martyr King Charles the 1st. was by such means brought to that horrid, accursed, murderous Death and End; I cannot call it less than so, in relation to the Persons that brought him to it, under the Pretence of Religion. It was the Cry of Popery and Arbitrary Power, of which he was no way Guilty, tho' that was insinuated into the Minds of silly People, those ignorant Souls that were easily captivated with a base Lye; but that was the

Occasion.

Occasion. Many of you Gentlemen, that are yet in being, remember it your selves; and many of you have, and cannot but have seen and read the History of those Times, and have been so conversant with the Practices of these People since, that you are able to make a Judgment in the Matter. All these sort of Things are but Pretences, and fair shews of dangerous and seditious People; that which was most dangerous to us at that Time, and I am apt to believe will be so to the World's end. For when People come to guild over their bitter Pill of Sedition, it is always under pretence of Religion. For a lack-a-day, perhaps there were as many Rebels against the late King raised by the beating of the Cushion in the Pulpit, as by the beating any Drum in the Street; for it is well known these are the Bell-weather's of the Faction, that under pretence of Religion, come there to incense the People to commit all these Villanies that sometimes they are incited to do, as we know; and to prepare the Way to bring us into that condition, that we were in, in the late Times: And particularly, were used as Instruments to bring that blessed Martyr, King *Charles* the First, to the Block. These Pulpiteers took Occasional Texts, of binding their Kings in Chains, and their Nobles in Fetters of Iron; and raised up such Doctrines from Texts of Scripture, that were certainly intended for quite far other Purposes, to countenance their Practices, to make People kill and slay God's Anointed, under pretence of saving and protecting the Anointed of God. But who did they mean by it? Pray how did these People come to take upon them to preach against Popery, when indeed they were preaching down all manner of Religion, under the Pretence of that? So that you grew to have as many Religions as there were Sects or Dissenters in the Nation; and never any could be tolerated that were not grown into the Party, but they came all into Office, and the more extravagant the more prefer'd; so that without the Blessing and immediate Providence of God, by a second Resurrection, reducing us into some sort of Order, in restoring his Sacred Majesty (whom I pray God grant long to Reign over us; and so ought all Loyal Subjects to pray) what a miserable Condition had we been in? And I may call it a second resurrection, it being the Resurrection of our Religion; we were turn'd all into Confusion; we had no other Religion, at least apparently predominant, but that that had the strongest Army to support it, and that had force enough to contribute to what the luxurious, debauch'd Professors of it would make to be Religion; for they were the Professors at that time of all things.

Gentlemen, I speak this, because even the Laws that have been made since the Restoration of the King, have taken notice, that the beginning of all the Mischief hath been this; and that the great Incendiaries of all Sorts of Rebellion were these who took upon them in their Pulpits, under colour of Religion, to countenance Rebellion and Treason, Confusion and Anarchy. Now how far these things have been known to you all, that I must leave to you; and must betake my self a little nearer to the Case, having premised these things; to which I would add this as a Warning to all People; that they would not abet or assist in any Meet-

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ing against Law, or that is known to be against Law, whatsoever they think; for there will Mischief come upon it one time or another, let them pretend what they will. As that Gentleman says, he undertook to Expound, and teach his People the Knowledge of the Lord: the Knowledge of the Lord is a very good Lesson to be learnt, and to be taught all People; but blessed be God, we thank him for it, we have Church men of as great Learning, (without any reflection upon the Gentleman at the Bar) as he can pretend unto; and Men as Pious, and Virtuous; and perhaps we may say at this time, with a little more Confidence than ordinary, that we have as Learned a Clergy as ever was since Religion was known within this Kingdom. And God be Thanked, these Men are not only learned for themselves, but they exert themselves for the good of others, for the Satisfaction of that Duty in which they are employ'd, by their due and constant Attendance upon the Worship of God, in their Places of Worship, the Churches which are by Law appointed for it; and we need not run into Holes and Corners, and Conventicles, and Clans to understand the Word of God and the Practice of our Duty towards him, or towards Men; because we have Churches to apply our selves to, where we may learn to know God, to obey him, and them that are put in Authority under him; which I am sure is a Duty incumbent upon every Preacher of the Word of God to insist upon, and press and urge. And I am sure, whosoever preaches at a Conventicle cannot with a safe Conscience preach Obedience to the Civil Magistrate; because while they are in that very Preaching, they are acting Disobedience against his Laws; in regard what they do, is against the Authority of those Laws under which they live; and no Man can Preach well against that which he knows in his own Conscience, at the same time, he is practising himself.

So that Gentlemen, I must tell you this is a wonderful dangerous thing; and therefore I give it as a Caution to all People to beware how they break the Laws by going to such Meetings, and Conventicles as these are; for it will have at the long run one time or other a very dangerous Issue. And there is another thing which is wonderful dangerous too, to see what Shoals and Crouds of People come to these sort of Meetings; People of all sorts of mean Trades and Professions. And how easy is it, if a Man has a Mind to insinuate into some silly, ignorant People, common, illiterate Fellows that can neither write nor read, some of them; yet thereby to feel their Pulse, to see whether they will swallow down such a Thing, or such a Pretence at first? For they did not in the late Times begin with open Rebellion, and preaching the Doctrine of deposing of Princes, or bringing them to the Block; but they tryed with several previous Ways, and as the Bait sunk, and was suck'd in, they attempted to try further. They apply'd themselves perpetually to pursue the temper of their Auditory; and therefore we must have a great deal of Care to prevent all such Mischiefs as these are for the future, that they may give no countenance to such, who pretend to be Expositors, but are very ill ones of the Scripture; and thereby instill into the Minds of Men such dangerous and pernicious Doctrines; that the Scripture may not be per-

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versed,

verted, to give an Authority to such desperate Things as these are ; for we have known over and over how easily People are drawn into Mischief in this Age, even by the very same Train that they were, in the time of the late Rebellion.

Now, Gentlemen, these things being premis'd, I would take notice to you, that the thing now before you, is a Question of a different Nature from what I have now spoken of. It is not the Question that you are to try ; Whether he preach'd at a Conventicle or not ; or whether the doing of that which he did in to Preaching, is against the Law or not. But whether he did at any Meeting, (especially as to the time that is particularly specified) speak Words of the same substance, to the same effect and intent that are compris'd in the Indictment. For tho' he did Preach at a Conventicle, and thereby did transgress the Law ; yet in case he did not Preach to the Substance of what is contain'd in this Indictment that hath been read unto you, and that he is accused of, he must be acquitted. That I must declare to you for Law, as no doubt it must be acknowledg'd to me to be ; therefore you are to take care upon your Consciences, to try and consider whether or no you believe these three Witnesses that have been produced against him, swear true ; or are guilty of wilful Perjury. For in downright plain English, they are guilty of Perjury, if he be not guilty of the Words laid in the Indictment. One of the two is certainly true ; either they are guilty of Perjury, or the Prisoner at the Bar is guilty of the Treason laid to his Charge ; I pray God direct you in your Enquiry ; for it is a Question (I must needs say) of very great Difficulty.

Gentlemen, for the intention of a Man's Heart (I must tell you this for Law) as to the compassing and imagining of the Death of the King, it is not to be discovered but by some Action ; some Word or Overt Act, there might be to interpret the secret Imagination of the Heart. It is impossible to discover, or disclose the Imagination of any Man's Heart, except we be directed to that Discovery by Words or Actions.

Now Gentlemen, Words that in themselves may bear a good Construction, and are good Words, yet coupled with Actions that are Evil, or other Words that are Evil, these very Words may be a Discovery of the evil Imagination that is in a Man's Heart. As to express my self in a very familiar Example, for the purpose, that I may make things as plain as I can, for that is my design, and ought to be every one's that is concern'd in such a Matter as this. Because we have had some Discourse concerning the late blessed Martyr King Charles the First, he was here brought to a Shambles of Justice ; for I cannot call it a Court of Justice, however they called it a High Court ; and there was a kind of Mockery or Pageantry of a Tryal. He was Arraign'd and Try'd for Treason, and a new notional Treason, never yet invented nor known of before amongst us, Treason against his People ; I say, new and never thought of till these Butcherly Fellows that sprung out of the Shambles came to put it in Practice ; erecting what they call'd a High Court of Justice, but which was truly to be call'd a High Court of Injustice ; and there they were to have some come and cry Justice, Justice, Justice upon the King. Gentlemen, Justice is a good Word ; but if that Word be used and spoken as it was in that case, in or-

der to bring the King to his Death, that which was a good Word, and if otherwise used, had been a proper Word even at that time ; that is, if apply'd to good purpose, to set the King and the Nation free ; yet being apply'd to the bringing that Sacred Martyr to so horrid and barbarous a Death, that was plain downright Treason ; and I make no difficulty in the World, (nor can any Man that understands any thing) that it was so by Law ; and it was an Overt Act sufficiently indicating the intention of all Persons that were therein concern'd to put and bring the King to utter Death and Destruction ; and all these Fellows that made use of that good Word, Justice, Justice, Justice, were all undoubted Traytors ; making use of it for that ill Purpose.

Gentlemen, again ; Suppose if Mr. Cook was a Man of Law, that was Solicitor of what they call'd the Common-wealth at that time, Solicitor to the State, (I only speak this to explain my Mind) if he comes (when the King had just ground to dispute the Authority of that Court of Injustice, that he was dragg'd to, and refused to Plead) and does pray Judgment against the King, as he did, and it was proved at his Tryal. Judgment alone might be there meant as tending to excuse the King, as well as to Sentence him to Death ; yet he being there, praying Judgment against the King, and which was afterwards at his Prayer so pronounced ; that shew'd what his Opinion of the Word he used was at that time ; and that made him a Traitor, and was an Overt-Act to discover his Guilt.

Why so, Gentlemen, I am to tell you, tho' there are Words that may be used in a Scriptural Way very well, and to very good Purpose ; yet if they be applied to an ill Purpose, they may be a sufficient Indication of a Man's compassing and imagining the Death and Destruction of the King. Therefore, Gentlemen, you are the Judges, whether if in this case, he speaking these Words, of destroying our Enemies, and standing to our Principles, they have not an Allusion to the former Words ; and whether they are not Expositors of the Mind of this Person, the Prisoner at the Bar, of compassing and imagining the Death and Destruction of the King ; and I do this on purpose to remind you of what is necessary to let you into the Question.

Now for the Testimony against the Prisoner at the Bar, you have three Witnesses. First, you have Mrs. Smith, she does directly Swear that she did frequently, several times go between the 13th of July and the 14th of September, to hear the Prisoner at the Bar preach at several Conventicles or Places of Meeting. She tells you the particular Days ; She tells you as to one, that she heard him the 20th of July. She heard him another time the 10th of August, according to the best of her remembrance. She heard him again the 17th of August, the 24th of August, the 31st of August ; and she heard him the 14th of September ; that is according to the best of her remembrance. She both tells you the Time and the Place, and she heard him Preach at these Conventicles. All that she says as to this, is introductory to what she speaks of the 14th of September, which is the Day to which the Indictment does refer ; and this she does say positively, that upon the 17th of August, he pray'd that he might be forgiven for not Praying for the King ; and by that she would have you to understand, as she would insinuate, that he did not use to Pray for the King.

Mr.

Mr. Rosew. [*Turning to the Jury.*] I made use of the Words of *Samuel*, God forbid that I should cease to Pray for him.

L. C. Just. Sir, you must not talk to the Jury now; I am directing of them.

Mr. Rosew. My Lord, I beg your Pardon; it was to set the Matter right. It was mis-apprehended.

L. C. Just. All this is antecedent to the Matter for which he is accused; and you see his Answer to it, from a Text of Scripture that he offers to you, which he did not repeat with dislike to pray for the King; but that he thought it his Duty always so to do.

Then she tells you particularly at another time, which, I think, was at the House of one *Paul Shed*; I cannot particularly tell directly the Name; there was a talk of the Recorder, and of the Lord Mayor of the City of *London*; but that was before this time. And afterwards, the first and the second Witness, two of them more, give you an Account, tho' they were never there but then; That he began to talk about the Fire, and that he should say there was a great Man at the Corner of *Grace-Church street*, I need not name his Name, for you all know him very well; that he met with a poor Man, tho' indeed he was not a poor Man, he was a labouring Man, a Carpenter; and they began to talk much concerning the Fire, and he did say, that in case it had not been for that great Man, there had been no such Thing as the Fire in *London*; nor if it had not been for the Lord Mayors and Sheriffs afterwards, there had been no such thing as the Fire in *Southwark* and *Wapping*. And I take notice too, that at the same Place, which was *Shed's* House, that they spoke of, there is Mrs. *Farrar*, against whom there is not the least Objection that I can hear of; She agrees both in the Circumstance of Place and Time, and of the Words, and to the Dialogue about *Grace-Church street*, and the Carpenter; and to the previous Words, that he was not a poor Man, and the like; and about the Discourse relating to the Fires of *London*, *Southwark*, and *Wapping*; and likewise relating to the Lord Mayors, and Aldermen, and Sheriffs; these Discourses were at that time.

Gentlemen, the next Testimony you have, is of these Witnesses that speak of the Time that is in the Record; which all the three Witnesses that you have heard, speak to; tho' the most of what I mentioned before, was another Time: And this is at the House of one Captain *Daniel*; one says, Capt. *Daniel Weldy*. But that it was a Captain that was then at Sea, is plain; for this Gentleman himself, Mr. Rosewell, does not deny that this was at Capt. *Daniel's* House; and that he did pray for him, as being then at Sea, and for all his Family; and all the Witnesses speak to the same time. Tho' indeed the first Witness did say, that she did not know but it might be Capt. *Daniel Weldy*; but she likewise said, she did not directly know his Name. But she directly Swears to the very Words that are mentioned in the Indictment. She does directly Swear that Mr. Rosewell preached upon the 21st of *Genesis*. Says she as I remember; tho' Mr. Rosewell did think, there was a difference between the Evidence of the one and the th' other Woman about the 20th or 21st; yet it was only upon her remembrance, as well as she could, and she did not positively Swear it was in that place, but according to the best of her remembrance. And the second Wit-

ness Mrs. *Hilton*, when she come to Swear, she said it was either the 20th or 21st; but in so many Words she did directly Swear; that he should Preach that the People made a Flocking to the King on purpose for the Curing of the King's Evil; but the King could not do it; but we are they that the People should flock to for the curing of all their Evils. Which are the very same Words in Substance that are in the Indictment.

The very same Words in Substance, says that other, the second Witness; the same Day, in the same Place, did I hear Mr. Rosewell then speak these Words; and they go further, and the same Witnesses both Swear, *Hilton* and *Smith*, that Mr. Rosewell should say, *We have had two wicked Kings together, who have suffered Popery to come under their Noses, who can be compar'd to no other Persons but wicked Jeroboam*. Mrs. *Smith* Swears these Words directly, and Mrs. *Hilton* says, she thinks there was the Name of *Reboboam* mention'd; but she is sure there was mention of two wicked Kings, in the same Words as Mrs. *Smith* speaks. They go yet further, and say, both the one and th' other of them, That he said if the People would stand to their Principles, he did not doubt but they should overcome their Enemies as in ancient Times with Rams horns, broken Platters, and a Stone in a Sling. The two Witnesses, both Mrs. *Smith*, and Mrs. *Hilton* swear to the very Words, and at least to the Substance of them; and if there should be some little Variance in some few of the Words, that will signify nothing if the Substance be the same.

But now Gentlemen, besides these two Witnesses, there is a third Witness, Mrs. *Farrar*, against whom (that I can see) there is not the least Exception in the World, if you remember any, you would do well to consider of it; you may be better able to recollect what has been spoken or offered than I can in so long a time; and you ought to endeavour (being Men of Understanding, and good Quality) to refresh one another's Memories, and make what Observations you can; which I perceive you have taken Notes about, some of you at least.

She does directly Swear as to the business of the King's Evil, The same Words that the other two have Sworn, about flocking to the King to Cure the King's Evil which he could not do; But they were the Priests and Prophets that could cure the Maladies of the People. And as to the second Words, She swears that he said there had been two wicked Kings that had suffered Popery to come in under their Noses. And she Swears in the third place, That there was likewise an Exhortation to stand to their Principles, and that they should overcome their Enemies. She does not indeed particularly tell you about Rams horns, and the Platters, and the Stone in the Sling, but only of standing to their Principles, and overcoming their Enemies: Which I would have you particularly to take notice of, it being the material Part of the Indictment, to make these Words Treason.

Now Gentlemen, give me leave to tell you, there is great regard, and very great, to be had to the Circumstances in this Case; to see how far these things are to be tack'd together. First, you remember the Witnesses were examined apart. And it does not appear that they have talk'd together; and there was all the Care taken that possibly could be, they should be out of the Court, and out of one another's hearing; so that there was as much endeavour to detect the Fal-

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shood of their Testimony (if it could be) as possible in any case, even in the very most minute Circumstance. Mrs. *Smith* Swears, that Mrs. *Hilton* came to her House on *Saturday* Night; that they went together to the House of this Capt. *Daniel* upon the 14th, about Seven of the Clock; that they were there before Mr. *Rosewell* came in; that there was a Lower Room in the House; and a little higher there was a little Room; and then there was a Room up two Pair of Stairs, where there was a Bed; that Mr. *Rosewell* stood upon the Stairs, but they both sat upon the Bed, together with one of Mr. *Rosewell*'s own Witnesses, which was the Mathematical Instrument-maker, and that he was in a Mourning Cloak; and that there was particular notice taken of a Pair of Shoes given by Mrs. *Smith* from under the Bed to the Child of that Mathematical Instrument maker; and that there was Prayer made for Capt. *Daniel* the Master of the House, who was then at Sea, and for his Child and Family. There were these Circumstances, every one particularly asked of the Witnesses, and Sworn to by them in the very same Words, the same manner of Posture, the same Things done both as to the Room, the Bed, who sat upon the Bed, the Mourning Cloak, the plucking off and delivering of the Shoes; that I may appeal to your Memories, if they did not agree to a tittle exactly.

Then they began to enquire further concerning other Expressions of Mr. *Rosewell* at other times: Something about People in Scarlet, and something about Canting: And Mrs. *Smith* tells you, that he did speak something about Canting; that he was talking concerning that Word; says he, I will tell you what that Canting means; I went not long ago thro' a Cathedral where the Organs are, and there the People were gather'd together, and they were Singing the Lord's Prayer, and I don't know what; I heard them Sing, and I could not but laugh out; and he broke out in his Sermon into a He! he! he! that is Canting. This, they say, was his Expression at that time.

When Mrs. *Hilton* came in, she tells you the very same Words, even to a very particular Phrase which I had forgot before, that he saw the Men in white Gowns that were Singing, and which he counted Canting. It is very true, there is no such thing mentioned in this Indictment; but only it is offer'd by the King's Council to shew the Temper of the Man, and how he usually used to Preach.

As concerning the Story of *Sampson* and *Dalilah*, that's Sworn by both Witnesses, that there was such a Discourse; for he began to talk of our King's keeping of Women, and he hop'd that they would bring the same Destruction upon him that they had brought upon *Sampson*; he hoped it would so fall out with our King. How far it is true, (they both having Sworn it) you are the Judges; they have directly Sworn it, and to all the Circumstances both of Time and Place.

Gentlemen, There is yet another thing that is material too, tho' a small minute Circumstance, and that is about this same *Paul Shed*, that they have spoken of. When the first Witness came in, he chid her for coming in her Pattins, and bid her pull off her Pattins, for they would leave such an Impression there, that People would be apt to discover that there was, or

would be a Meeting; and therefore she promis'd when she came any more, that she would be sure to leave off her Pattins. And it is proved, that Mrs. *Hilton* and Mrs. *Smith* were in the Room above, and Mrs. *Farrar* was in the Room below, and it does not appear that she was acquainted with the rest. She had heard him several times, and tho' she did not see him that Day, he being up two pair of Stairs higher, yet she Swears directly to the same Words, the substantial Part of them that the other two Witnesses spoke of. So that I must say, if in case they have contrived this Story to take away the Life of the Prisoner at the Bar, they have contrived it with all the devilishest Subtilty that ever any could do, or that could enter into the Minds of any People. You are the Judges of the Fact, I pray God to direct you, that you may detect the Truth; far be it from the Court, or any body, to desire that any thing but Truth should prevail. For it were far better a thousand times that a hundred guilty Men should escape, than one innocent Man should suffer. But on the other side, far be it from any Man that is upon his Oath to do his Duty between the King and the Subject, to be moved by Compassion, or any thing of that Nature, to go against the Evidence that is given in open Court; unless he be satisfy'd that the Evidence is False. For in this case, I say again, either you must find the Prisoner Guilty of what he stands charged with in the Indictment; or else you must find these three Witnesses guilty of wilful Perjury: And I pray God again to direct you what you are to do in it.

Gentlemen, as to the Testimony that has been offered on the behalf of the Prisoner; (I would follow the same Method that has been taken, both in the Evidence given by the King and the Prisoner, as near as we can.) First, you have had brought by him half a Dozen, (for I would not injure him as near as I could one tittle) that have given you an Account of what he said at that time. There was *Hudson, Hall, Atkinson, Smith, Hales* and *Wharton*; I took their Names, as near as I could; and all these People do directly say they were present at that time, and they heard nothing spoken of the late blessed Martyr King *Charles* the First, or of Reflection upon the Government; but all that was said of the King's Majesty that now is, was in his Prayer, wherein he did pray for him; that they heard nothing come from Mr. *Rosewell* concerning the King's Evil in the manner that the Witnesses speak of; but what was spoken, was spoken of another King, in relation to *Abimelech* King of *Egypt*, and not relating any way to the Disease they call commonly amongst us the King's Evil. It is true, one of them does say (which is a Word that has obtain'd very much amongst some sort of People) that when he pray'd for the King, he pray'd for his deliverance from evil Counsellors: And under these Words, evil Counsellors, and deliverance from them, we know what became of that so often mention'd Prince now, King *Charles* the First. Under that Pretence they would remove all his Friends from him; and when he was left alone they could easily do what they pleas'd with him. Many with pretence of great Pity and Zeal for the King, cry out that all that they complain of, is not of what the King does; him they think to be a wonderful good Man; it is not he, but his evil

evil Counsellors that they reflect upon; and so we must fight against these evil Counsellors; and when we have laid them aside, and he stands alone, then it will be easy to serve him as they did his Father. Whatsoever the Pretensions of such Words are, we know what the Designs of the People that made the same Pretence heretofore came to; and I pray God that there are not the same Designs on foot still; nay, that that was not the Design of this Prayer of the Prisoner at the Bar.

Gentlemen, they give you a particular Account how he preached upon the 29th of *Genesis*; and they speak as to the 2d and 7th Verses of that Chapter, and what Discourse he had upon them. But truly it is pretty strange (as Mr *Rosewell* himself objected even to you of the Jury very well) can any one of you remember so exactly the Words that were spoken as these Witnesses have Sworn? and truly he puts a very material Question: But then the Question turns to other way; how come all your Witnesses to give such an exact Account; all except the second Man, who indeed did commit a Blunder or two, your Six Witnesses, even to the Texts of Scripture, to the very Phrases that were used, particularly to the Word *Tremendous*? they are all as exact as can be. It is strange that five People should agree in all the Circumstances; but why should it not be as much believable that three should have as exact a Memory as the other five? Nay, and I will tell you what is pretty strange too, that these People must hear, and remember just what was said upon the 14th of *September*; but that which was said upon the Text the time before or after, that they cannot so well remember. It is plain they have been dialogueing with one another; and it is plain, that some People can neither write, or read, nor remember, but how they shall be sure to serve the present purpose. That seems to carry an Objection in it on the other side, as the King's Council say; and it seems the more reasonable on Our side why they should remember so exactly, as they have Sworn; because, (say they) that Day when we came home, we call'd for Pen, Ink and Paper and set down these Words, the Substance of which we have now here Sworn: So that that does shew you we had reason to remember what we have testify'd against this Person. But what is yet greater than all this, it cannot be imagined, (say the King's Council) that the Prisoner's Witnesses are so much to be believed, since they give no Account of what was spoken at any time before, nor any time since.

Then, Gentlemen, there is another Reason, says Mrs. *Smith*, I came on purpose to see who was at the Conventicle; tho' I had been at several Conventicles before, yet I never heard such Words spoken. Says Mrs. *Hilton*, I was glad to be gone: and tells you of her unwillingness to stay there, having never heard such Words spoken against the Government before; and therefore she set them down immediately as soon as they came home; and they went together to the *Bull and Mouth*, the *Quakers* Meeting near *Aldersgate* afterwards; and that that Day, or the Day following, they went to Mr. *Recorder*, and gave him an Account of what had past in their Knowledge. This is the Answer that is given by them to what the Prisoner's Witnesses say; But you are to weigh this Testimony of both Sides. For

I must tell you, Gentlemen, tho' these Witnesses that are for the Prisoner are not upon their Oaths, yet they are as much under the Obligation of giving true Testimony, as they can be by Law; and you ought to have regard to their Testimony; how far it is consistent with Reason and with Truth. Some things they differed in; some things they heard in another manner; whether you believe such things may slip out of their Memories, or how that is, you are to consider of it. This, Gentlemen, is the first part of the Evidence that the Prisoner hath given for himself.

Next, Gentlemen, There is another part of the Evidence, and that is from the Fifteenth Witness, one Mr. *Jolliff*, Captain *Cotton*, Mr. *Fips*, Mr. *Veering*, Mr. *Hitchcock*, Mr. *Hinman*, Mr. *Wanley*, Mr. *Strong*, Mr. *Cutloe*, Mr. *Melsum*, Mr. *Medbam*, Mr. *Winnacott*, *Anne Broadhurst*, *Anne Manning*, *Isabella Dickeson*; all these were call'd to his Reputation, as to his Behaviour and Conversation towards the Government. They tell you that they have known him a long time. It seems they frequented the hearing of him sometimes, when there was an Indulgence and a Dispensation for such Meetings; then they went to hear him; and then he used to pray for the King; and it has been observed, that, it may be, meeting with favour and kindness from the King and Government he might be very well pleased with the King at that time; tho' that turn'd to the Prejudice of the Government, (as we all know.) But whether his Complexion alter'd towards the Government, when it was thought fit to restrain that Indulgence; that you have to consider. They say they know nothing of Harm by him, and that may be true; no more do I; and I presume you do not; if you do you will tell us. You and I pray God we had never heard of any thing of Harm come from him with relation to the King and Government; but you have heard what has been testify'd by these Witnesses.

Then there came two Witnesses that lived at *Sir Edward Hungerford's*, when the Prisoner at the Bar lived there; one of them lived Ten Years there, the other Four. And they give you an Account how he was used to Pray (not according to the Common-Prayer, but) he used to go to Church, and he did Pray for the King very earnestly and heartily, as they say; he came there in the Year 1664, and he continued there Seven Years, and they always look'd upon him to be well-inclin'd to the Government.

Then you have an Account of three Servants that lived in the House; one lived four Years with him, and that she frequently heard him pray for the King, (for I would not willingly forget a Word that should make for the Prisoner's Advantage) she said he prayed as earnestly for the King as for his own Soul; with as much zeal and earnestness as he could do; this is what she says. And the second lived with him three Years, and she does remark particularly, that one time being in private in his own Closet, at Prayer by himself she heard him very earnest in Praying for the King: So that he would urge it as improbable; and unreasonable to believe, that if he, in his private Family, and by himself should so earnestly pray for the King, (which was never intended to be heard by any body, and came to be thus heard by Accident) he should in Publick, before a great Congregation, utter such

such Words against the King and Government, as are pretended against him. This is the use he makes of that.

Then, Gentlemen, you have likewise afterwards the Testimony of those two Witnesses that had been examin'd before, that is Mr. *Atkinson* and Mr. *Smith*; that whereas you seem to say, says he, I made a great Reflection upon the late King and his present Majesty; it was so far from that, that I used to Teach upon the 30th of *January*; and then to preach Obedience to the King, and to pray for the King, and make sharp Invectives and Reflections upon those that had been concern'd in that horrid, barbarous Murder of the late King of blessed Memory; so that I cannot be thought to encourage such Things as these, when I used to preach to my Auditory such Doctrine as I now tell you of. This is the Substance of that part of the Evidence, as near as I can remember, and recollect; you have taken Notes, Gentlemen, your selves; you will be able for to make Observations, according to what Notes you have taken.

Then Gentlemen, here are eighteen Witnesses that he has called to endeavour to perswade you to a disbelief, and gain a discredit as to the Witnesses that are produced against him. Now as to that, which was offer'd by the first Witness *How*; that was but by Hear-say, he knows nothing of his own Knowledge; for my Brother, Sir *Thomas Fenner*, he gives you an Account of all the Questions that he was asked about; that she never did say that she was present at the Conventicle, but that Mrs. *Bathoe* had confess'd it to her; and upon that Confession she was Convicted. Now Gentlemen, it is a very untoward thing in this Matter, that Mrs. *Bathoe* it is plain used to have Conventicles, and she is the Widow of a Non-conformist Preacher, and this Woman was so far from saying, that she was there; that she only insisted upon it, that Mrs. *Bathoe* had confess'd it to her. So likewise you have been told concerning that Business of Mr. *Hales*, the Conventicle at his House on the 13th of *July*; it was so far from her Swearing that Mr. *How* was there, that tho' he was mention'd, yet she refused before Sir *George Treby* to Swear that there was any such Conventicle, or that he was the Man; she did not know the Man, and could not say any thing to him. And my Brother *Fenner* being convinc'd that there might be a Mistake, that there might be no such Conventicle at Mrs. *Bathoe's*, went as far as he could to retrieve it; but it seems it was past from him into the Clerk of the Peace's hands; I cannot say any thing to it: But if you are satisfy'd that there was no such Conventicle at all, all that can be said is, that the Old Woman bely'd her self; and my Brother *Fenner* as to an Accommodation between them did resolve to do what he could, and promis'd to speak to the Clerk of the Peace: Not but that for any thing yet appears, this Woman that is here brought as a Witness against Mr. *Rosewell*, did swear true, That that other Woman did confess to her, that there was such a Conventicle; they indeed have endeavour'd to evince there was no such Conventicle. I must leave it to you; for nothing appears clear of the one Side, or the other.

Then Gentlemen, as concerning her talking with, and about one *Games*; wherein you had

an Account given you by one *Harvey*, and he advised to give Money rather than to be troubled; but they would not give Money. Now, for that the whole Answer (that it may be given together) is that you know the Prosecutor in these Cases, has a Share out of the Penalties that are incur'd by Conventicles; and tho' it may be that it was not so well done by such Informations to compound Penalties, yet it is no Evil Thing: For if I will choose to inform or not inform, there is a right in me to a Part of the Penalty arising from the Offence: And tho' it be not a commendable Thing, yet it is not a criminal Thing for me to Compound it; for I do not observe that they are proved to be People that do use to go to Conventicles.

Then Gentlemen, There is something to be observed concerning the Evidence of *Cartwright*; He comes and tells you, that he was by, and one of the Persons that went along with Mrs. *Smith* to several Places, in order to make Convictions of Persons for Conventicles; and she would have him Swear such and such Conventicles that she would dictate to him; and she promis'd and offer'd to Swear for the Conviction of Conventicles when she was not there: And this was a great while ago; but no body heard a Word of it till now, and that when Mrs. *Smith* was engaged in this Prosecution against Mr. *Rosewell*. Now when we meet with this sort of People, we ought to consider of the Nature of their Evidence. It is certainly a very improbable thing, that any Person should come and tell him, I will be Guilty of Perjury, I will be forsworn for you, if you will be forsworn for me. It can hardly be believed that any body should say so to a Fellow that you see is likely enough to detect any such thing, if it should be for his Advantage: And it had been his Duty (if he had been an honest Man) to have discovered this to a Magistrate immediately, and detected it, so as that the Villany should have been punish'd; not to come and serve a turn upon such a Tryal just as this is. And therefore Gentlemen, I do not like such accidental Witnesses that seem to drop (as it were) out of the Clouds, and we can have no Account of them before. You have no Satisfactory Reason how he comes in now to make this Discovery: Here you have several other Witnesses that were before, that give some Account of her Behaviour in these Matters.

As to the Conviction that they talk of upon the 13th of *July*; several Witnesses give you an Account of the Matter. First of all it is very apparent by that Book that is produced, That there was a Conventicle the 13th of *July*; and it was at Mr. *Hudson's*; but indeed it was not at Mr. *Hale's*; and it is not alledg'd hereby her that it was so. And for that other, my Brother *Fenner* gives you an Account that upon the Confession of Mrs. *Bathoe* there was a Conviction; but there was no such Conviction of *Hales* in the Case, but only of *Bathoe*; as appears by the Record which hath been produced.

Then Gentlemen, the next Question is concerning the Clerk of the Peace, and the Writing that they talk of; which makes nothing one way, nor t'other. Then there are two Witnesses, *Drew*, and the other Man, that meet with this Woman, Mrs. *Smith*, in *Grub-street*, in order to make a Composition for Penalties for going

going to Conventicles; and they find out a Fellow that used to go to Conventicles, and they frighten him into a Composition, and so much as they say, was paid perhaps, and he ought to have paid more: But it's plain, he used to go to Conventicles; and it's pretty odd that he should be pick'd up on a sudden there, on this side the Water, to discover these Practices at the Instigation of the Prisoner at the Bar, who lives at such a Distance on t'other side of the Water.

Then Gentlemen, as for Mrs. Higgenfon, I can only say this, she says nothing to the Purpose, that is either material for or against the Prisoner; for she said, she knew nothing of her own Knowledge; and all that she did say, was but Hear-says and Reports, not by way of down-right Accusation against the Person she was produced against. And Gentlemen, you are to consider that Hear-say and Report is no Evidence at all; but it must be what the Witnesses know, and say of their own Knowledge.

The next is a worthy Gentleman, Sir John Talbot, and as to whatsoever he said, or any of his Family told him, except he knows it of his own Knowledge, that's no manner of Evidence at all to take off the Credit of Mrs. Hilton. But what she her self did say, (if it can be testify'd) is Evidence against her. If she confest that she had any Design, or was ingaged in any Practice to betray the young Lady Sir John Talbot talks of; that indeed is a very evil thing. But whatsoever were the Apprehensions of others concerning her share in that matter; or any of the little things that they talk'd of concerning Mistress Hilton before she intermarried, it can signify but very little in this matter. And when we ask Sir John Talbot the Question, he cannot give any Satisfactory account of it; for he says plainly, he had no Conversation with her. It seems it was not a Contrivance while she liv'd there for ten Years together; and it is pretty hard to imagine in such a Case, if she had been such an evil Person as they would represent her, in that time that it had not appeared, so far at least as that she had been discharg'd the Service long before: For Sir John Talbot is a Person that cannot be thought to permit any thing of ill in his Family. But yet withal, he can't know all that passed, any more than any of you of Irregularity in the Family. If indeed they had question'd any of the Servants that were more conversant with her, and taxed her of any thing that was Evil, then it had been a much more probable Exception; but to have Peoples Reputations blasted barely by Tittle-tattle and Stories, after Persons are gone out of a Family, where they have liv'd for many Years, is a matter of very dangerous Consequence; and any Man in the World may be injur'd in his Credit, if such a thing be permitted. What Sir John Talbot speaks of his own Knowledge, that is Evidence, and we would hear it, and give all due regard to it: But what was spoken of concerning Hilton, before she was married; what the rest of the Servants said concerning her; or the general Reputation that she had in the Family; that's no Evidence at all.

Gentlemen, in the last place there is a Witness produced, one Dillingham; and she pretends that she is a Woman of a very ill Reputation; and that she would have hired her, (as she would have it believed) to have sworn against several People. Now as to that, she would have

done exceeding well to have made a Discovery of this before this Question; and it had been her Duty so to do; and not now to come, and drop in, just when this Question comes to be debated before you: That Gentlemen, draws a Suspicion along with it, and a very great one: But I must leave the whole matter to you, which I do not question but you will examine, and look into, as well as you can. Thus I have offered the Evidence that has been given on the one side, and on the other in point of Fact.

Now Gentlemen, there are some Remarks made by the Prisoner at the Bar, (as God forbid but he should have the Advantage of whatsoever can be observed upon the Evidence given against him) that is, he makes a Difference between the Testimony of the one and the other of these Witnesses, about the 20th or 21st of *Genesis*; that the one said the 21st, the other the 20th. Now it is to be observed, as has been said, that she that said the 20th, which was the second Witness, said, it was either the 20th or the 21st; and Mrs. Smith said it was so to the best of her remembrance; but it appears to be, and so I perceive, by all the Witnesses, upon the 20th; so that as to her it cannot be very material, because she does not swear positively, either the one or the other.

Then Gentlemen, there is another thing, that is, that she should talk of one *Weldy*, Captain *Weldy*, or Captain *Daniel Weldy*, when it seems his Name was not *Weldy*, but his Name was Captain *Daniel*; which I think can go no great way in the Case. She is not acquainted with the Man himself; she tells you one part of his Name right; describes the House in all the Parts of it; and speaks of the Circumstance of his being at Sea, and being pray'd for by Mr. *Rosewell*; therein they do both agree: So that tho' she apprehended that his Name might be *Daniel Weldy*, yet it is so far right enough that it was one Captain *Daniel*; and that is a very small minute difference, that will make little one way or other.

Then Gentlemen, he insists upon the difference between their Evidence about that Circumstance, whether it was all upon one entire Subject; or part one part of the day, and part the other. One of them says it was not an entire Discourse; for that about the Rams-horns, and the broken Platters, and the Stone in a Sling was after Two o'-Clock, after the interval that had been, and the space of time between the Discourse of the King's Evil, and those other things; and therefore, says Mr. *Rosewell*, whereas she pretends that it was all spoken at the same time, just as it is laid in the Indictment, that cannot be; and so it appears upon his own Evidence. Now, says that Woman, I can't so well tell whether it was Forenoon or Afternoon; and truly they might call it Forenoon, because they had neither Eat nor Drank; and says the Woman, we reckon that it's Forenoon till after we have Dined; and she cannot tell whether it was in the Psalms, or whether it was upon the Chapter; but it was in that Discourse that he held that Day. She does generally apply it to the whole; and that in that Day's Discourse (all which time she stay'd, till all was over) such Words did pass. You have heard the difference that is between the two Witnesses, and you will do well to consider of it, if you think there is any thing material in it.

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Gentlemen, I must confess it carries a notable sort of Testimony in it, of which you are Judges, and will weigh it according as it ought to be weigh'd: *First*, That these People should luckily hit together concerning the King's Evil, and that there was such a Discourse as is laid in the Indictment about it; and of the Prophets praying for the People for the Cure of the King's Evil, and then they should be immediately heal'd. And on the other side, it is pretty strange (as he urges for himself) that that should be perverted which he spoke concerning the Prophet's praying for the King, and thereupon his Hand being healed, whereby the Prophets have the Honour, (as he says) some time by Prayer, of curing the King's Evil: So that something or other there is in the matter that gives a mighty countenance to what the Witnesses speak. There is a certain sort of Occasion given (as one would say) for such Expressions as they have testify'd, in his Discourses.

Then when they come to talk concerning the Rams-horns, and the Platters; the Witnesses say, we heard nothing concerning Platters, much less of Pewter Platters; no, it was broken Pitchers, and that was occasion'd by, and had relation to a Text, (says Mr. Rosewell) about *Gideon*, how easily he discomfited the *Philistines* Army, and there was no such thing as any Discourse concerning the King or the Government, or any relation thereunto; it was only a Phrase used by me in the Pulpit, to shew how great a matter might be done by little means. And so likewise concerning the Stone in the Sling, that being an occasional Instance too, what great Miracles have been brought about by little Means and Circumstances: I have instanc'd in that (says he) how *David* kill'd *Goliath* with a Stone out of a Sling, and that our Saviour *Jesus Christ* cured the Blind man by a little Spittle mingled with Clay. So that he would insinuate, that those Words that were spoken were not with any such Intention as the King's Council would make it, and as the Indictment insinuates; but only in a common, ordinary Preachment, as Inferences from such and such Scriptures. And whether this that he talks of was the Discourse he held at that time; or what the Witnesses speak, must be left to you; they having sworn it. And this (as I take it) is the Substance of the Evidence given by the one and the other side.

Then Gentlemen, Mr. Rosewell put the Question in the Morning, and he seem'd to insist very much upon it in Point of Law, that the Discourses of a Mad-man cannot be Treason. It is true that such Discourses cannot be Treason, if you take (Mad-men) in the true sense that the Law commonly takes it. All Traytors, all Knaves and Villains, are some way, and in some sense Madmen; for no Person can act with any Reason in any such Affairs. Treason is not to be committed upon the foundation of Reason. Therefore upon his asking of the Question of the Witnesses, what Reason there was for him to use such Expressions; I told him, you did it, according as the Indictment says (which is drawn according to the Prescripts of the Law) by the Instigation of the Devil; you did it, not only without Reason, but against Reason. But if the bare saying that it was against Reason, and that therefore a Man was a

Madman, would serve the turn, there would be no Traytor according to that Rule; because every Traytor would be a Madman. Every Traytor is a Madman; but every Madman is not a Traytor. A Madman, in our common Acceptation, is one that is captivated in his Senses, not one that is corrupt in his Will and Affections, which must be the Definition of a Traytor: So that the Argument, I must tell you, is fallacious. Every Man, that is depraved in his Mind and Affections, is a Madman, so as to be an Enemy to the Government, or to Mankind; but he is not such a Madman, as is commonly meant by that Word; one whose Words may be mistaken, because of some disorder in his understanding; so as to be excus'd from the Accusation of Treason. Therefore whatsoever consequence there may be of the Thing, I must tell you, all Men that talk after this rate that this Person is accused to talk in his Pulpit, they are every one Traytors, and so Madmen; for every Traytor is a Madman: And if in Case Mr. Rosewell be Guilty, he is in that sense a Madman. It is true, in other Things you find him a Man of very notable Understanding; a Man of a very great Insinuation; one that has a great deal of Knowledge in the Tongues; look'd upon to be a very learned and ingenious Man; who was thought fit to be a Tutor to Sir *Edward Hungerford's* Children; and has had very many learned Discourses, and shewn himself to be a Man of very great Parts. Tho' if he be a Traytor upon this Evidence that is given, he is *eo nomine* a Traytor, and consequently a Madman for preaching and publishing such Doctrine as this; that will not serve to excuse him from his Treason: But the rather, because he is a Man of so much Learning, it aggravates the Treason; as it must needs do to any Body in the World that considers it. For he under that pretence offering to preach his Doctrine, as Gospel-truths to ignorant People, (it seems 300 or more, of all Trades and Perswasions) whose Duty it was, according to Law, to have been then at Church; Men of Strength and Ability of Body, as they appear to be, for the Service of the Government; for these People to be debauch'd into such Doctrines as these, of *Standing to their Principles*, against the Government; the more learned the Man is, the greater and blacker is the Crime of that Man that is guilty of it. God knows whether that be Mr. Rosewell's Case, and you that are of the Jury are to try it: To do it under pretence of preaching the Gospel, is the worst way of doing it that could be taken; to quote Scripture for Rebellion adds to the Crime; as it did to that of those black Villains that were concern'd in the Murder of our late dread Sovereign, who has been so often mention'd; they were generally the Preachers of the late Times that contributed to that horrid Villany.

Gentlemen, it is notoriously known to you in this accursed late hellish Conspiracy against his sacred and most merciful Majesty, our Sovereign that now is, (whom I pray God long to reign over us,) those that had an hand in the Intention to destroy him, and his Royal Brother, were a great many of them black-Coat Dissenters to the Church of *England*; and I cannot say I know any one Member of the Church of *England* that had any hand in it at all. How many of them stand now convicted by Out-lawry

lawry for that bloody Treason; I won't say all Parsons, but generally all of them Dissenters; and we know these are those base, profligate Villains, always made use of in these base Sinks of Rebellion. And they are the common Sewers of Faction; these Conventicles are, and of Treason and Conspiracy against the Government in Church and State. God be praised, we have a Religion that teaches us much better; a Religion established by the Laws of the Land, and with that Decency of Worship, and Care of the Souls of Men, that may bring us all to Heaven, by the Grace of God, if we please to hearken to the Dictates of it, and to mind what is enjoyn'd us our Duty by the Law; but when People are once deluded by the Insinuation of such false Teachers, and run into Faction and Discontent, then they'll soon run into Rebellion too. And I speak this the rather to deter and give warning to other People, to have a care how they come near such Places, and such Practices, than to affect you.

Gentlemen, here you have had three Witnesses examined against the Prisoner, who stands accused for a Crime of High Treason. I must confess, I have taken up a great deal of the Time; and a great deal of the Time was taken up before; but there's no Time too long, wherein a Question of so mighty Moment as this is, is to be decided: The Government, the Preservation of our King, the Preservation of our Religion, the Preservation of our Laws, are all concern'd: For by the Destruction of our King and of our Government, our Religion, and all that is near and dear to us in the World, will run a great Hazard, if not come to a total Destruction; and I am sure it did come near to it in a former Time, by this very sort of way. Therefore I enjoyn you, in the Presence of the Almighty God, let neither Displeasure, nor any sort of personal Animosity, in any thing, that has been contracted by Hearsay, from abroad, nor any Imaginations that have been suggested here without proof, any way direct you in the Consideration of this Cause against the Prisoner at the Bar: But go according to the Evidence that has been here before you, on the one side and on the other side. For as on the one side you are not to be corrupted by common Talk, or any Prejudice against a Party or a Faction; so are you not to be misled by any Affirmation or Reflection, or Comment that the Prisoner has made or said for himself, other than what is supported by the Testimony of these Witnesses that he has produced, and whose Evidence is left to you to consider: For you must not be led by any Circumstances, or by Discourses; but what's sworn on the one side for the King, or testified on the other for the Prisoner. And therefore I can with all Freedom and Zeal for the Government, and all due Compassion to the Prisoner at the Bar (whom with all my Soul I am sorry to see accused, or indeed any Man, of such a Crime,) leave this matter entirely upon the Evidence that has been given. And tho', I say, I am sorry to see him accus'd; yet such Transgressions are aggravated now, when we live in an Age, wherein we have all Peace and Plenty, while the rest of our Neighbours are wallowing in their Blood round about us; some we have heard of are brought to the Necessity of eating the most filthy and basest Animals, that never was design'd for the Food of Man: I

say, when all our Neighbours are groaning under the Miseries of War, (blessed be God) we live and sleep quietly under our own Vines; we enjoy the Benefit of being Subjects to a gracious King; we enjoy the full extent of our Laws, which are sufficient to secure our Liberties and Properties; and no Man can be brought (no, not one of the meanest Subjects the King has) to such an untimely End, but by the true Methods of Justice.

He is to be try'd by you, Gentlemen, who are Gentlemen of Quality of the County where the Fact is alledged to be committed; against whom he might have made his Challenges and Exceptions, if he had any reason, as he did against the others (according to the Liberty the Law allows him) without any reason. So that you stand indifferent between the King and the Prisoner at the Bar, to try this Cause, whether he be Guilty, or not Guilty of the Treason of which he stands accused. In case the late intended Rebellions and Insurrections had taken the designed Effect, according to the Doctrine preached in these Sermons, of standing to Principles and overcoming Enemies; and what several of his Brethren who stand now accused of, and are upon Prosecution (and for ought I know every one of them might be actually engaged) I say, in case such a thing had been, there had been nothing but cutting of Throats; there had been no Justice for any Subject to have expected; no Methods or Proceedings of Law; but Destruction would have come upon us like an armed Man.

Therefore, Gentlemen, as the Evidence has been long; so I hope you will give me your Pardon, that I have been the longer in insisting upon it; and according to my best Understanding and Memory, I have given you the best Account I can both of the Evidence for, and against the Prisoner. You are Judges of the Fact; and I pray God direct you, and guide you and your Consciences, that the Truth may be discovered by your Verdict.

Mr. Rosewell. May a Loyal Subject speak, my Lord?

L. C. J. No Mr. Rosewell; after the Jury are charged by the Court, you are not to say any thing. Swear an Officer to keep the Jury.

(Which was done.)

Then the Jury withdrew into the usual Room for such Purposes, to consider of their Verdict; and afterwards they returned into Court.

Clerk of the Crown. Crier, take the Appearance of the Jury.

Crier. Sir George Sheers:

Sir George Sheers. Here.

Crier. Vous avez Sir George Sheers, &c.—

(And so of the rest.)

Cl. of the Crown. Gentlemen, Are you agreed in your Verdict?

Jury. Yes.

Cl. of the Crown. Who shall say for you?

Jury. Our Foreman.

Cl. of the Crown. Thomas Rosewell, Hold up thine Hand. (Which he did.) You of the Jury, look upon the Prisoner. How say you? Is he Guilty of the High-Treason, whereof he stands Indicted, or not Guilty?

Foreman. Guilty.

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Cl. of Cr. What Goods or Chattels, Lands or Tenements had he at the time of the High-Treason committed; or at any time since to your Knowledge?

Foreman. None that we know of.

Mr. Rosewell. Then the Lord have mercy upon the Jury. My Lord, I humbly request this Favour, that they may be asked *separatim*, whether they be all of the same Opinion.

L. C. J. That's never done, *Mr. Rosewell*, unless there be any difference suggested from amongst themselves:

Mr. Rosewell. I ask it in regard to them themselves; for I have heard many times the Jury go by the major part; and I would know whether they be all of that Opinion. Therefore I beg they may be asked that Question.

L. C. J. You must be contented, *Mr. Rosewell*; in case there were any difference, we should hear of it from amongst themselves.

Cl. of the Crown. Then hearken to your Verdict, as the Court has recorded it. You say that *Thomas Rosewell* is Guilty of the High-Treason whereof he stands Indicted; but that he had no

Goods, Chattels, Lands or Tenements at the time of the High-Treason committed, or any time since, to your Knowledge; and so you say all?

Omnes. Yes.

Cl. of the Crown. Gentlemen, the Court dismisseth you.

L. C. J. Marshal, you must take him into your Custody, being now Convicted.

Mr. Rosewell. My Lord, I would heartily beg, for the Jury's sake themselves, that that Question may be asked of them.

L. C. J. We must not indulge any Innovations. It is not usual. You may ask them, if you please; see whether they will answer you. We must go according to the Forms of Law.

Mr. Rosewell. Then, my Lord, if all these Gentlemen's Estates were joyn'd in one, I would not change Conditions with that Man of them who should possess the Whole.

L. C. J. *Mr. Rosewell*, We must have no Reflections upon the Jury.

Then the Prisoner was taken away, and the Court broke up.

Die Lunæ 24 Nov. An. Dom. 1684: B. Regis.

Dominus Rex vers. Rosewell.

THIS Day *Mr. Rosewell* being brought up to the Court, to receive Sentence, the Court proceeded as follows.

L. C. J. Brother *Fenner*, have you any thing to move?

Mr. Ser. Fenner. My Lord, we wait upon the Prisoner at the Bar to desire Judgment upon the Conviction that was here the other Day for High-Treason.

L. C. J. Against the Prisoner at the Bar do you mean?

Mr. Serj. Fenner. Yes, Sir.

L. C. J. Then call him to his Judgment.

Cl. of the Crown. *Thomas Rosewell*, Hold up thy Hand. (*Which he did.*) Thou hast been Indicted for High-Treason, in compassing and imagining the Death of the King, and the Subversion of the Government: Upon that Indictment thou hast been Arraign'd: Upon that Arraignment thou hast Pleaded not Guilty: And for thy Tryal thou hast put thy self upon God and thy Country; which Country has found thee Guilty. What hast thou to say for thy self, wherefore Judgement should not be given against thee, to die according to the Law?

(*Then he was made to kneel and rise again.*)

Mr. Rosewell. My Lord, I humbly hope that your Lordship will not give Sentence against me upon this Indictment; considering the Circumstances of it. I have, my Lord, protested to this Honourable Court in the Presence of the great God, the Searcher of Hearts, my Innocency in this Case; but I have been found Guilty by the Jury on whom the Lord have Mercy. I do still protest my Detestation and Abhorrence of the Fact, even in my very Soul; and I do humbly beg your Lordship and the Court to compassionate my present Condition; and with humble Submission to your Lordship, I would

enter into my Discourse upon that *Hypothesis*; for I would be still taken thus, even in this Conviction to deny the *Thesis*; that I ever was guilty of speaking such Words as are laid in the Indictment. But upon the *Hypothesis*, supposing that I were Guilty, I do humbly conceive that these Words, as they are laid, are not Treason. They are very foolish and ugly Words; and may be a very great Misdemeanour in Law (if true, which still I must over and over again insist upon) but they are not Treason. And I beg your Lordship will do me the Favour to let the Indictment be read once more.

L. C. J. Ay, with all my heart.

Mr. Rosewell. I humbly thank your Lordship; I desire it may read in Latin.

L. C. J. Read it to him in Latin.

Surrey J. *Furatores pro Domino Rege super Sacramentum suum presentant, &c.*

(*The whole Indictment was read.*)

Mr. Rosewell. I humbly thank your Lordship. There are some things that I shall offer to your Lordship in Arrest of Judgment out of this Indictment; and I request your Lordship to hear me with Patience, being here for my Life. I pray Judgement may be arrested for these Causes: That there is not any Crime sufficiently set forth for your Lordship to give Judgment upon. My Lord, I humbly take it for granted that in all Indictments of Treason, there must be some particular Matter of Treason assign'd; and that it is not a sufficient Indictment in general, that a Man did intend to depose the King, or to raise Rebellion, without some *Overt-Act* positively asserted to be done by that Person; the general Intention being only an inducement to the Charge. The special Matters that set forth the particular Acts of Treason are those that make the real Charge, upon which the Court and the

Jury

Jury are to proceed. Now, my Lord, if that special Matter that is alledged be insufficient, with all humble Submission, tho' there be never so many such sorts of Facts proved, and found by the Jury, the Party cannot be convicted of High-Treason: For in this case the Party has the same Advantage to except against the particulars alledg'd, to prove the general suggested Treason, as against the general Treason it self. Now, with humble Submission, my Lord, again I say, that the Matter here suggested is insufficient; as will evidently appear by what I am going to offer to your Lordship.

The first and principal Objection that I have, is against the *Inuendo's*, which are so many and so strange in these Words that are alledged against me. These *Inuendo's*, my Lord, I say, are naught and void; and I presume that it will be allowed to me upon reading of the Words by themselves, as bad and as foolish as they are. Without these *Inuendo's*, there could nothing be made out of such Words as these are, neither Treason nor any thing else.

Then, my Lord, in the second Place laying aside the *Inuendo's*, I must insist upon the repugnancy and insensibility of the Words laid in the Indictment, being in *Latin*, and such *Latin* as I believe your Lordship never saw; and upon these two Points, I desire that Judgment may be arrested; and I humbly pray Council may be assign'd me to make them out in better form.

L. C. J. What say you to it, Brother *Fenner*, and the King's Council?

Mr. Serj. Fenner. I cannot see that he has alledg'd any Objection which here requires an Answer from any of us that are of Council for the King.

L. C. J. Yes, Brother; Methinks he does.

Mr. Att. Gen. If he does pretend to object against any of the Overt-Acts alledg'd in the Indictment; your Lordship observes, this Indictment is upon the Statute of the 13th of this King, wherein Words are made Treason, if they intend any Hurt or Imprisonment to the King's Person. For his Objection as to the *Inuendo's*, he does not assign wherein they are repugnant or insufficient. He does assign in particular, indeed, that it is insufficient, being a general Crime; which yet he does not say is not sufficiently laid; for it is said, that he did compass and imagine the Death and Destruction of the King: And to effect that compassing and imagination, he did speak such and such Words, which by the Statute are made Treason, if they tend to attempt by Preaching or Writing any Imprisonment or Harm to the King's Person. Then for him to come to Talk of *Standing to their Principles*, after he had spoken of *two wicked Kings together*, (meaning the late King, and the Present) and that *then we should overcome our Enemies*; what is that but Preaching in order to raise a Rebellion and Insurrection, tending to the Destruction of the King; and his Government? All this is laid in the Indictment; the Jury find it spoken maliciously, and with such an Intention as we have laid; and therefore we think that it is sufficient.

L. C. J. But if I take the Gentleman right, (for I tell you before hand Justice must be done to all People impartially. The Crime is a very great Crime that he stands accused of; and the Jury have found him guilty of the

Crime laid in the Indictment: But if I take him aright) he does not say that Words are not sufficient to create a Treason, but the Words here as they are laid in this Indictment are not sufficient: And as I take it, there is no great difficulty in the Matter; but the Words would have been sufficient to have supported the Accusation, if they be well laid. But the Question is, whether the Words that you have laid here be so positively affirm'd to have been spoken by the Prisoner, and to relate to the Government, as they ought to be in an Indictment of High-Treason.

Mr. Att. Gen. That the Indictment must make out; and the Jury have found him Guilty, according to the Indictment.

L. C. J. But that is his Objection, they are not so in the Indictment.

Mr. Att. Gen. My Lord, they are laid as the Witnesses swore them; as your Lordship can't but remember.

L. C. J. That they are not positively affirmed, but only alledg'd under an *Innuendo*; that is, he spoke such and such Words whereby he compared the King to *Jeroboam*, and the like; and we had two wicked Kings together, but it would stand to our Principles, we should overcome our *Enemies*, *Innuendo* the King. The alledging of the Words spoken in the Indictment is positive, if there be sufficient Matter in the Words to make them applicable to the Government, so as to make it Treason. But if you only say he spoke them, *Innuendo* so and so, that is not positive enough to make the Indictment good. I take it the Objection runs that way.

Mr. Roswell. My Lord, I humbly thank your Lordship for explaining my meaning; it is so.

L. C. J. In an Action on the Case, if you say the Defendant spake such and such Words, if you do not lay it that he spoke them of the Plaintiff; *Innuendo* the Plaintiff in repeating the Words won't do. So here, if you had brought it in the Indictment; that having discourse of the late King and this King, he had spoken these Words, *We have now had two wicked Kings, &c.* You then had brought it home to him: But you do not lay it that it was spoken of them at all, but only in the *Innuendo*; whereas you ought to say first, That he spoke of the late King, and this King; and then said, We have had two wicked Kings together, *Innuendo* the late King, and this King.

Mr. Att. Gen. My Lord, I do not know, how we could have done it better than we have done.

L. C. J. Look ye, we give no Opinion; but the Objection has weight in it upon my Word. As I told you before, in common Cases, an Action of the Case for Words, or the like, you must lay a Communication concerning the Plaintiff, or an *Innuendo* will not be a sufficient Averment of its being spoken of him. In an Action of the Case for Words, till within this Seven or Eight Years, they were obliged to lay a *Colloquium* of the Plaintiff, and of his Trade; and that to Defame him, were spoken of him at such a Time such Words, as that he was a Cheating Knave; where the Word Knave would bear an Action; a bare *Innuendo* would not do, that was not enough. But now I confess since Declarations are made a little more concise, you need only say *dixit de Querente*, such and such Words

without

without a *Colloquium*, but you must aver it to be spoken of the Plaintiff. I never thought it good in such a Case, to say of a Merchant he is a Bankrupt Knave, (*Innuendo* the Plaintiff) unless he say he spoke of his Trade and Merchandise. So that the Objection does seem to carry very much weight in it.

Mr. *Sollicitor*. My Lord, if your Lordship would give me leave, I would endeavour to answer the Case as your Lordship has put it; for my Lord, no doubt in all common Actions of the Case for Words, it must be aver'd that the Words were spoken *de Personâ*, of the Plaintiff; but the First part of the Indictment, in this Case, shews that the Words must be spoken of the Person of the King, and of the late King; for it says he did conspire the Death and Destruction of the King, and to depose him from his Government, and to manifest that traiterous, wicked Intention of his; *Ed Intentione* he did speak these Words of the Government, *we have had two wicked Kings together*, meaning this King and the late King.

L. C. J. If you had said so, that he spoke these Words of the King, you had answered my Objection; but the Conspiracy of the Death of the King being only a general form for Treason, will not make good an Indictment of High-Treason; but you must show some Acts or Words to evince and prove that that was his Intention; that he did either speak such and such Words, or did such and such Actions. It is not a good Indictment to prove that he did conspire, for he spoke such and such Words; but that to carry on his Conspiracy he did speak such and such Words of the Government; that must be positively alledged.

Mr. *Sollicitor*. We do so, my Lord; for we say, *& ad easdem nefandas proditones, &c perimplendas*, He spoke such and such Words, we have had two wicked Kings together, *Innuendo* this King and the late.

L. C. J. You have *Innuendo'd* it too much I do doubt; for all the Facts are laid under an *Innuendo*, without a positive Averment.

Mr. *Att. Gen.* My Lord; I think it is as fully laid as it possibly could be.

L. C. J. Come, Mr. *Attorney*, if in Cases of common Actions for Words, there be such Strictness requir'd, ten Times more ought there to be in an Indictment of Treason, where a Man's Life, and All, is so much concern'd. I am not satisfy'd I assure you that this Indictment is well laid, tho' I give no Opinion; but in all Justice we ought to assign him Council to make out his Objection.

Mr. *Att. Gen.* All this, my Lord, is only in delay.

L. C. J. Mr. *Attorney*, *De vitâ Hominis nulla est Cunctatio longa*. I think we ought to assign him Council; and the rest of my Brothers are of that Opinion too.

Mr. *Att. Gen.* Let them read Colonel *Sidney's* Tryal, and the Indictment there; and they'll find it the same thing.

L. C. J. I cannot tell whether there are any such *Innuendo's* there, I believe not; but I know not if there were, if in case it had been moved in arrest of Judgement, what the Court would have done then. But I think we ought to assign him Council to make out his Objection.

Mr. *Sollicitor*. The very Fact, that makes this Treason is his stirring up Sedition and Rebel-

lion within the Kingdom; and we say, to effect it he had these Expressions in his Pulpit, we have now had two wicked Kings together (meaning this King and the late) who have suffered Popery to come under their Noses; but if you will stand to your *Principles* (meaning the People) we shall overcome our Enemies (meaning the King and Government.)

L. C. J. Ay, but you do not say that he spoke these Words of the King: This you should have said at first; because the speaking of these Words is the very Overt-act; and if he did not speak them of the King (which you ought to affirm) but only by way of *Innuendo*, that cannot, we think, be so good nor sufficient.

Mr. *Just. Withins*. I take it that these are the main Words that are to maintain this Indictment of Treason; and the Question is whether they ought not to have been aver'd that they were spoken of the two Kings.

L. C. J. We do not give any Opinion, Mr. *Attorney*; but because there seems to be some reasonable Doubt, and Weight in the Objection, we desire to have it argu'd; and therefore will assign him Council.

Mr. *Rosewell*. I humbly thank your Lordship.

L. C. J. We do think it fit to look into it, before we proceed any further in a case where a Man's Life is concerned.

Mr. *Rosewell*. I pray God to bless your Lordship.

L. C. J. Nay, you have no need to thank me; for I desire to do Justice to all Men.

Mr. *Rosewell*. But I desire to return my hearty thanks to your Lordship, for explaining and making out what my Unskilfulness in the Law would not permit me to do. God be your Reward for it.

L. C. J. Well; Who would you have to be your Council?

Mr. *Rosewell*. If your Lordship pleases, Mr. *Wallop*, Mr. *Pollexfen*, and Mr. *Thomas Bampfseild*.

L. C. J. Let them be assign'd of Council for him. But, Mr. *Rosewell*, I think it is not improper for me upon this Occasion to take notice of this that is in my Mind relating to your Affair; because I observe it is a Matter of great Expectation, and so was at your Tryal, and here is a great Croud of People now; that as this Fact is found, if the Indictment falls out to be a good Indictment (which is the Question that now depends before the Court) so that you come to have Judgment of High-Treason pass'd upon you, and to Suffer according to that Judgment; what will become of these 400 People that were your Auditors at the Time that these Words (that are thus found and adjudged to be Treason) were spoken? And I speak it for the sake of all Conventiclers, and Frequenters of such Meetings as these are. If you that are the Preachers and Teachers, the Mouths of such Congregations, do utter Treason, and so they conceal that Treason, what a Condition are they in? what are they Guilty of? Therefore if People will consider, they would do well to think, that when they go to such Places, they go at a great Peril; being to answer for Themselves, their Lives, and Estates upon the Prudence of the Expressions (to say no more) that come from the Teachers. I only put you in mind of this, because I would have all Standers by, and the Auditory (which

I see is very great) in Mind what Danger and Risque they run in thus offending the Law.

Mr. Rosewell. My Lord, I do believe, that no one in the World (besides these Witnesses that here were produced against me) can ever testify the least disrespectful Word spoken by me of the late King, or of his present Majesty.

L. C. J. Well; when will you be ready, Gentlemen?

Mr. Pollexfen. My Lord, we desire to have as much time to prepare our selves as we can.

L. C. J. Two or three Days time will serve.

Mr. Att. Gen. It is fit we should know what Points they intend to insist upon, that we may prepare to answer them.

L. C. J. Yes, yes, that must be; but I perceive his main Objection is, what I tell; Let him be brought by Rule higher upon Thursday, because the Court may have time to consider of what shall be said on both Sides.

Mr. Rosewell. My Lord, these Gentlemen are Strangers to me; but I dare rely upon them, from the Character I have heard of them, that they will do me all the Justice that they can.

L. C. J. Well, they are assigned of Council for you. But I could not forbear giving that hint that I did, that this might be a Warning to People, how they transgress the Law in going to such Meetings.

Die Mercurij 26 Novemb. 1684.

Rex versus Rosewell.

L. C. J. **M**R. Pollexfen, Have you any thing to Move?

Mr. Pollexfen. My Lord, I have one Word to Move for my self, and the others, that are appointed to be of Council for Mr. Rosewell. We think it our Duty to apply our selves to your Lordship for this Favour; that to enable us the better to do our Duty for the Person for whom we are assign'd, your Lordship and the Court would please to order that we may have a Copy of the Indictment. We do acknowledge, that it is not an usual thing to have Copies granted (tho' there be no exprefs Law that we know against it) in capital Matters; but where any Doubt does arise upon the Penning the Indictment, and Council is assign'd; to enable them to do what is fitting for them to do for their Client, Copies of the Indictment have been granted; as particularly in the Case of *Fitzbarris*, in order to the Plea that he was to put in; and I my self was one of the Council at that time.

L. C. J. Mr. Pollexfen, I make no doubt in the World, it is in the Power of the Court to order a Copy of the Indictment, if they see Cause; but if you remember, (for you were of Council in that Cause too) it is not to be granted, because it is asked. For my Lord *Russel* had no Copy of the Indictment, tho' he insisted very much upon it: And it was in the Case of *Fitzbarris* granted, that he might particularly apply his Plea (if he had a Mind to it) to the Indictment it self.

Mr. Pollexfen. My Lord, I do not desire a Copy of all the whole Indictment; but of so much thereof, as may be enough for us to know the Foundation upon which we are to go. I do remember we were call'd in, in my Lord *Russel's* Case, upon the Point of Challenge, for want of Free-holders; but that was not in the Point of the Indictment; and there I cannot see what we had to do with the Indictment; but here we must understand how it is laid really in the Indictment, that we may apply our Arguments to the Case; and that I believe was never denied.

L. C. J. Look ye, if you speak to me privately, as to my own particular Opinion; it is hard for me to say that there is any exprefs Resolution of the Law in the Matter: But the Practice has been always to deny a Copy of the

Indictment. And therefore, if you ask me as a Judge, to have a Copy of the Indictment delivered to you in a Case of High-Treason, I must answer you, shew me any Precedents where it was done: For there are abundance of Cases in the Law which seem hard in themselves; but the Law is so, because the Practice has been so; and we can't alter the Practice of the Law without an Act of Parliament. I think it's a hard case, that a Man should have Council to defend himself for a Twopenny-trespas, and his Witnesses examined upon Oath; but if he Steal, commit Murder, or Felony, nay, High-Treason, where Life, Estate, Honour, and all are concern'd; he shall neither have Council, nor his Witnesses examined upon Oath: But yet you know as well as I, that the Practice of the Law is so; and the Practice is the Law.

Mr. Pollexfen. My Lord, we heard the other Day the Indictment read, and so may have some little Account of the Indictment; but we desire such a Copy as may enable us to argue as we ought to do; and as the Court will expect from us, being assigned by the Court.

Mr. Wallop. My Lord, if we should offer any thing that is not in the Indictment, it's all one as if we held our Tongues; and if we have only a loose Account of the Indictment, that may be as bad as if we had a false one: And therefore we desire, to the end that we may argue *ad idem*, that your Lordship will please to favour us that we may have a Copy of so much of the Indictment, as upon which our Objections may be grounded.

L. C. J. Mr. Pollexfen, you may remember a particular Case; I have forgot the Name; but I believe you may remember it; where a Prisoner at this Bar desired to have the Indictment delivered to him to read; but it was denied him. It is hard, I confess, and so are many other Things in the Law; but I am wonderfully tender of making Precedents: And therefore if it has not been practiced, I do not see how we can do it.

Mr. Just. Winbins. That is the usual Practice, my Lord; but it is in the Power of the Court sure to grant a Copy; or at least of so much as is necessary for them to apply themselves to. There have been many Cases of Murders where they have had Copies of the Indictment, in order

der to move in Arrest of Judgment; as this Case is.

Mr. *Just. Walcot*. But have there been any in High-Treason?

Mr. *Just. Withins*. I do not take it that there is any difference between the one Case and the other; they being both capital Crimes; and Council being assign'd they must know what they are to speak to.

L. C. J. I would know when ever a Copy was granted to enable the Party to move in Arrest of Judgment.

Mr. *Just. Withins*. My Lord, when there is a Motion in Arrest of Judgment, and Council is assign'd, that is a Thing they ought to know, how to demean themselves in their Arguments.

Mr. *Pollexfen*. My Lord, we submit it to you. We desire the Favour that we may acquit our selves as we ought to do; and as the Court (we know) expects from us.

L. C. J. As far forth as I could do, being in the Case of Life, I would indulge you: But I tell you, I am loath to be the Author of Precedents in Cases of this Nature, one way or other; especially in this Case, where I know you cannot but understand by what was spoken here to-

ther Day, what the Objection is, and where the Stress of it lies: Every Man at the Bar must needs understand it.

Mr. *Pollexfen*. My Lord, we know People have various Understandings; and the case is many times variously stated, not only in our Minds, but in our Books.

L. C. J. Well, we know you understand your selves well enough: And what we could grant we would.

Mr. *Just. Withins*. It may be Mr. *Pollexfen* does it only to make way for an excuse, when he comes to argue, that he is not so well prepared as he should have been; but we know him well enough.

Mr. *Pollexfen*. But, my Lord, if we miss the Words of the Indictment, we hope your Lordship will not think us impertinent in having made this Motion, which is for our Selves, not for our Client: And therefore we hope you will Pardon us, if in case we mistake; which we could have had no colour to have desired, if what we had to say were guided by a true Copy of the Record.

No Copy was granted, nor Rule made.

Die Jovis, 27 Novembris 1684. B. Regis.

Dominus Rex vers. Rosewell.

THIS Day Mr. *Rosewell* was brought to the Bar, and the Court asked the Council assign'd for him, what they had to say.

Mr. *Wallop*. May it please your Lordship, I am of Council with Mr. *Rosewell*, by your Lordship's Appointment; he being here a Prisoner now at the Bar. My Lord, I am inform'd (for I have not seen the Proceedings, nor heard the Indictment read) that it is an Indictment for treasonable Words; and many treasonable Words; and likewise, as I take it by Information, these Words are apply'd by divers Innuendo's; so that for ought I can apprehend by what I am inform'd (which I must still keep to) it is so uncertain, insensible, involved and intricate, that no safe Judgment, as I humbly conceive, can be given upon it.

My Lord, to consider these Words; First, if you please, I shall state them as discharged of the Innuendo's, and put them to your Lordship barely and nakedly, as they are in the Indictment, and as they were sworn, and are to be supposed by the Conviction to have been spoken. The Words are these, as they stand discharged of their Innuendo's. That the People make a flocking to the King under pretence of healing the King's Evil, which he could not do; but we are they to whom they ought to flock, because we are Priests and Prophets, that by our Prayers can heal the Dolours and Grievs of the People. We have had now two wicked Kings together, who have suffered Popery to enter under their Noses; who can be liken'd to no other Person but the most wicked Jeroboam: And if they would stand to their Principles, he did not fear but they should overcome their Enemies as in former times, with Rams-horns, broken Platters, and a Stone in a Sling.

These, my Lord, are the Words nakedly in themselves; and these are said to be spoken in

a Publick Assembly, where they were likely to do hurt to the Government. Thus, I say, they stand without any of the Innuendo's. Now, tho' your Lordship will have, and justly ought to have, a good Account given you of such Words as these, how they came to be spoken, even taking them as they stand discharged of the Innuendo's; yet I humbly conceive with Submission, they do not contain any intention of deposing or destroying the King, and so can have no treasonable Intention in them: And then your Lordship, I suppose, will likewise expect to have a good account of these Words in another respect; how Words which in the hearing of them barely and nakedly spoken, could not carry a treasonable Intention, I say, how it comes to pass that in the writing of them down in an Indictment they become High Treason.

My Lord, these Words as they stand discharged of the Innuendos, are loose, extravagant, insensible Words; sounding rather towards Phrenzy, than Treason. So that as they stand without further Explanation by an Innuendo, they are perfectly insensible, and one cannot tell what they refer to, or whom; and if the Words, *Ex vi termini*, without further Averment, contain no treasonable intention and meaning, and so consequently have no Treason; it may seem very difficult and hard to maintain, how, out of the Assembly in which they were spoken, being put into Latin, in an Indictment, they should become Treason: They not being Treason at *Rotherhithe*, where they were spoken; how they should be made Treason at *Kingston* or here, where they are dress'd up in another Form. Indeed, I know no way that it can be done, but by adding some other Words by some other Hand. And, my Lord, I suppose it was so

so done by those who framed this Indictment that is before your Lordship, by inserting, and adding this Multitude of Innuendos.

But I suppose then, they that would insert these Innuendos must have a good Warrant to insert them: For if they are inserted without Warrant in Law, then it must be acknowledg'd to me that the Indictment is not good; and I humbly conceive it to be a Rule in Law, that no Innuendo can warrantably be inserted in an Indictment, Information, or Declaration, upon an Action of the Case for Words, unless the Defendant first himself be averr'd, and that directly to have mention'd a Person in certain, to whom those Words may be referr'd; and it must not slide in by Supposition, but it must appear in the Body of the Discourse of the Defendant. And the Reason is evident, in all Cases of Slander, and particularly in these of treasonable Words; for how could the Hearer understand whom the Preacher meant, or he that discoursed so and so; and so be influenced to Rebellion, unless he had named the Person of whom he spoke; as here, unless the Defendant had named the King to whom the Words he spoke should be referred?

My Lord, the Treason of the Words is in stirring up Sedition and Rebellion; and if then the Words cannot terminate upon the King, and the Hearers could not collect that to be the Intention of the Speaker, these Words could not influence a People to Rebellion and Sedition. And according to this Rule, I conceive that most of the Innuendos in this Indictment are not warrantable.

For my Lord, as to the first Words, to take them in order, tho' I take it, that that is the most remote Matter from the Crime charged; yet let us strike off these Innuendos as we go along, if we can. There it is *Quod populus, &c. the People* (meaning the Subjects of our Lord the King) *keep a flocking to the King, to cure the King's Evil, which he cannot do, &c.* Here the first Innuendo is, *the People* (meaning the Subjects of our Lord the King). Now he had never before named the People of England; but the Innuendo fastens that meaning upon the Word (*People*.) Which with Submission, my Lord, is always a Sign of a naughty Innuendo; and it is without Warrant of Law; an endeavouring to give an original certainty to uncertain Words; which is more than the Office of an Innuendo will allow or warrant. I say, my Lord, it always bears a bad face, where Words first appear with an Innuendo, and have no certainty even in the Beginning of them but by the Innuendo: that with Submission, is to be rejected, the Innuendo not doing its proper Office, for which it ought to be used in Law: For *Populus* may intend any People; it may intend the French People flocking to the French King, (and he does heal the King's Evil in the same manner; nay, pretends to it as a sole Gift to him, his Predecessors and Successors: But I only put that for an instance) and all the Innuendos, if you observe them, are of this Nature. The Words first appear without any light, but what these Suppositions give them; and therefore, I say, they are to be rejected.

But now, my Lord, I come to that which is more particular, *Non habuimus nunc duos iniquos Reges in simul; We* (meaning the Subjects of the King) *have had two wicked Kings* (meaning King Charles the First, and this King) *together.* Now

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that we say is altogether void, for there was no mention of any Kings; wicked Kings or good Kings, Pious or Bad, before in the Discourse; to which, according to the Office of an Innuendo, these Words are to be apply'd. My Lord Coke in his 4 Rep. fol. 17. B. has this Case.

* John Jeames brings

his Action against Alexander Rutlech, for speaking the following words concerning him, to one John Bonner. "Hang him (prædictum Johannem Jeames innuendo) he is full of the Pocks. (innuendo the French Pocks.) I marvel that you (prædictum Johannem Bonner innuendo) will eat or drink with him (prædictum Johannem Jeames innuendo) I will prove that he is full of the Pocks (innuendo the French Pocks.) Upon a Motion in Arrest of Judgment, it was Resolved by the Court, that in every Action of the Case for Slander, two things are requisite. First, That the Person who is Scandalized be certain. Secondly, That the Words spoken be apparent Slander. The Office of an innuendo is to design the same Person that has been named before: And is in Effect, instead of a Prædict. But it cannot make the Person certain, that was uncertain before. In the present Case, it was evident that the Plaintiff did speak the Words of the Defendant. But as to the second Thing, it did not appear that the Words spoken did mean the French Pocks; and Words are to be taken in mitiori sensu.

que actions serra maintaine per imagination d'un entent que nappiert per les parols sur que l'action est fendue, mes est tout incertain & subject al deceivable conjecture: Mes si un dit a J. S. Thou art a Traitor, &c. la, constat de personne; & action gift: Issint icy en le case al barre, quant le defendant & Bonner ad parlance del p'donques quant le defendant dit hang him. La (innuendo) coyle de note mesme le person nosme devaut: Mes si le defendant sauns aucun parlance del plaintiffe ad dit, hang him &c. La nul innuendo coyle aver fait le person certain. ¶ Quant al 2. sicome (innuendo) ne poit faire le person certain que suit incertain devant, issint un (innuendo) ne poit alier le matter ou sence des parols mesmes: Et pur ceo quant le d'fendant en le case al barre dit al plaintiffe: That he was full of the Pocks, (innuendo) the French Pocks, cest innuendo ne fait son proper office; car ceo contende a extender les general parols the Pocks a le French Pocks per imagination d'un entent que nest apparent per aucun precedent purbs, a que le innuendo reserver; Et les parols mesmes serra pris in mitiori sensu.

12.
Mich. 47. &c. 41 Reglæ Eliz en bank le-Roy, enter John Jeames pl. & Alex. Rutlech def.

L'E plaintiffe count que le defendant, & un John Bonner ayant conference de le plaintiffe; Le defendant dit del plaintiffe al dit John Bonner ceux parols. Hang him (prædictum Johannem Jeames innuendo) he is full of the Pocks (innuendo the French Pocks,) I marvel that you (prædictum Johannem Bonner innuendo) will eat [B] or drink with him, (prædictum Johannem Jeames innuendo) I will prove that he is full of the Pocks, (innuendo) the French Pocks: Le defendant plead non culpable, & suit trouve pur le plaintiffe & damages assesse: Et suit move en arrest de jugement que les dits parols ne fueront actionnable. Et suit resolve que en chescun action sur le case per slanderous parols, deux choses sont requisite. ¶ 1. Que le person que est scandalize soit certain. ¶ 2. Que le scand'l soit apparent per les parols mesmes. Et pur ceo si un dit sauns aucun precedent communication, que lun des servants de J. S. (il ayant divers) est un: notorious Felon, ou Traitor &c. icy pur le incertainte del person nul action gift; & un (innuendo) ne poit faire ceo certain: Issint si un dit generalment: I know one near about I. S. that is a notorious Thief, ou tiels semblables Mes quant le person est un fois mesme en certaine, come si deux parlant ensemble de J. S. lun dit, He is a notorious Thief: La J. S. en son count poit monstre qua la suit parlance de luy enter les deux, & que lun dit de luy: He (innuendo prædictum I. S.) is a notorious Thief. Car le office de un innuendo, est a container & designe mesme le person que suit mesme en certaine devant: & en effect estoit en lieu de un (prædict) mes un (innuendo) ne poit faire person certain que suit en certain devant: Car serra inconvenient que actions serra maintaine per imagination d'un entent que nappiert per les parols sur que l'action est fendue, mes est tout incertain & subject al deceivable conjecture: Mes si un dit a J. S. Thou art a Traitor, &c. la, constat de personne; & action gift: Issint icy en le case al barre, quant le defendant & Bonner ad parlance del p'donques quant le defendant dit hang him. La (innuendo) coyle de note mesme le person nosme devaut: Mes si le defendant sauns aucun parlance del plaintiffe ad dit, hang him &c. La nul innuendo coyle aver fait le person certain. ¶ Quant al 2. sicome (innuendo) ne poit faire le person certain que suit incertain devant, issint un (innuendo) ne poit alier le matter ou sence des parols mesmes: Et pur ceo quant le d'fendant en le case al barre dit al plaintiffe: That he was full of the Pocks, (innuendo) the French Pocks, cest innuendo ne fait son proper office; car ceo contende a extender les general parols the Pocks a le French Pocks per imagination d'un entent que nest apparent per aucun precedent purbs, a que le innuendo reserver; Et les parols mesmes serra pris in mitiori sensu.

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And I humbly conceive this Book is a most pregnant Authority that states the Matter truly, with a Judgment of Law, and the Reason of it; and all the Books that come after this, borrow their Light from what is laid down as the Rule of Law in this Case; as there are an infinite Number of them, which I shall not trouble your Lordship with particularizing; only just to name some of them. 5 Co. 20. Hob. 45. and 2 Cro. 126. wherein they say, That altho' the Plaintiff be particularly nam'd by a special Name; yet if the Declaration comes to Name him in an Action of the Case for Words, at the first Appearance with an Innuendo, then that Innuendo is Void; tho' his Name be expressly alledg'd in the very Words, yet they will reject that Innuendo, as not doing the proper Office of an Innuendo: And that Judgment shall be Arrested, tho' the Jury found that the Party spoke such Words: And this is upon the Rule in 4 Co. before-mentioned.

Now, my Lord, to apply this Rule in the 4th Report to the Case before your Lordship; we say there was no mention at all before of any two Kings; nay, not of any King, in his Discourse, to which the Innuendo should refer; and the Innuendo being join'd to the Words first spoken, without any Discourse laid concerning such a Person, or Averment to be spoken of such an one before, the Innuendo cannot give any certainty to that which had no such original Certainty; that being against the Office of an Innuendo, and so is to be rejected. And the meaning of the Books, and of that great Rule which I first cited is this, That the Defendant must himself in his Discourse, first set up such a Light about the Words of the Person concerning whom they are spoken, that the Intention of the Speaker may with ease be collected; then comes the Innuendo with a Beck or a Nod, as it were; and that Collection is to be the *nutus* to shew who was meant; but it is not sufficient to give an original Certainty, where such a Certainty is not fix'd before the Innuendo comes. The Defendant himself must set up such a Light as will carry the Intention to the End of the Discourse.

Then it is said *Duos iniquos Reges*, in the Plural Number; meaning the late King Charles and his present Majesty; now King Charles the First was never pretended to be mention'd before; why then according to that Rule, as to him the Innuendo signifies nothing at all; and then it must be taken in common Understanding, *We have now had two wicked Kings together*, Innuendo our Sovereign Lord the King that now is, against whom the Treason must be said to be committed: But this is very harsh, and insensible, and impossible; it is harsh in all respects both of Grammar, and Reason, and Law; it is insensible because it is impossible; and it is impossible because you must else make two Kings to be one, or one King to be two, and the Innuendo must serve both ways; which I believe your Lordship will hardly undertake to do.

And besides, my Lord, there is another Inconsistency in these Words, *habuimus nunc*, that's contradictory; *habuimus* refers to the Time past, and draws one Way; *nunc* to the Time present, and draws another Way; and when there are such Inconsistencies and Incoherences, how can any Man make a Judgement in this Case where the Life of a Man especially is concerned?

But, my Lord, if *habuimus* be that which being first shall take place, then these Words refer to any two Kings that we have had, under whom Popery hath been let in; and so we must run back from Harry the 8th up to the Conquest, nay beyond the Conquest to the Saxons, and other former Kings, to the first that Established the Christian Religion, which was then subject to the Papacy. And it will be hard to construe them wicked Kings for so doing at that Time; as any Man's reading, that knows any thing of the History of England, will easily tell him. So that it is unintelligible and insensible, even that way; and to be sure, if it be so, that we have had two wicked Kings together, referring so far back, it cannot at all concern the present King.

My Lord, I shall be short; I only state these things before you, and recommend them to your Lordship's Consideration. Then come these Words, which it seems are most relied upon, *if they would stand to their Principles, he did not not Question, but they should be able Inimicos suos vincere*; Innuendo the King and the Government. This is the most insensible, (as I apprehend) of all; and it is in the fatallest part, it being there that the Treason must lye, if there be any. Now my Lord, we first say, there is no mention at all of any Enemies throughout all the Words precedent; there is no Averment that the King was Enemy to any body, or any body to him; and therefore the Innuendo, for this reason, is to be rejected; and the rather, in that it makes the King and his Subjects to be Enemies one to another; which is an Imputation that ought not to be admitted; and I dare say, will not be by your Lordship. Therefore in this Case, to put such a Sense, in such a Weighty Matter, (being a Matter of Fact,) upon such Uncertainties without any further Averment of the Intention and Meaning of the Speaker to be so and so; and without any thing but such Inuendo's, is very hard: For now perhaps the Jury only from this Inuendo were perswaded that all these things pointed upon the King and the Government; and did take it that the Law was so; that the Words intended as much: Then do they give their Verdict of a Matter that was never averr'd, and for want of an Averment could never be put in issue, so that the Party could have a Tryal whether he were Guilty as the Indictment says.

My Lord, I shall cite no Books more than I have done. I humbly conceive that putting that great Rule in the Book I first mention'd, and the reason of the thing together, and the subsequent Authorities that I have cited; and they stand so fair and clear to avoid this Indictment, that to trouble your Lordship further were to embroil the case; therefore I shall say no more out of the Books. But the Rule is a firm, reasonable, undeniable Rule, which must rule all Cases that come under the Reason of it. And I never heard that Book was ever contradicted; but all subsequent Judgments were agreeable therunto.

Mr. Just. Withins. What Folio is it, Mr. Wallop, in the 4th Rep?

Mr. Wallop. Folio 17 B.

Mr. Just. Holloway. It is —'s Case, is it not?

Mr. Wallop. Yes, Sir. My Lord, I have stript the Words of the Inuendo's. You will not

not I am sure put, nor can an Inuendo put such a Violence or Force upon Words, as to make them Treason, when in themselves they have no such meaning. Inuendo's are to follow the meaning of the Words as they lie in the Record, and not to draw the Meaning of the Words after the Inuendo; for you will never, (especially in a Case of Life) press Words, or strain them to speak more than willingly they mean or intend. It is not the practice of the Law so to do, to make any such Stretches. *Quinimis emungit, elicit sanguinem*, he that wrings the Nose too hard will draw forth Blood; that is the Rule of that great Lawyer, my Lord Coke, who applies that Saying to the forced Straining of Words beyond what in themselves they naturally and easily will bear. And it is plain that God is not well pleased with such Emundions: Nor does the Law of the Land at all allow it, but absolutely forbid it; for the Law of England speaks thus, *In dubiis & generalibus, benignior sensus est preferendus*; in all dubious, uncertain, and general Cases, the most benign and candid Interpretation is to be taken: So that if there should be a doubt about these Words, what Sense they be taken in; the Law of England does enjoyn your Lordship to take the Way that lies on the Right hand, and make the most favourable Construction that can be of them. We say then, the Words (as I conceive) standing quite otherways and without the Innuendo's, are insensible; at least uncertain to what they should be applyed, or to whom; and then if there should be a Doubt, (though indeed in one respect I think there is none; yet if there should remain a Doubt) I say your Lordship and the Court are to take that which is the most mild and gentle way of construing these Words.

My Lord, I shall not trouble your Lordship further in the matter; for I think it is seen by its own Light, and these few Touches that I have given of that general Rule as applyed to the particular Case before your Lordship: And I do not question but they will be apply'd by your Lordship and the Court, in their Consideration of the Case: Therefore I lay it at your Lordship's Feet, and humbly pray that the Judgment may be arrested.

Mr. Pollexfen. My Lord, I am assign'd by the Court to be of Council for Mr. Rosewell, the Prisoner at the Bar; and therefore humbly desire your Lordship would please to spare me a Word of the same Side with Mr. Wallop. The Case, that is, this Part of the Indictment hath been put (according to what our Information is) right by Mr. Wallop; but because there may be many Words in the Indictment, (and there are so) some of a higher Nature than others; therefore I beg leave to put the Words distinctly as they lie; and I shall endeavour, with Submission to your Lordship, to shew what Words are in themselves Treason; and what are not Treason, tho' they may be a great Misdemeanour, and highly punishable by the Law, and by the Court.

My Lord, Tho' the Statute of the 25 Ed. 3. does provide that for the Convicting of any for Treason, there shall be an Overt Act; yet I do not hold, nor do I think, but that there may be Words that are an Overt Act, and consequently Treason within that Statute; but then what sort of Words these are, is that which I would humbly offer to your Lordship to dis-

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course of: For my Lord it plainly appears that Words in themselves that are very evil and wicked, yet are not Treason, nor are to be Punish'd by virtue of that Statute of the 25 Ed. 3. As in one Cro. 117. & 125. *Hugh Pine's Case*. The Words there spoken by Pine, are most evil and wicked Words; yet by all the Judges of England they are agreed not to be Treason.

But, my Lord, for a further Determination of this Point, what Words are Treason and what not; give me leave to mention the Statute of 13 Car. 2. which I understand to be the Statute upon which the Prisoner is Indicted, and the two Branches of that Statute: for the First tells what is Treason, and the Second what is not Treason, but only Misdemeanour; And that second Branch of the Statute says, That if any Person shall maliciously and advisedly publish or affirm the King to be an Heretick, or a Papist; or that he endeavours to introduce Popery, or maliciously and advisedly by Writing, Printing, Preaching or expressly Speaking, publish, utter or declare any Words, Sentences, or other Things, to stir up the People to hatred, or dislike of the King's Person, or the Established Government; then he is disabled to have or exercise any Place or Office, Civil or Military, and be liable to such further Punishment as by the Common Laws or Statutes may be inflicted in such Cases: By which, I take it, the meaning to be Fine and Imprisonment, or bodily Punishment; But not the Punishment that is appointed to the Judgment of High-Treason, or loss of Life or Member.

Mr. Att. Gen. My Lord, I humbly crave your Lordship's Judgment whether this shall be permitted, that the Council should enter into such a Discourse as this. The Question (I take it) that your Lordship appointed to be Spoke to is; Whether this Indictment as to Form, be sufficient for your Lordship to give Judgment upon: But Mr. Pollexfen is going into that which is a far greater Point; whether these Words abstracted from all their Innuendo's are Treason, or no. My Lord, the Prisoner did not move that in Arrest of Judgment; and whether your Lordship expects any such thing should be spoken unto, that was not moved or stirred by him; I must submit it to you. The Jury found that these Words were spoken with an intent to depose the King. Whether that your Lordship will permit it to be argued whether such Words are Treason in their own Nature, is of quite another Consideration.

Mr. Pollexfen. Good Mr. Attorney, Pray spare us. We come to show that if in their Nature they import not Matter of Treason, then the Innuendo's cannot help them, so as to make Treason of them.

Mr. Att. Gen. Truly, my Lord, I did not understand that it was your Lordship's Pleasure the Council should have liberty to argue any such thing as whether the Words be Treason, being found to be spoken with such an Intention; but whether these Innuendos have sufficiently been laid to maintain the Indictment in point of Form.

Mr. Pollexfen. If you leave out the Words Innuendo, then sure we may speak to the Words themselves.

L. C. J. Look you, Mr. Attorney, either you mistake Mr. Pollexfen; or I do; For I take it, that he is entering into the Consideration of these Words, as they are laid in the Indictment; that

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are uncertainly laid, so as that they will not support an Indictment of Treason.

Mr. Att. Gen. My Lord, He is arguing that if they were spoken of the King, yet they would not be Treason.

L. C. J. Will he say so? I dare say he will not.

Mr. Att. Gen. He is arguing upon the Statute, what Words are Treason, tho' spoken of the King, and what not; which, I take it, is not the Question now.

Mr. Sol. Gen. My Lord, We humbly offer it to your Lordship, whether it be according to your Lordship's Rule and Intention that he was to argue whether the Words were Treason; or only whether the Form of the Indictment, as to the Innuendos, was good and sufficient.

L. C. J. Taking the Words to be sufficiently set forth in the Indictment, and found by the Jury to be spoken of the King, especially the last Words; Do you think we would suffer that Question to be debated, whether they were Treason or not? God forbid. I will not sit here to hear that Question at all so much as made or put, I'll assure you. I took him not to argue at all any thing that way.

Mr. Pollexfen. Pray, my Lord, hear me; I am going only to this; for I would not offer any thing beyond what is fit for me to offer, and for the Court to hear: But this we say. That the Words, the effective Words are not so sufficiently laid in this Indictment, as to make them amount to Treason; I am only going to that.

L. C. J. Ay; That's the stinging Part of the Question; and so I understood him before.

Mr. Pollexfen. My Lord, I only mention'd that of the Statute, that there were two sorts of Words there taken notice of; to shew that I thought these Words were not within that Branch that is said to be Treason.

L. C. J. Well, go on.

Mr. Pollexfen. I will keep my self to the first Clause of the Statute; for what I mean, is this. That if these Words come not within that first Branch which makes the Treason, then your Lordship cannot give Judgment upon this Indictment. For tho', my Lord, it may be these Words are extraordinarily ill; and being spoken or Preached, may have an ill sense or meaning with them; yet I would observe to your Lordship, there are other Penalties and Punishments provided for some sort of Words, than there are for others.

But then my Lord, let us consider the Words of the first Branch of this Statute. If so be any Person does compass the Death, or bodily Restraint, or other harm to the King's Person, or to deprive the King, or levy War against the King, &c. And this compassing and imagination does express by Printing, Writing, Preaching, or malicious and advised Speaking, they shall suffer Judgment of High-Treason. Now then, all that I would come to is this, that this same treasonable Printing, Writing, Preaching or Speaking, must be of such Words as shall intend the Death, bodily Hurt, Restraint or Imprisonment of the King's Person; or Levying of War.

My Lord, having said this, the next thing is to come to the Words themselves; and to take them as they are in themselves without the Innuendo's; and see what the Natural Sense of them will be: And we'll take them in the Na-

tural Order as they are laid in the very Indictment, and found by the Jury.

The first Passage of them is *quod Populus, &c.* (meaning the People of England, the Subjects of our Lord the King) *made a flocking to the King* (meaning our said Lord the King that now is) *to cure the King's Evil, which he could not do; but we are they to whom they should come, being Priests and Prophets, that by our Prayers can heal the Grievs of the People.* Now, my Lord, with humble Submission, it is plain that as to these Words, they have not in themselves any tendency to Treason at all, whatsoever Reflection they may make upon the King; they are the Words of a Priest magnifying his own Office, and his Power with God Almighty; but they do not come up (I think) to this Crime, for which the Prisoner at the Bar stands accused.

Then the next Words that follow are these, *Nos habuimus nunc duos iniquos Reges in simul, qui permiserunt Romanam superstitionem intrare in eorum conspectu, &c.* and whom can be liken'd to none but wicked Jeroboam. My Lord, these I do acknowledge are very wicked and bad Words, especially if they must be apply'd as the Indictment has set them forth, to the late King and his present Majesty: Yet these very Words (under favour) will not amount to the Charge of High-Treason. They deserve very severe Punishment; but they seem not to come up to any thing of an Intention, or compassing, or designing the Death, bodily Hurt, or Imprisonment of the King; or the levying War against him. This I speak, my Lord with Submission, and I believe your Lordship may be of the same Mind.

But then, my Lord, the next Words that follow, are the Words (I suppose) that are rely'd upon to make out this Accusation; *Quod si ipsi starent ad fundamentalia, ipse non timebat, &c.* That they should overcome their Enemies as in former times, with Ram's horns, broken Platters, and a Stone in a Sling. These, my Lord, seem to be the Words in which the Crime consists. Now, my Lord, if these Words in themselves are so uncertain, or such as do not tend or relate to the present King, or the present Government, to stir up Sedition or Rebellion against them; then they will not be Treason, because they do not so relate.

Now, my Lord, these Words if you take them alone without the former Clause, *Nos habuimus nunc duos iniquos Reges in simul &c.* closed with the Innuendo, that he meant the late King and this, I see not possibly how they can be said to relate to the present King and Government to make them Treason within this Act. Which way can it be? if they would stand to their Principles, they should overcome their Enemies: How can they be intended to be meant of the King, and his Loyal Subjects? Then let us consider the Words that go afore, whether they will help any thing or no; *habuimus nunc duos iniquos Reges in simul.* These Words of themselves stript of the Innuendo, do not express what two Kings are meant by them. If you take the Words strictly, that *We have had two Kings now together, in simul*; as the Word signifies, it must be two Kings at one and the same time; But take it in the English Phrase (as perhaps they would have it turned into English) *We have had now two wicked Kings together* (meaning the late blessed Martyr, and his now Majesty) then it must be, we have had now two Kings

Kings successively; but it is a strange thing to render such *Latin* into such *English*, which seems to be in the Nature of the Words themselves, such as will bear no such Sense or Construction as that. And then the *qui permiserunt Romanam superstitionem intrare in eorum conspectu*; if the first words do not in themselves express what Kings were meant, these Words that follow can give no manner of Certainty to them at all: For here's not so much as any Innuendo; nor can the Words that follow them (*qui assimilari possunt, &c. which can be liken'd to none but wicked Jeroboam*) in any sort shew any certainty to whom the Words are to be apply'd, or illustrate whom the Speaker meant.

But now that which is the next Clause is the worst Clause of all, *Sed si ipsi starent ad fundamentalia, &c. Ipsi* in all ordinary Construction of speech in all Language, being coupled to the former Words, (and so I think the rule in the Grammar is, and will be read by any reasonable Person that reads) must refer to the next Antecedent. And then who are *they* that are last spoken of? It must be the two wicked Kings, let them be who they will, that were meant by those wicked Kings; for there is no other Person that does intervene as spoken of, to whom they should be refer'd. The former Words are spoken in the first Person, and plural Number; *we have had*, speaking in the Name of himself, and they that were his Auditors; and then to come with *ipsi* after he had mention'd two Kings who had suffered Popery to come in, and were to be liken'd to *Jeroboam*, changes the form of the whole Speech: It should seem according as it is laid in the Indictment, to run thus; and then I desire your Lordship to consider the Sense and Grammar of them; *We had now two wicked Kings together, who have suffered Popery to come under their Noses; we cannot compare them to any but wicked Jeroboam: And if they would stand to their Principles, then he did not doubt but they should overcome their Enemies as in former times, &c.* Why then if *ipsi* according to Grammar and ordinary reading, being a relative must refer to that which went last before, there is nothing in all the Sentence before, but, *We*, (that is he and the People that heard him;) and the two Kings that he spoke of; and the two Kings being last spoke of, it must in all Grammar I say and Sense be understood of the Kings. Then let us see what Sense we can make of it; *We have had two wicked Kings that have permitted Popery under their Noses, that they can be compar'd to none but wicked Jeroboam: and if they stand to their Principles he did not fear but they, (the Kings) should overcome their Enemies.* In all ordinary and fair Reckoning, I cannot see how they can mend it, but the *Ipsi* must refer to the *Reges*; and the *Eorum fundamentalia, ipsorum Regum*, if you take these Words as they do lye; and if they have any Sense or Meaning at all in them, this is the proper and natural Sense and Meaning of them.

For it is pretty hard to apply the *Nos habuimus nunc duos iniquos Reges* to the *ipsi qui starent ad fundamentalia*. In all Probability he spoke it thus, (if it continued on in a Discourse, which I can say nothing to, being only to speak to the Words as they are laid in the Indictment;) and if we do but stand to our Principles; I do not doubt but we shall overcome our Enemies as formerly, &c. But *ipsi* is a Variation of the Person, and accord-

ing to all Grammatical Constitution, we know how it must be expounded. The other seems to be the natural reading of the Words, but the Indictment has not pursued them; but has made them instead of that, to be quite Nonsense, supposing them to have been spoken as the Jury have found them.

But my Lord; if they don't well bear that Sense which I think they should properly and naturally bear, if they had been right laid; the Question then is whether we can make these Words as they are laid, to bear any such Sense as the King's Council (by their Innuendos) have placed upon them; that is if *they*, (meaning his Auditors) should stand to their Principles, then they should overcome their Enemies (meaning the King and his Loyal Subjects). Truly my Lord, I cannot see how that can be, how *ipsi* should be me; I and mine Auditors should stand to their Principles.

But setting that aside, come we then to the main Words. *He did not fear but they should overcome their Enemies.* The great force of these Words lye in the Word *Enemies*. What is meant by *Enemies*? For all the rest without that, would not signify any great Matter, with Submission to your Lordship, as I think: And therefore here comes the great Burden, and that which is the sharp Sting of all this Indictment. And to make *Enemies* to signify the King and his Subjects, my Lord, is a very wonderful Innuendo, as I believe ever was attempted to be made. So it seems to me with Submission to your Lordship; the Word *Enemies* it self is a Word of so large Comprehension that it reaches to a great part of the World. God knows Mankind is so very unhappy as that every one hath very many, and too many Enemies. Who is not an Enemy? A Man scarce knows; its well if he does. And this is a thing that's mighty hard, that so general a Word should have so hainous a particular Application.

There then rests the Burden of the Case; whether *Inimicos* should signify the King and his Loyal Subjects. If in the natural Grammar, the former Words of *Ipsi starent ad fundamentalia*, be, as I have shown, to be refer'd to the *duos Reges* as the last Antecedent, then it must mean that the *duo Reges* would overcome their Enemies; and then there is no hurt in all these Words; but whatsoever was spoken is very commendable and very allowable: But if you would take it otherways, I see not how it can be done without the greatest Strain in the World of so general a Word, to make *inimicos* mean the King and his Subjects.

Now my Lord, let us see how they intend to help it out, and that is by these Innuendos. The Nature of an Innuendo hath been already open'd to your Lordship by Mr. Wallop. I shall not repeat anything of that which was said before; for that I cannot take to be any Service to the Prisoner at the Bar, to take up your Lordship's time in Repetitions. The Books have been cited, and Reason it self will direct to that; for must not a Man be convicted by his own Words as well as punished for them? It is not sure the skill of the Clerk to put in an Innuendo (or of any one else) that shall be construed to make my Words to have any other Sense than I that spake them intended them in. If the words are not clear, why then they cannot affect the Auditory so as to have any evil Influence upon them

them to incite them to Sedition or Rebellion ; for sensible words must influence sensible Men : But words that are insensible can have no influence at all upon rational Creatures. Then shall an Innuendo make that an Offence, which without it, was not an Offence ; especially so great an Offence, as that of High-Treason ? Surely not.

Besides my Lord, all our Books are against making any such Construction. *Roll's Abr. 1. Part 84.* There is a whole Bead Roll of them to prove, that Innuendos will not help where the Words in themselves have any Incertainty in them. The bare setting down the Words with Innuendos are not an Averment sufficient to maintain an Action, or an Indictment. The Cases there are indeed upon Actions of the Case for Words, which in reason are under the same Rule.

For my Lord, there are two Ways to apply words that are uncertain, to bring out the true Intent and Meaning of them, to whom they are to be apply'd ; the one is by a *Colloquium* precedent ; and where there is a *Colloquium* precedent of such Matter as will lead in the Sense of the words, which without it were not to be understood, there the laying that *Colloquium* makes the words come to be sensible ; and there is this reason for it, whenever that's done, the *Colloquium* must come in Evidence and must be proved : But I never yet knew an Innuendo offer'd to be proved. Another Way is this, where words are laid in a Declaration with an Averment precedent to be spoken of such a Person, then the words with an Innuendo after that Averment, show sufficiently what is meant by them. If so be scandalous words are spoken, as to say, *Thy Landlord, your Brother, your Master, your Servant, your Son is a Thief*, or the like : In these Cases the words in themselves do not express the Man of whom the Scandal is raised, but they give such a Denomination of the Man, that may by the Hearers be sufficiently known. Why then in that Case, if in the Declaration it is averr'd that the Plaintiff was his *Landlord*, was his *Brother*, was his *Master*, was his *Servant*, was his *Son*, and that these words were spoken of him ; and thereby it comes to be made apparent to the Court what is meant, and who is meant, that is well ; and all that must be proved to the Court upon Evidence ; or the Action cannot be maintain'd. By such means as this, it is made plain and demonstrable, that there can no Doubt remain, either with the Court or the Jury, to whom the Injury is done, and of whom the Scandal is utter'd. And these are the only two Ways that ever I could observe were allow'd to be sufficient to maintain any such Action ; And there the Innuendo comes very properly in to assist the Averment, or the *Colloquium*.

But now my Lord, here in this Case, here's nothing of that kind but only a bare *Innuendo*, that such and such were meant, without either a *Colloquium* that there was a Discourse concerning such and such Persons ; or an Averment that the words were spoken of the Persons.

My Lord, I cannot tell what Precedents they will offer to your Lordship of former or later Times. We have had but a very little time to look into it ; and have not that recourse to the Precedents on the Crown's side, that the King's

Council have. But my Lord, for Precedents that may have pass'd *sub silentio*, without having the Question stir'd, I suppose will not be allowed by your Lordship and the Court as Precedents against us. But I think there will be no Instance given where ever any such thing came in question, that ever Judgment was given against the Defendant.

My Lord, this seems to be the sense and nature of the words as they are laid in this Indictment, stript of the Innuendos ; and your Lordship knows what a Case we have now before you. We are in the Case of the Life of a Man, which is much favour'd in Law ; and if there be any doubt or uncertainty, your Lordship will lean rather towards the favourable Side ; and if according to the Rules of Law, words to make Men Criminal shall not be strained or forced beyond their plain, natural Meaning ; sure they shall not to make a Man capitally so : For the greater the Crime is, the greater Consideration the Court will have to see that there be no strain'd, forc'd Constructions to bring the Life of a Man in danger : And therefore I humbly pray that Judgment may be Arrested.

Mr. *Att. Gen.* May it please your Lordship, I am of Council in this Case for the King ; and notwithstanding any thing that has been said, I do conceive, that there is High-Treason well alledg'd in this Indictment, of which the Prisoner is found guilty, against whom I must demand your Judgment. My Lord, there is a great difference in this Matter ; that is, whether the words are Treason, as they were spoken by him ; and whether or no this Treason, admitting it to be Treason, be well disclosed by this Indictment : For my Lord, I think to preach in a Publick Assembly, that *we have had two wicked Kings together who have permitted Popery to come under their Noses*, and then to go on with it to *Stand to their Principles* (for so the words are laid in this Indictment) *and they should overcome their Enemies as in former times with Rams-horns, broken Platters, and a Stone in a Sling*, is a very high Aggravation of such words. And my Lord, if you remember the Evidence, as I doubt not you do, it was all spoken in a Publick Assembly, before 4 or 500 People ; and they were spoken without any words intervening whatsoever. These were the only words that were spoken relating to this Matter : So that these must carry their own pregnant Sense with them, of exciting the People to stand to their Arms against the wicked Kings, or else they are of no Signification. And thus they are laid in the Indictment, and found by the Jury to be spoken positively to stir up the People against the King, to depose him, and to raise Rebellion within the Kingdom. This I say, is positively affirmed, and laid down in the Indictment. But now whether or no these words are in point of Form so laid, that the Court must understand them with relation to the King and Government, and as an Argument to stir up the People, is the Question : For if they be so, then they are well laid to support this Conviction of Treason.

Now for that, my Lord, I would only first say, they must either import Treason in themselves, or they do not. If they do import Treason in themselves, no Addition of the Person concerning whom they were spoken (as that they were spoken of the King) will mend the Case,

Cafe, or make it better. Tho' it be laid never so much to be spoken of the King, and that be never so much averr'd; yet if it be not spoken to disturb the Government, or to raise Rebellion and Insurrection, the adding a thousand times that it was spoken *de domino Rege* would not avail. They confess they have no Precedents to produce; and I believe truly they have not: And so they only go by way of Argument, taken from Actions upon the Cafe for words: Whereas there is a great Disparity in the Cafe between Actions of the Cafe for words, and Informations or Indictments for words that are Criminal or Capital; and I know if they will look into the Precedents that are in Print, in the Entries and in the Reports of Informations or Indictments, they will find it is never, or very seldom, or rarely done; it being look'd upon as to no Purpose, or as perfect Surplusage, to lay that such or such a thing was spoken, *de domino Rege, de Gubernatione*. But in Criminal Cafes, and not Capital, it is commonly thus; of which there are Multitudes of Instances: That such a one being of an ill Mind, to raise Commotion in the Kingdom, and stir up Sedition, spoke these and these words. This was the constant Form in your Lordships time, as your Lordship can remember, in the Informations that were, or the Indictments of Persons that had spoken words relating to the Duke of York. I can remember when your Lordship us'd to say, *Never consult me, but follow the ancient Precedents*, which I dare undertake to say are all thus; and so I shall shew by and by, it has been in Indictments of Treason: And tho' perhaps one or two might at any time be otherways drawn, (of which yet we can find none) yet, this hath been the constant Form for any thing that I can find; and it is of very great Consequence to say at this time of Day, That what has for 100's of Years together been the constant Practice, and way of Indictments and Informations, is not good; it were to turn all things topsie turvie, and to make great confusion in Prosecutions, and the Practice of the Law in Criminal Matters. I shall therefore shew your Lordship that here is such a certainty as the Law does require, and as is usually practis'd; and that the Words in themselves are such, that they must have relation to what we have laid down in the Indictment, and to nothing else.

But then they do lay down this for a Ground, which I think I may grant them very easily, and yet it will signifie nothing to what they mean; I would wipe off all these Innuendos, leave them out of the Cafe, for I never expect any help from them at all; and then I do agree that an Innuendo without a strong, urgent Averment that the People which hear the words spoke, and the Court that are to pass Judgment upon them shall say forcibly appears from the words themselves, who was meant, and what was meant, will not support the Indictment, nor has the Verdict fortify'd it at all.

But they tell you in Actions of the Cafe, if *John-a-Stiles* be called a Bankrupt; if he will bring an Action against the Party that spoke these words, he must aver, and affirm, that they were spoken *de quarente*, of that particular Person that doth bring the Action; and so it is, the Law is so, and the Reason's plain; because there are many *John-a-Stiles's* perhaps, and the Plaintiff that brings the Action is but one; and

therefore if he does not shew that the Discourse was of that *John-a-Stiles* who brings the Action, it is uncertain who was meant, and cannot be supported by a bare Innuendo. But I take it in these Cafes, wherever the precedent Averment is necessary, there must be a distinct Proof of that Averment; as if *John-a-Stiles* be called Bankrupt, (in the Cafe I mention'd) and he brings his Action and avers the Discourse to be *de Quarente*; and he calls Witnesses, who prove the words to be spoken, that the Defendant did say *John-a-Stiles* was a Bankrupt; and the Court demands this Question of the Witnesses, but do you know what *John-a-Stiles* the Defendant meant? and he shall answer, no, we only heard the Party say *John-a-Stiles* is a Bankrupt: It is apparent that Evidence will not support the Action; for that Averment must be proved, that he that brings the Action was intended, and that there was a Discourse concerning him. There must be, I say, the Proof of the Averment to make up that certainty of the Application of the Words which the Law requires. And therefore in what Cafe soever it be, if the words be the only Proof, or if the words carry sufficient in themselves to shew of whom they were spoken, it is ridiculous to say there must be an Averment that they were of such a one; because Words cannot prove themselves.

For my Lord, where ever words by strong and pregnant Intendment do carry Slander, and of such a particular Person, there the Books are express that there needs no Averment, that they were spoken of such a one; as in the Cafe of *Fleetwood and Curle, Hob. 267.* which is a Rule for all Cafes upon Actions of the Cafe for Words. Sir Miles Fleetwood being Receiver of the Court of Wards, brought an Action of the Cafe against Curle, for that he (having Speech with one *Whorewood*) did speak of the Plaintiff these Words, Mr. Deceiver (Innuendo the Plaintiff) had deceived and couzened the King, &c. He did there alledge the Words to be spoken of the Plaintiff. In that Cafe, upon not Guilty pleaded, it was found for the Plaintiff; and it was moved in Arrest of Judgment, that it did not appear by the Words spoken, that they were spoken of the Plaintiff: For Mr. Deceiver had no Propriety to that purpose; and the Innuendo would not make it certain; when it appeared to the Court that the words would bear no certainty, tho' he did alledge the words to be spoken of the Plaintiff in that Cafe; because there may be many Deceivers or Receivers; and he must prove it particularly spoken of himself. But then the Book is express, that after a Verdict, tho' he did not averr it was spoken of him in his Office, yet Judgment should be given for the Plaintiff, because there is a pregnant, violent, certain Sense, that may lead the Court and Hearers to take it so to be meant, and cannot be other ways imagin'd; and therefore the Court will not imagine it. As if a Man spoke of an Attorney, that he is a Knave, and spoke not of his Practice; why then the Action won't lye: But if he be named an Attorney in the Declaration, and the Hearers knew him to be an Attorney; in that Cafe, it was rul'd not necessary to have any such Averment; for the words themselves did import it in the Original Cafe, that it was spoken of him in his Office by the Word Deceiver; that having an Allusion and Ironical resemblance to the Name of his Office;

fice; and in the other Case, because the Hearers knew him to be an Attorney.

So my Lord, upon these Grounds, Judgments have gone in those Cases which they themselves do so much rely upon; Actions for the Case for Words; wherever the Words import pregnantly such a Sense, there does not need such an Averment. But I shall shew that in Informations and Indictments this cannot be necessary, and the Reason seems plain: For here as we have laid it, and as the Truth is, we all know it, there is but one King, and one Government; and when Words are laid to be spoken to excite Commotions, or Rebellions, or Insurrections, they are but external Declarations of the Mind; the Treason that he is charg'd with, that is inward, it is the thoughts that are Treason. But it is true, the laying that alone, that he did so compass and imagine, without some outward Declaration, would not be good in an Indictment, any more than the outward Declaration without the inward Intention. But the Treason is, that he did imagine to raise Rebellion and War within the Kingdom, to stir up the People against the King, and to depose the King, and bring him to Death, and deprive him of his Crown and Dignity; and then goes the Indictment on, and says, to the end that he might effect this Treason, he spoke such and such Words, which by that new Law (that Mr. Pollexfen mention'd) will amount to Treason in Speaking, as well as Writing. I say, it is positively charged in the Indictment, that he did thus and thus speak to stir up the People to Rebellion and War against the King; and then come the Words, If indeed any collateral Words be spoken, which in their own Nature import not a Tendency to incite and stir up the People against the King, it would be naught with Innuendo's; and so it would be if there were twenty Averments. But I think that this is as strong an Averment as can be (what we all know to be true) that there is but one King and one Government. And then he spoke the Words in a Publick Assembly, *We have had so and so, and if they would do so and so*; which carries forcibly and pregnantly this Sense, that it cannot be intended to be spoken against any one else, but against the King and the Government; especially now after the Verdict, when the Jury find that he did all this to raise up the People against the King. All the Discourse is in it self pregnantly and forcibly tending that Way.

My Lord, we are now upon the Form of the Indictment. Put the case there are many idle Expressions in it, as I may grant there are; yet if the greatest part import Treason, Sedition, and Rebellion; and are laid to be done to incite the People to Rebellion; and so found by the Jury; then the Indictment is well laid, and Judgment must be given for the King. The first Words are highly derogatory to the King, and must be understood to be spoke of him. If the Prisoner had thought these Words would not have been Treason, if he had demurr'd in the Case, by that, as the Jury find it now here, he would have confess'd it to have been spoken of the King; for it is said he spoke it to the People, and he spoke it of the People of England; and to say that *Populus* may mean the King of France's People, as Mr. Wallop would have it, certainly no Man can think that: For when he speaks in English, to an English Auditory in a

Publick Assembly, *That the People make a flocking to the King*, how can that King mean the King of France? And how can the Word *People*, by any Intendment, but a very foreign and strange one, be interpreted to mean that the French People should come over hither for to be cured of the King's Evil, when (as he himself says) the French King claims such a Power? No, That does fix it particularly upon our own King.

Pray let's consider then, what possibly can the Intendment of these Words be that follow, *We have had now two wicked Kings together*? as for that Objection of the Word *insimul*, that it means together at one time; that sure can have very little in it; it being to be taken according to common Understanding in our Dialect; and in English to say we have had now two wicked Kings together; every one will understand it, we have had them one after another, because we have but one King at a time.

And then, my Lord, if the latter Words were left out, with Submission, I conceive upon the Authorities that are in our Books, these Words would have been Treason upon the Statute of 25 Ed. 3. For, my Lord, in a publick Assembly of People, which is an unlawful Assembly as this was, to speak such Words of the King would be Treason. For put the case he had collected a number of armed Men, at *Hounslow Heath*, and there exhorted them to stand together; that the King was a wicked Prince, and had misgovern'd himself in the Administration of the Government; I think that would be Treason within the Law. By the new Statute, to say the King is a Papist, plainly is a *Præmunire*; but to say the King is a wicked King, and has misgovern'd himself in introducing Popery; that's a Step further than what the Act makes a *Præmunire*; for these are Words to stir up the People against the King, especially preach'd in a publick Assembly.

Then, my Lord, you'll take all these Words together; first after he had drawn away that great Authority, and great Power that the God of Heaven hath given to the King in curing the King's Evil, and declar'd him to be a wicked Prince, by suffering Popery to come under his Nose, and that he was to be compar'd to none but wicked *Jeroboam*: And then to exhort the People, to stand to their Principles, and he did not doubt, but they should overcome their Enemies. What can be plainer Treason? For it is plain, that he did speak to the People, to the Congregation; and that can never be understood otherways by the Court, nor by the Hearers. For that Interpretation, that the King should overcome his Enemies; it is foreign and ridiculous; and not to be imagin'd by any body that has either Sense or Reason about them.

But my Lord, I shall leave all this (the Jury having now found it) to shew what Precedents we could prepare for your Lordship; how things of this Nature have been used to be drawn; For we have made for the little time we had, as good a Search as we can; and I have found several: And indeed, I cannot find one otherways, than as this is. And for late Informations, and Indictments, if you examine the Clerks that now are, they'll tell you, that there is not one otherways: But that if it be said to be done with an intent to raise Rebellion or War against the King, or Sedition, or the like; and then say, he spoke such and such Words, that is sufficient.

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But I will shew your Lordship some ancienter Precedents, some few which will shew how the Practice was heretofore.

The first is 3 H. 8. Rot. 17. in the Indictment against my Lord Grey, of High-Treason; after the general Charge of machinating the Destruction and Death of the King, and Subversion of the Government; It is said there, that *Proditorie* he did speak these Words, 'That the King's Grace should be driven out of the Realm, and the Prince's Grace should never Succeed.' And it is not averr'd that these Words were spoken of the King, and of the Prince; nor was there any need it should be averr'd; for the Words plainly import they were spoken of them; and the laying it, that it was to raise Sedition within the Realm, was sufficient to make them High-Treason.

Then the next is my Lord Cobham's Case, 2 Jac. Sessione 1^{ma}; for it is one of the great Records that lye in the Chest, amongst the *Artana*. But by the Book in the Office, we have a Copy of it; but there is the Record in the Chest, and there it is, 'Posteaque 12. die Junii, ultimo præterit. ac diversis aliis diebus & vicibus, tam postea quam antea, dixerunt, &c. (for there are other Defendants) *Proditorie*, 'there will be no good till the King (meaning our Sovereign Lord the King) 'and all his Cubbs (meaning the Children of our said Lord the King) 'were quite taken away, &c. I leave out the general Charge of the Machination and contriving of the Death of the King; but to the intent to effect that Treason, such Words were spoken, without any Averment that they were spoken *de Rege*. There was no mention of the Progeny of the King before; or that the Cubbs that were spoken of, were the King's Children; neither would the Words *Regalis Progenies*, answer the English Word *Cubbs*; which was a Word abusively mention'd by him. But in that Case it was held to be a good Indictment; and Sir Walter Rawleigh was condemn'd upon it.

Another is *William's* Case; and that's very like our Case in the first Part; that is, the first Words insisted upon are laid positively to be spoken of King *James*, by an Innuendo. *Pasch. 17. Jac. Rot. 40.* there after the *Machinans & intendens &c.* it is laid that he such a Day of September, *Proditorie* devisavit a treasonable Book, call'd *Balaam's Ass*; wherein there are such and such Passages apply'd to the King by the Innuendo. There is nothing said of that, to be spoken of the King, *de Rege*; but the Words of the Book, carrying their own plain Sense and meaning in them that they must be intended of the King, and the Government; that was sufficient to maintain the Indictment; and he was executed. The Innuendo's are not material. If it can have no other Sense, that is enough to maintain the Indictment.

My Lord, In *Fitzbarris's* Case, which your Lordship and all the Court remember; part of the Libel related to the Duke of *York*, by the Letters *D. of Y.* and sometimes only call'd by the Letter *Y*; and the King himself by the Letters *Cb.* And the Innuendo is, Meaning our Sovereign Lord the King; and there is nothing averr'd in that Case, and indeed, there can be be nothing averr'd; for by the import of the Thing it must have that Sense.

Colonel *Sidney's* Case, my Lord, you'll find to be the same: There's no Averment; but the

Words of the Libel are brought in with an Innuendo.

And you have another Indictment at *Salop, 21 Car. 2.* One *Pitt* was Indicted of High-Treason, and convicted for these Words, 'If the King should hang, or banish any of the Papists, his Throat shall be cut.' This is laid in the same Form in the Indictment, as we have it here in our Case. If you please it may be read that he did *advise, proditorie*, speak such and such Words if the King (meaning our Sovereign Lord the King, without any previous Discourse of the King, or saying it was spoken *de Rege*) should hang or banish any of the Papists (*quasdam personas male dispositas, &c.* innuendo) his Throat shall be cut. He was convicted (I say) and I think was executed, tho' I cannot directly tell that: But this is the Record of his Conviction.

So I take it, it is (with Submission) that the Precedents go all along, both in Criminals that are not Capitals, in Indictments and Informations; and also in Indictments for High-Treason. The charging the Words to be spoken to stir up Sedition and Rebellion within the Kingdom, without the help of any Averment whatsoever, is sufficient; that is a strong Implication that they are spoken of the King and Government.

And my Lord, as to these Words they could not be laid otherways, than they are in this Indictment; for this is all that the Persons that are the Witnesses swore was Spoken. Your Lordship remembers it, it was so when they were here, they could swear no more. So that to have averr'd that he spoke to them *de Rege & Gubernatione*, would have put a proof upon us that our Witnesses would not have come up to. We must have prov'd a Discourse of the King and Government, and a Swearing of the Words would not have been a Proof of that. The Jury has found that this was done to stir up Sedition and to levy War; therefore I conceive according to the constant course of the Precedents, there is no need of any Averment; but the Words are well laid and well prov'd; and he well convicted.

To say that *Enemies* is a very general Word, and that we have *Enemies* of all sorts, and that therefore a bare Innuendo cannot make it mean one more than another, is odd in this Case; For I would fain have any Man assign me what sort of *Enemies* he could be thought to mean in such a Discourse; he could not mean Spiritual *Enemies*; because the Instruments that they were to be destroy'd with, were carnal Weapons, broken Pitchers, and a Stone in a Sling. These are not fit for overcoming Spiritual *Enemies*; but they must be such *Enemies* as can be destroy'd by such Instruments; Carnal *Enemies*, that are to be vanquish'd by outward Force. And then what *Enemies* can such a publick, unlawful Assembly have but the Government? All that are of their own Side and Party, are none of their *Enemies*. And it cannot be taken distributively, that every particular Man has his *Enemy*, that's a foreign Understanding: But when he spoke to the Congregation in a Conventicle, that they should overcome their *Enemies*, being so unlawfully assembled, that must be the Government. And had he not told you before who were the *Enemies* that he plainly meant? He had said that the King was a wicked Man; and

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According as he represented him, an Enemy to God and Man by introducing Popery into the Kingdom. And you are to consider the Time when, and the Place where these Words were spoken. We know that in these Conventicles, it has been the constant Cry, that we should be all over-run with Popery, and the like: And therefore that is considerable in the Case.

My Lord, I make a great Difference between Words spoken in private, and Words spoken in a great and large Assembly. It is the same Thing as if it had been spoken at the Head of an Army; especially when People meet contrary to the Laws of the Land in Defiance of the Government; and gather together in such great Multitudes; and have such Discourses and Opinions broach'd amongst them. I cannot see truly how it is possible to have been better laid, being Sworn directly as it is laid; and especially being found to be all spoken to disturb the Government, and to raise Sedition and Rebellion. Therefore I must submit it to your Lordship; and pray your Judgment against the Prisoner for the King.

Mr. Sol. Gen. My Lord, I beg leave to add one Word on the same Side. That which I shall apply my self to, is, to shew that this is a very good Indictment, in the Form of the Indictment, and that upon this Matter which the Prisoner is proceeded against; for it could not be better.

My Lord, the Fact charged upon the Prisoner is as Mr. Attorney has open'd. These Words were spoken in a Conventicle, *The People make a flocking to the King to cure the King's Evil, which he cannot do, &c.* These are the Words upon which the Prisoner was committed: These are the Words upon which he is proceeded against; and These are the Words which have been found against him. And, my Lord, more Words than these are not alledg'd to be spoken by the Prisoner, nor proved to be spoken by him at his Tryal upon this Indictment. Therefore if these Words are High-Treason, this is a good Indictment in Substance, if it prove so too in Form. And whether these Words are not themselves Treason, I shall not now speak, but shall only go to shew (as I said) that it is a good Indictment in Point of Form. For these Words are his Crime, as spoken in that Conventicle; and the only Crime of which he was accus'd, and of which he is found guilty.

Now, my Lord, let us see how the Indictment is. He is charged with compassing, imagining, and intending to raise Rebellion, and levy War in the Kingdom; and to depose the King; and to bring the King to Destruction: That is the Charge of High-Treason, in the Kind of it. Now, as that is the Charge, it is of absolute Necessity to alledge an Overt-Act, which must be proved too; and, if there be not an Overt-Act, the Indictment is naught. Well then, the Treason is compassing the Death of the King, and intending to raise Sedition, and levy War. What is the Overt-Act charg'd upon him? Why, to bring such his wicked Purposes to pass, he did traiterously speak, publish and utter [*the Words of the Act of Parliament in 13 Car. 2.*] in an unlawful Assembly, in the Presence of divers of the Kings Subjects, these Words that I repeated before to your Lordship.

Now, my Lord, I ask; Are these Words Treason in themselves, or are they not? If they are Treason of themselves; then the Indictment is certainly good in Form, without saying, that he spoke the Words of the King, or of the People of *England*, Subjects of the King. For either they do import that of themselves, or they do not. If they do import it of themselves, the saying that he did speak them of the King, and of the People, would have been impertinent and idle; because it is a thing manifestly plain of it self. If they do not import this of themselves; then had it been charged that they were spoken of the King and of the People, this must have been proved.

To go on then, my Lord: If it must have been proved; it must have been proved either by the Words themselves, or by something else. If it were to be proved by the Words themselves; why then it returns to the old Question, and we need not alledge it. If it were to be proved by something else; then the Fault is not in the Indictment, but it must be want of other Matter than what our Witnesses would prove; which, I am sure, would have been a very great Fault in us to have drawn upon our selves. But if the Words import of themselves the Meaning to be of the King, and of the People of *England*; then it is plain they make the Treason of themselves, and there requires no Averment.

As now, for Instance, (my Lord) to change the Words a little, to illustrate the Case; as suppose it had been charged in the Indictment, that to bring his wicked Purposes forth to effect, he did speak these Words in such an Assembly, *Procure to your selves Arms, and make your selves ready by such a Day, and go to Whitehall and kill the King*; Would any Man have said here, that it was necessary that we should say in the Indictment that he *dixit de Populo, vel de Rege*, so and so; No certainly, it is not necessary, because the Words plainly import their own Meeting.

So here in this Case; if the Words themselves necessarily import to be spoken of the King, it is as impertinent here to say *dixit de Rege, dixit de Populo*, as in that Case; because it is no more than what they necessarily and naturally import of themselves: Which shews that this Averment that they would have, is absolutely immaterial; and, if it had been charg'd, would have requir'd some other Proof than the Words themselves. And so the Fault cannot be, as they would alledge, in the Form of the Indictment; but in the Substance of the Words, that they do not import in themselves such a Meaning. And therefore, I think (with Submission) I have maintain'd the Form of this Indictment, beyond all Contradiction; and, notwithstanding all their Objections, it is a very good Form without the Words, *dixit de Rege, vel de Populo*.

As Mr. Attorney said, it is necessary (my Lord) in Actions on the Case for Slander, to aver, *dixit de querente*, because he must ascertain the Person of whom the Words are spoken, to be the very Plaintiff; for there may be divers of the same Name: And you must always, upon a Record, ascertain the Person, to entitle the Plaintiff to the Action; But where Words are pregnant, and full of themselves, there needs no Averment in such a Case; which, without

without such Pregnancy; would be necessary, and if not done the Action would fail. As in that Case that was cited by Mr. Attorney of Sir Miles Fleetwood; if it had been that the Words were, Sir Miles Fleetwood has deceived the King, it would not have born an Action, unless it had been averr'd to have been spoken of him as of *conzening* the King in his Office: Because generally to say a Man has *conzen'd* the King, will not bear an Action, it is so loose. But when he says Mr. Deceiver; the Ironicalness of that shall not excuse him, but rather demonstrate both who and what he meant; that it shall be apply'd to him as doing it in his Office. And, being so, it must necessarily be understood to be a very great Slander, and then it needs no Averment. So says the Book.

So that where Words are plain and full, even in an Action on the Case, there requires no Averment: But in Indictments, they being for Offences against the Government, the very ancient Forms used will govern the Case; as well as the Reason and Nature of the thing; that no one can be meant, by such sort of Words, but the King and the Government: And for that I rely upon the Precedents that have been cited, that the Forms were always thus. The Precedents (with humble Submission) where the Overt-A&t laid in the Indictment is by Words spoken, that it is said, *dixit de Domino Rege*, &c. there is not one that does ever carry it so, but the Forms are constantly in the same Manner with this that is now before your Lordship, without such Averment, as carrying plain Surplusage, to averr that which the Words necessarily import.

To say, my Lord, in this Case (as we hear it objected on the other Side,) That these Forms pass'd *sub Silentio*, and no such Objection was ever made: I say that is no Objection to our Indictment; for the Argument sure turns the other way; because the Forms have been constantly in this Manner that ours is, therefore it is assign'd that what they offer is no Objection at all; for, doubtless, in so long a tract of time, when so many learned Men sate on the Bench; and so many learned of the King's Council attended the King's Courts, and so many Persons have been indicted, try'd, and suffer'd upon such Indictments, who would have saved their Lives (no doubt) if they could, by making such Advantage of such an Exception; that is a strong Argument that it was never thought an Exception. So that, besides the Reason of the thing, the Precedents are all with us, which hath always been accounted a good Argument.

My Lord, a great many of us remember the Indictments of latter Times; particularly that of Colonel Sidney: Tho' there is another Overt-A&t laid in that Indictment too, yet that is nothing to this Case. If there be but one Overt-A&t laid in the Indictment, it must be proved by two Witnesses; but if there be several Overt-acts laid in the Indictment, and one is proved by one Witness, and the other by another Witness, that is sufficient to maintain the Indictment. In Mr. Sidney's Case there was to one Fact but one Witness; and therefore it was necessary to lay another Overt-A&t, which was proved by other Witnesses. And one Overt-A&t comes to this point that's now in Question before your Lordship. It is in this Form directly,

without any Averment that the Words were spoke, or written *de Rege* or *de Regimine*; but that the Book contain'd so and so: And the Thing it self speaks it self of whom it was meant. If therefore the Words in that Case, being proved, were necessarily to be apply'd to the Government of England, there need no Averment: No more does there here.

My Lord, not to trouble your Lordship further in so plain a Case; the Precedents being thus, and it being known to be the constant Practice in point of Form; I would fain know what they would have had us do. The Witnesses swear these are the Words, and there are no more; how then can we frame a better Indictment than upon the Words that they swear were spoken? My Lord, we pray your Judgment for the King.

L. C. J. Well, have you done on both Sides?

Mr. Attorney. Yes, my Lord.

L. C. J. Truly for my part, I think this is a Case of great Consequence on the one side; and on the other. I hear it's said there are abundance of Precedents in the Case; some have been mention'd; and it is necessary we should look upon these Precedents before we deliver any absolute Opinion. But truly I must say, Mr. Attorney's Precedents have with me very little weight. And I must differ from Mr. Attorney in another Thing: For if in Case the last Words were out of the Case, of *standing to their Principles*, and *overcoming their Enemies*, Do you think, that because it is said in the fore part of the Indictment, that he intended the Death of the King, and to raise Rebellion, and therefore said, there were two wicked Kings who suffer'd Popery under their Noses, and were to be liken'd to Jeroboam; that that would be a good Indictment for High Treason? Then it were plain the A&t of Parliament, 13 Car. 2. was made to no Purpose. For tho' I doubt not in the least, words may be an Overt-A&t of High Treason, in compassing the Death of the King, upon the Stat. of 25 Ed. 3. I make no difficulty in the World of that: So was my Lord Cabbam's Case; and so were the Cases in Harry the Eighth's Time, 'We will drive the King out of England, or any thing of that Nature: I say that would be an Overt A&t sufficient to bring a Man within the Compass of the Statute of 25 Ed. 3. because those are exprefs words tending to the death and destruction of the King, the deposing him and depriving him; and they call him the King. But if a Man comes and says, That such a one with a Purpose and Intent to destroy the King, said these words, That *the King could not cure the King's Evil*; that's not such an Overt A&t, as to make good an Indictment of High Treason. And to say that the King introduces Popery under his Nose into the Kingdom; why it's a very high Crime; but it is prescribed by the A&t of Parliament to be prosecuted only as a Misdemeanour, and punished by *Præmunire*. If you look into that Statute, you will find which way the words shall have a Tendency that are to convict a Man of Treason; that is, that tend to the Imprisonment, bodily harm, death or destruction of the King; or raising Insurrection and Rebellion; or levying War within the Kingdom, that is High Treason. But words that do not necessarily tend to any such thing; as to say the King is a *Papist*,

introduces Popery, is Popishly affected; Phrases that some People delight in; that has a peculiar Punishment appointed to it by this Act. And this is all taken care of, to shew the Judges how they should proceed, being careful of leaving it loose in so great a Case as High Treason. And the Parliament seems to be the more careful in it; because they make the treasonable words such an Offence during the King's Life only. Now as Mr. Solicitor puts the Case by way of Illustration in other words; I make no difficulty, but to bid Men prepare Arms, and go to *White-hall*, and kill the King, would be rank down right Treason. Would any Man in the World doubt to averr, that that were an Overt Act? No Man living would. But if I will say, that to compass and imagine the King's Death, he bid them rise up and go to *White-hall* and they should overcome their Enemies, does that import the King? There's no necessity of that. The King cannot be said to be an Enemy, unless it be plainly declar'd by the Party himself who he meant. And then to say, how could it be made better? No doubt of it, it might easily be made better if it had been consider'd of. For if you had come and averr'd, that these Words were spoken concerning the King, and the People of *England*, certainly it would have made it more certain. I don't bind my self now in my Opinion, by what I now tell you; but I am only breaking the matter. If you had said, that he said, if we will stand to our Principles, we shall destroy them, I think it had made the Case stronger ten times; but you have not so donè. Indeed I am not so fond in my Imagination as the Council for the Prisoner seem to be; That *we have had two wicked Kings together, who have suffered Popery to come under their Noses*; that therefore we must run it up to King *Ethelbert*, and I don't know who; no, that plainly in common *English* speaking, means two Kings successively; and it must be made a strange, forc'd Construction, if we should interpret it that he did not speak these Words of the late blessed Martyr and his present Majesty. And because *Enemies* is in the Plural Number therefore to make it Nonsense, because one is destroy'd, (if the words had been well laid as they might) therefore it could have no relation to him that was left, (I say) would make a strange forc'd Construction. That might be well enough if the words had been properly laid. But when you come to speak of *Enemies*, innuendo the King and his Subjects; how can that possibly be? For you had talk'd of no body before that they are said to have a Displeasure to; and therefore without saying that the King is an Enemy to say, *Stand to your Principles, and you shall destroy your Enemies*, Innuendo, *The King*, is I doubt to stretch it a little too far. But whereas I have put the words how I think they should have been laid; says Mr. Solicitor the Truth is, they were not so spoken as you would have them laid; but they are laid as they were spoken, and as they were sworn; and that's a Point of Fact to be left to the Jury, whether they aim'd at the King and Government, or not. Do you think that an Answer? for it would be the same Argument in an Action of the Case for Words? Where it's plain it must be *dixit de quarente*, you do so, and so. My Declaration must averr it, and I must prove it too. If I do not say it, tho' I prove it, that won't maintain the Action; if I do say it,

and not prove it, it will not maintain the Declaration; all's naught; and what is there more in this Case? If you had said it, that would have directed the Jury plainly upon finding the words as laid in the Indictment, to have found what was the Intention of the Party by these Words. These are things (I must confess) that wonderfully weigh with me. It is in a Case of a capital Offence, where the Life of a Man is concern'd. If the Precedents have all gone so, there is some weight in that: But if the Precedents be only such as you have spoken of, Words directly telling who is meant; they have no manner of likeness to the words in this Indictment; because there they could never import any thing else.

In the next place, I am stumbled at another thing, Mr. Attorney; and that is, the difference of the Persons in one part of the Words, and t'other. You have begun in the first Person Plural; *We have had two wicked Kings together*; and as the Latin Words are, *Nos habuimus nunc duos iniquos Reges in simul*; but afterwards you say, and if *they, Ipsi*, will stand to their Principles, *he did not doubt but they should overcome their Enemies*. It had been best to have laid them, as (certainly in common understanding) they must be believed to be spoken; *if you or we, will stand to our Principles*; and then the very Innucendo would have been more sensible and applicable.

Mr. Sol. Gen. But my Lord, it was sworn so by the Witnesses, that he said, *if they*.

L. C. J. The words say he preached, *We have had*, that is he, and the Congregation assembled; and then it is afterwards turn'd to *they*. I make no difficulty in the World, but that *we have had two wicked Kings together*, was intended of the late King and this; and if it had been all ledg'd, That afterwards he had said, *We shall overcome them*, and a Jury had found that these words were spoken with such an Intention as is laid in the Indictment, it would have been Treason. But both in Grammar and Reason, when you come to say, and *si ipsi, &c.* Pray to whom should that relate? What's the English of *ipsi*? Is it *we* or *they*? If it be *they*, in the third Person, there are no third Persons spoken of, but the two Kings; and they are the last Antecedent. For my part, it does stumble me, it is a thing of great Consideration. I speak not, as I said, to bind my self in Opinion; but I think if ye had put the words *Nos* instead of *Ipsi*, it had come nearer to the Understanding of Men, both in Grammar and Sense. For I exclude my self, and them I speak to, if I put it in the third Person; and your Innucendo (I said) can no way help it.

Mr. Att. Gen. Truly, my Lord, I did not think, that that did rest upon your Lordship at all as any Objection.

L. C. J. It does rest, I assure you, Mr. Attorney.

Mr. Sol. Gen. If we had done otherways, we should not have laid it as the Truth is; and the Latin does not alter the Case; for the word spoken was *they*.

L. C. J. Ay; but certainly he said (no doubt) *You or We*; if *you will stand to your Principles*; it's Nonsense else.

Mr. Sol. Gen. My Lord, I take that to be well enough; for here are three Sentences. The first is, *That the People make a flocking to the King, &c.*

Quod

Quod Populus, &c. The next is, *Quod nos habuimus*, &c. And then the third is, *Quod si ipsi*. Now *Quod* governs the particular Sentence; and it being a particular Sentence by it self (with humble Submission) it is good in Grammar and in Sense too.

L. C. J. Suppose you were to speak it in English. *Mr. Solicitor*, suppose you were to speak it, *Now we have had two wicked Kings together, who have suffered Popery to come in under their Noses*, (meaning, the late King and this) there perhaps the Innuendo is sensible, and no doubt of it, then he must mean them? But to say, *If they will stand to their Principles, they shall overcome their Enemies*; Pray to whom does that they relate?

Mr. Soll. Gen. My Lord, with humble Submission, you put the Case of an entire Speech, made in the Person of the Preacher and the Congregation; and as the Words were spoken all at one time. I would make it an entire Speech too; but it seems to be several Sentences, and therefore that differs the Case. For taking it that these are three distinct Sentences, they might be spoken in a several manner by varying the Person; and so they were Sworn. And suppose he had only spoke the last Words; an Indictment for this in the third Person had been a good Indictment: And if it had been charged in that Case *Quod dixit & asseruit quod si ipsi*, &c. and then in Evidence come and prove these Words; would not that have been good?

L. C. J. Truly, I think, *Mr. Solicitor*, if the Indictment for these last Words alone, had been in the third Person, it is a Question whether that might have been a good Indictment, if you had come in Evidence, and proved, that he had said of the King and Government, *If you will stand to your Principles, you shall overcome your Enemies*. Though I deliver no absolute Opinion of that; because there ought (I think) to have been an Averment, that they were spoken of the King and the People.

Mr. Soll. Gen. In an entire Speech, (my Lord) there the Relative must be apply'd to the last Antecedent, according to Grammar.

L. C. J. And I think it must be taken to be an entire Speech; and you lay it in the Indictment to be so; and then the Relative must go to the last Antecedent; or else *Dr. Busby* (that so long rul'd in *Westminster School*) taught me quite wrong; and who had try'd most of the Grammars extant; and used to lay down that as a positive Rule in Grammar, that the Relative must refer to the next Antecedent.

Mr. Just. Withins. *Mr. Solicitor*, If you make it several Speeches, then it's ten times worse; for then the latter Part is so uncertain without an Averment of whom the Words were spoken, that sure it can never be made good.

Mr. Sol. Gen. Suppose it had been *Uterius dixit*; would that have made it a distinct Sentence? If it would, our Proof it may be was, that it was an entire Speech; but yet consisting of several Sentences, and must have the common understanding as to their relation one to another.

Mr. Att. Gen. This Objection of *quod ipsi* &c. was not moved by the Prisoner at the Bar; and therefore we did not expect to speak to it.

L. C. J. It is started here now by the Council. And it is a Question truly with me, whether this can be any way sensibly apply'd, as you

would have it: Surely the Innuendo can never make it good.

Mr. Att. Gen. My Lord, I say sling all the Innuendo's out of Doors; the Words in themselves will do it.

L. C. J. Why then we must see whether it be a good Indictment in point of Form, or rather in Point of Substance, as you have laid these Words; without saying they were spoken *de Rege*. It is a Question of great Weight and Concernment, both to the King and to the Prisoner; and therefore we must take good time to consider of it before we deliver a settled Opinion. But, *Mr. Solicitor*, you very well remember that *Staley's Case* was otherways. For, tho' the Words were, the King of England is a Tyrant, &c. yet there it is said, and expressly averr'd that he spoke the Words *de Rege*.

Mr. Att. Gen. Could Colonel *Sidney* have moved in Arrest of Judgment, this that the Prisoner now starts? No, he could not sure. He might have moved for a new Tryal—

L. C. J. Certainly (*Mr. Attorney General*) that Case comes not up to this. Where the Words import in themselves that the King is meant; or any way circumstantially; it does necessarily imply they could be meant of no one else; and that would be good without the Averment: Which was the Case of Colonel *Sidney*, where the Matter declar'd in the Libel was plainly down-right relating to the Government, that *if he did so and so he must renounce his Crown*, and the like. How can that be apply'd to any but the King? *The People of England have committed the Kingdom to his Power*, &c. Why, how can it be interpreted that any Body else is meant?

Mr. Att. Gen. When will your Lordship please to give Judgment?

L. C. J. *Mr. Attorney*, we will consider of it. It is usual, in Cases of less Difficulty than this, to take time of Consideration. I do not say, but that looking upon the Precedents perhaps I may alter my Opinion; and therefore do not speak this to bind my self: But we will consider of it.

Mr. Att. Gen. I look upon it that the Government is greatly concern'd in this Matter; more than ten such as the Prisoner at the Bar.

L. C. J. It is true (*Mr. Attorney*) the Government is greatly concern'd; and the Prisoner is greatly concern'd, for his All is at Stake. I do say a good Indictment might have been made, I am sure

Mr. Sol. Gen. This is the best we could make; for we had no Proof to make out any Averment, because these were all the Words he said.

Mr. Att. Gen. After the Jury have found the Words as laid in the Indictment, was it ever ask'd of a Jury; *These Words were spoken of the King, or they were not*; but you have not said that they are spoken of the King, for it is not laid in the Indictment? Would that ever vitiate the Verdict?

L. C. J. *Mr. Solicitor*, Pray, would you have us give Judgment, That the Jury could not find that the Words were spoken of the King?

Mr. Pollexfen. The Jury have not found that that they were spoken of the King; for there is no such thing averr'd.

Mr. Att. Gen. Nor they have not found them to be not spoken of the King: But they have found them to be spoken to stir up Sedition.

Mr. Solicitor. We are never bound by Law to aver that we cannot prove. And therefore I put all upon that Dilemma: Either the Words

import of themselves to be spoken of the King, or they do not. If they do not; if we had said, *dixit de Domino Rege*, it must have been proved; and that would have been to have left it to the Jury whom he did mean. And if they be not self-evident, God forbid the Jury should be charged to find out such a Meaning; but if they are self-evident, they need no Averment.

Mr. *Just. Holloway*. Truly, we think it may be good Evidence to a Jury; and it is every Day done in Cases of Actions for Words. It is left to the Jury to consider whether he meant the Plaintiff, *John-a-Stiles*, or any other: And the Evidence is help'd by this or that Circumstance, where the Words do not naturally import it.

Mr. *Just. Walcot*. I do think that the Averment that these Words were spoken of the King, is a Point of Fact that ought to be averr'd, and proved. Might not the Jury, in this Case, have found that they were not spoken of the King? If they had found that, why, they would have acquitted him; if they had found they were, and you had not alledg'd it, why then they had found more than the Indictment would lead them to.

L. C. J. Well, this is only by way of Discourse; not that we bind our selves by our present Opinion. We must look upon it. We will not give our Judgment suddenly in a Case of this Nature.

Mr. *North*. Will your Lordship please to spare me one Word?

L. C. J. Ay, Sir; let every Man be heard, in God's Name.

Mr. *North*. My Lord, as to this Objection; *quod ipsi* relates to the two wicked Kings spoken of just before; that cannot be: For you take Notice that these Words of the two wicked Kings relate to the late King, and to the present, as the Indictment says. One of the Kings is dead; so that you cannot understand it to be of the two Kings, that should overcome their Enemies; and therefore it must be the People. This *Populus* being a Noun of Multitude, and taken in the Plural Number, *ipsi* will very well relate to it.

L. C. J. Mr. *North*, The Argument turns both Ways upon that; and certainly he did not express himself after that rate. It is so loose a hung-together Indictment as truly I have scarce seen. For my Part, I would know how it come to pass, that we should not have as much Certainty in Indictments, as we have in Actions upon the Case.

Mr. *Att. Gen.* My Lord, there must be Certainty in all Cases; and we think there is Certainty enough in this for your Lordship to give Judgment upon.

Lord Ch. *Just.* Mr. *Attorney*, I believe if you fate in our Places you would not think so. All our Books require greater Certainties in Indictments than in Actions on the Case: Nay, in Causes of this Nature, we are bound, by our Law-Books, to be of Council for the Prisoner; which we are not in Civil Causes, where the Prisoner may chuse his own Council. And we have not one Act of Parliament to help the defect of forming Indictments, as we have in Civil Actions; but still in all the Statutes made in *Jeofails*, there is an Exception of capital Offen-

ces, to shew that our Ancestors would not help Uncertainties or Insufficiencies in Form, where the Life of a Man was concern'd. This seems to carry a great Consideration with it.

Mr. *Att. Gen.* My Lord, I was very willing and desirous your Lordship should assign the Prisoner this Learned Council; because we did suppose they would have produced some Precedents of a better Form than this: But they have cited none.

L. C. J. And you have cited never such a Case as this. Mr. *Attorney*. And if we can find no other like Case, we must be govern'd by the Reason of the thing.

Mr. *Att. Gen.* My Lord, we hope you will expedite it, for the sake of the Government.

L. C. J. Certainly, I think, it is very uncertain who are meant by *Enemies*; it may be Mr. *Solicitor*; Mr. *Attorney*; it may be the Court; no Body knows who it is: For every Body knows, that to Preachers in Conventicles, and to those that meet there, the Judges, and all that are for the Support of the Laws, may be reckon'd to them as *Enemies*. But when it is so uncertain who are meant, how can we supply it by such an Innuendo? That there might have been a good Indictment fram'd upon such Words as these, as he in all Probability spoke them; and he justly found guilty, is no Question with me at all. And (as I said the other Day, for the sake of the Auditory) if he be guilty of speaking such Words, and of Treason in speaking them; what will they be guilty of that were present, and heard the Words spoken? They may thank God that we have a gracious King, that does not take all the Advantages the Law gives him against those that break his Laws.

Mr. *Sol. Gen.* My Lord, your Lordship was pleas'd to mention *Staley's* Case to me. As I do remember it, it is not as your Lordship says: But it is, *That he, to perfect his wicked Treason, (speaking of the King) said so and so.* Now, if an Averment be necessary, this is a naughty Averment; for it is not positively averr'd that he did speak of the King.

L. C. J. Well, we will look upon it. And I would ask you, Mr. *Solicitor*, Whether if he said, (as it is most likely he did,) *If you will stand to your Principles*; and you put it in *si ipsi*, whether that would be good?

Mr. *Sol. Gen.* My Lord, we put it in as the Witnesses swore it.

L. C. J. They did swear the Words according to their Apprehension; but, no doubt of it, in common Form he must speak them as I say.

Mr. *Att. Gen.* They swore the Words so; and we could lay them no otherways.

L. C. J. Well, Mr. *Attorney*, will you move any thing?

Mr. *Att. Gen.* No, my Lord.

L. C. J. Then we will consider of it. And take you back the Prisoner; and you shall have a Rule of Court to bring him, when the Court is ready for Judgment.

Then the Prisoner was carried back to the King's Bench; and no Judgment was given that Term: But the next Term Mr. Rosewell pleaded the King's Pardon at the Bar of the Court of King's Bench; and was Discharged.

The

The RECORD, &c.

[*Inter Placita Regis.*] *Placita coram Domino Rege apud Westmonaster' de Termino Sancti Michaelis Anno Regni Domini Caroli Secundi, nunc Regis Angliæ &c. Tricesimo Sexto. Ro. 133.*

Surry ff. **A** Lias, scil. die *Martis*, scil. septimo die *Octobris*, Anno Regni Domini nostri *Caroli Secundi*, Dei Gratia, *Angliæ, Scotiæ, Franciæ, & Hiberniæ* Regis, Fidei Defens' &c. Tricesimo sexto. Per quandam Inquisitionem capt' pro Serenissimo Domino Rege apud *Kingston* super *Thames'*, in Comitatu *Surr'*, coram *Georgio Com' Berkley*; *Francisco Wythens Mil'*, un' Justic' dicti Domini Regis ad placita coram ipso Rege tenend' assign'; *Thoma Jenner Mil'*, un' Servien' dicti Domini Regis ad legem, ac *Recordator Civitat' London*; *Adamo Browne Barr'*; *Francisco Vincent Barr'*; *Eduardo Evelyn Mil' & Barr'*; *Jacobo Clarke Mil'*; *Christophero Buckle Mil'*; *Richardo Heath*, Servien' ad Legem; *Petro Rich & Stephano Harvey Arm'*, Justic' dicti Domini Regis per literas patentes ipsius Domini Regis eisdem Justic' prænominat', ac quibuscunque tribus vel pluribus eorum, sub magno Sigillo dicti Domini Regis *Angliæ* confect', ad inquirend' per sacramentum proborum & legalium Hominum Com' prædict', ac aliis viis, modis & mediis quibus melius sciverint aut poterint, tam infra Libertat' quam extra, per quos rei veritas melius sciri poterit, de quibuscunque Proditionibus, Misprisionibus Proditionum, Insurrectionibus, Rebellionibus, Contrafacturis, Tonsur', Lotur', falsis Fabricationibus, & aliis falsitat' Monetæ hujus Regni *Angliæ*, ac aliorum Regnorum, sive Dominior' quorumcunque; ac de quibuscunque Murdris, Feloniis, Homicid', Interfectionibus, Burglar', Raptibus Mulierum, Congregationibus ac Conventiculis illicitis, Verborum prolationibus, Coadunationibus, Misprisionibus, Confederationibus, falsis Allegantiis, Transgressionibus, Rior', Rout', Retentionibus, Escapiis, Contempt', Falsitat', Negligent', Concealement', Manuteneant', Oppressionibus, Cambipartiis, Deceptionibus, ac aliis malefactis, Offens' & Injur' quibuscunque; nec-non Accessar' eorundem, infra Com' prædict', tam infra Libertat' quam extra; per quoscunque & qualitercunque habit' fact', perpetrat', sive commissa; & per quos vel per quem; cui vel quibus; quando, qualiter, & quomodo. Ac de aliis Articulis & Circumstantiis, Præmissa & eorum aliquod, vel aliqua, qualitercunque concern'; plenius veritat', & ad easdem Proditiones, & alia præmissa, audiend' & examinand' assign', secundum Legem & Consuetud' Regni dicti Dom. Regis *Angliæ*, per sacramentum duodecim Jur', proborum & legalium hominum Com' prædict', qui ad tunc & ibidem jurat' & onerat' existen' ad inquirend' pro dicto Domino Rege, & Corpore Com' prædict' extitit præsentat'. *Surr. ff. Juratores &c.*

The whole Indictment as in the Tryal.

Quod quidem Indicaumentum Dominus Rex nunc coram eo postea certis de causis venire fecit terminand' &c. PER QUOD præcept' fuit Vic' Com' prædict' non omitt' &c. quin caperet eum si &c. ad respondend' &c. ET MODO, scilicet die *Jovis* prox' post tres septimanas *Sancti Michaelis* isto eodem Termino, coram Domino Rege apud *Westm'* venit prædict' *Thomas Rosewell*, sub custod' Custod' Prison' de le *Gatehouse Westm'*, in cujus custod' præantea ex causa prædict' commiss' fuit,

virtute Brevis dicti Domini Regis de *Habeas Corpus*, ad subjiciend' & recipiend' ad barram hic duct' in propria person' sua, qui committitur *Marr' &c.* Et statim de Præmissis ei superius inposit', alloquit' qualiter se velit inde acquietari. Dicit quod ipse in nullo est inde culpabilis; & inde de bono & malo ponit se super Patriam. Ideo ven' inde Jur' coram dicto Domino Rege apud *Westm'* die *Martis* in *Octab' Sancti Martini* per quos, &c. Et qui, &c. ad recogn' &c. quia &c. Idem dies dat' est præfat' *Thomæ Rosewell* sub custod' præfat' Custodis Prison' de le *Gatehouse Westm'* iterum commiss' salvo custodiend' quousque, &c. Ad quem quidem diem *Martis* in *Octab. Sancti Martini* coram Domino Rege apud *Westm'* venit prædict' *Thomas Rosewell* sub custod' præfat' Custod' Prison' de le *Gatehouse Westm'* prædict', virtute Brevis Domini Regis de *habeas Corpus*, ad subjiciend', &c. ad barram hic duct' in propria persona sua, qui committitur *Marr', &c.* Et Jur' prædict' per Vic' Com' prædict' ad hoc impanellat' exact' ven' qui ad veritatem de Præmissis dicend' elect' triar' & Jurat', dicunt super sacramentum suum quod prædict' *Thomas Rosewell* est culpabilis de alta proditione prædict' in Indicam' prædict' specificat' modo & forma, prout per Indicament' prædict' superius versus eum supponitur. Et quod idem *Thomas Rosewell* tempore perpetrationis altæ proditionis prædict' seu unquam postea, nulla habuit bona, seu catalla, terras, sive tenementa, ad Notitiam Jur' prædict'. Et quia Curia dicti Domini Regis hic de Judic' suo inde reddend' nondum advisatur, dies inde dat' est præfat' *Thomæ Rosewell* in statu quo nunc &c. usque diem *Mercur'* prox' post *Octab. Purificationis beate Mariæ Virginis* coram Domino Rege ubicunque, &c. de judic' suo inde reddend' &c. ANTE quem diem dictus Dominus *Carolus secundus* Rex *Angliæ &c.* diem suum clausit extremum; & Dominus *Jacobus secundus* super se suscepit gubernationem hujus Regni *Angliæ*. ET MODO, scilicet die *Mercur'* prox. post octab' *Purificationis beate Mariæ Virginis*, isto eodem Termino coram Domino Rege apud *Westm'* venit prædict' *Thomas Rosewell* in propria persona sua, sub custod' præfat' Custodis Prison' de le *Gatehouse Westm'* prædict' & alloquit' ei si quid pro se habeat vel dicere sciat quare Curia hic ad judic' super Indicament' prædict' procedere non debeat. DICT' quod dictus Dominus *Carolus secundus* Dei Gratia *Angliæ, Scotiæ, Franciæ & Hiberniæ* nuper Rex, Fidei Defensor, &c. per Literas suas patent' sub magno sigillo suo *Angliæ* sigillat' geren' dat' apud *Westm'* vicesimo octavo die *Januar'*, anno Regni sui tricesimo sexto, de gratia sua speciali ac ex certa scientia & mero motu suis, PARDONAVIT, remittit & relaxavit, ac per easdem Literas patentes, pro se, Hæred' & Successor' suis, pardonabat, remittebat & relaxabat eidem *Thomæ Rosewell*, per Nomen *Thomæ Rosewell* nuper de paroch' de *Redriffe* in Com' *Surr'* Clerico, seu quocunque alio nomine, vel cognomine, seu additione nominis vel cognominis, aur Loc'i, idem *Thomas Rosewell* sciatur, censeatur, vocabatur

tur five nuncupabatur, O M N E S prodictiones quasunque unde praefat' *Thomas Rosewell* in Termino Sancti Michaelis jam ult' elaps' in Curia dicti nuper Regis, coram attinet ipso Rege apud *Westm'* tent', convict', five fuit; ac omnia & singula Indicament', Judicia, Convictiones, Condemnationes, Executiones, Imprisonament', Punitiones, & omnes alias paenas & paenalitat' quaecunque super, vel versus ipsum *Thomam Rosewell* de, pro, five concernen' Praemissis, seu eorum aliquo habit', fact', reddit' five adjudicat' aut in posterum habend', reddend', faciend' five adjudicand': nec non omnia & singula Utlagar' versus dictum *Thomam Rosewell*, ratione seu occasione Praemissorum, seu eorum aliquor' vel alicujus, promulgar' five in posterum promulgand'; ac omn' & omnimod' sect', quarel', forisfactur', impetitiones & demand' quaecunque que dictus nuper Rex versus ipsum ratione Praemissorum seu eorum alicujus habuit, habet, seu in futuro habere poterit, aut Haered' seu successores dicti nuper Regis ullo modo habere poterint in futuro; sectamque Pacis ipsius nuper Regis quae ad ipsum nuper Regem versus praefat' *Thomam Rosewell* pertinet seu pertinere potet occarione praemissorum seu eorum aliquor' vel alicujus. Et firmam Pacem dicti nuper Regis ei inde dabat & concedebat per eandem Literas patent'. Nolens quod idem *Thomas Rosewell* per Vicecomites, Justic', Ballivos, aut alios ministros ipsius nuper Regis, Haered' seu successor' suorum, occasione Praemissor' seu eorum alicujus, molestetur, occ'oneretur, perturbetur, seu in aliquo gravetur. Volens quod eadem Literae suae patent' quoad omnia & singula praemissa superius mentionat', bon', firm', valid', sufficient', & effectual' in lege sint & erint, licet Crimina & Offens' praedict' minus certe specificat' existunt' Quodque Pardonatio illa in omnibus Cur' dicti nuper Regis, & alibi, interpretetur & adjudicetur in beneficentissimo sensu pro firmitiori exoneratione praefat' *Thomae Rosewell*; ac etiam placitetur & allocetur in omnibus Cur' dicti nuper Regis, absque aliquo Brevis de allocatione in ea parte prius obtent' five obtinend'; non obstant' statut' in Parlamento, anno Regni dicti nuper Regis decimo tertio fact' & edit': Et non obstante aliquo defect' aut aliquibus defectibus in eisdem Literis patent' content' aut aliquo alio statut', Actu, Ordinatione, Provisione, Proclamatione, five Restrictione, aut aliqua alia re, causa, vel materia quacunque in contrar' inde in aliquo non obstant'. Ita tamen quod dictus *Thomas Rosewell* tal' bon' & suffic' securitat' de se bene gerend' a Dat' Literar. patent' praedict' erga dictum nuper Regem, Haered' & successores suos, & cunctum populum suum inveniatur, qual' appunctuat' & limitat' erit per Capital' Justic' de Cur' praedict' pro tempore existen'. Et idem *Thomas Rosewell* profert hic in Cur' Literas patentes praemissa testificantes in hac verba.

CAROLUS secundus Dei Gratiâ, Angliae, Scotiae, Franciae & Hiberniae Rex, fidei Defensor &c. OMNIBUS ad quos praesentes Literae nostrae pervenerint, salutem. Sciatis quod nos de Gratiâ nostrâ speciali, ac ex certâ scientia, & mero motu nostris, PARDONAVIMUS, remisimus & relaxavimus; ac per praesentes, pro nobis, Haeredibus & Successoribus nostris pardonamus, remittimus & relaxamus *Thomae Rosewell*, nuper de Paroch' de Redriffe in Com' Surr' Clerico; seu quocunque alio Nomine vel cognomine, seu additione nominis, aut loci, idem *Thomas Rosewell* sciatur,

consequatur, vocetur, five nuncupetur; aut nuper sciebatur, consequatur, vocabatur, five nuncupabatur; O M N E S prodictiones quasunque, unde praefat' *Thomas Rosewell* in Termino Sancti Michaelis jam ult' elaps', in Curia nostra coram nobis apud *Westmonast'* tent', convict', five attinct' fuit; ac omnia & singula Indicamenta, Judicia, Convictiones, Condemnationes, Executiones, Imprisonamenta, Punitiones, & omnes alias paenas & paenalitates quasunque super vel versus, ipsum *Thomam Rosewell*, de pro, five concernen' Praemissis, seu eorum aliquibus habit', fact' reddit' five adjudicat'; aut in posterum habend', reddend', faciend' five adjudicand': Nec non omnia & singula utlagar' versus dict' *Thomam Rosewell* ratione seu occasione Praemissorum, seu eorum aliquorum, vel alicujus promulgar', five in posterum promulgand'; ac omnia & omnimod' sect', quarel', forisfactur', Impetitiones & demand' quaecunque quae nos versus ipsum ratione praemissorum seu eorum alicujus habuimus, habemus, seu in futuro habere poterimus; aut Haered' seu successor' nostri ullo modo habere poterint in futuro; sectamque Pacis nostrae quae ad nos versus praefat' *Thomam Rosewell* pertinent seu pertinere poterit ratione Praemissorum, seu eorum aliquorum, vel alicujus; Et firmam Pacem nostram ei inde damus & concedimus, per praesentes. Nolentes quod idem *Thomas Rosewell* per Vicecomites, Justiciar', Ballivos, aut alios Ministros nostros, Haeredum seu successor' Nostrorum occasione Praemissorum, seu eorum alicujus, molestetur, occ'oneretur, seu in aliquo gravetur. Volent' quod hae Literae nostrae Patent' quoad omnia & singula Praemissa superius mentionat' bonae, firmae, validae, Sufficiens & effectual' in lege sint & erint, licet Crimina & Offens' praedict' minus certe specificat' existunt. Quodque haec Pardonatio nostra in Omnibus Cur'is nostris, & alibi, interpretetur & adjudicetur in beneficentissimo sensu pro firmitiori exoneratione praefat' *Thomae Rosewell*; Ac etiam placitetur & allocetur in omnibus Cur'is nostris absque aliquo Brevis de allocatione in ea parte prius obtent' five obtinend', non obstante Statut' in Parlamento Anno regni nostri decimo tertio fact' & edit': Et non obstant' aliquo defect' aut aliquibus defectibus in his Literis patentibus content' aut aliquo alio statuto, Actu, Ordinatione, Provisione, Proclamatione five Restrictione; aut aliqua alia re, causa, vel materia quacunque in contrar' inde in aliquo non obstante. Ita tamen quod dict' *Thomas Rosewell* tal' bon' & sufficiens securitat' de se bene gerend' ex nunc erga nos, Haered' & successores nostros, & cunctum populum nostrum inveniatur qual' appunctuat' & limitat' erit per Capital' Justic' de Curia praedict' pro tempore existen'. In cujus rei Testimonium has Literas nostras fieri fecimus patentes, Teste meipso apud *Westmonast'* Vicefimo octavo die Januarii, Anno regni nostri Tricesimo sexto.

Per Breve de Privato Sigillo

BARKER.

SUPER quo Vis' & per Cur' hic intellect' omnibus & singulis praemiss', conf' est per Cur' hic quod praedict' *Thomas Rosewell* (sub conditione mentionat' in Literis patent' superius recitat') de altis prodictionibus praedict' in Indicament' praedict' superius specificat' exoneretur; & eat inde sine die.

"On the Back of the Pardon is written as follows:

Ista Charta placitatur, allocatur & irrotatur de Record' coram Domino Rege apud *Westm'* Termino Sancti Hillar'. Anno Regni Domini Jacobi Secundi nunc Regis Angliae &c. Primo.


Inter Placita de Terminis Sancti Michaelis,
Ann' xxxvi. Car. secundi Regis;
Ro. Cxxxiii.

*A Defence of the late Lord RUSSEL's Innocency. To which
are prefix'd two Letters upon the Subject of his Lordship's Tryal.
By Sir ROBERT ATKYNS, Knight of the Bath.*

[N. B. This should have been printed before *The Magistracy
and Government of England vindicated*, pag. 174.]

*First LETTER concerning my Lord RUSSEL's
TRYAL.*

' S I R,

 AM not without the Apprehensions
of Danger that may arise by advising in, or so much as discouraging of
Publick Affairs; yet no fear of Danger shall hinder me from performing
that Duty we owe to one another, to counsel
those that need our Advice, how to make their
just Defence when they are called in question for
their Lives; especially if they are Persons that
have by their general Carriage and Conversation
appeared to be Men of Worth, and Lovers of
their King and Country, and of the Religion
establish'd among us. I will follow the Method
you use, and answer what you ask in the Order
I find in your own Letters.

' I cannot see any disadvantage or hazard by
pleading the general Plea of *Not Guilty*: If it
fall out upon the Proofs that the Crime is only
Misprision of Treason, and not the very Crime
of Treason, the Jury must then find the Prisoner
not guilty of Treason, and cannot upon an
Indictment of Treason find the Party guilty of
Misprision, because he is not indicted for the
Offence of Misprision, and Treason and Misprision
of Treason are Offences that the Law hath
distinguished the one from the other, and the
one is not included in the other; and therefore if
the Proofs reach no farther than to prove a Misprision,
and amount not to Treason, the Prisoner may urge it
for himself, and say that the Proofs do not reach to
the Crime charged in the Indictment: and if the Truth
be so, the Court ought so to direct the Jury, not to find
it.

' Now being present in Company with others,
where those others do consult and conspire to do
some Treasonable Act, does not make a Man
guilty of Treason, unless by some Words and
Actions he signify his Consent to it, and Approbation
of it: but his being privy to it, and not discovering it,
makes him guilty of Misprision of Treason, which
consists in the concealing it, but it makes him not
guilty of Treason. And if the same Person be present
a second time, or

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oftner, this neither does not make him guilty
of Treason; only it raises a strong suspicion that
he likes it, and consents to it, and approves of it,
or else he would have forborne after his having
been once amongst them. But the strongest Suspicion
does not sufficiently prove a Guilt in Treason,
nor can it go for any Evidence: And that
upon two Accounts.

' *First*, The Proofs in case of Treason must be
plain, and clear, and positive, and not by Inference,
or Argument, or the strongest Suspicion imaginable:
Thus says Sir *Edward Coke* in many places in his
third Institutes, in the Chapter of High Treason.

' *Secondly*, In an Indictment of High Treason,
there must not only be a general Charge of Treason,
nor is it enough to set forth of what sort or species
the Treason is, as killing the King, or levying War
against him, or Coining Money, or the like; but the
Law requires that in the Indictment there must be
also set forth some Overt or Open-Act, as the Statute
of the 25th of *Edw.* the 3d calls it, or some instance
given by the Party or Offender, whereby it may appear
he did consent to it, and consult it, and approve of it.
And if the bare being present should be taken and construed
to be a sufficient Overt or Open-Act, or Instance,
then there is no difference between Treason and Misprision
of Treason; for the being present without consenting
makes no more than Misprision, therefore there must
be something more than being barely present, to make
a Man guilty of Treason, especially since the Law
requires an Overt, or Open-Act, to be proved against
the Prisoner accused. See Sir *Edward Coke's* third
Institutes, fol. 12. upon those Words of the Statute,
(*per overt fact*) and that there ought to be direct
and manifest Proofs, and not bare Suspicions and
Presumptions, be they never so strong and violent:
see the same fol. in the upper part of it upon the
word (*Proveablement*.) And the Statute of the 5th
of *Edw.* 6. Chap. 11. requires that there should be
two Witnesses to prove the Crime: so that if there
be but one Witness, let him be never so credible a
Person, and never so positive; yet if there be no
other Proof, the Party ought to be found *Not Guilty*:
and those two Witnesses must prove the Person
guilty of the same sort or species

X x x x x

' Species of Treason. As for Example, if the
' Indictment be for that Species of Treason of
' conspiring the King's Death; both Witnesses
' must prove some Fact or Words tending to
' that very sort of Treason: but if there be two
' Witnesses, and one proves the Prisoner con-
' spired the Death of the King, and the other
' Witness proves the conspiring to do some other
' sort of Treason; this comes not home to prove
' the Prisoner guilty upon that Indictment: for
' the Law will not take away a Man's Life in
' Treason upon the Testimony and Credit of one
' Witness, it is so tender of a Man's Life, the
' Crime, and the Forfeitures are so great and
' heavy.

' And as there must be two Witnesses, so by the
' Statute made in the 13th Year of his now Ma-
' jesty, Chap. the 1st, (intituled, *For the Safety of*
' *his Majesty's Person*) those two Witnesses must
' not only be lawful, but also credible Persons:
' See that Statute in the 5th Paragraph. And the
' Prisoner must be allowed to object against the
' Credit of all, or any of the Witnesses; and if
' there be but one Witness of clear and good
' Credit, and the rest not credible, then the Testi-
' mony of those that are not credible must go for
' nothing, by the Words and Meaning of this Sta-
' tute: See the Statute. Now were I a Jury-Man,
' I should think no such Witness a credible Wit-
' ness, as should appear either by his own Testi-
' mony, or upon proof made by others against
' him, to have been *Particeps Criminis*; for that
' proves him to be a bad, and consequently not
' so credible a Man; especially if it can appear
' the Witness has trapann'd the Prisoner into the
' committing of the Crime: Then the Witness
' will appear to be guilty of a far higher Crime
' than the Prisoner, and therefore ought not to
' be believed as a credible Witness against the
' Prisoner; for he is a credible Witness that has
' the Credit of being a good and honest Man,
' which a Trapper cannot have; and this Tra-
' panning proves withal, that the Trapper did
' bear a Spite and Malice against the Person
' trapann'd, and intended to do him a Mischief,
' and designed to take away his Life. Shall such
' a one be a credible Witness, and be believed a-
' gainst him? God forbid!

' Then again; It cannot but be believed, that
' such Persons as have been guilty of the same
' Crime, will out of a natural Self-love be very
' forward and willing to swear heartily and to
' the purpose, in order to the Convicting of
' others, that they may by this Service merit their
' Pardon, and save their own Lives: And for this
' Reason are not so credible Witnesses, such as the
' Statute of the 13th of Car. 2. does require.
' Read over the whole Chapters of Sir Edward
' Coke of High Treason, and of Petty Treason;
' for in this latter of Petty Treason, there is much
' Matter that concerns High Treason.

' I wish with all my Soul, and I humbly and
' heartily pray to Almighty God, that these Gentle-
' men that have given so great Proof of their
' Love to the true Religion, and of the just Rights
' and Liberties of their Country, and of their
' Zeal against Popery, may upon their Tryal ap-
' pear innocent. I am so satisfy'd of their great
' Worth, that I cannot easily believe them guilty
' of so horrid a Crime. I pray God to stand by
' them in the time of their distress.

' I wish I might have the liberty fairly to give
' them the best assistance I could, in that wherein
' I might be any way capable of doing it. I be-
' seech Almighty God to heal our Divisions, and
' establish us upon the sure Foundations of Peace
' and Righteousness. I thank you for the Favour
' you have done me, by imparting some publick
' Affairs which might perhaps have been unknown
' to me, or not known till after a long time, for
' I keep no correspondence.

' When there is an occasion, pray oblige me by
' a further account, especially what concerns these
' Gentlemen: And tho I have written nothing
' here but what is innocent and justifiable, yet
' that I may be the surer against any disadvantage
' or misconstruction, pray take the pains to tran-
' scribe what Notes you think fit out of this large
' Paper; but send me this Paper back again inclosed
' in another, by the same hand that brings it.

' There is nor ought to be no such thing as
' constructive Treason, this defeats the very Scope
' and Design of the Statute of the 25th of Edw. 3.
' which is to make a plain Declaration, what shall
' be adjudged Treason by the Ordinary Courts of
' Justice: the conspiring any thing against the
' King's Person, is most justly taken to be to con-
' spire against his Life.

' But conspiring to levy War, or to seize the
' Guards, is not conspiring against the King's
' Life: For these are Treasons of a different
' Species.'

Your faithful

Friend and Servant,

R. A.



The Second LETTER.

S I R,

' I Thank you for the unexpected Account you
' gave me by your first Letter; but this exact
' Narrative you have now sent me of the Tryal
' of that Honourable Excellent Person my Lord
' Ruffel, has exceedingly obliged me. It was a
' thing I much desired, but I knew not from what
' hand to gain it; for I was a little impatient to
' hear what could be prov'd of so foul a nature
' as High Treason against a Person of whom I
' had ever entertained a very high esteem: and
' tho I had a very small and short Acquaintance
' with him, yet no Man that has known any
' thing of the Publick Affairs, or of our late
' Transactions, could be a mere Stranger to his
' great Worth. He had as great a Name for a
' true and honest English Gentleman, and for
' good Temper, and Prudence, and Moderation,
' as ever I knew any Man have, and was generally
' belov'd by all that love our Religion and Coun-
' try. I presume your Relation of the Proofs at
' his Tryal is certainly true in every part, and
' in the very words, and it is a thing that might
' be had by many hands, the Proceedings being so
' publick, and I suppose deliberate: Presuming it
' to be true, this I will affirm, that upon this Evi-
' dence,

‘ dence, both that against him, and for him, ‘ (might I have been permitted to have made ‘ his Defence for him at his Tryal after the ‘ Evidence given) I could easily have satisfy’d any ‘ equal and understanding judicious Man, that my ‘ Lord ought to have been acquitted; and had I been ‘ one of the Jury that try’d him, I make no doubt ‘ I could clearly have convinced all my Fellows ‘ (if they were honest and indifferent) that they ‘ ought not to have found him Guilty. The Spec- ‘ ies or Sort of High Treason that the Wit- ‘ nesses inclin’d to prove against him, was a Con- ‘ spiracy with others to levy War against the ‘ King.

‘ The two first Witnesses, *viz.* *Rumsey* and ‘ *Sheppard*, tho what they say may raise a strong ‘ Suspicion upon my Lord, and make it probable ‘ that he was guilty, yet neither of them do come ‘ home and close to the Person of my Lord *Russel*; ‘ as they do (I confess) against the Earl of *Shaftes- ‘ bury*, Sir *Thomas Armstrong* and *Ferguson*.

‘ The first does not affirm, that the Lord *Russel* ‘ did join in the Discourse, or agree to any thing ‘ in the Consult, but only says, he was present; ‘ which extends no further than to make a Mis- ‘ prison of Treason, and this too not directly ‘ and positively, as legal Proof ought to be, to ‘ convict a Man of Treason: the latter (*Shep- ‘ pard*) when he applies what he swore to the ‘ Person of the Lord *Russel*, only says, *He be- ‘ lieves* the Lord *Russel* was there at that time ‘ when the Discourse he speaks of was used; which ‘ is a very imperfect uncertain Proof, and not ‘ positive enough: so that neither of these were ‘ full Witnesses. As to the Evidence given by the ‘ Lord *Howard* against my Lord *Russel*, it is ‘ strange to me, (as the Evidence is stated) that ‘ any Credit should be given to it; that he should ‘ be believed against those Execrations, that (it ‘ seems) he had so solemnly, and so lately used to ‘ the contrary of his Evidence; especially when ‘ by giving this Evidence, he must merit his own ‘ Pardon, and save his own Life, which extremely ‘ takes off from the Credit and Weight of his ‘ Evidence.

‘ What Mr. *West* says, in reference to my Lord ‘ *Russel*, was but bare Opinion and Hear-say, and is ‘ no proof at all in Law; so that instead of two ‘ plain, direct, manifest, and positive, and two ‘ credible Witnesses, as the Law requires in Trea- ‘ son, here is not, in my opinion, so much as one ‘ positive credible Witness. The Lord *Howard* ‘ (as your Case and Narrative states it) is not ‘ credible, tho direct and positive; none of the ‘ other three are positive, tho more credible. In ‘ the Statute of the 25th of *Edward* the Third, ‘ of Treasons, the word (*Proveablement*) as Sir ‘ *Edward Coke* observes upon it, in his *Third In- ‘ stitutes*, fol. 12. imports direct and manifest ‘ Proofs, not Presumptions and Conjectures, and ‘ (as may be added) not Probabilities: and so ‘ the words (*per overt fact*) do (as he observes)

‘ strengthen that Sense of the word (*Proveable- ‘ ment*;) and the Act of Treasons made since this ‘ King’s Time, requires there should be two cre- ‘ dible Witnesses. Now, tho the Lord *Howard* ‘ was not, by the Evidence offer’d against him by ‘ the Lord *Russel*, utterly disabled from being a ‘ Witness; yet I will be bold to say, it made ‘ him no credible Witness in this Case. That the ‘ Lord *Russel* made no use of these Things in his ‘ Defence, tho a Man of Parts, is no wonder to ‘ me; the ablest Man under that Terror, and ‘ upon so speedy a Proceeding, and where it is ‘ impossible to be so composed and free from ‘ distraction, may easily pass by many just Ad- ‘ vantages, which a Stander-by, with less Abilities, ‘ might quickly have apprehended. I am far from ‘ reflecting upon the Court that try’d him; this ‘ matter that I observed, rested principally upon ‘ the Jury. And he is found Guilty and Con- ‘ demn’d, and it may be before this comes to your ‘ hand, put to death too: If it hath so happen’d ‘ (as possible it may) that the Earl of *Bedford*, and ‘ his other great Relations, have prevail’d with ‘ the King for a Respite of the Execution, I wish; ‘ and heartily beg of Almighty God, that these ‘ Considerations may yet be made use of to the ‘ King, (with whom it then rests) as *Tabula post ‘ Naufragium*, to save the Life of this Noble Lord. ‘ Much more than this may be said, were there ‘ such an Opportunity before the King, (and I so ‘ intend it, and no otherwise) and if I might be ‘ any ways serviceable in it, I would come up to ‘ *London* bare-foot, rather than neglect so good an ‘ Office. And I ever thought it a Severity in our ‘ Law, that a Prisoner for his Life is not allowed ‘ the Assistance of a grave and prudent Lawyer, ‘ or some other Friend, to make his Defence for ‘ him, even as to Matter of Fact, as well as to ‘ Law. I know ’tis said, the Court is of Counsel ‘ for the Prisoner; but for my part, I should never ‘ desire to depend upon that only. I know what ‘ this is by Experience. If the Case be in any part ‘ of it mistaken, I have lost all my Observations, ‘ and beg your pardon for all this trouble; it is ‘ out of the great Honour and Zeal I have for ‘ that good Lord: but the Narrative you give is ‘ very ably and well composed, and in very good ‘ Method; and, I think, could not have been bet- ‘ ter done, which inclines me to think it very true ‘ also. I could be contented the Earl of *Bedford* ‘ (to whom I am known) might have the view of ‘ this Letter, if it come not too late, and may be ‘ thought of any use; I heartily thank you for ‘ your Favour, which obliges me to be

Your faithful

July 21. 1683.

Friend and Servant,

R. A.

A Defence of the late Lord RUSSEL's Innocency: By way of Answer or Confutation of a Libellous Pamphlet, entitled; An Antidote against Poison.

1. **T**HE Pamphlet styles it self, *An Antidote against Poison*; but it is so far from deserving that Title, that it may be truly said, *That the Antidote it self is the rankest Poison.*

We read in History, That the Noble Emperor, called *Henry of Luxemburgh*, was poisoned in the Sacrament; and Pope *Viktor* was poisoned in receiving of the Chalice. Who could have suspected such horrid Villany in the Administration of such sacred and solemn Rites? Who could without Horror and Amazement contrive the mingling of a deadly Poison with the Bread and Water of Life? To make those consecrated Elements (which ought to be the Savour of Life unto Life) to be the dreadful Messengers of sudden Death? Surely had those outward Signs been changed into the very Body and Blood of the Lord of Life, (as they that acted in those execrable Villanies profess'd to believe) there must needs have been a Miracle wrought in altering likewise the Substance and malignant Nature of those Poisons, that they should not have wrought those direful Effects; which yet they did. There appears the like wicked Policy in the Author of this Pamphlet; who, under pretence of prescribing an Antidote against Poison, under the Vizor and Disguise of preventing Mischief, does most deceitfully infuse the worst of Poisons, and labours to intoxicate a whole Nation. This Author would have the World believe that the Noble Lord, in the composing of his Speech, was wholly govern'd by his *Confessor*; and that the Compiler of it was infected with those Doctrines, that the Northern Climate has of late furnished us with. The very Language and Spirit of *Coleman*! Sure the Soul of *Coleman* is by Transmigration enter'd into this Author: It is easy to guess at his Religion. He supposes all that were present at my Lord's Tryal, must needs be surprized to find the Truth of the Case so untruly and unfaithfully set down in my Lord's Speech. But whoever will take the pains to read the Tryals, publish'd by Authority, (which no Man will suspect of Partiality towards the Person tried) will receive abundant Satisfaction in the Truth of what was said by the Lord *Russel*, and discover the shameless Impudence of this malicious Author.

The Indictment (as we find it printed at large in the Tryal, fol. 29.) charges the Prisoner, *That he intending to disturb the Peace of the Kingdom, and to move War and Rebellion against the King, and to subvert the Government, and to depose, or put down, and deprive the King from his Title and Kingly Name of the Imperial Crown of his Kingdom of England, and so bring and put the King to Death and Destruction*; 2 Novem. 34 Car. 2. and at other Times, maliciously and traitorously, with divers others, did *Conspire*, Compass, Imagine, and Intend,

1. To deprive the King of his Title and Government.
2. And to kill the King, and to subvert the Government.

3. And to move Insurrection and Rebellion against the King.

And to fulfil and perfect these Treasons and traitorous Compassings and Imaginations, the said *William Russel* did meet together with divers other Traytors, and Consult, Agree, and Conclude,

1. To move and stir up Insurrection and Rebellion. And,

2. To seize and destroy the King's Guards.

The Operative and Emphatical Words of this Indictment are the *Intending, Conspiring, and Concluding.*

The Things intended and conspired were,

1. To move and stir up War and Rebellion against the King.

2. To depose the King.

3. To kill the King. And in order to the accomplishing of these horrid Crimes,

The Things concluded on were,

1. To move and stir up Insurrection and Rebellion.

2. To seize and destroy the Guards. This is the very Sum and true Method of the Indictment, if it be truly printed in the Tryals.

Note, Here is no open Act or Deed charged to be done by the Lord *Russel*, unless his meeting together with others be meant to be an open Act or Deed: But then, again, that Act of Meeting terminates merely in Consulting, Agreeing, and Concluding. They met only to consult, agree, and conclude; but they acted nothing in pursuance of that Consulting, Agreeing, and Concluding, for any thing that appears in the Indictment: So that the Meeting properly hath not the Nature of an Acting or Action, or of a Thing done. But the Effect of the Indictment is, That the Lord *Russel* and others did consult, agree, and conclude to do something; but the Indictment stops there, and goes no further, for it sets not forth any thing done at all. So that here is no *Overt-Act* or Deed, and therefore the Indictment is void; for there is no Act charged but meeting, and that was merely in order to consult and agree: And they did agree upon a Thing to be done; but it is not said they did it, or did any thing towards it. I repeat this the oftner, that it may be the better understood and minded, being very material. Read the Indictment.

The Indictment is grounded upon the Statute of 25 E. 3. cap. 2. (the old Statute of Treasons.) So the *Attorney-General* declares himself, fol. 49. of the Tryal.

Now let us see how far this Charge in the Indictment will make my Lord guilty of any Treason within that Statute.

The Body of that Statute of 25 Ed. 3. of Treasons, is printed together with the Tryal; (see the Tryal, fol. 50.) so that it need not be repeated here, though there are some other Clauses in that Statute not printed in the Tryal.

The

The occasion of making that Statute, appears to be the Variety of Opinions that then were, what should be accounted Treason, and what not; which was very mischievous to the Subjects, and gave too great a Liberty to the Judges of the ordinary Courts.

To cure this mighty Mischief, and to prevent that arbitrary Power of Judges, this excellent Statute makes a *Declaration* what shall be adjudged Treason by the ordinary Courts of Justice. Not but that there might be like Cases, or other Facts amounting to Treason, besides those there enumerated; but those other Facts or Treasons must not be adjudg'd by those ordinary standing Courts, (such as the Goal-Delivery of *Newgate*, and the Court of the *King's-Bench* at *Westminster* it self are:) But in such Cases those Courts must forbear proceeding, and the Case must be reserved for the Determination of the King and Parliament. See that Statute in the printed Statutes at large.

So that the Court of Goal-Delivery at *Newgate* must judge only, and proceed upon no other Treasons but what are there enumerated and specified.

Now the Treasons in that Statute enumerated and specified (for the Word *Specified* is the very Word used by that Statute) are these:

1. Compassing or imagining the Death of the King, Queen, or Prince.

2. Violating, or carnally knowing the Queen, King's eldest Daughter unmarried, Prince's Wife.

3. Levying War against the King. Not a compassing or imagining to levy War, but an actual levying War: It must be a War begun. And several other Sorts of Treasons are there specified, not to our purpose to be recited.

The Statute further requires, That the Person indicted be *provably* attainted of some one of these Treasons by *Overt Deed*, that is, some open manifest Act or Deed done, which must of necessity also be expressly set down in the Indictment, and fully and clearly proved at the Tryal by two Witnesses.

See Sir *Edward Coke's* Third *Institutes*, in his Chapter of *High Treason*, fol. 12. in his Exposition of the Words of that Statute, (*per Overt Fact*) and there, fol. 5. upon the Words (*Fact Compasser*) he tells you the Nature of that *Open Deed* that the Statute intends. It must be a Deed, and not mere Words: It must be a Deed tending to the Execution of the Treason imagined. That Deed must be an *open Deed*, that is, it must be fully proved, and made open and manifest at the Tryal by clear Proof.

So that if the Indictment fail of setting forth one of those Treasons that are there enumerated, it is not a good Indictment upon that Statute.

If it do set forth one of those Treasons, yet if it do not set forth some *open Deed* done by the Party indicted, that is, such a Deed as does properly and naturally tend to Execution of that sort of Treason set forth in that Indictment; in such case also the Indictment is not good.

If both these, *viz.* the Treason intended, and a proper suitable open Deed, be well set forth in the Indictment, (which make a good Indictment) yet if that very sort of Treason intended, and that open Deed or Fact, so set forth in the Indictment, be not also fully, clearly, and manifestly proved upon the Tryal against the Prisoner, he ought to be acquitted.

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It will not suffice either to prove it by one Witness, or to prove any other sort of Treason, (not charged in the Indictment, nor any other Over-Deed) other than what is so set forth in that Indictment, tho it be by never so full a Proof; but upon that Indictment the Prisoner ought to be acquitted, if that special Treason, and that special Overt or Open Deed, set forth and expressed in that very Indictment, be not fully proved.

Now let us examine the Indictment in this Case against the Lord *Russel*, and the Proofs against him, as they are published by Authority, and observe how they agree with the Statute, and how the Indictment and Proofs agree the one with the other.

It may be admitted that here is in the Indictment against the Lord *Russel*, a Treason sufficiently charged and set forth, *viz.* one of the Treasons specified in that Statute of 25 *Edw. 3.* namely, That the Lord *Russel* did compass and imagine the Death of the King. This is not denied, but it is duly charged in the Indictment. For those other Charges in the Indictment, *viz.* His intending to depose the King, and his intending to move or levy War and Rebellion against the King; these are inserted into the Indictment as Aggravations of that horrid Crime of intending to kill the King, or as open Acts of the other; but of themselves alone, they are no distinct substantial Charges, nor are they any of the Treasons specified in this Act, upon which Act this Indictment is solely grounded. For tho by the Act of 13 of this King that now is, *cap. 1.* entitled, *An Act for the Safety and Preservation of the King's Person*, it is made High Treason (during the now King's Life only) to compass or imagine to depose the King, or to compass or imagine to levy War against the King, if such Compassing or Imagination be expressed by speaking or writing, (altho without any open Deed) yet the Lord *Russel* was not indicted upon that Statute, (as the Attorney-General himself acknowledged openly at the Tryal) but only upon the old Statute of 25 *Ed. 3.* So that those late-made Treasons are not to our purpose.

So that the only Treason charged in the Indictment, as a substantial Charge, is that of *imagining to kill the King*. And so the Lord Chief Justice agrees in his Direction to the Jury. See the Tryal, fol. 61.

But where is that other Requisite, that other most material part of the Indictment, of the *Open Deed or Act*? without which the rest serves for nothing: For it is not enough by this Statute to make a Man guilty of conspiring or imagining the Death of the King, unless the Party indicted have expressed that Imagination by some *open Deed*; and that must be plainly set down in the Indictment too, or else the Indictment (as was said before) is no good Indictment. And it must appear to the Court upon the Indictment not only to be an open Deed, but such a Deed as has a natural Aptitude and Tendency to the Execution of that very Treason so imagined. And there is no such set forth in this Indictment; and therefore the Indictment it self was insufficient and void.

And that which seems to have a colour of an Overt-Fact, or *open Deed*, set forth in this Indictment, was not fully and sufficiently proved neither: And then, tho the Indictment had been sufficient, yet for want of due Proof, the Party indicted ought to have been acquitted.

Y y y y y

To

To these two Points or Matters shall the ensuing Discourse confine it self. And if this Undertaking be made good, the *Antidote* will appear to be a rank Poison, the Lord *Ruffel's* Speech justified, and his Innocency and Loyalty cleared, and his Honour vindicated.

The *Overt-Fait*, or open Deed, set forth in the Indictment, (if there be any) are the Things said to be consulted of, agreed and concluded on; viz.

1. To move and stir up Insurrection and Rebellion.
2. To seize and destroy the Guards. (Peruse the Indictment carefully.)

Now neither of these are *Open Deeds*, in the Nature of them.

The First, which is to stir up Insurrection and Rebellion: This is a distinct Species of Treason it self; it is the same with a Levying of War, (specified in this Statute of 25 *Edw.* 3. which is the only Statute we have to do with in this Case of my Lord *Ruffel*;) and if it had been set forth in the Indictment as a Deed done, or Thing acted, that is, if it had been laid in the Indictment that the War was actually levied, or the Insurrection or Rebellion actually raised or stirred up, (as it is not, for it is only mentioned as a Thing agreed and concluded on, and not done) yet it had not been a sufficient proper *Overt Fait*, or *Open Act*, to make it a good Indictment: because (as is said before) levying of War is a distinct Species from that of compassing to kill the King; and therefore cannot be made an *Overt Fait*, or Open Deed, to manifest an Imagination of killing the King: For that one Species of Treason cannot be a proper Open Act to another Species of Treason, as will be proved hereafter.

Sir *Edward Coke* in his third *Institutes*, fol. 14. in the third Clause or Paragraph of that *Folio*, tells us, That the Connexion of the Words is to be observ'd, viz. [thereof be attainted by *Overt or Open Deed*.] This, says Sir *Edward Coke*, relateth to the several and distinct Treasons before expressed; whereof that of imagining to kill the King, and that of levying War against the King, are two distinct Species of High Treason. And therefore, says Sir *Edward Coke*, the one of them cannot be an *Overt-Act* for another, that is, levying of War cannot be an *Overt-Act* for that sort of Treason in imagining to kill the King, much less when the Indictment does not charge it as a War actually levied, but only an Agreement or Conclusion for levying a War. Such Agreement can be no Open Deed to manifest an Intent or Imagination of killing the King. This is the main Question between us.

The other only Colour or Pretence to an *Overt-Fait*, or *Open-Deed*, must be that of seizing or destroying the King's Guard: For no other but these two are set forth in the Indictment, or look any thing like *Overt* or *Open-Acts*.

And this latter is nothing like to an *Overt-Fait*, or *Open-Deed*, in the Nature of it; for it is not said to be done, but only agreed on, and concluded on to be done. If it had been but alledged in the Indictment, That in pursuance of this Agreement or Conclusion of the Conspirators, a View was accordingly taken of those Guards, and reported to the rest (whereof the Lord *Ruffel* was one) that it was feasible, (whereof there is some Colour or Proof against some of them) this had been more to the purpose: But being laid so imperfectly as it is, the Indictment it self must needs be insufficient, for the Reasons before given.

But, alas! the Noble Lord is gone; and he is

gone from whence he would not be recall'd, a Place of infinite Bliss and Glory, out of a spiteful malicious World: It is we, it is the King and Kingdom, it is the whole Protestant Part of the World that suffers the inestimable Loss of him: Not to speak of the unspeakable Grief of his dear and disconsolate Widow; and other Noble Relations; *Factum infectum fieri nequit*. So that we may seem to labour in vain, and it comes too late. But something may be done for the Benefit of his hopeful Posterity, and some small Satisfaction may be made to his Noble Family, by a Writ of Error for reversing of this Attainder, and the avoiding of the Record; for the Statute of 29 *Eliz.* cap. 2. extends only to such Attainders for High Treason as then had been before the making of that Statute, and does not hinder a Writ of Error in this Case, if the King will sign a Petition for it.

But to examine this last *Overt-Fait*, or *Open-Deed*, a little further;

Viz. To seize and destroy the King's Guards.

The Guards! What Guards? What or whom does the Law understand or allow to be the King's Guards, for the Preservation of his Person? Whom shall the Court that tried this Noble Lord, whom shall the Judges of the Law that were then present, and upon their Oaths, whom shall they judge or legally understand by these Guards? They never read of them in all their Law-Books: There is not any Statute-Law that makes the least mention of any Guards. The Law of *England* takes no notice of any such Guards; and therefore the Indictment is uncertain and void.

The King is guarded by the special Protection of Almighty God, by whom he reigns, and whose Vicegerent he is: He has an invisible Guard, a Guard of glorious Angels.

*Non eget Mauri jaculis nec arcu;
Nec venenatis grævada sagittis,
Crede, Phœretra.*

The King is guarded by the Love of his Subjects:

The next under God, and the surest Guard.

He is guarded by the Law and Courts of Justice.

The *Militia* and the Trained-Bands are his legal Guard, and the whole Kingdom's Guard.

The very Judges that tried this Noble Lord were the King's Guards, and the Kingdom's Guard, and this Lord *Ruffel's* Guard against all erroneous and imperfect Indictments, from all false Evidence and Proof, from all Strains of Wit and Oratory misapplied and abus'd by Counsel.

What other Guards are there? We know of no Law for more. King *Henry* the Seventh of this Kingdom (as History tells us) was the first that set up the Band of Pensioners. Since this the Yeomen of the Guard; since them certain Armed Bands, commonly, now a-days, (after the *French* Mode) called the King's Life-Guard, ride about and appear with naked Swords, to the Terror of the Nation: But where is the Law? where is the Authority for them?

It had been fit for the Court that tried this Noble Lord on this Indictment to have satisfied themselves, from the King's Counsel, what was meant by these Guards; for the alledging, and setting forth an *Overt-Fait*, or *Open-Deed*, in an Indictment

of Treason; must be of something that is intelligible by Law, whereof Judges may take notice by Law. And herein too the Indictment fails, and is imperfect.

But admit the seizing and destroying of those who are now called the King's Life-Guard, had been the Guard intended within this *Overt-Fait*, or *Open-Deed*; yet the Indictment should have set forth that *de Facto* the King had chosen a certain Number of Men to attend upon and guard his Person, and set forth where they did attend, as at *Whitehall*, or the *Meuse*, or the *Savoy*, &c. and that these were the Guard intended, by the Indictment, to be seized and destroyed: That by this setting forth the Court might have taken notice judicially what and who were meant. But to seize and destroy the King's Guards, and not shew who, and what is meant, makes the Indictment very insufficient.

So much as to the *Indictment* it self.

In the next place, let us look into the *Proofs*, as they are at large set forth and owned in the printed Tryal; and let us consider how far those Proofs do make out the Charge of the Indictment, *viz.* the Compassing and Imagining the Death of the King, and how far they make out that *Overt-Fait*, or *Open-Deed*, (such as it is) of seizing or destroying the King's Guards, in order to the effecting of that Compassing and Imagining the Death of the King. And it must appear by Proof to be in truth so intended by the Conspirators, and levelled to that end; for if it were done, yet if it were done quite to another Intent and Purpose, and not to that of Compassing the King's Death, it does not come home to this Indictment.

There are but three Witnesses that can be thought to bring the Matter home, and to fix any thing upon the Lord *Russel*, Colonel *Romsey*, Mr. *Sheppard*, and the Lord *Howard*.

It is true, two of the three, that is, Col. *Romsey*, and the Lord *Howard*, positively prove a traitorous Design, or a Discourse at least, by some of the Company, of making an Insurrection or Rebellion, or (to speak it in the Language and Phrase of this Statute of 25 E. 3.) of levying a War against the King, (for all these signify one and the same thing) and they prove the Lord *Russel* was sometimes present at those Meetings: But is that enough? Admit he were present, and heard the Debate of it, (which yet is not fully and directly proved) yet if he did not join in the Debate, and express and some way signify his Approbation of it, and consent to it, it makes him not at all criminous. It is true, his After-concealing of it might have made him guilty of Misprision of Treason; but that is a Crime of another Nature, and is another distinct Genus of Crimes, of which he was not indicted.

Col. *Romsey*, as to the *Overt-Fait*, (as they would make it) says, *There was some Discourse about seeing what Posture the Guards were in*: And being asked by one of the Jury, By whom the Discourse was? he answers, *By all the Company that was there*, (whereof, as he said before, the Lord *Russel* was one.) So that my Lord *Russel* may (I agree) be understood to be one that discoursed about seeing what Posture the Guards were in. Nay, the Colonel says, *All the Company did debate it*: And he says further, *The Lord Russel was there when some of the Company undertook to take the View of those*

ral to what purpose the View was to be? the Colonel answers, *It was to surprize our Guards, if the Rising had gone on*.

The Chief Justice observing to the Witness, that he ought not to deliver a doubtful Evidence, and to speak it with Limitations, that made it not so positive; as by saying, *I apprehend so and so*: then the Colonel grows more positive, and says further, *That a Rising was intended*; but afterwards he says, *There was no debate of the Rising*. At last the Witness being asked by Sir *George Jefferies*, whether the Prisoner were present at the Debate concerning the Message from the Lord *Shaftesbury* to the Company then met, and the Answer return'd to it; he flatly says, *The Prisoner was present at that Debate*, (which Debate did indeed concern the Rising.) Being ask'd by the same Person, whether my Lord was averse to it, or agreeing to it; he answers like an Echo, *Agreeing to it*. Nay, then he says, my Lord *Russel* did speak, and that *about the Rising of Taunton*, and that *he did discourse of the Rising*: but what were his Words? Being question'd again by the Chief Justice, whether my Lord did give any Consent to the Rising, he answers still like an Echo, *My Lord did*. And this last Answer is the weighty Part of his Evidence, if there be any weight at all.

Now mind the Defect of the Witness's Memory in some other most material Passages. He thinks the Lord *Grey* did say something to the same purpose, with the Answer deliver'd by *Ferguson* to the Lord *Shaftesbury*'s Message.

He does not know (says he) how often he himself (the Witness) was at Mr. *Sheppard*'s House where this Debate was. He says he was there more than once, or else I heard (says he) Mr. *Ferguson* make a Report of another Meeting to the Lord *Shaftesbury*. And then he says, *That this was all at that time that he remembred*; and before this he had said no more against the Lord *Russel*, but that he was present; and after this upon much interrogating of him, he proceeds to tell a great deal more, indeed all the rest that has been before observ'd to proceed from him. And after all, he says he thinks he was not there above a quarter of an Hour. He says he was not certain whether he did hear something about a Declaration there, or whether Mr. *Ferguson* did report it to my Lord *Shaftesbury*, that they had debated it. And the Witness speaking of a View to be taken of the Guards, to surprize them; the Lord Chief Justice seems to be surpriz'd at that Word: The Guards! he never met it in all his Books. What Guards? why you know it is mention'd in the Indictment; but he might yet very well ask what Guards? And the Colonel answers, The Guards at the *Savoy* and the *Meuse*.

The Colonel says, He thinks the Duke of *Monmouth*, and the Lord *Grey*, and Sir *Thomas Armstrong*, were the Persons that undertook to view the Guards. And he thinks, Sir *Thomas Armstrong* began it, and Mr. *Ferguson*. And he says, further Direction was given to take a view of the Guards, *if the Rising had gone on*, (as it never did) and then he mentions the very Day that had been appointed for the Rising, *viz.* the 19th of *November*; and that the Message from the Lord *Shaftesbury* was, he thinks, a matter of a Fortnight before that Day, or something more; for he thinks it was concluded Sunday fortnight after my Lord *Grey* met. The mention of my Lord *Russel*'s Consent to this Rising,

ing, comes in at the last, and after many Questions ask'd him, and not till that very particular Question was put to him; and he answers in the very same Words as the Question was ask'd. The Chief Justice ask'd him in these Words, Did my Lord give any consent to the Rising? The Colonel's Answer was, *Yes, my Lord, he did.* But how did my Lord *Russel* signify that Consent? What Words did he use that may clearly express it? For this is the pinching Proof, if it had been certain and clear'd by remembring the manner of his Consenting, or how it did appear. Why was not this put home to the Witness? This is the material Part of his Evidence, without which the rest had not come home to the Prisoner: And why did not the Witness deliver this of himself, and before his giving this home Evidence he had said, *That was all at that Time that he remember'd?* And this was at the same Time with that of the Message, and of the Discourse about viewing the Guards. He afterwards doubts whether he was any more than once there with that Company, or whether he heard Mr. *Ferguson* report things to the Lord *Shaftesbury*; which shews a wild kind of Memory in a Witness, and the Colonel is no Fool, nor Baby; so that there is but one Time positively spoken of by this Witness. How strangely uncertain is he in the Matter of the Declaration, to which he was examined? A most noted Thing, and he cannot tell whether he heard any thing of it there, or whether Mr. *Ferguson* told him of it. It is to be suspected too, that what he has delivered positively at last so late in his Evidence, and after so much interrogating of him, was but mere hearsay too, and then it would not have been any Evidence. He has not, it seems, a good distinguishing Head or Memory, as a Witness ought to have in case of Life, and a Life of so high a Value as this of that Noble Lord.

And many other material Passages this Witness delivers under that Limitation, as he thinks.

The Rising was intended, but never took effect; and the View was no more than appointed and undertaken: but the Seizing of the Guards, as this Witness says, was not to be unless the Rising had gone on; which it never did. He speaks nothing of any View made of the Guards, or any Report upon it: but he swears my Lord *Russel* consented to the Rising. That is his stabbing Evidence; but by what Words, or how he signify'd his Consent, not a Word, tho' mighty material.

But what is this Conspiracy for a Rising? and a Conspiracy to seize the Guards? (in case the Rising had gone on:) What are these to the Crime charged in the Indictment against the Lord *Russel*, for conspiring the Death of the King?

Here is not a word of any such Matter, nor of seizing the Guards in order to it, no not one Word.

And that is the only material Part of the Indictment (as shall appear more plainly hereafter.)

The second Witness, Mr. *Sheppard*, mentions the meeting (at his House) of the Duke of *Monmouth*, and among the rest, the Lord *Russel*, and they discours'd of surprizing the Guards; and that the Duke, the Lord *Grey*, and Sir *Thomas Armstrong*, (as he remembers) went one Night to view the Guards, and the next Day at his House they said it was very feasible, if they had strength to do it. And then he says there was two Meetings

there, and, as he remembers, my Lord *Russel* was both times there. Being ask'd by the Attorney-General, besides the seizing of the Guards, if there were any discourse of a Rising; he answers, *He did not remember any further Discourse*, for he was often gone out of the Room: And this is the effect of that he says.

If any thing of this comes near my Lord *Russel*, it is those Words, first giving an Account of who they were that were met, and that my Lord *Russel* was one of them; he says the Substance of their Discourse was how to surprize the King's Guards. This may be true, if one or two of the Company only discourses it; for it does not necessarily affirm, that every one did speak in that Discourse. He does not mention one Word spoken by my Lord *Russel*, nor that he approv'd of, or consented to any thing. At the worst, for any thing that he says, it can be but Misprision: He can say nothing as to the intended Rising. Now Colonel *Romsey's* Evidence is altogether of that Rising, and the seizing of the Guards was to have been if the Rising had gone on; and this was at the same time that Mr. *Sheppard* speaks to: and yet Mr. *Sheppard* being ask'd if there was any Discourse of a Rising, he answers, he did not remember any further Discourse.

Nor does Colonel *Romsey* certainly remember any thing of a Declaration read amongst them, whether he heard it there, or whether by Mr. *Ferguson's* Report of it to my Lord *Shaftesbury*; which is one of the principal things that Mr. *Sheppard* speaks to, (besides that of seizing the Guards.) And as to the Declaration, Mr. *Sheppard* says, he cannot say my Lord *Russel* was there when that Declaration was read.

So they agree in nothing but in the Discourse of seizing the Guards, and that my Lord *Russel* was then present.

So that as yet the Sum of the Proof by Colonel *Romsey* is, that my Lord *Russel* consented to the Rising, which is too general; and the Sum of the Proof by Mr. *Sheppard* is, that my Lord *Russel* was present in Company when the Company discours'd of seizing the Guards, but he knows nothing of the Rising.

The third Witness (the Lord *Howard*) discourses much about a Conspiracy to rise, but he speaks most (of what he says) by report from the Earl of *Shaftesbury*, and from the Duke; so it goes for no Evidence against my Lord *Russel*, and the Chief Justice did the Prisoner that Right, as to declare as much to the Jury: and the Lord *Howard* clears the Duke from any such horrid Act as the killing the King, the Duke said he would not suffer it; and if the Duke be innocent in that, it is probable that my Lord *Russel*, and the rest of the Company that met, had no discourse about killing the King, nor any Thought that way; which yet is the great and only substantial Charge of this Indictment, which must still be minded and observ'd.

My Lord *Howard* does indeed prove two several Consults, one at Mr. *Hampden* the younger's, the other at my Lord *Russel's* about the middle of January last, and after, and that my Lord *Russel* was at both; and these Consults were of an Insurrection, and where to begin it, and of providing Arms and Money, and of sending into Scotland to settle an Understanding with the Lord of Argyle:

Argyle: and being asked what my Lord did say, he answers thus, *viz.* Every one (says he) knows my Lord Russel is a Person of great Judgment, and not very lavish in Discourse. But did he consent? was a Question ask'd by Sir George Jefferies: the Lord Howard answered, We did not put it to the Vote, but it went without Contradiction, and I took it that all there gave their Consent. That my Lord Russel join'd in the Council of Six, that he approv'd of his being chosen for one, that he said one Word in these two Consults, there is not any Proof by the Lord Howard; only he says, *He took it that all there consented.* Is that enough? O strange Evidence!

I will not here take notice, or examine how far the Lord Howard is a credible Witness in this Case, but refer the Reader to the Testimony of my Lord of Anglesey, Mr. Howard, and Dr. Burnet: or how far any of the three Witnesses are to be believ'd, having all three upon their own Testimony been *Participes Criminis*, and it is suppos'd have their Pardons, or are promis'd Pardons: Not that this is offer'd to disable them quite from being Witnesses, but surely, all things consider'd, it much lessens their Credit in this Case; nor does it make them the more Credible, because no other Witnesses can be had. But then consider that most Excellent Character given of the Prisoner by Persons of Honour, and of the highest Esteem for Ability and Integrity, and such as contradicts, and is inconsistent with the Charge of the Indictment, and whatever is of weight in the Evidence against him; and especially if you give any Credit to the Lord Howard himself, who upon his Oath does declare, as in the Presence of God and Man, That he did not believe that either the Duke of Monmouth, or my Lord Russel, had any design to murder the King; which is the only effectual Charge of this Indictment. These things consider'd, it seems very strange to me, how the Lord Russel could be found guilty of a compassing and imagining the Death of the King; for so is the Verdict.

This answers most of the Observations made by the Author of the *Antidote* upon my Lord Russel's Speech, restraining the Expression, as he says, of his Innocency to the Design upon the King's Life, and to killing of the King, and of his omitting to mention the general Rising; which, as this Author boldly affirms, was fully proved upon him; and that my Lord's Professions of his Innocency, as to any Plot upon the King's Life, or to kill the King, or his knowing any thing thereof, these (says the Author) are no plain Declarations of his Innocency, as to the Crime charged and proved upon him, of conspiring and consulting to raise an Insurrection. Nor was there any need of my Lord's answering that, for it was little material.

How uncertain, how disagreeing, how unapplicable to the Charge of the Indictment those Proofs are, has been fully observ'd already; and the Author grossly mistakes in his Judgment, when he takes the conspiring and consulting to raise an Insurrection, to be the Crime charged in the Indictment; for (as was observ'd before) the Charge of the Indictment is, the *compassing and imagining to kill the King*; and that of a Conspiracy to raise an Insurrection, or to levy War, is none of the Crimes or Treasons enumerated or specified in the Act of 25 Edw. 3. and therefore could not be the Crime charged in the Indictment, which is grounded

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only upon that Act of 25 Edw. 3. (as the Attorney-General acknowledges) for it is an actual levying of War, and not a conspiring only to levy War, or raise an Insurrection, that is the Treason specified in that Act of 25 Edw. 3. And therefore the mention of other things are but by way of Aggravation, for the more ample setting forth of the Crime charged, which is of compassing the King's Death: and that the conspiring to make an Insurrection, cannot be an open Deed to prove a compassing the King's Death, has been already spoken to, and shall be yet more fully.

Nor is the Author more mistaken in his Observations upon the Matter of Fact, and his unwarranted Conclusions and Inferences raised from thence, than he is in his Determinations of Matters in Law arising from that Fact.

The Death of the King (says the Author) in that Law of 25 Edw. 3. is not restrained to killing of his natural Person, but extends as well to his civil Death as natural: As to conspire to depose the King, to imprison him, or laying any force or restraint upon him; these (says the Author) are all High-Treason, for compassing his Death, natural or civil. If so, why then we are at never the more certainty for this excellent Law of 25 Edw. 3.

I agree, that conspiring to depose the King, to imprison him, are Treasons; but it is not so plain that they are Treasons within this Law of 25 E. 3. upon which this Indictment is grounded. It is true, they are made Treason by the late Act of 13 of the now King, and have by several temporary Acts (such as this of 13 Car. 2. is) been made Treason: but this proves that they were not judged by those Parliaments, that pass'd those temporary Acts, to be Treasons within the Statute of 25 Edw. 3. For why then were these temporary Acts made? What need was there of them? Sir Edward Coke, 3 Inst. fol. 9. in the last Paragraph but one of that fol. says, A Conspiracy to levy War is no Treason; he means within the Act of 25 Edw. 3. but it has been made Treason since Sir Edward Coke's time, *viz.* by 13 Car. 2. And let it be remembred, that the great End of making this excellent Law of 25 Edw. 3. (as appears by the Preamble) was to avoid Uncertainty, and Variety of Opinions, and to prevent the Arbitrariness of Judges, in the ordinary Courts; and the Act takes care, that doubtful Cases, such as are not plainly within the enumeration of the Act, are to be reserv'd for the Judgment of the King and Parliament. And herein consists the Excellency of this Law: *Quoad fieri possit, quam plurima Legibus ipsis definiantur: Quam paucissima Judicis arbitrio relinquantur.* And as the learned Lord Bacon in his *Advancement of Learning*, fol. 447. says, That is the best Law, which gives least Liberty to the Judge; he the best Judge that takes least Liberty to himself: *Misera est servitus, ubi Jus est vagum.* And this Law is a Declaration of Law, and therefore ought not to be extended to like Cases in the Construction of it: And it is made in the Punishment of the greatest Offences, and is as penal as a Law can be; and therefore ought not to be expounded by Equity, that is, to be extended to like Cases.

It is true, the Opinion of the Judges hath been, That conspiring to depose or imprison the King, is a compassing or imagining the Death of

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the King. And if a Man declares by *Overt-Act*, that he will depose or imprison the King; this, says Sir *Edward Coke*, 3 *Inst.* fol. 6. upon the Word (*Mort*) is a sufficient *Overt-Act*, for the Intent of killing the King. Mind him well, he does not say, that *conspiring* to depose or to imprison the King, is an *Overt-Act*, to prove the conspiring the King's Death; which is the Opinion the Antidoter maintains, and for which he cites all his Cases afterwards cited. But Sir *Edward Coke* says, That conspiring to depose or imprison the King, being declar'd by *Overt-act*, this *Overt-Act* is also a sufficient *Overt-Act* for the Intent of killing the King.

It is one thing to conspire to depose the King,

And another thing to declare, that Conspiring by some Open-Act: They differ as much as thinking does from acting. Now in this Case of the Lord *Ruffel*, the Author of this Antidote, and some others (as appears by the printed Tryals) would have us believe that very conspiring to levy War, is an *Overt-Act* to prove the compassing and imagining the King's Death: For which there is not the least ground from Sir *Edward Coke*. First they are different Species, as Sir *Edward Coke* observes in his third *Institutes*, fol. 14. the third Paragraph; and therefore (says he) the one of them cannot be an *Overt-Act* for another. That is, Conspiring to levy War, may the actual levying of War too, which is one Species of Treason, cannot be an *Overt-Act* for the compassing the Death of the King, which is another Species of Treason. But this is that the Antidoter labours; only says Sir *Edward Coke*, the *Overt-Act* of the one, may be an *Overt-Act* for another Sort or Species of Treason.

And I agree it, if the *Overt-Act* in the one sort of Treason, may as fitly and as properly in its own nature, and as equally be also an *Overt-Act* in the other sort, and had a Tendency to the Execution of that other sort. And it also does appear by the Proofs, to be so intended by the Conspirators: As for example; Actual seizing of the King's Guards (not a Conspiring to seize the King's Guards, and such Guards as are not plainly set forth in the Indictment what they are) may in its nature be an *Overt-Act*, to make manifest the compassing of the King's Death, and is an *Act* proper enough, and has in its nature a Tendency towards the Execution of the Conspiracy to kill the King: But then it must be proved to be so intended and designed, that is, in order to the killing of the King. But if it appear otherwise upon the Proof (as here it did) that it was not so intended, but design'd merely in order to a Rebellion, and levying of War (for which also it is as apt, and proper in its nature, and has as great a Tendency that way;) then it cannot be applied nor made use of as an *Overt-Act*, to prove the compassing the King's Death, (as in this Case of my Lord *Ruffel*'s it was:) For this (as Sir *Edward Coke* well says, fol. 14. the latter part of the third Paragraph of that *Folio*) would be to confound the several Classes or Species of Treason: And the Confusion of Species is abominable in Nature.

And where Sir *Edward Coke* seems to comply with the Opinion and Practice of some Judges, that the *Overt-Act* of *Deposing* may be a good *Overt-Act* of *Killing*, (which, with the Distinction that I have offered, is just enough) yet he has

some Hesitation; for he concludes that Opinion of his with these Words, fol. 6: in his third *Institutes*, upon the Word [*Mort*:] But (says he) peruse advisedly the Statutes of 13 *Eliz.* cap. 1. And why those Statutes? Because by those Statutes conspiring to depose the Queen is made Treason; which needed not, (as has been observ'd already) if it was Treason, within that Clause of Compassing the King's Death, within the Statute of 25 *Edw.* 3. The like may be observed in many other such temporary Laws, as that of 25 *H.* 8. cap. 22. 26 *H.* 8. cap. 13. 28 *H.* 8. cap. 7. 1 *Edw.* 6. cap. 12. and 5 & 6 *Edw.* 6. cap. 11.

And it is worthy Observation, tho by way of a short Digression, that in many, if not in every one of these temporary Laws of Treason, there is an express Clause and Provision still, that Concealment, or keeping secret of any High Treason, should be adjudged Misprision of Treason: As if there were great need of that Caution, lest the Judges might judge concealing of Treason for High Treason.

Now to shew the Tenderneſs that the Judges heretofore shewed in the expounding of this Statute of Treasons of 25 *Edw.* 3. and how cautious they were in extending it beyond the strict Sense and Letter of the Statute, read the Case in *Mich.* 19 *Hen.* 6. fol. 47. Case 102. A Man was indicted in the King's Bench of Petty-Treason (which is declared too by the same Statute of 25 *Edw.* 3. cap. 2.) for killing his Mistress, whom he served. And because the Words of this Statute of 25 *Edw.* 3. declares it Petty-Treason where the Servant kills the Master, they were in doubt whether it ought to be extended to the Mistress, or not. And there the Judges of the King's Bench (before whom the Case was) sent to the Judges of the Court of Common-Pleas, then sitting, and to the Serjeants there, to know their Opinion of the Case. And by Advice of all the Judges of both Courts, it was adjudged Petty Treason for the Servant to kill the Mistress, not only within the Meaning, but within the very Words of that Statute; for Master and Mistress are in effect but one and the same Word, they differing only in Gender.

Sir *Edward Coke* says, 3 *Instit.* fol. 20, & 22. The Judges shall not judge *a simili*, or by Equity, by Argument, or by Inference of any Treason; but new or like Cases were to have been referred to the Determination of the next Parliament: *Ubi terminata sunt dubitationes Judiciorum*, says *Bracton*.

Let us in the next place examine the Authorities in Law, and Book-Cases, cited by this Author of the Antidote, and see how far they make good his Opinion, That meeting and consulting to make an Insurrection against the King, or raise a Rebellion, (which is the same with levying War, within the Words of 25 *Edw.* 3.) tho the Rebellion be not actually raised, is High Treason within this Law of 25 *Edw.* 3. For so he proposes the Question, Fol. 5. of his Book. And if he does not confine his Argument to that Statute, he says nothing to the Lord *Ruffel*'s Case.

To prove the Meeting and Consulting to make an Insurrection against the King, or raise a Rebellion within the Kingdom, (tho the Rebellion is not actually raised) is High Treason within the

Statute

Statute of 25 *Edw. 3. cap. 2.* (which, put all together, is the Position the *Antidote* maintains :) He cites the Case of *Constable*, mentioned in *Calvin's Case*, Sir *Edward Coke's 7th Rep. fol. 10. b.* and thence infers, That whatsoever tended to the deposing of Queen *Mary* was adjudged Treason for compassing her Death.

And this no Man denies; and it agrees with the Judgment of Sir *Edward Coke*, in his Chapter of Treason, *fol. 6.* upon the Word [*Mort,*] where he says, He that declareth by Overt-Act to depose the King, does an Overt-Act of compassing and imagining the Death of the King: And so says Sir *Matthew Hale's Pleas of the Crown, fol. 11.* towards the latter end. But what is this to the Point in hand, which merely concerns a Meeting and Consulting to make an Insurrection, or raising a Rebellion, which is the same thing with Conspiring to levy War? Conspiring to depose the King, and conspiring to levy War, are different Things; as conspiring to levy War is clearly held to be a distinct Treason from conspiring the Death of the King: And therefore the former of these (as hath been before observed) cannot by Law be an Overt-Act of the latter, as appears by the said Treatise of the *Pleas of the Crown, fol. 13.* towards the latter end. Nor was conspiring to levy War, without an actual levying of it, any Treason within the Statute of 25 *Edw. 3.* upon which Statute only the Indictment of the Lord *Russel* is grounded, as is acknowledged by the Attorney-General. And therefore to supply that Defect, the Statute of 13 *Car. 2.* does expressly make it to be Treason. But the Lord *Russel* was not indicted upon that Statute of 13 *Car. 2.* and for this Reason he ought to have been acquitted upon this Indictment grounded only upon the Statute of 25 *Edw. 3.*

And if practising with a foreign Prince to make an Invasion, (when no Invasion followed, as the Case of Doctor *Story* was) *Dyer 298.* be all one with conspiring to levy War, when indeed no War is raised; it is out of all dispute that such Practising and such Conspiring cannot be Treason within the Statute of 25 *Edw. 3.* tho it be Treason within the Statute of 13 *Car. 2.*

In the Case of the Lord *Cobham*, 1 *Jacobi*, there was more in the Case than conspiring to make an Insurrection, (which is all that the Author of the *Antidote* takes notice of :) There was also an actual Rebellion raised, as appears by the said little Treatise, filed, *The Pleas of the Crown, fol. 13.*

for the People were there assembled to take the King into their Power, as that Book puts the Case of the Lord *Cobham*.

And so it is in the Case of the Lord *Grey*: For there they had not only conspired to make an Insurrection, but, further, to seize the King, and get him into their power; which is a direct Conspiring against his Person, which naturally tends to the Destruction of his Person, and is the same with conspiring his Death, as hath been usually expounded: But 'tis otherwise merely to conspire to make an Insurrection, which can be no more than conspiring to levy War. The Case of Sir *Henry Vane* and *Plunket* had many other Ingredients to mount them up to Treason, which difference them from my Lord *Russel's* Case.

As to the Point of Misprision of Treason, with which the Author of the *Antidote* concludes, I have fully declared my Opinion already in the former part of this Discourse; and, I think, plainly evinced, That tho the Noble Lord might be present while others might between themselves privately debate Matters, and conclude upon them, yet it did not clearly appear by any Proofs that this Noble Lord ever gave the least Consent (to what was so concluded; without which Consent it could not amount to Treason, but at the most be a Misprision only. Nor must any Man's Life be taken from him upon Presumption or probable Arguments, but by plain, direct, and manifest downright Proofs. But a more strong, and indeed a violent Presumption lay quite the other way, that this Noble, Prudent, and Pious Lord, could never be guilty of such a Crime, as to conspire the Death of King *Charles* the Second: It was extremely against his Interest so to do; for the Life of that King, so long as it continued, by the Blessing of God was the great Security, both he and all good Protestants had against the greater Danger that might happen by the Change arising by the Death of that King, of losing our Religion, and all our Civil and Religious Rights, as the Experience we have lately had, hath sadly taught us. And if any thing were consulted between this Excellent Lord, and those with whom he met, as is more than probable, it was how to secure themselves against those Dangers they saw so near approaching, if the Life of King *Charles* the Second should fail; there was so great a Cause to fear them, considering who was like to succeed in the Throne.

The End of the Third Volume.



